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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1450

RIN 0560–AI27

Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending the Biomass Crop Assistance Program (BCAP) regulations to implement changes required by the Agricultural Act of 2014 (the 2014 Farm Bill). BCAP provides financial assistance to producers who establish, collect, harvest, store, and transport biomass crops. The 2014 Farm Bill reauthorizes BCAP, with certain changes that are implemented in this rule. The changes include reducing the payment rate per ton for collection, harvest, storage, and transportation of eligible materials, and limiting the cost share per acre for establishment of biomass crops. The requirements for eligible material and eligible land are revised in this rule, as required by the 2014 Farm Bill. The general scope of BCAP is not changing with this rule.

DATES:

Effective Date: May 28, 2015.

Comment Date: We will consider comments we receive by April 28, 2015.

ADDRESSES: We invite you to submit comments on this rule. In your comment, please specify RIN 0560–AI27 and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments;
- *Mail, Hand Delivery, or Courier:* Kelly Novak, FSA CEPD, USDA, STOP 0513, 1400 Independence Ave. SW., Washington, DC 20250–0513.

All written comments will be available for inspection online at *www.regulations.gov* and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Kelly Novak, telephone (202) 720–4053. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

BCAP is an FSA administered program using Commodity Credit Corporation (CCC) funds. Section 9010 of the 2014 Farm Bill (Pub. L. 113–79) amends 7 U.S.C. 8111 and reauthorizes BCAP with certain changes. BCAP provides assistance to biomass producers and owners in two payment categories:

- Matching payments to eligible material owners for the delivery of eligible material to qualified Biomass Conversion Facilities (BCFs). Qualified BCFs use biomass feedstocks to produce heat, power, biobased products, research, or advanced biofuels. The 2014 Farm Bill adds research as an authorized use of material by BCFs.
- Establishment and annual payments to producers who enter into contracts with CCC to produce eligible biomass crops on contract acres within BCAP project areas.

This rule implements all the required 2014 Farm Bill changes to both parts of the program and seeks comment on FSA's implementation of BCAP, given the required changes and changes to funding. The rule also includes several discretionary changes, including the removal of the participant's option for assignment of BCAP payments to third parties, and a clarification of how the two-year period of eligibility for matching payments, commencing with the effective date of this rule, will be calculated.

Definitions and Terms Used in This Rule

This rule adds, removes, or revises the following definitions:

- ''Agricultural residue'' is being added and includes crop residues and woody orchard wastes. Both these types of residues can be eligible materials.
- ''Beginning farmer or rancher'' is being removed, because that term is defined in 7 CFR part 718, which is referenced in § 1450.2.
- ''Dry ton'' is being revised to clarify requirements for measuring moisture content of eligible woody materials.
- ''Eligible crop'' is being revised to clarify that noxious and invasive species are ineligible for establishment and annual payments, and to move specific eligibility requirements to § 1450.200.
- ''Eligible land'' is being added to reflect the 2014 Farm Bill requirements, which add eligibility for Conservation Reserve Program (CRP) acreage or land in the Agricultural Conservation Easement Program (ACEP) that expires in the current year of a BCAP project area signup and has not yet received a CRP or ACEP annual rental payment in the current year.
- ''Eligible material'' is being revised to reflect the 2014 Farm Bill required changes for matching payments, and to move the specific eligibility requirements for material for matching payments to section § 1450.103.
- ''Native sod'' is being revised to reflect the 2014 Farm Bill's change in definition for native sod that is required for other USDA programs. For the purposes of consistency with crop insurance and the Noninsured Crop Disaster Assistance Program (NAP) regulations that now restrict the eligibility of native sod for those programs, the definition of native sod for the purposes of BCAP will now include ground that has never been tilled or the producer cannot substantiate that the ground has ever been tilled.
- ''Socially disadvantaged farmer or rancher'' is being removed, because that term is defined in 7 CFR part 718, which is referenced in § 1450.2.

Matching Payments

The changes to the BCAP matching payments required by the 2014 Farm Bill include a reduced payment rate of up to $1 for each $1 per ton provided by the biomass conversion facility, in an amount not to exceed $20 per dry ton (previously $45 per ton) for a period of up to 2 years. The rate is being changed in § 1450.106.

As specified in the 2014 Farm Bill and in this rule, bagasse, which includes sugar cane and sorghum biomass, is now specifically excluded from the definition of an eligible material and the requirements for eligible materials in Subpart B. This rule also requires that all eligible material be collected or harvested directly from the land according to an approved conservation plan, forest stewardship plan, or equivalent plan. For example, manufacturing wood wastes that are not harvested directly from the land, such as sawdust or sawmill residues, are not eligible woody material. Woody material, including orchard waste, must be collected and harvested directly from the land and must also be a by-product of preventive treatments for hazardous fuel reductions, or reduction or containment of disease or insect infestations. Woody material that is a by-product of preventative treatments solely for the purpose of restoring ecosystem health is no longer eligible. Woody material that can be used to create a higher-value product (such as a mulch product) is not eligible. The 2014 Farm Bill definition of ''eligible material'' also specifies that eligible material can now be used by a biomass conversion facility for the purpose of research, in addition to heat, power, biobased products and advanced biofuels.

The 2014 Farm Bill clarifies that the rate for matching payments must be based on a ''dry'' ton. Therefore, this rule adds a requirement that biomass conversion facilities must use the applicable American Society for Testing and Materials (ASTM) standards to determine dry ton weight of eligible materials. In addition, the eligible material owner, as specified in § 1450.104, is required to submit a request for payment on approved eligible woody material deliveries based on the dry ton weight that was determined using an ASTM standard.

The 2014 Farm Bill continues the matching payment eligibility period of 2 years total per eligible material owner. This rule specifies that any matching payments received before the effective date of this final rule will not count towards an eligible material owner's 2-year period of eligibility for matching payments. This is a discretionary decision. FSA determined that the revised requirements for eligible materials and the reduction in payment rate changed the scope of the matching payments part of BCAP to the extent that a new 2-year period of payment eligibility for eligible material owners is appropriate.

Project Areas

The changes to BCAP establishment and annual payments required by the 2014 Farm Bill include:

- Project area selection criteria will include consideration of existing project areas and continuation of funding to advance the maturity of such project areas;
- Land eligibility will now include expiring CRP land and ACEP land, but the 2014 Farm Bill prohibits the Secretary from making a BCAP payment if a CRP or ACEP payment was received in the same year;
- Establishment payment rates are reduced to not more than 50 percent of the costs of establishing an eligible perennial crop, not to exceed $500 per acre, except that socially disadvantaged farmers or ranchers may be reimbursed up to $750 per acre; and
- Any plant that is an invasive or noxious species is explicitly excluded from the definition of ''eligible crop.''

The 2014 Farm Bill also provides specific authority for the Secretary to consider whether the biomass conversion facility for the project area has equity sufficient to be in operation by the date on which the eligible crops are ready for harvest. Under prior regulations, CCC could require information demonstrating that the biomass conversion facility would have sufficient equity available to operate. We are requesting comments on how we should apply this criterion in future Requests for Proposals (see Comments Requested section below).

The 2014 Farm Bill clarifies that eligible crops for a project area do not include invasive or noxious species or varieties of plants. Therefore, this rule amends § 1450.200 to effect that exclusion. If a project area proposal includes species or plant varieties whose potential to be invasive or noxious has not yet been determined, the 2014 Farm Bill requires CCC to use ''credible risk assessment tools or other credible sources'' to determine which plants are invasive or noxious in a particular area. We are requesting comments on which credible risk assessment tools or other credible sources for determination CCC should use (see Comments Requested section below). The requirement to use credible risk assessment tools to determine which plants are invasive or noxious is in addition to the existing National Environmental Policy Act (NEPA) requirements that apply to BCAP, which are not changing. FSA will continue to require the appropriate level of (NEPA) review, consistent with 7 CFR 799, for BCAP project area proposals.

As required by the 2014 Farm Bill, this rule amends § 1450.202 to include status as an existing project area as a new criterion in selecting BCAP project areas for funding, in order to advance the maturity of existing project areas. The 2014 Farm Bill does not specify what is meant by ''maturity'' of a project area. Different factors could be considered when determining ''maturity,'' including the harvesting of longer term crops, such as biomass trees, or the expansion of a project area, making it more economically viable in the long term. We are requesting comments on how FSA should apply this criterion (see Comments Requested section below).

This rule amends § 1450.204 to make the changes in the definition of eligible land required by the 2014 Farm Bill. Specifically, CRP contract acreage and Grassland Reserve Program (GRP) contract acreage were previously not eligible for BCAP, regardless of whether or not the CRP or GRP contract was due to expire within the year. The 2014 Farm Bill allows CRP acres that are in their expiring year, and which have not yet received an annual rental payment, to be eligible for enrollment into BCAP. The 2014 Farm Bill consolidates non-easement GRP acres into the CRP, so GRP acres are included in the provisions for expiring CRP land. The 2014 Farm Bill also consolidates GRP easements and Wetland Reserve Program (WRP) contract acreage into the newly created ACEP, administered by the USDA Natural Resources Conservation Service (NRCS). Therefore, § 1450.204 now specifies that the expiring ACEP acres are also eligible for enrollment in BCAP, provided no current year annual payment was received. This rule removes obsolete references to GRP and WRP acreage eligibility.

This rule is revising the levels and rates for establishment payments in § 1450.213 to reflect the limits provided in the 2014 Farm Bill. Specifically, the 2014 Farm Bill reduces the cost share for establishment payments from 75 percent to 50 percent of actual establishment costs and sets a payment limit of $500 per acre. The limit is $750 per acre if the producer is a socially disadvantaged farmer or rancher. There was no previous cap on payments per acre.

Removal of Assignment Provisions

As a discretionary decision, this rule removes § 1450.9 ''Assignments.'' That section included provisions that allowed participants to assign BCAP payments, including both matching and establishment payments, to third

parties. This change is intended to improve program integrity and transparency. BCAP payments, as specified in the 2014 Farm Bill, are intended to benefit the land owner or operator or the eligible material owner. The removal of assignment of payments, under the matching payment portion of the program, lessens the potential for inappropriate assignment of payments to biomass conversion facilities under unauthorized value sharing arrangements. The removal of assignments, under the project area portion of the program, will likely provide greater clarity to stakeholders in project areas, which include project area sponsors and the contracting producers. The removal of the assignment of payment will help clarify that any crop establishment or harvesting services provided by the project sponsor or any other provider to the producer are services outside the scope of the BCAP program and the BCAP contract, and that financial responsibility for those actions is between the service provider and the producer.

Policy Changes for Project Area Activities

FSA will make certain changes to the way the establishment and annual payments portion of BCAP is implemented. These policies do not require changes to the regulations. As noted below, we are requesting comments on this rule and on implementation issues; these changes are being explained to provide information for the commenters (see Comments Requested section below).

The requirements for project area signup are largely unchanged by the 2014 Farm Bill. FSA will continue to initiate project area signup by first requesting project area proposals. Once FSA receives proposals, FSA will select and designate geographic-and-eligible-crop-specific project areas, and then announce producer signup at FSA county offices.

The process for producer signup is changing, to improve program effectiveness. In an effort to provide more timely outreach during signup, FSA will be evaluating and adjusting the timing of the producer signup process. In previous years, BCAP signup periods for establishment payments in approved project areas were relatively short and at less than optimal times for establishing crops. Therefore, FSA is revising the producer signup process to allow project area signups to take place on a continuous basis within the constraints of available funding.

As noted below in the Comments Requested section, FSA welcomes public input on BCAP implementation issues and policies. Most of the itemized issues pertain to changes the 2014 Farm Bill made to the establishment and annual payments component of the program.

Funding Changes in the 2014 Farm Bill

The 2014 Farm Bill specifies the annual amount of funds authorized for BCAP and specifies how funding may be allocated among various activities. Specifically, the 2014 Farm Bill provides mandatory funding of $25 million for each of fiscal years 2014 through 2018, and specifies that the Secretary must use not less than 10 percent, nor more than 50 percent, of the funding for each fiscal year for BCAP matching payments. The $25 million each fiscal year is subject to sequestration or other reductions through the appropriations process. Section 716 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) effectively limited the funding available for BCAP in fiscal year 2015 to $23 million. The previous authorization for BCAP provided such sums as necessary from the mandatory appropriation for CCC; however, subsequent Congressional actions in the annual appropriations acts placed restrictions on the amount of funding available. The overall result of the 2014 Farm Bill changes in funding is to provide a more stable and predictable stream of funding for BCAP, although the annual amount of funding available is less than in some previous years.

The 2014 Farm Bill also specifically authorizes funding of technical assistance from available BCAP funds. BCAP included technical assistance previously, but FSA did not have the specific authorization to use BCAP funds for those activities. FSA plans to expand technical assistance activities to provide BCAP with enhanced compliance spot checks, greater breadth of environmental reviews, outreach, and training. In addition, BCAP technical assistance will continue to include the development and evaluation of conservation plans, forest stewardship plans, or equivalent plans for participants.

As noted in the next section, FSA seeks comments on how FSA should prioritize and implement various BCAP activities, given the funding authorization provided in the 2014 Farm Bill.

Miscellaneous Corrections

This rule makes several minor technical corrections, such as correcting typographical errors.

Comments Requested on BCAP Implementation

FSA is requesting public comments on how BCAP should be implemented in future years, given the new requirements in the 2014 Farm Bill and the limited funding authority. FSA is, in particular, requesting public comments on the following questions:

- What information could FSA reasonably collect that would provide assurance that the biomass conversion facility has sufficient equity to be in operation by the date on which project area eligible crops are ready for harvest?
- How could FSA best determine if expansion of a project area would advance the maturity of that project area?
- What credible risk tools and sources should FSA consider in determining whether proposed crops are potentially invasive?
- With a new cost share cap of 50 percent for establishment costs for perennial crops in project areas, what establishment practices should FSA consider as most important to support?
- With the new limits to the BCAP budget, what priorities should FSA consider in implementing the program?

Please provide information on these issues, and any other issues of concern with BCAP implementation, to the contacts listed in the **ADDRESSES** section. Specific comments addressing the issues raised above are most helpful; all comments are welcome. Proposals for alternatives should address data sources, costs, and the provisions of the 2014 Farm Bill that support the alternative. The following suggestions may be helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and data on which you based your views.
- Provide specific examples to illustrate your points.
- Offer specific alternatives to the current regulations or policies and indicate the source of necessary data, the estimated cost of obtaining the data, and how the data can be verified.

Submit your comments by the comment period deadline.

Notice and Comment

We are issuing this final rule without prior notice and opportunity for comment. The Administrative Procedure Act (APA) exempts rules ''relating to agency management or personnel or to public property, loans,

grants, benefits, or contracts'' from the statutory requirement for prior notice and opportunity for comment. 5 U.S.C. 553(a)(2). However, FSA is providing a 60-day comment period and we invite you to participate in this rulemaking by submitting written comments, data, or views. We will consider the comments we receive and may conduct additional rulemaking based on the comments.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The 2014 Farm Bill extended and revised BCAP and authorized its funding through 2018. FSA has no discretion in these BCAP provisions or changes; the only discretionary provisions in this final rule are minor editorial clarifications. The general scope of BCAP, as implemented under the 2008 Farm Bill, is unchanged. As such, FSA has determined that this final rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule does not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule is not a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in

the Catalog of Federal Domestic Assistance to which this rule applies is the Biomass Crop Assistance Program—10:087.

Paperwork Reduction Act of 1995

The regulatory changes in this rule do not require changes to the information collection requests currently approved by OMB control number 0560–0082.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1450

Administrative practice and procedure, Agriculture, Energy, Environmental protection, Grant programs—agriculture, Natural resources, Reporting and recordkeeping requirements, Technical assistance.

For the reasons discussed above, CCC amends 7 CFR part 1450 as follows:

PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

■ 1. The authority citation for part 1450 continues to read as follows:

Authority: 7 U.S.C. 8111.

Subpart A—Common Provisions

§ 1450.1 [Amended]

■ 2. Amend § 1450.1, in paragraph (b), by removing the word ''Program'' and adding the word ''Programs'' in its place.

§ 1450.2 [Amended]

■ 3. Amend § 1450.2 as follows:
■ a. Add, in alphabetical order, definitions for ''Agricultural residue'' and ''Eligible land'', to read as set forth below;
■ b. Remove the definitions for ''Beginning farmer or rancher'' and ''Socially disadvantaged farmer or rancher'';
■ c. Revise the definitions for ''Dry ton'', ''Eligible crop'', ''Eligible material'', and ''Technical assistance'', to read as set forth below;
■ d. In paragraph (2) of the definition of ''Native sod'', add the words ''or the producer cannot substantiate that the ground has ever been tilled'' immediately after the word ''tilled''; and
■ e. In the definition of ''Yard waste'', remove the word ''byproducts'' and add the word ''by-products'' in its place.

The revisions and additions read as follows:

§ 1450.3 Definitions.

* * * * *

Agricultural residue means crop residue from agricultural lands, including woody orchard waste.

* * * * *

Dry ton means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content. Woody material dry ton weight is determined in accordance with applicable American Society for Testing and Materials (ASTM) standards.

Eligible crop means a crop of renewable biomass as defined in this section that is eligible for establishment payments and annual payments as specified in Subpart C of this part.

Eligible land means agricultural and nonindustrial private forest lands on which eligible crops for establishment payments and annual payments may be grown, as specified in subpart C of this part.

Eligible material means renewable biomass, including agricultural residue, as defined in this section that is harvested directly from the land and that is eligible for matching payments, as specified in subpart B of this part.

* * * * *

Technical assistance means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. BCAP technical assistance may include, but is not limited to: technical expertise and services, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed to support delivery of technical and program services, such as technical standards, resource inventories, training, data, technology, monitoring, compliance spot checks, and effects analyses.

* * * * *

§ 1450.9 [Removed]

■ 4. Remove § 1450.9.

§§ 1450.10 to 1450.13 [Redesignated]

■ 5. Redesignate §§ 1450.10 through 1450.13 as §§ 1450.9 through 1450.12.

■ 6. Revise newly redesignated § 1450.9(b) to read as follows:

§ 1450.9 Appeals.

* * * * *

(b) Determinations by the Natural Resources Conservation Service, U.S. Forest Service, Department of Interior, Bureau of Land Management, or other authorized technical assistance provider may be appealed in accordance with procedures established in part 614 of this title or otherwise established by the respective Agency.

Subpart B—Matching Payments

■ 7. Revise § 1450.101(a)(2)(v) and (vi) to read as follows:

§ 1450.101 Qualified biomass conversion facility.

(a) * * *

(2) * * *

(v) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered. Woody material dry ton weight must be determined in accordance with applicable ASTM standards; and

(vi) Purchase eligible material at a fair market price that is consistent with similar products, regardless of whether or not the seller has applied for or receives a matching payment authorized by this subpart or if the seller and purchaser are related entities.

* * * * *

■ 8. Amend § 1450.102 as follows:
■ a. In paragraph (a)(2), remove the words ''eligible material'' and add the words ''eligible material, regardless of whether the eligible material is produced on contract acreage authorized by subpart C of this part,'' in their place; and
■ b. Revise paragraph (a)(3).

The revision reads as follows:

§ 1450.102 Eligible material owner.

(a) * * *

(3) Certify that the eligible material for which a payment may be issued as specified in § 1450.106 has been harvested according to a conservation plan, forest stewardship plan, or equivalent plan, and, if woody eligible material collected or harvested on land other than contract acreage, the woody material is a by-product of preventative treatments that was removed to reduce hazardous fuels or to reduce or contain disease or insect infestation.

* * * * *

■ 9. Amend § 1450.103 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a), introductory text;

■ c. Remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3);
■ d. Revise newly redesignated paragraph (a)(2)(i);
■ e. Revise paragraphs (b)(1), (3) and (4) and add paragraphs (b)(5) through (10); and
■ f. Add paragraph (c).

The revisions and additions read as follows:

§ 1450.103 Eligible material for payments.

(a) Except for the exclusions specified in paragraph (b) of this section, in order to qualify for matching payments, eligible material must meet the following requirements:

* * * * *

(2) * * *

(i) By-products of preventative treatments that were removed to reduce hazardous fuels or to reduce or contain disease or insect infestation; and

* * * * *

(b) * * *

(1) Any eligible material delivered before May 28, 2015;

* * * * *

(3) Material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber;

(4) Animal waste and by-products of animal waste including fats, oil, grease, and manure;

(5) Food waste and yard waste;

(6) Algae;

(7) Woody eligible material that is not a by-product of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation;

(8) Any woody eligible material collected or harvested outside contract acreage that would otherwise be used for higher-value products;

(9) Any otherwise eligible material collected or harvested outside contract acreage that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value market product in order to be used for heat, power, biobased products, research, or advanced biofuels; or

(10) Bagasse.

(c) For eligible woody material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the U.S. Forest Service or other appropriate Federal agency will not be eligible for additional haul costs unless the facility is a further distance than specified in the contract requirement or the material was not a mandatory removal item from Federal lands.

■ 10. Amend § 1450.104 by revising paragraphs (a), (b), and (f)(1) to read as follows:

§ 1450.104 Signup.

(a) Applications for participation and requests for payments under this subpart will be accepted as specified in the FSA announcement(s) in a given fiscal year through the end of the announced sign up period on a continuous basis, subject to the availability of funds.

(b) An eligible material owner must apply to participate in the matching payments component of BCAP before delivery is made to a qualified biomass conversion facility and before payment for the eligible material is received from the qualified biomass conversion facility. The application must be submitted to the FSA county office servicing the tracts of land where the collection and harvest will occur and must be approved by CCC, before any delivery is made to or payment is made by the qualified biomass conversion facility for the eligible material.

* * * * *

(f) * * *

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using standard moisture determinations applicable to the eligible material (Woody material dry ton weight is determined in accordance with applicable ASTM standards);

* * * * *

■ 11. Amend § 1450.106 as follows:
■ a. Revise paragraph (a); and
■ b. In paragraph (b), remove the amount ''$45'' and add the amount ''$20'' in its place.

The revisions read as follows:

§ 1450.106 Payments.

(a) Payments under this subpart will be made for a term not to exceed 2 years, commencing on the date that CCC issues the first payment under this subpart to the participant. The 2-year eligibility period for each participant runs from the date that the participant is first issued any matching payment from CCC, regardless of payment for subsequent deliveries to any other biomass conversion facility. The eligibility period will not include any BCAP matching payments received prior to May 28, 2015.

* * * * *

Subpart C—Establishment Payments and Annual Payments

■ 12. Add § 1450.200(b) to read as follows:

§ 1450.200 General.

* * * * *

(b) Eligible crops include renewable biomass, as defined § 1450.2, excluding:

(1) Any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

■ 13. Amend § 1450.201 as follows:
■ a. In paragraph (a)(3), add the words ''has or'' immediately before the word ''will''; and
■ b. Revise paragraph (a)(4).

The revision reads as follows:

§ 1450.201 Project area proposal submission requirements.

(a) * * *

(4) Any other information that gives CCC a reasonable assurance that the biomass conversion facility will be in operation in a timely manner so that it will use the eligible crops, as determined by CCC.

* * * * *

■ 14. Amend § 1450.202 as follows:
■ a. In paragraph (a)(8), remove the word ''and'';
■ b. Revise paragraph (a)(9); and
■ c. Add paragraph (a)(10).

The revision and addition read as follows:

§ 1450.202 Project area selection criteria.

(a) * * *

(9) Status as an existing project area that has received funding under this subpart and the continuation of funding such project areas to advance the maturity of such project areas; and

(10) Any other necessary additional information, as determined by CCC.

* * * * *

■ 15. Amend § 1450.204 as follows:
■ a. Revise paragraphs (b)(3) and (4); and
■ b. Remove paragraph (b)(5).
The revisions read as follows:

§ 1450.204 Eligible land.

(b) * * *

(3) Land enrolled in the Conservation Reserve Program (CRP) as specified in part 1410 of this chapter for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) A CRP payment for this land has been received in the current fiscal year; or

(4) Land enrolled in the Agricultural Conservation Easement Program (ACEP) for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) An ACEP payment for this land has been received in the current fiscal year.

§ 1450.211 [Amended]

■ 16. Amend § 1450.211, in paragraph (g)(4), by adding the word ''by'' immediately before the word ''CCC''.

§ 1450.212 [Amended]

■ 17. Amend § 1450.212, in paragraph (d), by removing the words ''agreed to'' and adding the word ''determined'' in their place.

■ 18. Amend § 1450.213 by revising paragraphs (a) and (b) to read as follows:

§ 1450.213 Levels and rates for establishment payments.

(a) CCC will pay not more than 50 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan, not to exceed $500 per acre. For socially disadvantaged farmers or ranchers, as defined in part 718 of this title, establishment payments may not exceed $750 per acre.

(b) The average cost of performing a practice will be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by CCC. The average cost as determined by CCC will be used for payment purposes, if it is less than the actual cost for an individual participant.

* * * * *

§ 1450.215 [Amended]

■ 19. Amend § 1450.215, in paragraph (c), by removing the words ''the contract'' each time they appear and adding the words ''the BCAP contract'' in their place.

Signed at Washington, DC, on February 23, 2015.

Val Dolcini,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. 2015–04092 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2006–0074]

RIN 0579–AC36

Highly Pathogenic Avian Influenza; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on December 1, 2014, and effective on that date, we adopted, with changes, an interim rule that amended the regulations concerning the importation of live birds and poultry (including hatching eggs) and bird and poultry products from regions where any subtype of highly pathogenic avian influenza (HPAI) is considered to exist. As part of this action, we intended to clarify that table eggs from regions considered to have HPAI may only be imported under APHIS permit for scientific, educational, or research purposes to approved establishments, and only if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI into the United States. However, we did not add references to HPAI to one of the table egg provisions of the final rule as we intended. This document corrects that oversight.

DATES: Effective February 27, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Case Manager, National Import Export Services, Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737; (301) 851–3300.

SUPPLEMENTARY INFORMATION: In a final rule [1] that was published in the **Federal Register** on December 1, 2014 (79 FR 70997–71007, Docket No. APHIS–2006–0074), and effective on that date, we adopted, with changes, an interim rule that amended the regulations concerning the importation of live birds and poultry (including hatching eggs) and bird and poultry products from regions where any subtype of highly pathogenic avian influenza (HPAI) is considered to exist. As part of this action, we intended to amend the regulations in § 94.6(c)(4) to clarify that table eggs from regions considered to have HPAI that do not meet the requirements of § 94.6(c)(1) through § 94.6(c)(3) may only be imported if the Administrator has determined that the importation can be made under conditions that will prevent the introduction of HPAI into the United States. However, we did not add references to HPAI in § 94.6(c)(4) of the table egg provisions of the final rule as we intended. We are amending the regulations to correct that oversight.

We also wish to clarify a statement we made in the preamble to the final rule regarding the requirements for importing table eggs from HPAI regions. We incorrectly stated that table eggs moved to approved establishments for breaking and pasteurization require an APHIS permit. Such eggs do not require an APHIS permit for importation and, as indicated in § 94.6(c)(2), may be moved from the port of arrival in the United States, under seal of the United States Department of Agriculture, to an approved establishment for breaking and pasteurization.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

[1] To view the rule, supporting analyses, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0074.*

§ 94.6 [Amended]

■ 2. In § 94.6, paragraph (c)(4) is amended by adding the words ''and HPAI'' after the words ''Newcastle disease'' each time they occur.

Done in Washington, DC, this 23rd day of February 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–04147 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31002; Amdt. No. 3630]

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 removes 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 for the 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 February 27, 2015. 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 February 27, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 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 the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures 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 (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. 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 on FAA form documents is unnecessary. This amendment provides the affected CFR, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent 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 and Takeoff Minimums and ODPs, 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 that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

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 procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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, Navigation (air).

Issued in Washington, DC, on January 30, 2015.

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 and Takeoff Minimums and ODPs, 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
5–Mar–15	PA	Doylestown	Doylestown	4/2203	01/13/15	This NOTAM, published in TL 15–05, is hereby rescinded in its entirety.
5–Mar–15	PA	Doylestown	Doylestown	4/2204	01/13/15	This NOTAM, published in TL 15–05, is hereby rescinded in its entirety.
5–Mar–15	MN	Austin	Austin Muni	4/0072	01/13/15	RNAV (GPS) Rwy 17, Amdt 1.
5–Mar–15	MN	Willmar	Willmar Muni-John L Rice Field.	4/0101	01/13/15	RNAV (GPS) Rwy 31, Amdt 1.
5–Mar–15	ND	Bismark	Bismark Muni	4/1055	01/13/15	RNAV (GPS) Rwy 13, Orig.
5–Mar–15	ND	Bismark	Bismark Muni	4/1078	01/13/15	RNAV (GPS) Rwy 3, Amdt 2.
5–Mar–15	ND	Bismark	Bismark Muni	4/1082	01/13/15	RNAV (GPS) Rwy 21, Amdt 1..
5–Mar–15	IL	Peoria	Mount Hawley Auxiliary	4/1094	01/20/15	RNAV (GPS) Rwy 18, Amdt 1.
5–Mar–15	MA	Pittsfield	Pittsfield Muni	4/1842	01/15/15	RNAV (GPS) Rwy 26, Amdt 1.
5–Mar–15	MA	Pittsfield	Pittsfield Muni	4/1971	01/15/15	RNAV (GPS) Rwy 8, Amdt 1.
5–Mar–15	MA	Boston	General Edward Lawrence Logan Intl.	4/2040	01/13/15	Takeoff Minimums and (Obstacle) DP, Amdt 13.
5–Mar–15	NY	Penn Yan	Penn Yan	4/2208	01/20/15	NDB Rwy 28, Amdt 6C.
5–Mar–15	NY	Penn Yan	Penn Yan	4/2209	01/20/15	RNAV (GPS) Rwy 19, Orig-B.
5–Mar–15	KS	Clay Center	Clay Center Muni	4/2532	01/20/15	RNAV (GPS) Rwy 17, Orig.
5–Mar–15	WI	New Lisbon	Mauston-New Lisbon Union	4/7206	01/13/15	Takeoff Minimums and (Obstacle) DP, Orig.
5–Mar–15	LA	Bogalusa	George R Carr Memorial Air Fld.	5/0810	01/08/15	Takeoff Minimums and (Obstacle) DP, Amdt 3.
5–Mar–15	NY	Farmingdale	Republic	5/2582	01/13/15	ILS OR LOC Rwy 14, Amdt 8C.
5–Mar–15	ND	Kindred	Robert Odegaard Field	5/2805	01/13/15	Takeoff Minimums and (Obstacle) DP, Orig.
5–Mar–15	TX	Plainview	Hale County	5/2973	01/20/15	VOR Rwy 4, Amdt 9B.
5–Mar–15	TX	Plainview	Hale County	5/2974	01/20/15	RNAV (GPS) Rwy 4, Orig.
5–Mar–15	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	5/3530	01/20/15	RNAV (GPS) Rwy 18, Amdt 1C.
5–Mar–15	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	5/3531	01/20/15	ILS OR LOC Rwy 22R, ILS Rwy 22R (CAT II & III), Amdt 2C.
5–Mar–15	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	5/3532	01/20/15	RNAV (GPS) Rwy 22R, Amdt 1A.
5–Mar–15	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	5/3533	01/20/15	ILS OR LOC Rwy 22L, Orig-B.
5–Mar–15	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	5/3534	01/20/15	RNAV (GPS) Rwy 22L, Amdt 1B.
5–Mar–15	MI	Grand Rapids	Gerald R Ford Intl	5/3682	01/20/15	VOR Rwy 17, Orig-D.
5–Mar–15	AR	Nashville	Howard County	5/3701	01/20/15	RNAV (GPS) Rwy 1, Orig.
5–Mar–15	AR	Paragould	Kirk Field	5/3708	01/20/15	VOR Rwy 4, Amdt 5.
5–Mar–15	IL	Cahokia/St Louis	St Louis Downtown	5/3910	01/20/15	RNAV (GPS) Rwy 30L, Orig.
5–Mar–15	IL	Cahokia/St Louis	St Louis Downtown	5/3911	01/20/15	RNAV (GPS) Rwy 30R, Orig.
5–Mar–15	IL	Benton	Benton Muni	5/3926	01/20/15	RNAV (GPS) Rwy 18, Orig.
5–Mar–15	IA	Hampton	Hampton Muni	5/4099	01/20/15	VOR/DME Rwy 35, Amdt 1C.
5–Mar–15	IN	Logansport	Logansport/Cass County	5/4127	01/20/15	RNAV (GPS) Rwy 27, Amdt 1.
5–Mar–15	MA	Nantucket	Nantucket Memorial	5/4420	01/20/15	RNAV (GPS) Rwy 15, Orig.
5–Mar–15	MA	Nantucket	Nantucket Memorial	5/4421	01/20/15	RNAV (GPS) Rwy 33, Amdt 1.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4741	01/20/15	RNAV (GPS) Rwy 29, Amdt 1.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4742	01/20/15	RNAV (GPS) Rwy 35, Amdt 1.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4743	01/20/15	LOC BC Rwy 11, Amdt 9.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4744	01/20/15	ILS OR LOC Rwy 29, Amdt 12.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4745	01/20/15	RNAV (GPS) Rwy 17, Amdt 1.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4746	01/20/15	NDB Rwy 17, Amdt 12.
5–Mar–15	IL	Alton/St Louis	St Louis Rgnl	5/4747	01/20/15	RNAV (GPS) Rwy 11, Amdt 2.
5–Mar–15	IL	Kewanee	Kewanee Muni	5/4748	01/20/15	RNAV (GPS) Rwy 19, Amdt 1.
5–Mar–15	IL	Kewanee	Kewanee Muni	5/4749	01/20/15	RNAV (GPS) Rwy 27, Amdt 1.
5–Mar–15	IL	Kewanee	Kewanee Muni	5/4750	01/20/15	RNAV (GPS) Rwy 9, Amdt 1.
5–Mar–15	IL	Kewanee	Kewanee Muni	5/4751	01/20/15	RNAV (GPS) Rwy 1, Amdt 1.
5–Mar–15	OH	Galion	Galion Muni	5/4755	01/20/15	VOR Rwy 23, Amdt 13.
5–Mar–15	OH	Galion	Galion Muni	5/4756	01/20/15	RNAV (GPS) Rwy 23, Orig.
5–Mar–15	OH	Galion	Galion Muni	5/4757	01/20/15	RNAV (GPS) Rwy 5, Orig.
5–Mar–15	OH	Hillsboro	Highland County	5/4759	01/20/15	RNAV (GPS) Rwy 23, Orig.
5–Mar–15	OH	Hillsboro	Highland County	5/4760	01/20/15	NDB Rwy 23, Amdt 5.
5–Mar–15	OH	Dayton	Greene County-Lewis A Jackson Rgnl.	5/4761	01/20/15	VOR Rwy 7, Orig.
5–Mar–15	OH	Lebanon	Warren County/John Lane Field.	5/4762	01/20/15	RNAV (GPS) Rwy 1, Amdt 2.
5–Mar–15	IL	Chicago/Rockford	Chicago/Rockford Intl	5/5023	01/20/15	RNAV (GPS) Rwy 19, Amdt 2.
5–Mar–15	PA	New Castle	New Castle Muni	5/5070	01/21/15	RNAV (GPS) Rwy 5, Amdt 1A.
5–Mar–15	PA	New Castle	New Castle Muni	5/5071	01/21/15	RNAV (GPS) Rwy 23, Amdt 1A.
5–Mar–15	PA	New Castle	New Castle Muni	5/5072	01/21/15	NDB Rwy 23, Amdt 3A.
5–Mar–15	TN	Nashville	Nashville Intl	5/5075	01/21/15	ILS OR LOC Rwy 31, Amdt 9.
5–Mar–15	NY	Penn Yan	Penn Yan	5/5126	01/20/15	RNAV (GPS) Rwy 1, Amdt 3A.

[FR Doc. 2015–03923 Filed 2–26–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31001; Amdt. No. 3629]

Standard Instruction 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 removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) 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 February 27, 2015. 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 February 27, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 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 the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area 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 removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory 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 part § 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, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead 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, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended 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 that 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 procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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, Navigation (air).

Issued in Washington, DC, on January 30, 2015.

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 removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure 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:

Effective 5 March 2015

San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 25
San Jose, CA, Norman Y. Mineta San Jose Intl, ILS OR LOC/DME RWY 12R, Amdt 8
San Jose, CA, Norman Y. Mineta San Jose Intl, ILS OR LOC/DME RWY 30L, ILS RWY 30L (SA CAT I), Amdt 23
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 12L, Amdt 3
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 12R, Amdt 3
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 30L, Amdt 3
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 12L, Amdt 1
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 12R, Amdt 2
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 30L, Amdt 2
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (RNP) Z RWY 30R, Amdt 1
San Jose, CA, Norman Y. Mineta San Jose Intl, VOR RWY 12R, Amdt 5
San Jose, CA, Norman Y. Mineta San Jose Intl, VOR/DME RWY 30L, Amdt 3
San Jose, CA, Norman Y. Mineta San Jose Intl, VOR/DME RWY 30R, Amdt 1
Panama City, FL, Northwest Florida Beaches Intl, VOR/DME RWY 16, Orig
Panama City, FL, Northwest Florida Beaches Intl, VOR/DME RWY 34, Orig
Augusta, GA, Daniel Field, RNAV (GPS) RWY 11, Amdt 1
Donalsonville, GA, Donalsonville Muni, RNAV (GPS) RWY 1, Amdt 1B
Donalsonville, GA, Donalsonville Muni, RNAV (GPS) RWY 19, Amdt 1A
Fitzgerald, GA, Fitzgerald Muni, LOC/NDB RWY 2, Amdt 1
Fitzgerald, GA, Fitzgerald Muni, NDB RWY 2, Amdt 1
Fitzgerald, GA, Fitzgerald Muni, RNAV (GPS) RWY 2, Amdt 1
Fitzgerald, GA, Fitzgerald Muni, Takeoff Minimums and Obstacle DP, Amdt 1A
Champaign/Urbana, IL, University of Illinois-Willard, ILS OR LOC RWY 32R, Amdt 13
Champaign/Urbana, IL, University of Illinois-Willard, NDB RWY 32R, Amdt 11A
Champaign/Urbana, IL, University of Illinois-Willard, RADAR 1, Amdt 6B
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 4, Orig-B
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 14L, Orig-A
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 18, Orig-A
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 22, Amdt 1A
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 32R, Orig-A
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 36, Orig-A
Champaign/Urbana, IL, University of Illinois-Willard, Takeoff Minimums and Obstacle DP, Orig-A
Muncie, IN, Delaware County Rgnl, RNAV (GPS) RWY 3, Orig
Muncie, IN, Delaware County Rgnl, RNAV (GPS) RWY 21, Amdt 1
Terre Haute, IN, Terre Haute Intl-Hulman Field, ILS OR LOC RWY 5, Amdt 23
Winchester, IN, Randolph County, RNAV (GPS) RWY 8, Amdt 1
Winchester, IN, Randolph County, RNAV (GPS) RWY 26, Amdt 1
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 15R, Amdt 16
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 33L, ILS RWY 33L (SA CAT I), ILS RWY 33L (SA CAT II), Amdt 12
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, Takeoff Minimums and Obstacle DP, Amdt 10
Princeton, ME, Princeton Muni, RNAV (GPS) RWY 15, Amdt 1
Escanaba, MI, Delta County, ILS OR LOC RWY 9, Amdt 3
Sault Ste Marie, MI, Chippewa County Intl, ILS OR LOC RWY 16, Amdt 8B
Sault Ste Marie, MI, Chippewa County Intl, NDB RWY 34, Amdt 5A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 10, Orig-A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 16, Amdt 1A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 28, Orig-A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 34, Amdt 1A
Sault Ste Marie, MI, Chippewa County Intl, Takeoff Minimums and Obstacle DP, Orig-A
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS OR LOC RWY 12L, ILS RWY 12L (SA CAT I), ILS RWY 12L (CAT II), ILS RWY 12L (CAT III), Amdt 10
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS OR LOC RWY 12R,

ILS RWY 12R (SA CAT I), ILS RWY 12R (CAT II), ILS RWY 12R (CAT III), Amdt 11
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS V RWY 30L (CONVERGING), Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS V RWY 30R (CONVERGING), Amdt 3
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS Z OR LOC RWY 30L, ILS Z RWY 30L (SA CAT I), ILS Z RWY 30L (CAT II), Amdt 46
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, ILS Z OR LOC RWY 30R, Amdt 15
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) Z RWY 12L, Amdt 4
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) Z RWY 12R, Amdt 3
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) Z RWY 30R, Amdt 3
Tupelo, MS, Tupelo Rgnl, COPTER VOR 023, Orig
Tupelo, MS, Tupelo Rgnl, ILS Y OR LOC Y RWY 36, Orig
Tupelo, MS, Tupelo Rgnl, ILS Z OR LOC Z RWY 36, Amdt 10
Tupelo, MS, Tupelo Rgnl, NDB RWY 36, Amdt 5
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 18, Amdt 1
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 36, Amdt 1
Tupelo, MS, Tupelo Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Tupelo, MS, Tupelo Rgnl, VOR/DME RWY 18, Amdt 1
Oxford, NC, Henderson-Oxford, LOC RWY 6, Amdt 2
Oxford, NC, Henderson-Oxford, NDB RWY 6, Amdt 3
Oxford, NC, Henderson-Oxford, RNAV (GPS) RWY 6, Amdt 1
Oxford, NC, Henderson-Oxford, RNAV (GPS) RWY 24, Amdt 1
Oxford, NC, Henderson-Oxford, Takeoff Minimums and Obstacle DP, Amdt 1
Valentine, NE., Miller Field, RNAV (GPS) RWY 3, Orig
Valentine, NE., Miller Field, RNAV (GPS) RWY 14, Amdt 2
Valentine, NE., Miller Field, RNAV (GPS) RWY 21, Orig
Somerville, NJ, Somerset, RNAV (GPS) RWY 30, Amdt 2
East Hampton, NY, East Hampton, RNAV (GPS) X RWY 10, Amdt 1
East Hampton, NY, East Hampton, RNAV (GPS) Y RWY 10, Amdt 1
East Hampton, NY, East Hampton, RNAV (GPS) Y RWY 28, Amdt 1
East Hampton, NY, East Hampton, RNAV (GPS) Z RWY 10, Amdt 1
East Hampton, NY, East Hampton, RNAV (GPS) Z RWY 28, Orig
New York, NY, John F Kennedy Intl, RNAV (GPS) Z RWY 13R, Orig
Cambridge, OH, Cambridge Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6L, ILS RWY 6L (CAT II), ILS RWY 6L (CAT III), Amdt 2F
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 28, Amdt 24C
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC/DME RWY 24R, ILS RWY 24R (CAT II), ILS RWY 24R (CAT III), ILS RWY 24R (SA CAT I), Amdt 5C
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 10, Amdt 3A
Lorain/Elyria, OH, Lorain County Rgnl, ILS OR LOC RWY 7, Amdt 7
Lorain/Elyria, OH, Lorain County Rgnl, RNAV (GPS) RWY 7, Orig-A
Port Clinton, OH, Carl R Keller Field, NDB RWY 27, Amdt 14
Port Clinton, OH, Carl R Keller Field, RNAV (GPS) RWY 9, Amdt 1
Port Clinton, OH, Carl R Keller Field, RNAV (GPS) RWY 27, Amdt 1
Port Clinton, OH, Carl R Keller Field, VOR/DME–A, Amdt 9A, CANCELED
Washington Court House, OH, Fayette County, RNAV (GPS) RWY 23, Amdt 1
Houston, TX, George Bush Intercontinental/Houston, RNAV (RNP) Y RWY 8L, Orig-A
Houston, TX, Lone Star Executive, ILS OR LOC RWY 14, Amdt 3
Houston, TX, Lone Star Executive, NDB RWY 14, Amdt 3
Houston, TX, Lone Star Executive, RNAV (GPS) RWY 14, Amdt 1
Houston, TX, Lone Star Executive, RNAV (GPS) RWY 32, Amdt 2
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) Y RWY 16L, Amdt 4A

Effective 2 April 2015

Seneca Falls, NY, Finger Lakes Rgnl, RNAV (GPS) RWY 1, Amdt 3A

RESCINDED: On January 26, 2015 (80 FR 3879), the FAA published an Amendment in Docket No. 30995, Amdt No. 3623, to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries for Loup City, NE., effective March 5, 2015 are hereby rescinded in their entirety:

Loup City, NE., Loup City Muni, RNAV (GPS) RWY 16, Orig
Loup City, NE., Loup City Muni, RNAV (GPS) RWY 34, Orig

[FR Doc. 2015–03920 Filed 2–26–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31000; Amdt. No. 3628]

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 removes 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 for the 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 February 27, 2015. 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 February 27, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 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 the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures 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 (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. 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 on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent 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 and Takeoff Minimums and ODPs, 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 that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

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 procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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, Navigation (Air).

Issued in Washington, DC, on January 16, 2015.

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 and Takeoff Minimums and ODPs, 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
5–Mar–15	KS	Concordia	Blosser Muni	4/0379	01/07/15	RNAV (GPS) RWY 35, Orig.
5–Mar–15	MO	St Joseph	Rosecrans Memorial	4/0409	01/12/15	RNAV (GPS) RWY 13, Orig.
5–Mar–15	MO	St Joseph	Rosecrans Memorial	4/1601	01/12/15	RNAV (GPS) RWY 35, Amdt 2.
5–Mar–15	MO	St Joseph	Rosecrans Memorial	4/1607	01/12/15	VOR OR TACAN RWY 17, Amdt 14.
5–Mar–15	NE	Omaha	Eppley Airfield	4/1733	01/12/15	ILS OR LOC RWY 32L, Amdt 2.
5–Mar–15	NE	Omaha	Eppley Airfield	4/1734	01/12/15	ILS OR LOC RWY 36, Orig-A.
5–Mar–15	NE	Omaha	Eppley Airfield	4/1735	01/12/15	RNAV (RNP) Z RWY 32R, Orig.
5–Mar–15	NE	Omaha	Eppley Airfield	4/1736	01/12/15	ILS OR LOC/DME RWY 14L, Amdt 1B.
5–Mar–15	NE	Omaha	Eppley Airfield	4/1737	01/12/15	RNAV (RNP) Z RWY 14L, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
5–Mar–15	NE	O'Neill	The O'Neill Muni-John L Baker Field.	4/1742	01/06/15	VOR RWY 31, Amdt 1A.
5–Mar–15	NE	O'Neill	The O'Neill Muni-John L Baker Field.	4/1746	01/06/15	VOR RWY 13, Amdt 5B.
5–Mar–15	NE	O'Neill	The O'Neill Muni-John L Baker Field.	4/1747	01/06/15	RNAV (GPS) RWY 13, Amdt 1.
5–Mar–15	NE	O'Neill	The O'Neill Muni-John L Baker Field.	4/1748	01/06/15	RNAV (GPS) RWY 31, Amdt 1.
5–Mar–15	NE	Scribner	Scribner State	4/1749	01/06/15	RNAV (GPS) RWY 17, Amdt 1.
5–Mar–15	NM	Clayton	Clayton Muni Arpk	4/1759	01/06/15	RNAV (GPS) RWY 20, Amdt 2.
5–Mar–15	NM	Clayton	Clayton Muni Arpk	4/1762	01/06/15	RNAV (GPS) RWY 2, Amdt 2.
5–Mar–15	NM	Carlsbad	Cavern City Air Trml	4/1764	01/06/15	RNAV (GPS) RWY 3, Orig.
5–Mar–15	NM	Carlsbad	Cavern City Air Trml	4/1765	01/06/15	RNAV (GPS) RWY 14R, Amdt 1.
5–Mar–15	NM	Carlsbad	Cavern City Air Trml	4/1766	01/06/15	RNAV (GPS) RWY 21, Amdt 1.
5–Mar–15	NM	Carlsbad	Cavern City Air Trml	4/1767	01/06/15	RNAV (GPS) RWY 32L, Amdt 1.
5–Mar–15	NM	Los Alamos	Los Alamos	4/1770	01/06/15	RNAV (GPS) Z RWY 27, Orig.
5–Mar–15	NM	Los Alamos	Los Alamos	4/1771	01/06/15	RNAV (GPS) Y RWY 27, Amdt 1.
5–Mar–15	NM	Socorro	Socorro Muni	4/1773	01/07/15	RNAV (GPS) RWY 33, Amdt 1.
5–Mar–15	NM	Roswell	Roswell Intl Air Center	4/1775	01/07/15	ILS OR LOC RWY 21, Amdt 18.
5–Mar–15	NM	Raton	Raton Muni/Crews Field	4/1778	01/07/15	RNAV (GPS) RWY 2, Orig.
5–Mar–15	NM	Raton	Raton Muni/Crews Field	4/1781	01/07/15	RNAV (GPS) RWY 25, Orig.
5–Mar–15	NM	Ruidoso	Sierra Blanca Rgnl	4/1782	01/07/15	RNAV (GPS) RWY 24, Orig.
5–Mar–15	SD	Gettysburg	Gettysburg Muni	4/1783	01/07/15	RNAV (GPS) RWY 13, Amdt 2.
5–Mar–15	SD	Gettysburg	Gettysburg Muni	4/1784	01/07/15	RNAV (GPS) RWY 31, Amdt 2.
5–Mar–15	SD	Parkston	Parkston Muni	4/1785	01/07/15	RNAV (GPS) RWY 15, Orig.
5–Mar–15	SD	Parkston	Parkston Muni	4/1786	01/07/15	RNAV (GPS) RWY 33, Orig.
5–Mar–15	SD	Sturgis	Sturgis Muni	4/1791	01/07/15	RNAV (GPS) RWY 29, Amdt 1.
5–Mar–15	SD	Wagner	Wagner Muni	4/1792	01/07/15	RNAV (GPS) RWY 27, Orig.
5–Mar–15	SD	Belle Fourche	Belle Fourche Muni	4/1793	01/07/15	RNAV (GPS) RWY 32, Amdt 1.
5–Mar–15	SD	Yankton	Chan Gurney Muni	4/1820	01/07/15	ILS OR LOC RWY 31, Amdt 4.
5–Mar–15	SD	Yankton	Chan Gurney Muni	4/1821	01/07/15	NDB RWY 31, Amdt 3.
5–Mar–15	SD	Yankton	Chan Gurney Muni	4/1822	01/07/15	RNAV (GPS) RWY 31, Orig.
5–Mar–15	SD	Yankton	Chan Gurney Muni	4/1824	01/07/15	VOR RWY 31, Amdt 3A.
5–Mar–15	PA	Doylestown	Doylestown	4/2203	01/13/15	RNAV (GPS) RWY 23, Amdt 1.
5–Mar–15	PA	Doylestown	Doylestown	4/2204	01/13/15	RNAV (GPS) RWY 5, Orig.
5–Mar–15	TX	Dallas	Collin County Rgnl At Mc Kinney.	4/2231	01/06/15	ILS OR LOC RWY 18, Amdt 5.
5–Mar–15	TX	Dallas	Collin County Rgnl At Mc Kinney.	4/2232	01/06/15	RNAV (GPS) RWY 18, Amdt 2.
5–Mar–15	OK	Perry	Perry Muni	4/2509	01/06/15	RNAV (GPS) RWY 17, Orig.
5–Mar–15	OK	Perry	Perry Muni	4/2510	01/06/15	VOR/DME RWY 17, Amdt 3A.
5–Mar–15	AK	Dillingham	Dillingham	4/2511	01/08/15	LOC/DME RWY 19, Amdt 6D.
5–Mar–15	ND	Pembina	Pembina Muni	4/2555	01/07/15	RNAV (GPS) RWY 33, Orig.
5–Mar–15	MI	Cheboygan	Cheboygan County	4/2645	01/07/15	RNAV (GPS) RWY 10, Amdt 3.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
5–Mar–15	MI	Cheboygan	Cheboygan County	4/2646	01/07/15	VOR RWY 10, Amdt 9.
5–Mar–15	MI	Cheboygan	Cheboygan County	4/2648	01/07/15	RNAV (GPS) RWY 28, Amdt 2.
5–Mar–15	OK	Antlers	Antlers Muni	4/2727	01/07/15	RNAV (GPS) RWY 35, Orig.
5–Mar–15	OK	Oklahoma City	Sundance Airpark	4/2728	01/07/15	RNAV (GPS) RWY 17, Amdt 1A.
5–Mar–15	OK	Oklahoma City	Sundance Airpark	4/2729	01/07/15	LOC RWY 17, Orig-E.
5–Mar–15	OK	Oklahoma City	Sundance Airpark	4/2730	01/07/15	VOR RWY 17, Amdt 1C.
5–Mar–15	IL	Springfield	Abraham Lincoln Capital	4/2784	01/13/15	VOR/DME RWY 31, Amdt 1.
5–Mar–15	AK	Fort Yukon	Fort Yukon	4/2840	01/07/15	RNAV (GPS) RWY 4, Amdt 1B.
5–Mar–15	AK	Fort Yukon	Fort Yukon	4/2841	01/07/15	RNAV (GPS) RWY 22, Amdt 1B.
5–Mar–15	TX	Houston	George Bush Intercontinental/Houston.	4/2947	01/07/15	GLS RWY 26L, Amdt 1.
5–Mar–15	TX	Houston	George Bush Intercontinental/Houston.	4/2949	01/07/15	RNAV (GPS) Z RWY 26L, Amdt 4.
5–Mar–15	TX	Houston	George Bush Intercontinental/Houston.	4/2950	01/07/15	RNAV (RNP) Y RWY 26L, Orig-A.
5–Mar–15	TX	Houston	George Bush Intercontinental/Houston.	4/2951	01/07/15	ILS OR LOC RWY 26L, ILS RWY 26L (SA CAT I), ILS RWY 26L (CAT II & III), Amdt 21A.
5–Mar–15	CA	Santa Rosa	Charles M Schulz—Sonoma County.	4/3231	01/13/15	VOR/DME RWY 14, Amdt 3.
5–Mar–15	GA	Atlanta	Atlanta Rgnl Falcon Field	4/7646	01/07/15	ILS OR LOC RWY 31, Amdt 2A.
5–Mar–15	GA	Atlanta	Atlanta Rgnl Falcon Field	4/7647	01/07/15	NDB RWY 31, Amdt 3A.
5–Mar–15	GA	Atlanta	Atlanta Rgnl Falcon Field	4/7648	01/07/15	RNAV (GPS) RWY 31, Amdt 2A.
5–Mar–15	AK	Minchumina	Minchumina	4/8112	01/08/15	NDB RWY 3, Amdt 3C.
5–Mar–15	AK	Kotlik	Kotlik	4/8355	01/08/15	RNAV (GPS) RWY 2, Orig-B.
5–Mar–15	AK	Nome	Nome	5/0579	01/13/15	NDB A, Amdt 1.
5–Mar–15	MI	Traverse City	Cherry Capital	5/0625	01/08/15	ILS OR LOC RWY 28, Amdt 14A.
5–Mar–15	MI	Traverse City	Cherry Capital	5/0627	01/08/15	RNAV (GPS) RWY 10, Amdt 1.
5–Mar–15	MI	Traverse City	Cherry Capital	5/0629	01/08/15	RNAV (GPS) RWY 18, Orig.
5–Mar–15	SD	Mobridge	Mobridge Muni	5/0804	01/08/15	RNAV (GPS) RWY 30, Amdt 1.
5–Mar–15	MO	Clinton	Clinton Rgnl	5/0805	01/08/15	RNAV (GPS) RWY 4, Amdt 1.
5–Mar–15	MO	Clinton	Clinton Rgnl	5/0806	01/08/15	NDB RWY 4, Amdt 8.
5–Mar–15	MO	Clinton	Clinton Rgnl	5/0807	01/08/15	NDB RWY 22, Amdt 9.
5–Mar–15	MO	Clinton	Clinton Rgnl	5/0808	01/08/15	RNAV (GPS) RWY 22, Amdt 1.
5–Mar–15	OR	Portland	Portland-Troutdale	5/1391	01/08/15	RNAV (GPS)-A, Orig.
5–Mar–15	WA	Pasco	Tri-Cities	5/1969	01/12/15	VOR/DME RWY 30, Amdt 5.
5–Mar–15	MO	St Joseph	Rosecrans Memorial	5/2031	01/12/15	VOR/DME OR TACAN RWY 35, Orig.
5–Mar–15	MO	St Joseph	Rosecrans Memorial	5/2032	01/12/15	ILS OR LOC RWY 35, Amdt 31A.
5–Mar–15	AR	Arkadelphia	Dexter B Florence Memorial Field.	5/2038	01/12/15	RNAV (GPS) RWY 4, Amdt 1.
5–Mar–15	AR	Arkadelphia	Dexter B Florence Memorial Field.	5/2039	01/12/15	RNAV (GPS) RWY 22, Orig.
5–Mar–15	NE	Omaha	Eppley Airfield	5/2040	01/12/15	ILS OR LOC RWY 32R, ILS RWY 32R (CAT II & CAT III), Orig-C.
5–Mar–15	AK	Akutan	Akutan	5/2236	01/12/15	RNAV (GPS)-A, Amdt 1.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2520	01/13/15	RNAV (GPS) RWY 4, Amdt 2.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2521	01/13/15	ILS OR LOC RWY 22, Amdt 8.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2522	01/13/15	RNAV (GPS) RWY 22, Amdt 2.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2523	01/13/15	ILS OR LOC RWY 28, Amdt 31.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2524	01/13/15	RNAV (GPS) RWY 28, Amdt 2.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2525	01/13/15	RNAV (GPS) RWY 10, Amdt 1.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2526	01/13/15	RNAV (GPS) RWY 7, Amdt 1.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2527	01/13/15	RNAV (GPS) RWY 25, Amdt 1.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2528	01/13/15	VOR RWY 4, Amdt 12.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2529	01/13/15	VOR/DME RWY 4, Amdt 4.
5–Mar–15	NY	Rochester	Greater Rochester Intl	5/2530	01/13/15	ILS OR LOC RWY 4, ILS RWY 4 (SA CAT I), ILS RWY 4 (CAT II), Amdt 21.
5–Mar–15	MD	Gaithersburg	Montgomery County Airpark.	5/2542	01/13/15	RNAV (GPS) RWY 14, Amdt 3A.
5–Mar–15	MD	Gaithersburg	Montgomery County Airpark.	5/2543	01/13/15	RNAV (GPS)-A, Orig.
5–Mar–15	ME	Portland	Portland Intl Jetport	5/2548	01/13/15	RNAV (GPS) RWY 18, Amdt 1.
5–Mar–15	ME	Portland	Portland Intl Jetport	5/2549	01/13/15	RNAV (GPS) RWY 36, Amdt 1.
5–Mar–15	NH	Manchester	Manchester	5/2550	01/13/15	ILS OR LOC/DME RWY 17, Amdt 2.
5–Mar–15	SC	Charleston	Charleston Executive	5/2553	01/13/15	RNAV (GPS) RWY 27, Amdt 2.
5–Mar–15	GA	Atlanta	Covington Muni	5/2559	01/13/15	NDB RWY 28, Amdt 3A.
5–Mar–15	GA	Atlanta	Covington Muni	5/2560	01/13/15	RNAV (GPS) RWY 28, Amdt 1A.
5–Mar–15	GA	Atlanta	Covington Muni	5/2561	01/13/15	RNAV (GPS) RWY 10, Amdt 1.
5–Mar–15	GA	Atlanta	Covington Muni	5/2562	01/13/15	VOR/DME RWY 10, Amdt 5A.
5–Mar–15	FL	Punta Gorda	Punta Gorda	5/2563	01/13/15	VOR RWY 22, Amdt 4B.
5–Mar–15	NY	Farmingdale	Republic	5/2583	01/13/15	RNAV (GPS) Y RWY 14, Amdt 2B.
5–Mar–15	FL	Tampa	Tampa Executive	5/2825	01/13/15	RNAV (GPS) RWY 5, Orig-A.
5–Mar–15	FL	Tampa	Tampa Executive	5/2826	01/13/15	ILS OR LOC RWY 23, Amdt 1B.
5–Mar–15	FL	Tampa	Tampa Executive	5/2827	01/13/15	RNAV (GPS) RWY 23, Amdt 1B.

[FR Doc. 2015–03932 Filed 2–26–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30999; Amdt. No. 3627]

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 removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) 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 February 27, 2015. 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 February 27, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 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 the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area 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 removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory 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 part § 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, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead 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, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended 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 that 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 procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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, Navigation (air).

Issued in Washington, DC, on January 16, 2015.

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 removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure 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:

Effective 5 March 2015

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 13
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Amdt 5
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 28R, Amdt 5
Baltimore, MD, Martin State, Takeoff Minimums and Obstacle DP, Amdt 5
Easton, MD, Easton/Newman Field, Takeoff Minimums and Obstacle DP, Amdt 1
Gaithersburg, MD, Montgomery County Airpark, Takeoff Minimums and Obstacle DP, Amdt 1
Westminster, MD, Carroll County Rgnl/Jack B Poage Field, Takeoff Minimums and Obstacle DP, Amdt 6
Great Falls, MT, Great Falls Intl, RNAV (RNP) Z RWY 21, Orig–C
Prineville, OR, Prineville, NDB RWY 10, Amdt 1, CANCELED
Ponce, PR, Mercedita, Takeoff Minimums and Obstacle DP, Amdt 4
Ponce, PR, Mercedita, VOR–A, Orig, CANCELED
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 8L, ILS RWY 8L (CAT II), ILS RWY 8L (CAT III), ILS RWY 8L (SA CAT I), Amdt 4B
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) Z RWY 8L, Amdt 5B
Price, UT, Carbon County Rgnl/Buck Davis Field, ILS OR LOC/DME RWY 1, Amdt 1
Price, UT, Carbon County Rgnl/Buck Davis Field, Takeoff Minimums and Obstacle DP, Amdt 5

Price, UT, Carbon County Rgnl/Buck Davis Field, VOR RWY 36, Amdt 2, CANCELED

Price, UT, Carbon County Rgnl/Buck Davis Field, VOR/DME RWY 1, Amdt 1

Effective 2 April 2015

Truckee, CA, Truckee-Tahoe, RNAV (GPS) Z RWY 20, Orig–A

RESCINDED: On January 15, 2015 (80 FR 2009), the FAA published an Amendment in Docket No. 30990, Amdt No. 3619, to Part 97 of the Federal Aviation Regulations under section 97.23, 97.27, and 97.29. The following entries for Baton Rouge, LA, effective January 8, 2015 are hereby rescinded in their entirety:

Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 13, Amdt 27E

Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 22R, Amdt 11B

Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB RWY 31, Amdt 2D

Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR RWY 4L, Amdt 17C

Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 8H

[FR Doc. 2015–03931 Filed 2–26–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. FDA–2008–N–0393]

RIN 0910–AF86

Medical Device Reporting: Electronic Submission Requirements; Correcting Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation regarding postmarket electronic Medical Device Reporting (eMDR) to address the unintentional removal of certain provisions of the Unique Device Identification (UDI) System regulations and to update the contact information listed in the regulations.

DATES: This rule is effective August 14, 2015.

FOR FURTHER INFORMATION CONTACT: Sharon Kapsch, Office of Surveillance and Biometrics, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–6104, *Sharon.Kapsch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 24, 2013 (78 FR 58786), FDA published the ''Unique Device Identification System'' final rule (UDI rule). The UDI rule, among other things, amended part 803 (21 CFR part 803). These amendments became effective on December 23, 2013.

In the **Federal Register** of February 14, 2014 (79 FR 8832), FDA published the ''Medical Device Reporting: Electronic Submission Requirements'' final rule (eMDR rule). The eMDR rule will become effective on August 14, 2015. The eMDR rule, among other things, revises part 803 in its entirety. As published in the **Federal Register**, the eMDR rule will, upon its effective date, unintentionally remove the amendments made by the UDI rule to part 803 of the Code of Federal Regulations (CFR), Title 21. This document addresses the unintentional removal by amending part 803 to include the UDI requirements.

When the eMDR rule goes into effect, it will require changes to the CFR citations of some provisions within part 803; consequently, some of the citations used by the UDI rule will have to be updated. The following table provides the ''Original UDI Citation'' (the citation used by the September 24, 2013, UDI rule) and the corresponding ''Updated Citation'' for provisions addressed in this document.

TABLE 1—CITATIONS IN PART 803; UDI CITATION AND CORRESPONDING UPDATED CITATION

Provision	Original UDI citation [1]	Updated citation [2]
Amendment of 803.3—Definitions of human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device and unique device identifier (UDI).	Listed alphabetically within 803.3.	803.3(aa) and 803.3(bb), respectively.
Amendment of section 803.32	803.32(c)(6)	803.32(c)(4).
Amendment of section 803.33	803.33(a)(7)(iv)	803.33(b)(7)(iv).
Amendment of section 803.42	803.42(c)(6)	803.42(c)(4).
Amendment of section 803.52	803.52(c)(6)	803.52(c)(4).

[1] The ''Original UDI Citation'' is the citation within part 803, as amended by the UDI rule, which became effective on December 23, 2013.
[2] The ''Updated Citation'' is the citation within part 803, after the changes made by the eMDR rule go into effect on August 14, 2015, and after those changes are further amended by the correcting amendments in this document.

We are also updating the contact information listed in §§ 803.11 and 803.33 for the Division of International and Consumer Education (DICE) (formerly the Division of Small Manufacturers, International and Consumer Assistance (DSMICA)).

FDA is publishing this document as a final rule under the Administrative Procedures Act (5 U.S.C. 551, *et seq.*). FDA has determined that good cause exists to dispense with prior notice and public comment under 5 U.S.C. 553(b)(3)(B) and 21 CFR 10.40(e)(1) because the provisions addressed in this document have already undergone notice and public comment. Additionally, the amendments to §§ 803.11 and 803.33, to provide updated contact information, are editorial in nature and are intended to improve the accuracy of the Agency's regulations.

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The revised Form FDA 3500A is approved under OMB control number 0910–0291. The collections of information in part 803 have been approved under OMB

control number 0910–0437. The collections of information in the UDI rule have been approved under OMB control number 0910–0720.

The information collection provisions in the eMDR rule have been submitted to OMB for review as required by section 3507(d) of the PRA (44 U.S.C. 3507(d)). Before the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. 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.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 as amended by the Medical Device Reporting: Electronic Submission Requirements final rule of February 14, 2014, 79 FR 8832, is further amended as follows:

PART 803—MEDICAL DEVICE REPORTING

■ 1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 2. Amend § 803.3 by adding paragraphs (aa) and (bb) to read as follows:

§ 803.3 How does FDA define the terms used in this part?

* * * * *

(aa) *Human cell, tissue, or cellular or tissue-based product (HCT/P) regulated as a device* means an HCT/P as defined in § 1271.3(d) of this chapter that does not meet the criteria in § 1271.10(a) and that is also regulated as a device.

(bb) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A *unique device identifier* is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(v) For an HCT/P regulated as a device, the distinct identification code required by § 1271.290(c) of this chapter.

* * * * *

■ 3. Amend § 803.11 by revising paragraph (d) to read as follows:

§ 803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?

* * * * *

(d) Form FDA 3500A is available on the Internet at *http://www.fda.gov/medwatch/getforms.htm* or from Division of International and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4621, Silver Spring, MD 20993–0002, by email: *DICE@fda.hhs.gov,* FAX: 301–847–8149, or telephone: 800–638–2041.

■ 4. Amend § 803.32 by revising paragraph (c)(4) to read as follows:

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(4) Model number, catalog number, serial number, lot number, or other identifying number; expiration date; and unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 5. Amend § 803.33 by revising paragraphs (a)(2) and (b)(7)(iv) to read as follows:

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

* * * * *

(a) * * *

(2) Division of International and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4621, Silver Spring, MD 20993–0002, by email: *DICE@fda.hhs.gov,* FAX: 301–847–8149, or telephone: 800–638–2041.

* * * * *

(b) * * *

(7) * * *

(iv) Product model, catalog, serial, and lot number and unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 6. Amend § 803.42 by revising paragraph (c)(4) to read as follows:

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(4) Model number, catalog number, serial number, lot number, or other identifying number; expiration date; and unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

■ 7. Amend § 803.52 by revising paragraph (c)(4) to read as follows:

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(4) Model number, catalog number, serial number, lot number, or other identifying number; expiration date; and unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

Dated: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–03943 Filed 2–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9712]

RIN 1545–BL78

Alternative Simplified Credit Election

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the election of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code (Code). The final regulations affect certain taxpayers claiming the credit under section 41.

DATES: *Effective Date:* These regulations are effective on February 27, 2015.

Applicability Date: For dates of applicability, see § 1.41–9(d).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules relating to the time and manner of electing the alternative simplified credit (ASC) under section 41(c)(5) of the Internal Revenue Code (Code).

Section 41(a) provides an incremental tax credit for increasing research activities (research credit) based on a percentage of a taxpayer's qualified research expenses above a base amount. A taxpayer can apply the rules and credit rate percentages under section 41(a)(1) to calculate the credit (commonly referred to as the regular credit) or a taxpayer can make an election to apply the ASC rules and credit rate percentages under section 41(c)(5) to calculate the credit. Section 41(c)(5)(C) provides that an ASC election under section 41(c)(5) applies to the taxable year for which it is made and all succeeding taxable years unless revoked with the consent of the Secretary.

On June 10, 2011, the Treasury Department and the IRS published final regulations (TD 9528) (2011 Final Regulations) in the **Federal Register** (76 FR 33994) relating to the election and calculation of the ASC. Section 1.41–9(b)(2) provides that a taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, ''Credit for Increasing Research Activities,'' (or successor form) relating to the ASC election, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. Section 1.41–9(b)(2) also provides that a taxpayer may not make an election under section 41(c)(5) on an amended return and that an extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100–3.

Following the publication of the 2011 Final Regulations, the Treasury Department and the IRS received requests to amend the regulations to allow taxpayers to make an ASC election on an amended return. The requests explained that the burden of substantiating expenditures and costs for the base period under the regular credit can be costly, time-consuming, and difficult, and suggested that taxpayers often need additional time to determine whether to claim the regular credit or the ASC.

On June 3, 2014, the Treasury Department and the IRS published a notice of proposed rulemaking by cross-reference to temporary regulations (REG–133495–13) in the **Federal Register** (79 FR 31892), and final and temporary regulations (TD 9666) (the Temporary Regulations) in the **Federal Register** (79 FR 31863). The final regulations removed the rule in § 1.41–9(b)(2) that prohibited a taxpayer from making an ASC election for a tax year on an amended return. In its place, the Temporary Regulations provided a rule allowing a taxpayer to make an ASC election for a tax year on an amended return if the taxpayer had not previously claimed a section 41 credit for that tax year on an original or amended return. In addition, the Temporary Regulations provided that a taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that year claimed the research credit using a method other than the ASC on an original or amended return.

Written and electronic comments responding to the proposed regulations were received. No requests for a public hearing were made and no public hearing was held. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

Interaction With Section 280C Elections

A commenter requested clarification regarding whether a section 280C(c)(3) election made for a taxable year on line 17 of Form 6765, Credit For Increasing Research Activities, where no amount of regular credit is claimed, will be viewed by the IRS as a claim of the section 41(a)(1) credit and preclude an ASC election from being made on an amended return for that taxable year. Section 280(c)(3) allows a taxpayer to make an annual irrevocable election to claim a reduced research credit rather than reducing the section 174 deduction, as required by section 280(c)(1). A section 280C(c)(3) election must be made on an original return. If a taxpayer is undecided whether to claim the regular credit for a taxable year but wants to preserve the operative effect of the section 280C(c)(3) election for that taxable year, then the taxpayer will make the section 280C(c)(3) election on line 17 of Form 6765, but leave the remaining section of the form blank. A section 280C(c)(3) election on line 17 of Form 6765 made in a taxable year does not, in and of itself, constitute a credit claim under section 41(a)(1), and accordingly does not preclude a taxpayer from making an ASC election on an amended return for that taxable year.

Section 9100 Relief

One commenter requested that the final regulations allow an extension of time to make an election under section 41(c)(5) under § 301.9100–3. Under § 301.9100–3(c), the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Under § 301.9100–3(c)(1)(ii), the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. Because the final regulations allow a taxpayer to amend its return to make the ASC election in a taxable year that is not closed by the period of limitations for assessment under section 6501(a) if no credit under section 41(a)(1) was claimed in the prior taxable year on an original or amended return, an extension of time under § 301.9100–3 to make the ASC election is not necessary during this period. An extension of time to make an ASC election in a taxable year closed by the period of limitations on assessment under section 6501(a) ordinarily prejudices the interests of the government. See section 301.9100–3(c)(1)(ii). Accordingly, the final regulations retain the rule that an extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100–3.

Period for Making an ASC Election

One commenter requested that the final regulations provide that a taxpayer may make an ASC election for an earlier, closed tax year on a later year's return in which a research credit from that closed year is reported on a carryforward schedule, or actually used as a credit against tax, so long as no intervening amended return claiming a research credit for that tax year using a different method has been claimed. The Temporary Regulations only permitted a taxpayer to elect the ASC on an amended return for taxable years ending before June 3, 2014, (the effective/applicability date of those regulations) if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year. The rule in the Temporary Regulations provided

a reasonable time period for taxpayers to determine whether or not to make an ASC election with respect to a prior, open tax year. To permit a taxpayer to make an ASC election for a tax year in which the period of limitations for assessment of tax has expired has the practical effect of permitting the taxpayer to make an ASC election on a return that cannot be amended. Therefore, these final regulations do not adopt this suggested modification.

One commenter requested that these final regulations provide that an ASC election can be made on an amended return for a tax year so long as the period for making a refund claim under section 6511 has not expired for that tax year, even in cases where the statute of limitations on assessment under section 6501 is closed. These final regulations retain the rule of the Temporary Regulations that a taxpayer must make an ASC election on an amended return before the statute of limitations on assessment under section 6501(a) is closed. The general period under the statute of limitations on assessment under section 6501(a), which is three years after the tax return is filed, provides a reasonable time for taxpayers to file an ASC election on an amended return, and a reasonable time for the IRS to examine the amended return. This rule also preserves the integrity the of the rule in the final regulations providing that an extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100–3. Under § 301.9100–3, the interests of the government are ordinarily prejudiced if the taxable year in which a regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100. This requirement is mitigated by the fact that the period of limitations on assessment may be extended by agreement of the IRS and the taxpayer. For clarity, the language found in the effective date of the Temporary Regulations referencing the period of limitations for assessment of tax is added to the text of the final regulations under § 1.41–9(b)(2) relating to the time and manner of making the ASC election.

Controlled Group ASC Elections

One commenter requested that the final regulations modify the rules for controlled group ASC elections under § 1.41–9(b)(4), under which only the designated member of a controlled group may make or revoke an ASC election. Revising those rules is beyond the scope of these regulations. Therefore, the final regulations do not amend § 1.41–9(b)(4).

Modification of the Election Rule

One commenter requested that these final regulations amend the rule in the Temporary Regulations that allows a taxpayer to make an ASC election for a tax year on an amended return only if the taxpayer has not previously claimed the section 41 credit on its original return or an amended return for that tax year to clarify that the previously claimed section 41 credit is determined under section 41(a)(1), and not under sections 41(a)(2) or (3). The commenter stated that the ASC is an alternative method to the regular credit under section 41(a)(1), and whether a taxpayer elects the ASC or claims the regular credit does not impact the determination of the credits allowable under sections 41(a)(2) and 41(a)(3). This approach is consistent with the language of section 41(c)(5)(A) and § 1.41–9(a), which specifically reference section 41(a)(1). Accordingly, the final regulations provide that a taxpayer may make an ASC election for a tax year on an amended return only if the taxpayer has not previously claimed the section 41(a)(1) credit on its original return or an amended return for that tax year.

Effect on Other Documents

The Temporary Regulations are obsolete for taxable years beginning on or after February 27, 2015.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an ASC election on an amended return pursuant to these regulations, the economic impact of any collection burden on these entities relating to this election is minimal because the regulations will result in a benefit to taxpayers by providing additional time for taxpayer to calculate and elect the ASC. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.41–9 also issued under 26 U.S.C. 41(c)(5)(C). * * *

■ **Par. 2.** Section 1.41–9 is amended by:
■ 1. Revising paragraph (b)(2).
■ 2. Adding a third and fourth sentence to paragraph (d).

The revision and addition read as follows:

§ 1.41–9 Alternative simplified credit.

* * * * *

(b) * * *

(2) *Time and manner of election.* A taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, ''Credit for Increasing Research Activities,'' (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. A taxpayer may make an election under section 41(c)(5) for a tax year on an amended return, but only if the taxpayer has not previously claimed a section 41(a)(1) credit on its original return or an amended return for that tax year, and only if that tax year is not closed by the period of limitations on assessment under section 6501(a). An extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100–3 of this chapter. A taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return

if any member of the controlled group for that tax year previously claimed the research credit under section 41(a)(1) using a method other than the ASC on an original or amended return for that tax year. See paragraph (b)(4) of this section for additional rules concerning controlled groups. See also § 1.41–6(b)(1) requiring that all members of the controlled group use the same method of computation.

* * * * *

(d) *Effective/applicability date.* * * * Paragraph (b)(2) of this section applies to elections with respect to taxable years ending on or after February 27, 2015. For taxable years ending before *February 27, 2015,* see § 1.41–9T as contained in 26 CFR part 1, revised April 1, 2015.

§ 1.41–9T [Removed]

■ **Par. 3.** Section 1.41–9T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: February 3, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–04111 Filed 2–26–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1070]

RIN 1625–AA09

Drawbridge Operation Regulation; Passaic River, Rutherford, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the drawbridge across the Passaic River, mile 11.8, at Rutherford, New Jersey. The drawbridge was converted to a fixed bridge in October 2010, and the operating regulation is no longer applicable or necessary.

DATES: This rule is effective February 27, 2015.

ADDRESSES: The docket for this final rule, [USCG–2014–1070] 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 final rule. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212–514–4336, email *joe.m.arca@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Route 3 Bridge, that once required draw operations in 33 CFR 117.739(n), was converted to a fixed bridge in October 2010. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for 4 years and this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary.

B. Basis and Purpose

The Route 3 Bridge across the Passaic River, mile 11.8, was converted to a fixed bridge in 2010. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the conversion to a fixed bridge. The conversion of this drawbridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.739(n), pertaining to the former drawbridge.

The purpose of this rule is to remove paragraph 33 CFR 117.739(n), that refers to the Route 3 Bridge at mile 11.8, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

C. Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117.739 by removing restrictions and the regulatory burden related to the draw operations for this bridge that is no longer a drawbridge. The change removes paragraph 117.739(n) of the regulation which governs the Route 3 Bridge and redesignates (o) through (t) as (n) through (s). This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the Route 3 Bridge, which in fact no longer is a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.739 that govern the remaining active drawbridges on the Passaic River except to redesignate these bridges.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since this drawbridge has been converted to a fixed bridge and the regulation governing draw operations for this bridge is no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

3. Collection of Information

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

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the removal of a drawbridge operation regulation that is no longer necessary. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

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

List of Subjects in 33 CFR Part 117 Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.739 [Amended]

■ 2. In § 117.739, remove paragraph (n) and redesignate paragraphs (o) through (t) as paragraphs (n) through (s).

Dated: January 29, 2015.

L.L. Fagan,

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

[FR Doc. 2015–04152 Filed 2–26–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0888; EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9923–48–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; PSD Infrastructure SIP Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of state implementation plan (SIP) submissions from Ohio regarding the Prevention of Significant Deterioration (PSD) infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective April 28, 2015, unless EPA receives adverse comments by March

30, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background of these SIP submissions?

This rulemaking addresses submissions from the Ohio Environmental Protection Agency (Ohio EPA). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—October 12, 2011, and supplemented on June 7, 2013; 2008 ozone—December 27, 2012, and supplemented on June 7, 2013; 2010 NO_2—February 8, 2013, and supplemented on February 25, 2013, and June 7, 2013; and, 2010 SO_2—June 7, 2013.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

This specific rule making is only taking action on the PSD elements of these submittals. The majority of the other infrastructure elements were addressed in proposed rulemaking published July 25, 2014 (79 FR 43338). Final action was taken on those elements on October 6, 2014, for 2008 Pb and 2010 NO_2 (79 FR 60075),[1] and on October 16, 2014, for 2008 ozone (79 FR 62019).[2] The infrastructure elements for PSD are found in CAA 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J) and will be discussed in detail below. For further discussion on the background of infrastructure submittals, see 79 FR 43338.

II. What is EPA's review of these SIP submissions?

A. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review

[1] Specifically, sections 110(a)(2)(A) through (H), and (J) through (M) for the 2008 lead and 2010 NO_2 NAAQS except the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of (J).

[2] Specifically, sections 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS except the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of (J) and the interstate transport portion of 110(a)(2)(D)(i).

(NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD provisions that explicitly identify oxides of nitrogen (NO_X) as a precursor to ozone in the PSD program; (iii) identification of precursors to fine particulates ($PM_{2.5}$) and the identification of $PM_{2.5}$ and PM_{10} [3] condensables in the PSD program; (iv) $PM_{2.5}$ increments in the PSD program; and, (v) GHG permitting and the ''Tailoring Rule.'' [4]

Sub-element 1: Enforcement of SIP Measures

This element was proposed for the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS in the July 25, 2014, rulemaking (79 FR 43338) and was finalized for the 2008 lead and 2010 NO_2 NAAQS in the October 6, 2014, rulemaking (79 FR 60075) and for the 2008 ozone NAAQS in the October 16, 2014, rulemaking (79 FR 62019). This element will be finalized for the 2010 SO_2 NAAQS in a separate rulemaking.

Sub-element 2: PSD Provisions That Explicitly Identify NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.[5]

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the specification of NO_X as a precursor to ozone provisions, by June 15, 2007 (70 FR 71612 at 71683).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore, Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 3: Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5,}$ otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be sulfur dioxide (SO_2) and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to $SO_{2,}$ NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5,}$ the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tpy of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).[6]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the

[3] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[4] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPS for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2010 NO_2 NAAQS.

[5] Similar changes were codified in 40 CFR 52.21.

[6] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Ohio's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

2008 lead, 2008 ozone, 2010 NO_2, and 210 SO_2 NAAQS.

Sub-element 4: $PM_{2.5}$ Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5.}$ This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On October 28, 2014 (79 FR 64119), EPA finalized approval of the applicable infrastructure SIP PSD revisions for Ohio, therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 5: GHG Permitting and the ''Tailoring Rule''

With respect to Elements C, and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Ohio has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also found that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, EPA is no longer applying EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant: (i) That the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*see* 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, Ohio's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Ohio PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Ohio. EPA approved Ohio's minor NSR program on January 22, 2003 (68 FR 2909), and since that date, OEPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

B. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Ohio's satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA notes that the actions in that section related to PSD are consistent with the actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Ohio's SIP that meet certain requirements obligated by the Phase 2

Rule and the 2008 NSR Rule. These revisions included provisions that: (1) Explicitly identify NO_X as a precursor to ozone, (2) explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$, and (3) regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Ohio's SIP that incorporate the $PM_{2.5}$ increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for $PM_{2.5}$ per the 2010 NSR Rule. Ohio's SIP contains provisions that adequately address the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

Sub-element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Ohio's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the actions for those sections are consistent with the actions for this portion of section 110(a)(2)(J).

Therefore, Ohio has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

III. What action is EPA taking?

EPA is approving the PSD related infrastructure requirements for Ohio's 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS submittals under sections 110(a)(1) and (2) of the CAA. EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2008 Lead	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	a	a	a	p
(B): Ambient air quality monitoring and data system	a	a	a	p
(C)1: Enforcement of SIP measures	a	a	a	p
(C)2: PSD	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	a	NA	a	NA
(D)2: PSD	A	A	A	A
(D)3: Visibility Protection	a	NA	NA	NA
(D)4: Interstate Pollution Abatement	a	a	a	p
(D)5: International Pollution Abatement	a	a	a	p
(E): Adequate resources	a	a	a	p
(E): State boards	a	a	a	p
(F): Stationary source monitoring system	a	a	a	p
(G): Emergency power	a	a	a	p
(H): Future SIP revisions	a	a	a	p
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+
(J)1: Consultation with government officials	a	a	a	p
(J)2: Public notification	a	a	a	p
(J)3: PSD	A	A	A	A
(J)4: Visibility protection	+	+	+	+
(K): Air quality modeling and data	a	a	a	p
(L): Permitting fees	a	a	a	p
(M): Consultation and participation by affected local entities	a	a	a	p

In the above table, the key is as follows:

A	Approved in today's action.
a	Approved in a previous rulemaking.
p	Proposed in a previous rulemaking.
NA	No Action/Separate Rulemaking.
+	Not germane to infrastructure SIPs.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 28, 2015 without further notice unless we receive relevant adverse written comments by March 30, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective April 28, 2015.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 17, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1891 is amended by revising paragraphs (e) through (g) and adding paragraph (h) to read as follows:

§ 52.1891 Section 110(a)(2) infrastructure requirements.

* * * * *

(e) Approval—In a October 12, 2011, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Lead NAAQS.

(f) Approval—In a February 8, 2013, submittal, supplemented on February 25, 2013, and June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 NO_2 NAAQS. We are not finalizing action on the visibility protection requirements of (D)(i)(II).

(g) Approval—In a December 27, 2012, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Ozone NAAQS. We are not finalizing action on section 110(a)(2)(D)(i)(I)—Interstate transport prongs 1 and 2 or visibility portions of section 110(a)(2)(D)(i)(II) and 110(a)(2)(J).

(h) Approval—In a June 7, 2013, submittal, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 SO_2 NAAQS. We are only taking action on the PSD portions 110(a)(2)(C), (D)(i), and (J).

[FR Doc. 2015–04011 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R07–OAR–2015–0016; FRL–9923–69–Region–7]

Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE., for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) Including Maximum Achievable Control Technology (MACT) Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The States of Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT standards. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This document is effective on February 27, 2015. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental

Protection Agency, Air Planning and Development Branch, 11201 Renner Road, Lenexa, Kansas 66219. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324.

Kansas Department of Health and the Environment, Bureau of Air, 1000 SW Jackson Street, Suite 310, Topeka, Kansas 66612–1367.

Missouri Department of Natural Resources, Air Pollution Control Program, PO Box 176, Jefferson City, Missouri 65102–0176.

Nebraska Department of Environmental Quality, Air Quality Division, 1200 ''N'' Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Health Department, Division of Environmental Public Health, Air Quality Section, 3140 ''N'' Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

Duplicates of required documents must also continue to be submitted to the EPA Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Higbee at (913) 551–7028, or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

List of Delegation Tables

Table I—NSPS, 40 CFR part 60
Table II—NESHAP, 40 CFR part 61
Table III—NESHAP, 40 CFR part 63

I. What does this action do?

EPA is providing notice of an update to its delegable authority for implementation and enforcement of the Federal standards shown in the tables below to the states of Iowa, Kansas, Missouri, and Nebraska. This action updates the delegation tables previously published at 78 FR 71510 (November 29, 2013). EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given. This document does not affect or alter the status of the listed standards under state or Federal law.

II. What is the authority for delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

III. What does delegation accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the concurrent authority to enforce the standards.

IV. What has been delegated?

Tables I, II, and III below list the delegated standards. Each item listed in the Subpart column has two relevant dates listed in each column for each state. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through the date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation. This document specifically addresses revisions to the columns for Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska. If there are no dates listed in the delegation table, the state has not accepted delegation of the standard and implementation of those standards reside with EPA.

V. What has not been delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. In such cases, a specific section of the standard details what authorities can and cannot be delegated. You should review the applicable standard in the CFR for this information.

3. In some cases, the state rules do not adopt the Federal standard in its entirety. Each state rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled ''Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies'' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	06/28/11 10/24/12	07/01/08 11/05/10 Except 60.4; 60.9; 60.10; 60.16.	6/30/12 12/30/13 Except 60.4; 60.9; and 60.10.	07/01/13. 05/13/14.

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Db	Industrial-Commercial-Institutional Steam Generating Units.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Dc	Small Industrial-Commercial-Institutional Steam Generating Units.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
E	Incinerators	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Ea	Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989, and on or before September 20 1994.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Eb	Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
F	Portland Cement Plants	10/17/00 10/21/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
G	Nitric Acid Plants	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Ga	Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011.			6/30/12 12/30/13	07/01/13. 05/13/14.
H	Sulfuric Acid Plants	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
I	Hot Mix Asphalt Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
J	Petroleum Refineries	06/28/11 10/24/12	07/01/08 11/05/10 Except provisions in Ja: 60.100a(c); in 60.101a, the definition of ''flare''; 60.102a(g); and 60.107a(d) and (e).	6/30/12 12/30/13	07/01/13. 05/13/14.
Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.			6/30/12 12/30/13	07/01/13. 05/13/14.

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Kb	Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
L	Secondary Lead Smelters.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
M	Secondary Brass and Bronze Production Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
O	Sewage Treatment Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
P	Primary Copper Smelters.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Q	Primary Zinc Smelters	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
R	Primary Lead Smelters	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
S	Primary Aluminum Reduction Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
Y	Coal Preparation Plants	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
Z	Ferroalloy Production Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
BB	Kraft Pulp Mills	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
CC	Glass Manufacturing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
DD	Grain Elevators	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
EE	Surface Coating of Metal Furniture.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
GG	Stationary Gas Turbines.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
HH	Lime Manufacturing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
KK	Lead-Acid Battery Manufacturing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
LL	Metallic Mineral Processing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
MM	Automobile and Light Duty Truck Surface Coating Operations.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
NN	Phosphate Rock Plants	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
PP	Ammonium Sulfate Manufacture.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
QQ	Graphic Arts Industry: Publication Rotogravure Printing.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
RR	Pressure Sensitive Tape and Label Surface Coating Operations.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
SS	Industrial Surface Coating: Large Appliances.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
TT	Metal Coil Surface Coating.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
UU	Asphalt Processing and Asphalt Roofing Manufacture.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.			6/30/12 12/30/13	07/01/13. 05/13/14.
WW	Beverage Can Surface Coating Industry.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
XX	Bulk Gasoline Terminals.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
AAA	New Residential Wood Heaters.		07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
BBB	Rubber Tire Manufacturing Industry.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
DDD	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
FFF	Flexible Vinyl and Urethane Coating and Printing.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
GGG	Equipment Leaks of VOC in Petroleum Refineries.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.			6/30/12 12/30/13	07/01/13. 05/13/14.
HHH	Synthetic Fiber Production Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) AIR Oxidation Unit Processes.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
JJJ	Petroleum Dry Cleaners	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
LLL	Onshore Natural Gas Processing: SO_2 Emissions.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
NNN	Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
OOO	Nonmetallic Mineral Processing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
PPP	Wool Fiberglass Insulation Manufacturing Plants.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
SSS	Magnetic Tape Coating Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
UUU	Calciners and Dryers in Mineral Industries.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
VVV	Polymeric Coating of Supporting Substrates Facilities.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
WWW	Municipal Solid Waste Landfills.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.	06/28/11 10/24/12	07/01/05 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
DDDD	Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.		07/01/05 11/05/10	Not delegated	07/01/13. 05/13/14.
EEEE	Other Solid Waste Incineration Units for Which Construction Commenced After December 9, 2004 or Modification or Reconstruction Commenced On or After June 16, 2006.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
FFFF	Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004.		07/01/08 11/05/10	Not delegated	07/01/13. 05/13/14.
IIII	Stationary Compression Ignition Internal Combustion Engines.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
JJJJ	Stationary Spark Ignition Internal Combustion Engines.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
KKKK	Stationary Combustion Turbines.	06/28/11 10/24/12	07/01/08 11/05/10	6/30/12 12/30/13	07/01/13. 05/13/14.
LLLL	New Sewage Sludge Incinerator Units.			6/30/12 12/30/13	07/01/13. 05/13/14.
MMMM	Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.				07/01/13. 05/13/14.
OOOO	Crude Oil and Natural Gas Production, Transmission and Distribution.			6/30/12 12/30/13	07/01/13. 05/13/14.

TABLE II—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	9/19/11 10/24/12	07/01/10 12/28/12 Except 61.04, 61.16 and 61.17.	6/30/12 12/30/13 Except 61.04, 61.16 and 61.17.	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
B	Radon Emissions from Underground Uranium Mines.	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated.
C	Beryllium	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
D	Beryllium Rocket Motor Firing	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
E	Mercury	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
F	Vinyl Chloride	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
L	Benzene Emissions from Coke By-Product Recovery Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
M	Asbestos	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
Q	Radon Emissions From Department of Energy Facilities.	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated.
R	Radon Emissions From Phosphogypsum Stacks.	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated.
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated.
V	Equipment Leaks (Fugitive Emission Sources).	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
W	Radon Emissions From Operating Mill Tailings.	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated ...	Not delegated.
Y	Benzene Emissions From Benzene Storage Vessels.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
BB	Benzene Emissions From Benzene Transfer Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.
FF	Benzene Waste Operations	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/01 07/21/10	07/01/13 12/10/13	07/01/09. 12/22/12.

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	9/19/11 10/24/12	07/01/10 12/28/12 Except 63.6(f)(1), (g), (h)(1) and (h)(9); 63.7(e)(2)(ii) and (f); 63.8(f); 63.10(f); 63.12; 63.13; 63.14(b)(27) and phrase ''and table 5 to subpart DDDDD of this part''; 63.14(b)(35), (39) through (53), and (55) through (62); in 63.14(i)(1), the phrase ''table 5 to subpart DDDDD of this part''; and 63.15.	6/30/12 12/30/13 Except 63.13 & 63.15(a)(2).	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
F	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
G	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
H	Organic Hazardous Air Pollutants for Equipment Leaks.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
J	Polyvinyl Chloride and Copolymers Production.	9/19/11 10/24/12	07/01/10 12/28/12	Not delegated ..	Not delegated	07/01/13 12/10/13.	Not delegated.
L	Coke Oven Batteries	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13	Not delegated.
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
N	Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
O	Ethylene Oxide Emissions Standards for Sterilization Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
Q	Industrial Process Cooling Towers.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
R	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
S	Pulp and Paper Industry	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
T	Halogenated Solvent Cleaning.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
U	Polymers and Resins Group I.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
X	Secondary Lead Smelting	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
Y	Marine Tank Vessel Loading Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13.	Not delegated	Not delegated	Not delegated.
AA/BB	Phosphoric Acid Manufacturing Plants/Phosphate Fertilizers Production Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
CC	Petroleum Refineries	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
DD	Off-Site Waste and Recovery Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
EE	Magnetic Tape Manufacturing Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
GG	Aerospace Industry Surface Coating Manufacturing and Rework Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
HH	Oil and Natural Gas Production Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
II	Shipbuilding and Ship Repair (Surface Coating).	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13.	Not delegated	Not delegated	Not delegated.
JJ	Wood Furniture Manufacturing Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
KK	Printing and Publishing Industry.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
LL	Primary Aluminum Reduction Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Along Semichemical Pulp Mills.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
OO	Tanks-Level 1	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
PP	Containers	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
QQ	Surface Impoundments	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
RR	Individual Drain Systems	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
TT	Equipment Leaks—Control Level 1 Standards.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
UU	Equipment Leaks—Control Level 2 Standards.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
VV	Oil-Water Separators and Organic-Water Separators.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
WW	Storage Vessel (Tanks)—Control Level 2.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
YY	Generic Maximum Achievable Control Technology Standards.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
CCC	Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
DDD	Mineral Wool Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
EEE	Hazardous Waste Combustors.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
GGG	Pharmaceutical Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
HHH	Natural Gas Transmission and Storage Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
III	Flexible Polyurethane Foam Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
JJJ	Polymers and Resins Group IV.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
LLL	Portland Cement Manufacturing Industry.	12/20/06 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
MMM	Pesticide Active Ingredient Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
NNN	Wool Fiberglass Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
OOO	Manufacture of Amino/Phenolic Resins.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
PPP	Polyether Polyols Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
QQQ	Primary Copper Smelting	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
RRR	Secondary Aluminum Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
TTT	Primary Lead Smelting	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
UUU	Petroleum Refineries	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
VVV	Publicly Owned Treatment Works.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
XXX	Ferroalloys Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
AAAA	Municipal Solid Waste Landfills.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
CCCC	Manufacturing of Nutritional Yeast.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
DDDD	Plywood and Composite Wood Products.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
EEEE	Organic Liquids Distribution (Non-Gasoline).	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
FFFF	Misc. Organic Chemical Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
GGGG	Solvent Extraction for Vegetable Oil Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
HHHH	Wet Formed Fiberglass Mat Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
IIII	Surface Coating of Automobiles and Light-Duty Trucks.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
JJJJ	Paper and Other Web Coating.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
KKKK	Surface Coating of Metal Cans.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
MMMM	Surface Coating of Misc. Metal Parts and Products.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
NNNN	Surface Coating of Large Appliances.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
OOOO	Printing, Coating and Dyeing of Fabrics and Other Textiles.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
PPPP	Surface Coating of Plastic Parts and Products.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
QQQQ	Surface Coating of Wood Building Products.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
RRRR	Surface Coating of Metal Furniture.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
SSSS	Surface Coating of Metal Coil.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
TTTT	Leather Finishing Operations	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
UUUU	Cellulose Products Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
VVVV	Boat Manufacturing	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
WWWW	Reinforced Plastic Composites Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
XXXX	Rubber Tire Manufacturing	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
YYYY	Stationary Combustion Turbines.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
ZZZZ	Stationary Reciprocating Internal Combustion Engines.	01/30/13 10/23/13	7/1/09 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
AAAAA	Lime Manufacturing Plants	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
BBBBB	Semiconductor Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13	Not delegated.
DDDDD	Industrial, Commercial and Institutional Boilers and Process Heaters.	Not delegated	Not delegated	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	Not delegated.
EEEEE	Iron and Steel Foundries	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
FFFFF	Integrated Iron and Steel Manufacturing Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
GGGGG	Site Remediation	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
HHHHH	Misc. Coating Manufacturing	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
IIIII	Mercury Cell Chlor-Alkali Plants.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
JJJJJ	Brick and Structural Clay Products Manufacturing.	Not delegated	Not delegated	Not delegated	Not delegated	07/01/13 12/10/13.	Not delegated.
KKKKK	Clay Ceramics Manufacturing.	9/19/11 10/24/12	Not delegated	Not delegated	Not delegated	07/01/13 12/10/13.	Not delegated.
LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
MMMMM	Flexible Poly-urethane Foam Fabrication Operation.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
NNNNN	Hydrochloric Acid Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
PPPPP	Engine Test Cells/Stands	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
QQQQQ	Friction Materials Manufacturing Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
RRRRR	Taconite Iron Ore Processing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13.	Not delegated.
SSSSS	Refractory Products Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
TTTTT	Primary Magnesium Refining	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	Not delegated	07/01/13 12/10/13	Not delegated.

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
UUUUU	Coal and Oil-fired Electric Utility Steam Generating Units.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
WWWWW	Hospital Ethylene Oxide Sterilizer.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
YYYYY	Electric Arc Furnace Steelmaking Facilities or Stainless and Non-stainless Steel Manufacturing (EAFs).	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
ZZZZZ	Iron and Steel Foundries Area Sources.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
BBBBBB	Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
CCCCCC	Gasoline Distribution, Gasoline Dispensing Facilities.	1/24/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
DDDDDD	PVC & Copolymer Production.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
EEEEEE	Primary Copper Smelting	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
FFFFFF	Secondary Copper Smelting	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
GGGGGG	Primary Nonferrous Metal	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
HHHHHH	Paint Stripping Operations, Misc. Surface Coating, Autobody Refinishing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
JJJJJJ	Industrial, Commercial, and Institutional Boilers.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
LLLLLL	Acrylic/Modacrylic Fibers Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
MMMMMM	Carbon Black Production	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
NNNNNN	Chromium Compounds	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13,	Not delegated.
OOOOOO	Flexible Polyurethane Foam Fabrication and Production.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
PPPPPP	Lead Acid Battery Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
QQQQQQ	Wood Preserving	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
RRRRRR	Clay Ceramics Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
SSSSSS	Pressed & Blown Glass Manufacturing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
TTTTTT	Secondary Non-Ferrous Metals.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13	07/01/11. 12/22/12.
VVVVVV	Chemical Manufacturing Area Sources.	12/21/12 09/10/14	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
WWWWWW	Plating and Polishing	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
XXXXXX	Metal Fabrication and Finishing.	9/19/11 10/24/12	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
YYYYYY	Ferroalloys Production	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
ZZZZZZ	Area Source Standards for Aluminum, Copper and Other Nonferrous Foundries.	6/28/11 1/24/11	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
BBBBBBB	Chemical Preparations Industry.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
CCCCCCC	Paints and Allied Products Manufacturing.	6/28/11 1/24/11	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
DDDDDDD	Prepared Foods Manufacturing.	12/23/11 09/10/14	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
EEEEEEE	Gold Mine Ore Processing and Production Area Source Category.	Not delegated	07/01/10 12/28/12	6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.
HHHHHHH	Polyvinyl Chloride and Copolymers Production.	Not delegated		6/30/12 12/30/13	07/01/13 05/13/14	07/01/13 12/10/13.	Not delegated.

Note: At this time, Missouri is temporarily not accepting delegation for area source NESHAP requirements (40 CFR part 63, subparts 5W–7H) within the State of Missouri as described in an August 24, 2010 letter from MDNR to the U.S. EPA, Region 7.

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This document informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority

This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: February 13, 2015.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2015–04171 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2014–0811; FRL–9923–24–Region 8]

Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Negative Declarations; Control of Emissions From Existing Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action publishing negative declarations for sewage sludge incineration (SSI) units for: the State of Colorado, the State of Montana, the State of North Dakota, the State of South Dakota, the State of Utah, and the State of Wyoming. Each state notified EPA in its negative declaration letter that there are no SSI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) within the jurisdictional boundaries of their state. EPA is accepting the negative declarations in accordance with the requirements of the CAA.

DATES: This rule is effective on April 28, 2015 without further notice, unless EPA receives adverse comments by March 30, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2014–0811, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2014–0811.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, see Section I, General Information of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kendra Morrison, Air Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6145, *morrison.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

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

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

(ii) The initials *EG* mean emission guidelines.

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

(iv) The initials *NSPS* mean new source performance standards.

(v) The initials *SSI* mean sewage sludge incineration.

I. General Information

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

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

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

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

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

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

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

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

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

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

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

II. Background

EPA's statutory authority for the regulation of new and existing solid waste incineration units is outlined in CAA sections 111 and 129. Section 129 of the CAA is specific to solid waste combustion, and requires EPA to establish performance standards for each category of solid waste incineration units. Section 111 of the Act gives EPA the statutory authority to promulgate new source performance standards (NSPS), applicable to new units, and/or emission guidelines (EG) for existing units. EG are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan. If a state does not have any existing solid waste incineration units for the relevant EG, the state shall submit a letter to EPA certifying that no such units exist within the state (*i.e.,* negative declaration) in lieu of a state plan.

A SSI unit is a solid waste incinerator located at a wastewater treatment facility designed to treat domestic sewage sludge. On March 21, 2011 (76 FR 15372), EPA promulgated (40 CFR part 60) NSPS for new SSI units (subpart LLLL) and EG for existing SSI units (subpart MMMM). Existing SSI units are units that commenced construction on or before October 14, 2010. The State of Colorado, the State of Montana, the State of North Dakota, the State of South Dakota, the State of Utah, and the State of Wyoming each determined, through negative declarations, that there are no existing SSI units subject to CAA sections 111 and 129 within the jurisdictional boundaries of their state.

A. Colorado

Colorado Department of Public Health and Environment submitted a negative declaration on April 3, 2013, certifying the Air Pollution Control Division identified no SSI units affected by the EG.

B. Montana

Montana Department of Environmental Quality submitted a negative declaration on December 10, 2013, certifying no SSI units covered under 40 CFR 60, subpart MMMM.

C. North Dakota

North Dakota Department of Health submitted a negative declaration on November 27, 2012, certifying no SSI units covered under 40 CFR 60, subpart MMMM.

D. South Dakota

South Dakota Department of Environment and Natural Resources submitted a negative declaration on November 21, 2012, certifying no SSI units subject to 40 CFR 60, subpart MMMM.

E. Utah

Utah Department of Environmental Quality submitted a negative declaration on December 23, 2013, certifying no existing SSI units.

F. Wyoming

Wyoming Department of Environmental Quality submitted a negative declaration dated February 28, 2013, certifying no SSI units operating within the state.

Under subpart MMMM, Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units, EPA has no formal review process for negative declaration letters (40 CFR 60.5030).

III. Final Action

EPA is publishing the negative declarations for existing SSI units for the State of Colorado, the State of Montana, the State of North Dakota, the State of South Dakota, the State of Utah, and the State of Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to publish the negative declarations should relevant adverse comments be filed. This rule will be effective April 28, 2015 without further notice unless the Agency receives relevant adverse comments by March 30, 2015.

If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Orders Review

This final action merely publishes some state negative declarations and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have a substantial direct effect on one or more Indian tribes, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 28, 2015.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Solid waste incineration, Sewage sludge incineration.

Dated: January 30, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 62 is amended to read as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for Part 62 continues to read as follows:

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

Subpart G—Colorado

■ 2. Subpart G is amended by adding an undesignated center heading and § 62.1390 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.1390 Identification of plan—negative declaration.

Letter from Colorado Department of Public Health & Environment submitted to EPA on April 3, 2013, certifying that there are no known existing sewage sludge incineration units in the State of Colorado.

Subpart BB—Montana

■ 3. Subpart BB is amended by adding an undesignated center heading and § 62.6640 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.6640 Identification of plan—negative declaration.

Letter from Montana Department of Environmental Quality submitted to EPA on December 10, 2013, certifying that there are no known existing sewage sludge incineration units in the State of Montana.

Subpart JJ—North Dakota

■ 4. Subpart JJ is amended by adding an undesignated center heading and § 62.8640 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.8640 Identification of plan—negative declaration.

Letter from North Dakota Department of Health submitted to EPA on November 27, 2012, certifying that there are no known existing sewage sludge incineration units in the State of North Dakota.

Subpart QQ—South Dakota

■ 5. Subpart QQ is amended by adding an undesignated center heading and § 62.10390 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.10390 Identification of plan—negative declaration.

Letter from South Dakota Department of Environmental Quality submitted to EPA on November 21, 2012, certifying that there are no known existing sewage sludge incineration units in the State of South Dakota.

Subpart TT—Utah

■ 6. Subpart TT is amended by adding an undesignated center heading and § 62.11150 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.11150 Identification of plan—negative declaration.

Letter from Utah Department of Environmental Quality submitted to EPA on December 23, 2013, certifying that there are no known existing sewage sludge incineration units in the State of Utah.

Subpart ZZ—Wyoming

■ 7. Subpart ZZ is amended by adding an undesignated center heading and § 62.12640 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units

§ 62.12640 Identification of plan—negative declaration.

Letter from Wyoming Department of Environmental Quality submitted to EPA and dated February 28, 2013, certifying that there are no known existing sewage sludge incineration units in the State of Wyoming.

[FR Doc. 2015–03922 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–6055–F]

RIN 0938–AS03

Medicare Program; Right of Appeal for Medicare Secondary Payer Determinations Relating to Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation Laws and Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act) which require us to provide a right of appeal and an appeal process for liability insurance (including self-insurance), no-fault insurance, and workers' compensation laws or plans when Medicare pursues a Medicare Secondary Payer (MSP) recovery claim directly from the liability insurance (including self-insurance), no-fault insurance, or workers' compensation law or plan.

DATES: *Effective Date:* These regulations are effective on April 28, 2015.

Applicability Date: Applicable plans are parties to initial determinations issued on or after April 28, 2015 where CMS pursues recovery directly from an applicable plan.

FOR FURTHER INFORMATION CONTACT: Barbara Wright, (410) 786–4292. Cynthia Ginsburg, (410) 786–2579.

SUPPLEMENTARY INFORMATION:

I. General Overview and Background

A. General Overview

When the Medicare program was enacted in 1965, Medicare was the primary payer for all medically necessary covered and otherwise reimbursable items and services, with the exception of those items and services covered and payable by workers' compensation. In 1980, the Congress enacted the Medicare Secondary Payer (MSP) provisions of the Social Security Act (the Act), which added section 1862(b) to the Act and established Medicare as the secondary payer to certain primary plans. Primary plan, as defined in section 1862(b)(2)(A) of the Act, means a group health plan or large group health plan, workers' compensation law or plan, automobile or liability insurance policy or plan (including self-insured plan) or no-fault insurance.

Section 1862(b)(2) of the Act, in part, prohibits Medicare from making payment where payment has been made or can reasonably be expected to be made by a primary plan. If payment has not been made or cannot reasonably be expected to be made by a primary plan, Medicare may make conditional payments with the expectation that the payments will be reimbursed to the appropriate Medicare Trust Fund. That is, Medicare may pay for medical claims with the expectation that it will be repaid if the beneficiary obtains a settlement, judgment, award, or other payment. A primary plan and any entity that receives payment from a primary plan shall reimburse the appropriate Medicare Trust Fund for Medicare's payments for items and services if it is demonstrated that such primary plan has or had responsibility to make payment with respect to such items and services.

The responsibility for payment on the part of workers' compensation, liability insurance (including self-insurance), and no-fault insurance is generally demonstrated by a settlement, judgment, award, or other payment (including, for example, assuming ongoing responsibility for medicals (ORM)). When such occurs, the settlement, judgment, award or other payment is subject to the Act's MSP provisions because a ''payment has been made'' with respect to medical care of a beneficiary related to that settlement, judgment, award or other payment. Section 1862(b)(2)(B)(iv) of the Act provides the federal government subrogation rights to any right under MSP of an individual or any other entity to payment for items or services under a primary plan, to the extent Medicare payments were made for such medical items and services. Moreover, section 1862(b)(2)(B)(iii) of the Act provides the federal government a direct right of action to recover conditional payments made by Medicare. This direct right of action, which is separate and independent from Medicare's statutory subrogation rights, may be brought to recover conditional payments against any or all entities that are or were responsible for making payment for the items and services under a primary plan. Under the direct right of action, the federal government may also recover from any entity that has received payment from a primary plan or the proceeds of a primary plan's payment to any entity.

Moreover, the MSP statute requires a ''demonstration of primary payment responsibility;'' it does not require that CMS prove that the alleged incident or injury caused particular medical care. A primary plan's responsibility for payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination of liability) of payment or otherwise. A settlement, judgment, award, or other payment (including, for example, an assumption of ORM) is sufficient to demonstrate primary payment responsibility for what has been claimed, released, or released in effect.

B. Background

The Strengthening Medicare and Repaying Taxpayers Act of 2012 (the SMART Act) was signed into law by President Obama on January 10, 2013, and amends the Act's MSP provisions (found at 42 U.S.C. 1395y(b)). Specifically, section 201 of the SMART Act added paragraph (viii) to section 1862(b)(2)(B) of the Act. This new clause requires Medicare to promulgate regulations establishing a right of appeal and an appeals process, with respect to any determination for which the Secretary is seeking to recover payments from an applicable plan (as defined in the MSP provisions), under which the applicable plan involved, or an attorney, agent, or third-party administrator on behalf of the applicable plan, may appeal such a determination. Further, the individual furnished such an item and/or service shall be notified of the applicable plan's intent to appeal such a determination. For purposes of this provision, the term applicable plan refers to liability insurance (including self-insurance), no-fault insurance, or a workers' compensation law or plan, as defined at section 1862(b)(8)(F) of the Act.

Currently, if an MSP recovery demand is issued to the beneficiary as the identified debtor, the beneficiary has formal administrative appeal rights and eventual judicial review as set forth in subpart I of part 405. If the recovery demand is issued to the applicable plan as the identified debtor, currently the applicable plan has no formal administrative appeal rights or judicial review. CMS' recovery contractor addresses any dispute raised by the applicable plan, but there is no multilevel formal appeal process.

Subpart I of part 405, provides for a multilevel process including a redetermination by the contractor issuing the recovery demand, a reconsideration by a Qualified Independent Contractor (QIC), an Administrative Law Judge (ALJ) hearing,

a review by the Departmental Appeals Board's (DAB) Medicare Appeals Council (MAC), and eventual judicial review, and sets forth details on the process including standing to request an appeal, filing requirements, amount in controversy requirements, and other requirements. The December 27, 2013 proposed rule (78 FR 78802) would add appeals for applicable plans where Medicare is pursuing recovery directly from the applicable plan. The debts at issue involve recovery of the same conditional payments that would be at issue if recovery were directed at the beneficiary. Given this, we believe it is appropriate to utilize the same multilevel appeals process for applicable plans.

II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

A. Introduction

In the December 27, 2013 **Federal Register** (78 FR 78802), we published a proposed rule that would implement section 201 of the SMART Act which required us to promulgate regulations establishing a right of appeal and an appeals process with respect to any determination for which the Secretary is seeking to recover payments from an applicable plan. Our proposals would add appeal rights for applicable plans where Medicare is pursuing recovery directly from the applicable plan utilizing the existing appeals procedures in part 405 subpart I applicable to appeals filed by beneficiaries when Medicare seeks recovery of conditional payments directly from the beneficiary.

We received approximately 19 timely pieces of public correspondence on the December 27, 2013 proposed rule. Commenters included insurance industry associations and organizations, beneficiary and other advocacy groups, entities offering MSP compliance services, and health insurance plans. The commenters generally supported our proposals.

Because of the type of comments received, we are using the following approach to structure this section of the final rule:

- Presenting the proposed provision(s) based on topic area(s) of the public comments.
- Providing the proposed provisions for which we did not received public comments.
- Providing and responding to the public comments that do not ''fit'' in the topic areas noted previously. The following is a list of the regulatory provisions that would be revised or added in accordance with the December 13, 2013 proposed rule:
  - § 405.900 Basis and scope
  - § 405.902 Definitions
  - § 405.906 Parties to the initial determinations, redeterminations, reconsiderations, hearings, and reviews
  - § 405.910 Appointed representatives
  - § 405.921 Notice of initial determination
  - § 405.924 Actions that are initial determinations
  - § 405.926 Actions that are not initial determinations
  - Proposed § 405.947 Notice to the beneficiary of applicable plan's request for a redetermination

B. Discussion of the Provisions of the Proposed Rule by Public Comment Topic

In this section of the final rule we provide a general overview and a response to the public comments received, grouped under the following topics:

- Definition of Applicable Plan
- Issues Subject to Appeal/Not Subject to Appeal
- Party Status/Who Can Appeal and When
- Use of an Attorney or Other Representative; Assignment of Appeal Rights
- Notice
- Appeal Processes/Determining the Identified Debtor
- Interest and Penalties
- Applicability of the Proposed Rule to Medicare Part C and/or Medicare Part D
- Other

1. Definition of Applicable Plan

We proposed adding the following definition for ''applicable plan'' in § 405.902, Definitions: ''*Applicable plan* means liability insurance (including self-insurance), no-fault insurance, or a workers' compensation law or plan.'' This is the statutory definition of ''applicable plan'' in section 1862(b)(8)(F) of the Act.

Comment: A commenter requested that CMS revise the definition of applicable plan in the proposed rule to read: Applicable plan means liability insurance (including self-insurance), no-fault insurance, or a workers' compensation law or plan where payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a state or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no-fault insurance.

Response: We disagree with the recommended revision. The definition of the term ''applicable plan'' is the definition set forth in section 1862(b)(8) of the Act. The reference to ''. . . applicable plan under [section 1862(b)(2)(A)(ii) of the Act]'' (pursuant to the SMART Act and as codified now in section 1862(b)(2)(B)(viii) of the Act) is a reference to when CMS would pursue recovery with respect to liability insurance (including self-insurance), no-fault insurance, or workers' compensation law or plan recoveries where primary payment responsibility has been demonstrated, and is not a part of the definition of the term ''applicable plan'' itself. The term ''applicable plan'' as referred to in the SMART Act has a pre-existing definition in the same section of the Medicare statute (that is, in section 1862(b) of the Act). Therefore, we are finalizing the definition of the term ''applicable plan'' as proposed.

2. Issues Subject To Appeal/Not Subject To Appeal

In order for an action to be subject to the appeal process set forth in subpart I of 42 CFR part 405, there must be an ''initial determination.'' Section 405.924, Actions that are initial determinations, addresses actions that are initial determinations (and thus subject to appeal) for purposes of part 405 subpart I. We proposed adding paragraph (b)(15) to this section to specifically provide that where Medicare is pursuing recovery directly from an applicable plan, there is an initial determination with respect to the amount and the existence of the recovery claim. This addition would generally parallel the existing provisions of § 405.924(b)(14) addressing pursuing MSP recovery claims from a beneficiary, provider, or supplier. In addition to these changes, for consistency, we proposed a number of technical and formatting changes.

Paragraph (a) of § 405.926, Actions that are not initial determinations, addresses actions that are not initial determinations (and thus not subject to appeal) for purposes of part 405 subpart I because such determinations are the sole responsibility of CMS. Generally under § 405.926(k) initial determinations with respect to primary payers are not initial determinations. In conjunction with the proposed addition of § 405.924(b)(15), we proposed adding an exception to § 405.926(k) for initial determinations set forth in § 405.924(b)(15). Additionally, we proposed to add a new paragraph § 405.926(a)(3) to clarify that a determination of the debtor for a particular MSP recovery claim is not an

initial determination for purposes of part 405 subpart I. Because Medicare has the right to recover conditional payments from the beneficiary, the primary payer, or any other entity that has received the proceeds from payment by the primary plan, Medicare's decision regarding who or what entity it is pursuing recovery from is not subject to appeal. We also proposed to add the word ''facilitates'' to the existing ''sponsors or contributes to'' language in § 405.926(k) in recognition of our longstanding position that the concept of employer sponsorship or contribution has always included facilitation efforts. Finally, for consistency, we proposed making several technical changes.

Comment: A number of commenters believe that the issue of who or which entity CMS pursues an MSP recovery from should be subject to appeal. Some commenters requested that CMS always pursue recovery from the beneficiary first. Others believe that if the applicable plan has paid the beneficiary, recovery should be limited to the beneficiary. A commenter stated that the parties to a settlement, judgment, award, or other payment should be allowed to designate who CMS pursues or, at least who CMS pursues first.

Response: We decline these requests. Pursuant to section 1862(b)(2)(B)(ii) of the Act and 42 CFR 411.24 of the regulations, we have the right to pursue recovery from the beneficiary, the primary payer or any other entity receiving proceeds from the payment by the primary plan. We may recover from the applicable plan even if the applicable plan has already reimbursed the beneficiary or other party. Under our existing regulations under part 405 subpart I, beneficiaries have formal appeal rights; applicable plans do not have such rights. The SMART Act's provisions codified in section 1862(b)(2)(B)(viii) of the Act require us to provide formal appeal rights and a formal appeal process for applicable plans, but these provisions do not change Medicare's underlying recovery rights.

Comment: Some commenters would like to be able to appeal who is the identified debtor in a situation where there are multiple entities which are primary payers to Medicare (a beneficiary with multiple types of coverage or multiple settlements, or both). That is, they would like to be able to appeal whether CMS recovers from ''applicable plan #1'' rather than ''applicable plan #2'' in a situation where both applicable plans are primary to Medicare.

Response: We disagree. In accordance with section 1862(b)(2)(B)(ii) of the Act and 42 CFR 411.24 of the regulations, we have the right to pursue recovery from the beneficiary, the primary payer or any other entity receiving proceeds from the payment by the primary plan. Section 411.24(e) states that we have a direct right of action to recover from any primary payer.

Comment: A commenter requested that CMS remove any restrictions on the applicable plan, including the right to seek recovery from the beneficiary, service provider or other entity. Another commenter stated that the proposed rule did not address whether the applicable plan may seek recovery from another entity.

Response: We decline this request. The commenter is requesting that we provide a statement of the applicable plan's rights against Medicare beneficiaries, providers/suppliers, or other entities which is outside the scope of this rule.

After review and consideration of comments related to § 405.924 and § 405.926, we are finalizing the changes to these sections with modifications. In order to address the addition of a new paragraph (b)(15) to § 405.924 via the CY 2015 Physician Fee Schedule final rule with comment period (79 FR 68001), we will need to add proposed paragraph (b)(15) as paragraph (b)(16) and make conforming cross-references changes in § 405.906 and § 405.926(k).

3. Party Status/Who Can Appeal and When

We proposed to add paragraph (a)(4) to § 405.906, Parties to the initial determinations, redeterminations, reconsiderations, hearings, and reviews, to specify that an applicable plan is a party to an initial determination under proposed § 405.924(b)(15) where Medicare is pursuing recovery directly from the applicable plan. The applicable plan is the sole party to an initial determination when an applicable plan is a party. By ''pursuing recovery directly from the applicable plan,'' we mean that the applicable plan would be the identified debtor, with a recovery demand letter issued to the applicable plan (or its agent or representative) requiring repayment. If or when an applicable plan receives a courtesy copy of a recovery demand letter issued to a beneficiary, this does not qualify as ''pursuing recovery directly from the applicable plan'' and does not confer party status on the applicable plan. Making the applicable plan the sole party to the initial determination means that the applicable plan would also be the sole party to a redetermination or subsequent level of appeal with respect to that initial determination. We are also making a technical change in the section heading for § 405.906 (adding a comma before the phrase ''and reviews'').

Comment: Several commenters requested that (1) either the applicable plan, or the beneficiary, or both be allowed to participate in any appeal where the identified debtor is either the applicable plan or the beneficiary; (2) any appeal consolidate the appeal process and appeal rights of the applicable plan and the beneficiary; (3) either the applicable plan or the beneficiary has the right to appeal at any point prior to resolution of the appeals process or full payment (whichever occurs first); or (4) appeal rights be given to any entity potentially liable for repayment.

Response: We decline these requests. This final rule makes appeal rights available to the identified debtor, not potential identified debtors. An identified debtor and a potential identified debtor do not always have the same interests or present the same issues on appeal. For example, where a demand is issued, the identified debtor may elect to make payment in full and not appeal, in which case furnishing appeal rights to a potential debtor is unnecessary.

If we issue a demand to an identified debtor and later determine that it is appropriate to pursue recovery of some or all of the conditional payments at issue from a different identified debtor, a new separate demand will be issued, with appeal rights appropriate to the identified debtor in the new recovery demand.

Comment: A commenter requested that the provision making the applicable plan the sole party to a recovery pursued directly from the applicable plan be modified to state that the applicable plan is the sole party unless the applicable plan has previously made payment, in which circumstance any individual or entity which accepted payment would be a party to the initial determination and subsequent actions.

Response: We decline this request. In accordance with section 1862(b)(2)(B)(ii) of the Act and 42 CFR 411.24 of the regulations, we have the right to pursue recovery from the beneficiary, the primary payer or any other entity receiving proceeds from the payment by the primary plan. We may recover from the applicable plan even if the applicable plan has already reimbursed the beneficiary or other party.

Comment: Some commenters requested that CMS always pursue recovery from the individual or entity to whom/which the applicable plan has made payment (or, at minimum, pursue

recovery from that individual or entity before pursuing recovery from the applicable plan). A commenter suggested that CMS should have to inform an applicable plan regarding whether recovery had been sought from the beneficiary first.

Response: We decline these requests. The determination of who to pursue is our sole responsibility and, consequently, is not subject to appeal (see § 405.926(a)). We have the right to pursue recovery from the primary payer, the beneficiary, or any other entity receiving proceeds from the payment by the primary plan, and we may recover from the applicable plan even if the applicable plan has already reimbursed the beneficiary or other party.

After review and consideration of all comments related to § 405.906, we are finalizing the changes to this section with the modifications to the cross-references to § 405.924(b)(15) noted in section II.B.2. of this final rule.

4. Use of an Attorney or Other Representative; Assignment of Appeal Rights

We proposed adding paragraph (e)(4) to § 405.910, Appointed representatives, in order to provide applicable plans with the benefit of the existing rule for MSP regarding the duration of appointment for an appointed representative. We also proposed revising § 405.910(i)(4) to ensure that the special provision that beneficiaries as well as their representatives must receive notices or requests in an MSP case continues to apply only to beneficiaries. For all other parties, including an applicable plan, we continue to follow the regulatory provisions in § 405.910(i)(1) through (3). We did not propose any changes to § 405.912 which addresses the assignment of appeal rights.

Comment: Commenters requested that applicable plans be able to appoint third parties/agents as representatives in the appeal process.

Response: Applicable plans have this ability under the existing provisions in § 405.910. Section 405.910 does not limit who a party may appoint as a representative other than to state that ''[a] party may not name as an appointed representative, an individual who is disqualified, suspended or otherwise prohibited by law from acting as a representative in any proceedings before DHHS, or in entitlement appeals, before SSA.''

Furthermore, we are specifying when a party appointing a representative must include the beneficiary's Medicare health insurance claim number (HICN) on the appointment of representation. We believe that it is not necessary for non-beneficiary parties to include the HICN as part of a valid appointment because an applicable plan or other non-beneficiary party seeking to appoint a representative under § 405.910 is not a beneficiary, and would thus not have a beneficiary HICN to provide on an appointment of representation. Accordingly, we are amending the existing § 405.910(c)(5) to state that an appointment of representation must identify the beneficiary's HICN when the beneficiary (or someone, such as an authorized representative or representative payee, acting on behalf of a beneficiary) is the party appointing a representative.

Comment: Some commenters requested that beneficiaries be able to assign their appeal rights to the applicable plan; other commenters requested that applicable plans be able to assign their appeal rights to the beneficiary.

Response: We decline these requests. Both beneficiaries and applicable plans have the option of an agreement for representation when it is mutually agreed to. However, the assignment of appeal rights is controlled by section 1869(b)(1)(C) of the Act which limits the assignment of appeal rights to assignment by a beneficiary to a provider/supplier with respect to an item or service furnished by the provider/supplier in question.

After review and consideration of comments related to § 405.910, we are finalizing the changes to this section as proposed and with the specification to paragraph (c)(5) explained previously.

5. Notice

We proposed adding a new paragraph (c) to § 405.921, Notice of initial determination, to provide specific language regarding requirements for notice to an applicable plan. Proposed § 405.921(c)(iv) states that in addition to other stated requirements in § 405.921(c), the requisite notice must contain ''any other requirements specified by CMS.'' We also proposed to add § 405.947, Notice to the beneficiary of applicable plan's request for a redetermination, to add language satisfying the requirement at section 1862(b)(2)(B)(viii) of the Act that the beneficiary receive notice of the applicable plan's intent to appeal where Medicare is pursuing recovery from the applicable plan. As the beneficiary would not be a party to the appeal at the redetermination level or subsequent levels of appeal, we believe that a single notice at the redetermination level satisfies the intent of this provision. We also proposed that the required notice be issued by a CMS contractor in order to ensure clarity and consistency in the wording of the notice. In addition to these changes, for consistency we proposed a number of technical and formatting changes.

Comment: Several commenter stated that the requisite notice must contain ''any other requirements specified by CMS'' in proposed § 405.921(c)(iv) is too broad and/or gives CMS too much authority.

Response: We are finalizing § 405.921(c) as proposed. The proposed language in § 405.921(c) is designed to set forth the minimum requirements for notice of an initial determination. Proposed § 405.921(c)(iv) simply provides flexibility for CMS to include additional information appropriate for the efficient operation of the appeals process; it does not eliminate any obligations set forth in proposed § 405.921(c). Additionally, we note that the same language is a longstanding provision in § 405.921(a) and (b) as well as certain other sections within part 405 subpart I regarding ''notice.''

Comment: Commenters presented a range of concerns regarding whether—(1) the applicable plan should be copied on a recovery demand with the beneficiary as the identified debtor; and (2) all potential debtors should be copied on all actions (that is, recovery demands, appeal requests, all notices or decisions).

Response: Given that the proposed rule provides that the applicable plan will be the sole party to an initial determination if CMS pursues recovery directly from the applicable plan, we have determined that any notice beyond the notice we have proposed in § 405.947 is unnecessary, would cause an increase in administrative costs and would cause confusion in many instances, particularly where beneficiaries would receive copies of demands issued to applicable plans.

Comment: A commenter stated that the Notice of Initial Determination sent to an applicable plan must include specific statutory authority for determinations and notification of appeal rights.

Response: It is our routine practice to include the basis for our recovery rights as well as information on applicable appeal rights in the recovery demand letter. Moreover, we believe that the commenter's concerns are adequately addressed by proposed § 405.921(c)(i) and (iii) (which require the reason for the determination as well as information on appeal rights).

Comment: A commenter requested that we apply the ''mailbox rule'' (also known as the ''postal rule'' or

''deposited acceptance rule'') regarding receipt of a document.

Response: We decline this request. The appeals process set forth in part 405 subpart I already has rules regarding receipt of documents for the purpose of determining the timeliness of an appeal request. See, for example, § 405.942(a)(1) (date of receipt for an initial determination), § 405.962(a)(1) (date of receipt for a redetermination), and § 405.1002(a)(3) (date of receipt for a reconsideration).

Comment: A commenter requested that language be added to beneficiary correspondence requiring beneficiaries to cooperate with the applicable plan and CMS' contractor.

Response: Because we are not involved in the interactions between a beneficiary and an applicable plan, we are not adding the requested language.

Comment: A commenter was concerned that an applicable plan might lose its opportunity to appeal if the recovery demand to the applicable plan was addressed incorrectly.

Response: Section 405.942, § 405.962, § 405.1014, and § 405.1102 all contain provisions for extending the time for filing for a particular level of appeal upon establishing good cause. An applicable plan, as a party, is entitled to request an extension of the filing timeframe consistent with the previously referenced sections should there be good cause to extend such timeframes.

Comment: A commenter requested that notice to the beneficiary of the applicable plan's appeal explicitly state in plain language that the applicable plan's appeal does not affect the beneficiary (that is, that the applicable plan is the sole party to the appeal).

Response: We agree, however, the content of model notices is more appropriately included in our operational instructions for contractors. We will address this issue when we draft language for the notice CMS' contractor will issue in accordance with § 405.947.

Comment: A commenter requested clarification regarding ''notice'' for purposes of the statute of limitations provision set forth in section 205 of the SMART Act.

Response: This comment is outside the scope of this rule.

After review and consideration of all comments regarding § 405.921 and § 405.947, we are finalizing these provisions as proposed with one modification. We are revising § 405.947(a) to read: ''A CMS contractor must send notice of the applicable plan's appeal to the beneficiary.'' We are eliminating the reference to ''the contractor adjudicating the redetermination request'' issuing the notice in order to allow for operational efficiencies, where applicable. Section 405.947(b) will continue to read: ''(b) Issuance and content of the notice must comply with CMS instructions.''

6. Appeal Processes/Determining the Identified Debtor

Comment: Commenters requested we clarify that initial determinations (recovery demands) involving liability insurance (including self-insurance), no-fault insurance, or workers' compensation benefits are made only after there is a settlement with a beneficiary.

Response: Recovery demands are appropriate once primary payment responsibility has been demonstrated. Primary payment responsibility can be demonstrated based upon a settlement, judgment, award, or other payment. *See* section 1862(b)(2)(B)(ii) of the Act and 42 CFR 411.22 of the regulations.

Comment: A commenter indicated an understanding that issues of medical necessity, beneficiary eligibility, and payment would be decided simultaneously with issues of MSP recovery under the proposed rule.

Response: The commenter's understanding is incorrect because these issues arise at different points in time. Medicare has rules in place to permit conditional payment when a beneficiary has a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation claim. Our claims processing contractors utilize normal claims processing considerations (including medical necessity rules) in processing such claims. MSP recovery claims come into play once we have information that primary payment responsibility has been demonstrated, which often occurs after items or services have been reimbursed by Medicare.

Comment: A commenter stated that there should be a clear statement regarding the availability of judicial review for applicable plans and requested that such a statement be added in 42 CFR 405.904.

Response: We believe that this clarification is unnecessary. Section 405.904(b) already addresses nonbeneficiary appellants. Additionally, § 405.1136 explains that judicial review is available as authorized by statute. (See sections 1869, 1876, and 1879(d) of the Act.)

Comment: Several commenters requested that CMS consider an appeals process other than the process in part 405 subpart I. Requests ranged from suggesting fewer levels of appeal, using a separate team of experts, to a separate docket and group of ALJs for MSP appeals. Multiple comments noted concern with the current backlog of claims-based appeals at the ALJ level of appeal.

Response: We decline this request. The existing appeals process in 42 CFR part 405 subpart I addresses claims-based Part A and Part B MSP and non-MSP appeals for beneficiaries, providers and suppliers, including appeals of pre-pay denials as well as overpayments. The proposed rule would give party status to a new party (the applicable plan) with respect to specific initial determinations. As the existing process at 42 CFR part 405 subpart I, is currently used for Part A and Part B MSP appeals by beneficiaries, we believe it is an appropriate process for resolving similar disputes with applicable plans.

Comment: A commenter requested that CMS clarify how it determines who/which entity is the identified debtor and whether the identified debtor will generally be the beneficiary.

Response: This question is outside the scope of this rule. (See, section 1862(b)(2)(B)(ii) and (iii) of the Act as well as 42 CFR 411.24 of the regulations regarding who we may pursue for recovery.)

Comment: Several commenters questioned whether: (1) CMS could pursue concurrent claims against the beneficiary and the applicable plan; (2) a claim against a beneficiary rendered a claim against the applicable plan moot (and vice versa); and (3) a demand to the beneficiary (or to the applicable plan) rendered a subsequent claim with respect to the same matter moot against the beneficiary (or the applicable plan, as appropriate).

Response: These comments are outside the scope of this rule as they do not relate to the proposed appeal process. Please note that we will not recover twice for the same item or service. Appeal rights will be given to the beneficiary or applicable plan receiving the demand.

Comment: Commenters stated that applicable plans should have access to beneficiary medical records, including an ability to unmask data on CMS' web portal.

Response: These comments are outside the scope of this rule as they are not related to the proposed appeal process. If we pursue recovery directly from the applicable plan, the applicable plan will be provided with all information related to the demand.

7. Interest and Penalties

Comment: Several commenters requested that penalties (such as civil

monetary penalties (CMPs)) and interest be tolled entirely during an appeal, during a good faith appeal, or for some set period of time during an appeal.

Response: The statutory and regulatory provisions for interest and CMPs are outside the scope of this rule. However, we note that a debtor may eliminate the possibility of interest by submitting repayment within the timeframe specified in the demand letter. Such repayment does not eliminate existing appeal rights.

8. Applicability of the Proposed Rule to Medicare Part C and Medicare Part D

Comment: Some commenters requested that the proposed rule be revised to include appeal rights for applicable plans when a Medicare Part C organization or Part D plan pursues an MSP based recovery from the applicable plan.

Response: This request is outside of the scope of this rule. The SMART Act provision for applicable plan appeals amended only the MSP provisions for Medicare Part A and Part B (section 1862(b) of the Act).

C. Other Proposals

In this section of the final rule, we note the proposed rule included a provision for which we did not receive any public comment. We proposed to amend § 405.900, Basis and scope, by revising paragraph (a) to add section 1862(b)(2)(B)(viii) of the Act as part of the statutory basis or Subpart I. Section 1862(b)(2)(B)(viii) requires an appeals process for applicable plans when Medicare pursues recovery directly from the applicable plan. We received no comments on this proposal; and therefore, are finalizing this provision without modification.

D. General and Other Comments

This section of the final rule responds to public comments that are not specific to topics described in section II.B. of this final rule.

Comment: A commenter stated that the amount in controversy requirement should be consistent with the dollar threshold provided for by the SMART Act in section 1862(b)(9) of the Act.

Response: We do not accept this recommendation as the amount in controversy jurisdictional threshold for the appeals process is unrelated to the threshold set in section 1862(b)(9) of the Act. The section 1862(b)(9) of the Act threshold is a dollar threshold regarding the size of the settlement, where, in certain situations, MSP reporting and repayment is not required. The jurisdictional amount in controversy requirements for the appeals process are already set forth in § 405.1006 for ALJ hearings and judicial review. We see no basis for changing the existing thresholds at various levels of appeal based upon the addition of an applicable plan as the party for certain appeals.

Comment: A commenter stated that the proposed rule was inconsistent with the SMART Act requirement for an 11-day web portal response timeframe for ''redeterminations and discrepancy resolution.''

Response: The SMART Act provisions concerning a web portal are outside the scope of this rule. Moreover, the provisions concerning the web portal discrepancy resolution process (section 1862(b)(2)(B)(vii)(IV) of the Act) specifically state that: (1) The provisions do not establish a right of appeal or set forth an appeal process; and (2) there shall be no administrative or judicial review of the Secretary's determination under section 1862(b)(2)(B)(vii)(IV) of the Act.

Comment: A commenter stated that the proposed rule should address appeals related to the determination of a proposed Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) amount for future medicals.

Response: This issue is outside the scope of this rule. As stated in the preamble to the proposed rule, this issue will be addressed separately.

III. Provisions of the Final Regulations

This rule incorporates all of the provisions of the December 27, 2013 proposed rule with the following exceptions:

- In § 405.910(c)(5), we are revising the language to specify when an HICN is needed.
- In § 405.924, finalizing the addition of proposed paragraph (b)(15) as paragraph (b)(16). As a result of this change, we are also making conforming changes to the cross-references to this paragraph in §§ 405.906(a)(4) and (c), 405.921(c)(1), and 405.926(k).
- In § 405.947(a), we are removing the reference to ''the contractor adjudicating the redetermination request'' issuing the notice in order to allow for operational efficiencies, where applicable. Therefore, paragraph (a) will read ''A CMS contractor must send notice of the applicable plan's appeal to the beneficiary.''
- In § 405.980, we are making a grammatical change to the section heading to match the grammatical change made to the section heading of § 405.906.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement

We have examined the impact 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 (February 2, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that the effect of this rule on the economy and the Medicare program is not economically significant. The rule provides a formal administrative appeal process for MSP recovery claims where the applicable plan is the identified debtor, as opposed to the current process which requires a CMS contractor to consider any defense submitted by an applicable plan but does not provide formal administrative appeal rights.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We have determined and we certify that this rule would not have a significant economic impact on

a substantial number of small entities because there is and will be no change in the administration of the MSP provisions. The changes would simply expand or formalize existing rights with respect to MSP recovery claims pursued directly from an applicable plan. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis (RIA) if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We have determined that this rule would not have a significant effect on the operations of a substantial number of small rural hospitals because it would simply expand and/or formalize existing rights with respect to MSP recovery claims pursued directly from an applicable plan. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule has no consequential effect on State, local, or tribal governments or on the private sector because it would simply expand and/or formalize existing rights with respect to MSP recovery claims pursued directly from an applicable plan.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 2. Amend § 405.900 by revising paragraph (a) to read as follows:

§ 405.900 Basis and scope.

(a) *Statutory basis.* This subpart is based on the following provisions of the Act:

(1) Section 1869(a) through (e) and (g) of the Act.

(2) Section 1862(b)(2)(B)(viii) of the Act.

* * * * *

■ 3. Amend § 405.902 by adding the definition ''Applicable plan'' in alphabetical order to read as follows:

§ 405.902 Definitions.

* * * * *

Applicable plan means liability insurance (including self-insurance), no-fault insurance, or a workers' compensation law or plan.

* * * * *

■ 4. Amend § 405.906 by:
■ A. Revising the section heading.
■ B. Adding new paragraph (a)(4).
■ C. Amending paragraph (c) by adding a sentence at the end of the paragraph.

The additions and revision read as follows:

§ 405.906 Parties to the initial determinations, redeterminations, reconsiderations, hearings, and reviews.

(a) * * *

(4) An applicable plan for an initial determination under § 405.924(b)(16) where Medicare is pursuing recovery directly from the applicable plan. The applicable plan is the sole party to an initial determination under § 405.924(b)(16) (that is, where Medicare is pursuing recovery directly from the applicable plan).

* * * * *

(c) * * *. This paragraph (c) does not apply to an initial determination with respect to an applicable plan under § 405.924(b)(16).

■ 4. Amend § 405.910 by:
■ A. Revising paragraph (c)(5).
■ B. Adding paragraph (e)(4).
■ C. Revising paragraph (i)(4).

The revisions and addition read as follows:

§ 405.910 Appointed representatives.

* * * * *

(c) * * *

(5) Identify the beneficiary's Medicare health insurance claim number when the beneficiary is the party appointing a representative;

* * * * *

(e) * * *

(4) For an initial determination of a Medicare Secondary Payer recovery claim, an appointment signed by an applicable plan which has party status in accordance with § 405.906(a)(1)(iv) is valid from the date that appointment is signed for the duration of any subsequent appeal, unless the appointment is specifically revoked.

* * * * *

(i) * * *

(4) For initial determinations and appeals involving Medicare Secondary Payer recovery claims where the beneficiary is a party, the adjudicator sends notices and requests to both the beneficiary and the beneficiary's representative, if the beneficiary has a representative.

* * * * *

■ 5. Amend § 405.921 by:
■ A. In paragraph (a)(1), removing ''; '' and adding in its place ''.''
■ B. In paragraph (a)(2) introductory text, removing the phrase ''must contain—'' and adding in its place the phrase ''must contain all of the following:''
■ C. In paragraphs (a)(2)(i) and (a)(2)(ii), removing ''; '' and adding in its place ''.''
■ D. In paragraph (a)(2)(iii), removing ''; and'' and adding in its place ''.''
■ E. Redesignating the second and third sentences of paragraph (b)(1) as paragraphs (b)(1)(i) and (ii), respectively.
■ F. In paragraph (b)(2) introductory text, removing the phrase ''must contain:'' and adding in its place the phrase ''must contain all of the following:''
■ G. In paragraphs (b)(2)(i) through (b)(2)(iv), removing ''; '' and add in its place ''.''
■ H. In paragraph (b)(2)(v), removing ''; and'' and add in its place ''.''
■ I. Adding paragraph (c) to read as follows:

§ 405.921 Notice of initial determination.

* * * * *

(c) *Notice of initial determination sent to an applicable plan*—(1) *Content of*

the notice. The notice of initial determination under § 405.924(b)(16) must contain all of the following:

(i) The reasons for the determination.

(ii) The procedures for obtaining additional information concerning the contractor's determination, such as a specific provision of the policy, manual, law or regulation used in making the determination.

(iii) Information on the right to a redetermination if the liability insurance (including self-insurance), no-fault insurance, or workers' compensation law or plan is dissatisfied with the outcome of the initial determination and instructions on how to request a redetermination.

(iv) Any other requirements specified by CMS.

(2) [Reserved]

■ 6. Amend § 405.924 by:

■ A. In paragraph (b) introductory text, removing the phrase ''with respect to:'' and add in its place the phrase ''with respect to any of the following:''

■ B. In paragraph (b)(1) through (b)(11) removing ''; '' and adding in its place ''.''

■ D. In paragraph (b)(12) introductory text, removing the ''; '' and adding in its place ''—''.

■ C. Adding paragraph (b)(16).

The addition reads as follows:

§ 405.924 Actions that are initial determinations.

* * * * *

(b) * * *

(16) Under the Medicare Secondary Payer provisions of section 1862(b) of the Act that Medicare has a recovery claim if Medicare is pursuing recovery directly from an applicable plan. That is, there is an initial determination with respect to the amount and existence of the recovery claim.

* * * * *

■ 7. Amend § 405.926 by:

■ A. In the introductory text, removing the phrase ''not limited to –'' and adding in its place the phrase ''not limited to the following:''

■ B. In the introductory text of paragraph (a), removing the phrase ''for example –'' and adding in its place the phrase ''for example one of the following:''

■ C. In paragraphs (a)(1) and (a)(2), removing ''; '' and adding in its place ''.''

■ D. Adding paragraph (a)(3).

■ E. In paragraphs (b) through (j), removing ''; '' and adding in its place ''.''

■ F. Revising paragraph (k).

■ G. In paragraphs (l) through (q), removing ''; '' and adding in its place ''.''

■ H. In paragraph (r), removing ''; and'' and adding in its place ''.''

The addition and revision read as follows:

§ 405.926 Actions that are not initial determinations.

* * * * *

(a) * * *

(3) Determination under the Medicare Secondary Payer provisions of section 1862(b) of the Act of the debtor for a particular recovery claim.

* * * * *

(k) Except as specified in § 405.924(b)(16), determinations under the Medicare Secondary Payer provisions of section 1862(b) of the Act that Medicare has a recovery against an entity that was or is required or responsible (directly, as an insurer or self-insurer; as a third party administrator; as an employer that sponsors, contributes to or facilitates a group health plan or a large group health plan; or otherwise) to make payment for services or items that were already reimbursed by the Medicare program.

* * * * *

■ 8. Add a new § 405.947 to read as follows:

§ 405.947 Notice to the beneficiary of applicable plan's request for a redetermination.

(a) A CMS contractor must send notice of the applicable plan's appeal to the beneficiary.

(b) Issuance and content of the notice must comply with CMS instructions.

■ 9. Amend § 405.980 by revising the section heading to read as follows:

§ 405.980 Reopening of initial determinations, redeterminations, reconsiderations, hearings, and reviews.

* * * * *

Dated: November 20, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–04143 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[PS Docket Nos. 13–75 and 11–60; FCC 13–158]

Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** at 79 FR 3123, January 17, 2014 announcing the effective dates of rules requiring 911 communications providers to take reasonable measures to provide reliable service, as evidenced by an annual certification. That document erroneously stated the date of an initial reliability certification for covered 911 service providers. This document corrects the date of the initial certification.

DATES: This correcting amendment is effective February 27, 2015. An initial certification will be due October 15, 2015.

FOR FURTHER INFORMATION CONTACT: Eric P. Schmidt, Attorney Advisor, Public Safety and Homeland Security Bureau, (202) 418–1214 or *eric.schmidt@fcc.gov.*

SUPPLEMENTARY INFORMATION: The document published by the Commission in the **Federal Register** at 79 FR 3123, January 17, 2014, correctly noted that 47 CFR 12.4(c) and (d)(1), which pertain to annual and initial certifications, contain information collection requirements that had not been approved by the Office of Management and Budget (OMB) and would not take effect until such approval was announced in the **Federal Register**. However, the document erroneously stated that an initial certification pursuant to 47 CFR 12.4(d)(1) would be due ''[o]ne year after February 18, 2014,'' rather than one year after OMB approval of the associated information collection. In the **Federal Register** at 79 FR 61785, October 15, 2014, the Commission announced that OMB has approved the information collection for a period of three years and issued Control Number 3060–1202. Accordingly, 47 CFR 12.4(d)(1) became effective October 15, 2014, and an initial certification will be due October 15, 2015.

List of Subjects in 47 CFR Part 12

Certification, Telecommunications.

Accordingly, 47 CFR part 12 is corrected by making the following correcting amendments:

PART 12—RESILIENCY, REDUNDANCY AND RELIABILITY OF COMMUNICATIONS

■ 1. The authority citation for part 12 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 4(o), 5(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151,

154(i), 154(j), 154(o), 155(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d), unless otherwise noted

■ 2. Amend § 12.4 by revising the first sentence in paragraph (d)(1) to read as follows:

§ 12.4 Reliability of covered 911 service providers

* * * * *

(d) * * *

(1) *Initial reliability certification.* One year after October 15, 2014, a certifying official of every covered 911 service provider shall certify to the Commission that it has made substantial progress toward meeting the standards of the annual reliability certification described in paragraph (c) of this section. * * * * * * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–03433 Filed 2–26–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Chapter VI

[Docket No. FTA–2014–0012]

RIN 2132–ZA02

Interim Safety Certification Training Program Provisions

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Final Interim Safety Certification Training Provisions.

SUMMARY: This document announces interim safety certification training provisions for Federal and State Safety Oversight Agency personnel and their contractor support who conduct safety audits and examinations of public transportation systems not otherwise regulated by another Federal agency. This document also announces interim safety certification training provisions for public transportation agency personnel who are directly responsible for safety oversight of public transportation systems that receive Federal transit funding. Additionally, the document outlines voluntary, scalable training available to personnel of State Departments of Transportation and personnel directly responsible for safety oversight of urban and rural bus transit systems.

DATES: The interim provisions are effective May 28, 2015.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Ruth Lyons, FTA, Office of Safety and Oversight, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–366–2233 or email: *Ruth.Lyons@dot.gov*). For legal issues, contact Bruce Walker, FTA, Office of Chief Counsel, same address as above, (telephone: 202–366–9109 or email: *Bruce.Walker@dot.gov*). Office hours are Monday through Friday from 8 a.m. to 6 p.m. (EST), except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Overview

On October 1, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) authorized the Federal Transit Administration (FTA) to develop interim safety certification training provisions (interim program) for: 1) FTA and State agency personnel and their contractor support who conduct safety audits and examinations of public transportation systems; and 2) public transportation agency personnel who are directly responsible for safety oversight. A notification announcing FTA's proposed implementation of the interim program and request for comments was published in the **Federal Register** on April 30, 2014. (See 79 FR 24363).

In that document, FTA stated that the focus of the interim program would be directed primarily towards requirements for Federal and State Safety Oversight Agency (SSOA) personnel and their contractor support while designated safety oversight personnel of both rail and non-rail transit agencies that receive FTA funding would be voluntary participants. FTA received comments from nineteen entities regarding its proposed implementation of the interim program. This document addresses comments received and explains changes FTA has made to implement the interim program in response to those comments.

Summary of Changes to the Proposed Interim Program

The primary focus for the interim program remains on the training requirements for Federal personnel and their contractor support who conduct safety audits and examinations of public transportation systems, and SSOA personnel and their contractor support who conduct safety audits and examinations of rail transit systems. However, as recommended by commenters, FTA is expanding the interim program pursuant to 49 U.S.C. 5329(c)(2), to also require rail transit agency employees who are directly responsible for safety oversight as mandatory instead of voluntary participants. Compliance with the interim program will remain a grant condition for applicable recipients of Federal transit funding.

Additionally, as a result of comments received, FTA has revised the interim program to recognize the experience and training of those safety professionals who have already completed the curriculum for the Transit Safety Security Program (TSSP) certificate program. These participants will only be required to complete specific Safety Management System (SMS) courses and applicable technical training in accordance with section V of this document. For those who have not yet completed the TSSP program, FTA is updating the curriculum to include an emphasis on SMS tools and techniques to promote the development, implementation and oversight of SMS safety policies, risk management, safety assurance, and safety promotion programs and initiatives. The revised curriculum will continue to support the requirements of 49 CFR part 659, by also providing for organization-wide safety policy, formal methods of identifying hazards and controlling their potential consequences, continual assessment of safety risk, and an effective employee safety reporting system.

Recognizing that safety enhancement and promotion is of universal interest to the public transportation industry, FTA continues to encourage recipients with both bus and rail transit systems, as well as bus-only systems, to *voluntarily* participate in appropriate components of the interim provisions and to continue to avail themselves of FTA-sponsored voluntary bus safety training programs.

As a reminder, pursuant to 49 U.S.C. 5329(c)(1), FTA will establish the permanent Public Transportation Safety Certification Training Program (PTSCTP) through the rulemaking process. To that end, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) on all aspects of FTA's safety authority, including the training program, which was published in the **Federal Register** on October 3,

2013. (78 FR 61251, available at: *http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*). FTA is reviewing the comments received on the ANPRM and is developing, among other proposals, a notice of proposed rulemaking for the PTSCTP.

Until the PTSCTP final rule is promulgated, the interim program will be in effect. In the meantime, FTA periodically may revise the interim program following an opportunity for public notice and comment.

II. Public Comments on the Proposed Interim Safety Certification Training Provisions and FTA's Response

On April 30, 2014, FTA published a **Federal Register** document requesting public comment on its proposed implementation of the interim safety certification training provisions of MAP–21 (*see* 79 FR 24363). FTA received comments from nineteen entities, including trade associations, State Departments of Transportation (State DOTs) public transportation providers, and individuals. This document addresses the comments received and discusses changes FTA has made to the interim safety certification training provisions in response to public comments.

FTA initially proposed that the interim program contain distinct mandatory and voluntary components. Each mandatory participant was to complete a series of training on SMS principles, tools and techniques. The proposed curriculum for the interim program would be organized around a series of competencies and basic skills that supported training gaps indicated through a review of National Transportation Safety Board (NTSB) accident investigations, SSOA audits, FTA's Program Oversight reviews, annual reports submitted by SSOAs, FTA's National Transit Database (NTD) assessments and special studies.

In addition, FTA proposed that Federal and SSOA personnel and their respective contractor support would be required to develop technical training plans to address the competency areas specific to the rail transit system(s) for which they exercised safety oversight responsibility (*e.g.,* track inspections, safety systems and technologies, traction power, etc.). FTA proposed that both voluntary and mandatory participants would be able to complete the interim program requirements, on average within three years from initial enrollment, and annual recertification thereafter. Relative to cost, FTA noted that a majority of the cost to participate in the proposed interim program would be an eligible expenditure of Federal financial assistance provided under sections 5307, 5311, and 5329 grants.

Below are the questions FTA posed for public comment in the **Federal Register** document, the public's response to those questions, and FTA's response and revisions to the interim program as a result of the public comments:

1. Are there existing safety certification programs other than those described in this document that FTA should consider for personnel with direct safety oversight of transit systems?

Fourteen entities responded to this question noting the existence of other safety certification programs that address SMS principles that FTA should consider. Specific reference was made to the National Safety Council, World Safety Organization, Transportation Safety Institute, the American Society of Safety Engineers, Board of Certified Safety Professionals, National Association of Safety Professionals, Federal Railroad Administration (FRA), NTSB, vehicle manufacturer training and certification programs, and safety classes offered through colleges, universities, and technical schools.

Commenters recommended that FTA provide 'transfer credit' for those who have completed the appropriate certification requirements from these or similar programs. Some commenters indicated that FTA's proposed implementation was unreasonable because it did not leverage the existing TSSP Certificate program. They noted that over 700 transit industry personnel have received certificates through the TSSP program. These commenters indicated that the TSSP curriculum already covers a significant number of the competencies that FTA listed in the Appendix to the **Federal Register** document.

FTA Response: Upon further review and evaluation of existing FTA-sponsored safety training, FTA concurs with the commenters who recommended that FTA leverage its existing TSSP Certificate programs for the interim program. To that end, FTA is revising the interim safety certification training provisions to include credit for those safety professionals who already have completed the requirements for a TSSP Certificate. These participants will need only complete the supplemental SMS courses noted in Section V of this document within three years of the effective date of the interim program. In addition, SSOA personnel and their respective contractor support will be required to complete the technical training requirement.

FTA also agrees that the existing TSSP Certificate curriculum should be revised to incorporate the SMS principles FTA has adopted, rather than FTA creating an entirely new curriculum for the interim program. Thus, the training required for participants who have not completed TSSP Certificate training will be very similar to the current TSSP Certificate curriculum, except that the curriculum will be modified to also include SMS principles. These participants would also need to complete the applicable technical training. Similarly, safety professionals who have begun, but not yet completed, the requirements for a TSSP certificate only will need to complete the remaining revised TSSP courses and the supplemental SMS courses noted in Section V. As with the current TSSP program, the revised TSSP program and the additional courses may be completed within three years of the date of enrollment in the TSSP Certificate program.

Although commenters identified other non-FTA-sponsored SMS safety certification training programs for consideration, at this time FTA will not evaluate non-FTA-sponsored training for credit under the interim program. Credit for this type of training will be evaluated for consideration as FTA develops requirements for the proposed rule for the PTSCTP. However, as recommended by commenters, SSOAs will be able to include non-FTA-sponsored technical training as part of the technical training plan they will provide to FTA for evaluation as discussed in Section V of this document.

2. How should FTA consider such additional training and certification programs in finalizing the interim provisions?

Twelve of the fourteen entities who commented on this question indicated that FTA should allow experienced personnel who have already completed safety training requirements to be 'grandfathered' from the requirements of the interim program and receive credit for their certifications and experience. A few commenters noted that some of these safety professionals often are utilized as instructors for FTA-sponsored training. Two of the commenters indicated that FTA should not attempt to implement the interim program with significantly new and different requirements because SSO programs must continue to comply with 49 CFR part 659 until three years after the final SSOA rule becomes effective.

FTA Response: As noted in the response to Question 1 above, FTA agrees in part that credit for existing safety certification and training should be granted for the interim program. As noted in Section V of this document, FTA has revised the training requirements for all participants who have obtained a TSSP Certificate. However, as stated above, FTA will not evaluate and provide credit for alternative certification programs offered through other non-FTA-sponsored programs. As the final rule for the PTSCTP is developed, FTA will revisit this recommendation.

FTA disagrees with those commenters who suggested that the interim program should not include significantly new and different requirements at this time. FTA recognizes that 49 CFR part 659 remains in effect for the near-term and that the TSSP curriculum for rail certification was developed to support the systems management requirements of part 659. However, the current TSSP curriculum is not fully adaptable to the SMS framework FTA has adopted. FTA believes the revised TSSP curriculum and the SMS training noted in Section V of this document aligns systems management and SMS training while addressing those gaps identified with the current TSSP curriculum.

3. FTA sought comment on the proposal to require Federal and SSOA personnel and their contractor support to participate in the interim program but allow the voluntary participation of public transportation personnel with direct safety oversight responsibilities.

FTA received comments from eighteen entities regarding this proposal. Five commenters indicated that all public transportation safety personnel with direct oversight responsibility should be required to participate in the interim program. Eleven commenters specifically recommended that personnel directly responsible for safety oversight of rail transit systems should be required to participate in the interim program. Three commenters indicated that personnel directly responsible for bus safety on the State level or rural bus transit systems should not be required participants in the interim program. One of these commenters noted that the bus transit systems operating within its State were small, rural providers that do not have the resources to participate in the proposed voluntary curriculum of the interim program.

A number of the commenters indicated that both SSOA personnel and rail transit personnel should receive the same SMS-centric training. These commenters suggested that if rail transit personnel are not required to participate in the interim program, it could result in disjointed implementation of the SMS safety requirements that FTA is introducing across the rail transit industry. These commenters noted that rail transit agency safety oversight personnel should have a strong understanding of both SMS principles and the technical components of their systems which lead to more effective safety management.

Five commenters also noted that voluntary training requirements for rail transit personnel could result in a lack of participation by these safety partners. They indicated that voluntary participation could be a disincentive for public transit systems to host such training. Commenters noted that FTA's current training delivery model relies on local public transportation systems to host FTA-sponsored training events and voluntary participation could inadvertently increase the costs associated with the training. Three commenters also noted that joint SSOA and rail transit system participation in the interim program could facilitate cooperative relationships between State regulators and the regulated community.

One commenter suggested that at a minimum, the Chief Safety Officer (or equivalent) of rail transit agencies and their staff should be required to obtain certification. Other commenters indicated that FTA should determine which rail transit personnel should be designated directly responsible for safety oversight, including the chief executive and board of directors. Lastly, one commenter indicated that the interim program should include personnel involved with the design and construction of rail transit systems.

FTA Response: FTA concurs with the commenters who recommended that rail transit system personnel with direct safety oversight responsibility should be required participants in the interim safety certification training program. FTA agrees with those who noted that both SSOA personnel and rail transit system personnel should receive the same or similar training in order to more effectively implement safety management principles. To that end, pursuant to the authority of 49 U.S.C. 5329(c)(2), the interim requirements noted in Section V also will apply to rail transit system personnel who are directly responsible for safety oversight. However, rail transit systems will not be required to submit technical training plans to FTA.

On the other hand, FTA does not concur with the recommendation that FTA should determine which specific persons or positions within a rail transit system should be designated as having direct responsibility for safety oversight. Similar to the designation of safety sensitive personnel noted in the FTA Drug and Alcohol regulations, 49 CFR part 655, FTA believes that each rail transit system is in a better position to determine which of its personnel has direct responsibility for safety oversight. FTA understands that the unique organizational framework of each rail transit system does not allow for uniform designation of the same position or function as having direct responsibility for safety oversight. For this reason, each rail transit system will designate its personnel who are required to participate in the interim program based on the function(s) of their position.

For those commenters who indicated that bus recipients should not be required participants, FTA reiterates that since one of the initial objectives of the interim program is to develop the technical proficiency of rail transit personnel with direct safety oversight responsibility, at this time, non-rail safety oversight personnel are not mandatory participants in the interim program. FTA encourages State DOT personnel and bus transit system personnel who are directly responsible for safety oversight of bus transit systems to voluntarily participate in the interim program. We further emphasize that participation by small rural bus-only transit providers in any component of the interim program will be strictly voluntary. Hence, the scale and level of participation will be left to the discretion of these entities.

In response to the comment to expand required participants to include personnel involved with the design and construction of rail transit operating systems, FTA notes that MAP–21 does not require their participation in the interim program. Hence, FTA will not require their participation in the interim program.

4. Are there segments of the existing TSSP program that might be utilized to address the gaps and proposed competencies identified by FTA?

FTA received comments from twelve entities on this question. Two commenters indicated that FTA did not present sufficient information in the **Federal Register** document to support its assertion that gaps exist between the TSSP program and the competencies listed in Appendix A that supported the curriculum for the interim program. Two other commenters noted that FTA has not published MAP–21 regulatory safety requirements; therefore, FTA is not yet able to determine what deficiencies exist. They indicated that

FTA had not presented sufficient evidence to warrant significant departure from the current FTA-sponsored training.

Ten of the commenters suggested that FTA take another look at the TSSP curriculum and other FTA-sponsored training before implementing a new and untested training regime. Two of these commenters noted that FTA should wait until it has gained sufficient knowledge and experience, and developed the internal capacity before implementing an extensive new safety certification training program.

One commenter noted that SMS should not replace current FTA-sponsored training which is based in part on Military Standard 882 series, the military's system safety program. Two commenters also noted that the all-hazards training in the TSSP program is complementary to the SMS-framework that FTA wishes to advance through the interim program.

FTA Response: As noted in our response in Questions 1 and 2, FTA concurs with the commenters who indicated that requirements for the interim program should include credit for those who have already completed the requirements for a TSSP Certificate. To that end, as reflected in Section V of this document, FTA has revised the interim program to incorporate this recommendation. We also reiterate that FTA recognizes the benefit of the systems-based all-hazards training of the TSSP Certificate program and will retain those provisions in the TSSP curriculum as it is revised.

Responding to those commenters who indicated FTA has not provided evidence to support the interim program, we note that as stated in the April 30, 2014 **Federal Register** document, FTA identified training gaps based on review of SSOA audits, FTA program oversight reviews, annual reports submitted by SSOAs, special studies, and FTA's NTD assessments, as well as investigations conducted by the NTSB, and Government Accountability Office reports. FTA continues to find that these references sufficiently document support for the competencies and curriculum developed for the interim program. That review indicated gaps relative to the TSSP curriculum and the SMS framework FTA has adopted for its safety programs. However, based on the recommendation of commenters, FTA reassessed the TSSP Certificate curriculum and agrees with those commenters who noted that it sufficiently reflects a number of SMS principles and should be included in the interim program. To that end, FTA determined that those who have already completed the TSSP Certificate program will be required to complete only the supplemental SMS courses noted in Section V of this document. FTA believes this revised approach to the interim program reasonably responds to those commenters who indicated that the program, as initially proposed, failed to consider the extensive experience and training already achieved by transit safety professionals.

In response to the commenter who indicated that FTA should not replace the current training program for 49 CFR part 659, which is in part based on the Military Standard 882 series, FTA notes that the revised interim program includes the TSSP Certificate curriculum that was developed to support part 659. Therefore, FTA will proceed with implementing the interim program in accordance with 49 U.S.C. 5329(c)(2).

5. Is it possible to reduce the time commitment or other burdens associated with the proposed interim provisions, while still providing the necessary SMS and technical training? What additional or alternative training should be considered, and why?

FTA received comments from seventeen entities on this question. Many of these commenters recommended that FTA leverage the TSSP Certificate program with web-based SMS training as a more appropriate course of action for implementing interim safety certification training, and include a test-out option for those capable of demonstrating proficiency in the relevant training competencies.

Three commenters noted that FTA should reevaluate the need for 144 hours of SMS-related training that was initially proposed. Other commenters indicated that the three-year timeframe proposed for completing the interim program was impractical based on the timeline between introducing the interim program and implementing the PTSCTP requirements. Three commenters noted that the proposed annual recertification for the interim program would not be realistic and would be an unnecessary administrative compliance burden. Two of the commenters indicated that FTA should provide more specific information regarding recertification/refresher training.

Several commenters also recommended that FTA develop all of the training and host both technical and classroom training at various rail transit systems across the country. Three commenters suggested that FTA adopt the web-based training model used by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

One commenter suggested that training requirements for rural and tribal bus transit providers should focus on driver training, drug and alcohol compliance, vehicle maintenance and standards, and the outcome data reported to the NTD. Another commenter recommended that FTA use a ''train-the-trainer'' approach for training delivery as a means of reducing cost and increasing convenience by expanding the availability of training sites. Lastly, other commenters indicated that FTA should cover the costs associated with the interim program.

FTA Response: As noted in Section V of this document, the revised curriculum for the interim program adopts the recommendation to reduce the administrative burden for required participants by providing some of the SMS training in a web-based format. Additionally, FTA will grant credit for those participants who have completed the TSSP Certificate program. This action will reduce the administrative burden associated with achieving certification for personnel who have completed the TSSP program from 144 hours over a three-year period to approximately 36 hours per person across a three-year timeframe. FTA has determined that this reduction will not compromise safety because the targeted safety professionals have already achieved much of the requisite safety training through the TSSP Certificate program and any gaps relative to SMS principles will be remediated through participation in the SMS training requirements noted in Section V of this document.

FTA recognizes that requiring the participation of rail transit system personnel who are directly responsible for safety oversight increases the number of required participants. However, as noted in the April 30, 2014 **Federal Register** notification, FTA's records show that over 800 industry personnel have already completed the TSSP Certificate program. As a result, many will only need to complete the supplemental SMS courses and web-based training. FTA believes the revised program strikes an appropriate balance for those experienced professionals who have already received a TSSP Certificate, while providing a solid foundation for new safety oversight professionals who will participate in future FTA-sponsored safety training.

Additionally, FTA concurs with the commenters who indicated that annual refresher training for the interim program would be an unnecessary

burden since the PTSCTP rule will likely be in effect by the time most participants have completed the requirements of the interim program. To address this concern, recertification will be required two years after the initial certification instead of one year as initially proposed. FTA continues to find that it is reasonable that the initial requirements of the interim program be completed within a three-year timeframe.

Regarding training delivery, FTA believes its current training delivery model of allowing public transportation systems to host FTA-sponsored training onsite is effective for the transit industry. FTA believes this practice increases participation and provides a training environment that is relevant to the subject matter. FTA notes that the PHMSA web-based training delivery model cannot fully cross-walk to the training objectives of the interim program because many of the FTA-sponsored courses require in-person delivery. However, FTA recognizes the benefits associated with web-based training and has revised some of the interim program curriculum to include web-based training. As the PTSCTP rule is developed, FTA will look to incorporate additional web-based training where practical.

In response to the recommendation for the focus of rural bus training requirements, FTA notes that the interim program does not preclude any rural or tribal bus transit agency from continuing to focus on the training needs most relevant to its organization. It is important to note that much of this training is already supported through FTA-sponsored programs for bus safety and technical assistance.

FTA also supports the recommendation that the interim program adopt a train-the-trainer process. While it is not feasible to develop and implement a train-the-trainer process for the interim program, FTA will consider this recommendation as the agency develops the proposed rule for the PTSCTP.

With regard to the recommendation that FTA fully fund all costs associated with the interim program, FTA notes that Congress specifically authorized recipients of funds under 49 U.S.C. 5307 and 5311 to use up to 0.5 percent of their Federal formula funds to cover up to 80 percent of the cost of participation by an employee with direct safety oversight responsibility. The FTA ELearning courses are free to public agency staff and the FTA sponsored in-person training charges a small materials fee but does not charge tuition to public agency staff. In addition, recipients of funds pursuant to 49 U.S.C. 5329 are authorized to use grant funds to pay for up to 80 percent of the cost of participation by an SSOA employee. Therefore, FTA is statutorily precluded from funding more than 80 percent of the cost for participating in the interim program.

6. Is it possible to reduce the time commitment or other burdens associated with the proposed technical training requirements proposed for SSOA personnel and their contractors? Is there additional or alternative technical training that should be considered, and why?

Fifteen entities responded to this question. Seven commenters suggested that FTA develop the technical training component for the interim program instead of the SSOAs. Three commenters recommended that FTA reinstate the annual SSO training conference and workshop which would assist FTA in delivering training to the SSOAs. Another commenter recommended that SSOAs and rail transit agencies form partnerships with other subject matter experts to conduct technical training best suited for their respective systems.

Commenters also suggested that credit should be given for existing training and experience, including allowing credit for technical knowledge gained during audits and review of transit maintenance and inspection activities, and that the SSOA should determine the time required for conducting technical training. One commenter also recommended that FTA provide guidance on the level of proficiency expected for the technical program.

Two commenters requested clarification regarding the training requirements for SSOAs that are responsible for transit systems in multiple jurisdictions. Two other commenters indicated that FTA should take responsibility for determining the appropriate certification requirements for SSOA contractor support with a national certification process. One commenter also noted that the State should be allowed to determine the length of initial and refresher technical training required for its SSOA personnel. Lastly, two commenters suggested that FTA should fund the cost of the interim program beyond the Federal funds provided for under section 5329 grants.

FTA Response: As indicated by a number of commenters, the SSOAs and rail transit systems already are engaged in activities that promote technical training competencies. Based on public comment, FTA has reviewed the proposed process for developing and conducting technical training requirements for the interim program. Recognizing that more enhanced technical training of FTA, SSOA, and rail transit personnel is an objective of MAP–21, FTA continues to believe that technical training should be tailored to the rail transit system(s) under the SSOA's jurisdiction. With that in mind, FTA concurs with commenters who indicated that each SSOA should determine the specific number of hours of initial and refresher technical training that should be performed by its safety oversight personnel and contractor support.

However, FTA does not agree that FTA should develop and deliver the technical training for the interim program. In the April 30, 2014 **Federal Register** document, FTA identified specific competencies common to rail transit systems. FTA believes each SSOA is in a better position to determine how it plans to train to those competency areas. The SSOA is better situated to determine the specifics of its technical training requirements based on the characteristics of the rail systems under its jurisdiction. This approach will allow the SSOA and the rail transit system to collaborate on training issues specific to the physical and operational characteristics of the rail systems and to align training plans with the competency areas identified by FTA.

With regard to developing the SSOA training plan, FTA notes that one objective of the technical training plan is to align the technical training with the SSO certification work plans that most States have submitted to FTA as part of the requirements under 49 U.S.C. 5329(e). In the technical training plan, the SSOA will identify how its personnel and contractor support will train to the competencies of the technical training component in Section V of this document. Those SSOA's with rail transit systems in multiple jurisdictions will have the option of developing a consolidated technical training plan or preparing separate plans for each rail transit system. FTA will provide technical assistance to the SSOAs in developing the technical training plan and provide a web-based template to assist with this process.

In addition, FTA concurs with those commenters who indicated that credit should be granted for prior technical training and experience including technical knowledge gained through audits and examinations. FTA also concurs that some of the technical training competencies may be achieved through web-based training. To that end, SSOAs may leverage such training as they develop their technical training

plan. FTA also will look to develop technical training courses for e-learning delivery. As these courses come online they can be incorporated in the technical training plan. Also, FTA will consider reconvening the SSOA workshops which could provide opportunities to conduct technical training.

In response to the recommendation that FTA provide a national certification for contractors who support SSOAs with conducting audits and examinations, FTA notes that the SSOA is responsible for ensuring that its contractors are qualified to perform the requirements of their respective contracts. Contractor personnel performing safety audits and examinations for the SSOA will be required to participate in the same interim safety certification training program noted in Section V as SSOA personnel; therefore, no additional certification process is required.

Regarding the issue of FTA funding all costs associated with training for the SSO program, FTA notes that Congress has provided for cost-sharing with the States for section 5329 funding for the SSO program. Specifically, Congress has limited the Government share of funding to 80 percent of the cost; therefore, FTA is precluded from funding all of an SSOA's costs for participating in the interim program.

III. Purpose

The interim safety certification training provisions are designed to advance FTA's proposed adoption of SMS to improve the safety of public transportation. (See FTA Dear Colleague letter dated May 13, 2013, available at: *http://www.fta.dot.gov/newsroom/12910_15391.html*). The interim provisions consist of: (1) A required training program promoting SMS and ensuring technical competencies for FTA personnel and contractors who conduct safety audits and examinations and SSOA personnel and contractors who conduct safety audits and examinations of rail transit systems not subject to FRA regulation; (2) a required training program that includes promoting the adoption of SMS for designated rail transit systems employees who are directly responsible for safety oversight; and (3) a voluntary component for personnel who are directly responsible for safety oversight of non-rail transit systems (*e.g.,* passenger ferry, bus, bus rapid transit, and community transportation providers).

IV. Applicability

Pursuant to 49 U.S.C. 5329(c)(2), the interim safety certification training provisions will apply to the following covered personnel and will be effective until FTA issues a final rule for the PTSCTP:

(1) FTA personnel and contractors who conduct safety audits and examinations of public transportation systems; [1]

(2) SSOA personnel and contractors who conduct safety audits and examinations of rail fixed guideway public transportation systems not subject to FRA regulation. In accordance with 49 U.S.C. 5329(e)(3)(E), each SSOA will designate its covered personnel or positions responsible for conducting the applicable safety audits and examinations and identify them in its annual FTA certification reporting requirements; [2]

(3) Designated employees of re-cip-i-ents with rail transit systems subject to 49 CFR part 659 who are *directly* responsible for safety oversight.[3]

(a) Each recipient will designate its covered personnel who are *directly* responsible for safety oversight of its rail transit system.

(b) At a minimum, covered personnel should include the Chief Safety Officer and the primary staff directly responsible for safety oversight of the recipient's rail transit system. Directly responsible means safety staff who participate in the development, implementation or maintenance of the requirements of the oversight agency's program standard.

(4) The following personnel may *voluntarily* participate in the applicable interim safety certification training provisions: [4]

(a) Personnel employed by recipients of Federal transit funds who are directly responsible for safety oversight of non-rail transit systems (*e.g.,* passenger ferry, bus, bus rapid transit, and community transportation providers); and

(b) Personnel of State DOTs or other State entities that receive Federal transit funds, who are directly responsible for safety oversight of non-rail transit systems such as passenger ferry, bus, bus rapid transit, and community transportation providers.

[1] FTA anticipates that this category will include approximately 40 FTA personnel and contractors.

[2] FTA anticipates that this category will include approximately 70 to 120 SSOA personnel and contractors.

[3] FTA anticipates that this category will include approximately 340 rail transit agency personnel.

[4] FTA anticipates that this will include approximately 2000 personnel.

V. Interim Safety Certification and Training Requirements

A. Required Curriculum Over a Three-Year Period

- *FTA/SSOA personnel and contractor support, and rail transit agency personnel with direct responsibility for safety oversight of rail transit systems not subject to FRA regulation:*
  - One (1) hour course on SMS Awareness—e-learning delivery (all required participants)
  - Two (2) hour course on Safety Assurance—e-learning delivery (all required participants)
  - Two (2) hour SMS Gap course (e-learning for existing TSSP Certificate holders)
  - SMS Principles for Rail Transit (2 days—all required participants)
  - SMS Principles for SSO Programs (2 days—FTA/SSOA/contractor support personnel only)
  - Revised TSSP with SMS Principles Integration (not required of current TSSP Certificate holders—17.5 days for all other covered personnel)
  - Rail System Safety
  - Effectively Managing Transit Emergencies
  - Transit System Security
  - Rail Incident Investigation
- *FTA/SSOA/contractor support personnel* (*technical training component*):

Each SSOA shall develop a technical training plan for covered personnel and contractor support personnel who perform safety audits and examinations. The SSOA will submit its proposed technical training plan to FTA for review and evaluation as part of the SSOA certification program in accordance with 49 U.S.C. 5329€(7). This review and approval process will support the consultation required between FTA and SSOAs regarding the staffing and qualification of the SSOAs' employees and other designated personnel in accordance with 49 U.S.C. 5329€(3)(D).

SSOA's should submit their technical training plan to FTA via the following Web site: *safety.fta.dot.gov* no later than May 28, 2015. FTA will provide technical assistance on a one-on-one basis after the technical training plans are submitted and reviewed.

Recognizing that each rail fixed guideway public transportation system has unique characteristics, each SSOA will identify the tasks related to inspections, examinations, and audits, and all activities requiring sign-off, which must be performed by the SSOA to carry out its safety oversight requirements, and identify the skills and

knowledge necessary to perform each task at that system.

At a minimum, the technical training plan will describe the process for receiving technical training from the rail transit agencies in the following competency areas appropriate to the specific rail fixed guideway system(s) for which safety audits and examinations are conducted:

- Agency organizational structure
- System Safety Program Plan and Security Program Plan
- Knowledge of agency:
  - Territory and revenue service schedules
  - Current bulletins, general orders, and other associated directives that ensure safe operations
  - Operations and maintenance rule books
  - Safety rules
  - Standard Operating Procedures
  - Roadway Worker Protection
  - Employee Hours of Service and Fatigue Management program
  - Employee Observation and Testing Program (Efficiency Testing)
  - Employee training and certification requirements
  - Vehicle inspection and maintenance programs, schedules and records
  - Track inspection and maintenance programs, schedules and records
  - Tunnels, bridges, and other structures inspection and maintenance programs, schedules and records
  - Traction power (substation, overhead catenary system, and third rail), load dispatching, inspection and maintenance programs, schedules and records
  - Signal and train control inspection and maintenance programs, schedules and records

The SSOA will determine the length of time for the technical training based on the skill level of the covered personnel relative to the applicable rail transit agency(s). FTA will provide a template on its Web site to assist the SSOA with preparing and monitoring its technical training plan and will provide technical assistance as requested. Each SSOA technical training plan that is submitted to FTA for review will:

- Require covered personnel to successfully:
  - Complete training that covers the skills and knowledge the covered personnel will need to effectively perform his or her tasks.
  - Pass a written and/or oral examination covering the skills and knowledge required for the covered personnel to effectively perform his or her tasks.
  - Demonstrate hands-on capability to perform his or her tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.
- Establish equivalencies or written and oral examinations to allow covered personnel to demonstrate that they possess the skill and qualification required to perform their tasks.
- Require biennial refresher training to maintain technical skills and abilities which includes classroom and hands-on training, as well as testing. Observation and evaluation of actual performance of duties may be used to meet the hands-on portion of this requirement, provided that such testing is documented.
- Require that training records be maintained to demonstrate the current qualification status of covered personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request.
- Records must include the following information concerning each covered personnel:
  - Name;
  - The title and date each training course was completed and the proficiency test score(s) where applicable;
  - The content of each training course successfully completed;
  - A description of the covered personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination;
  - The tasks the covered personnel is deemed qualified to perform; and
  - Provide the date that the covered personnel's status as qualified to perform the tasks expires, and the date in which biennial refresher training is due.
- Ensure the qualification of contractors performing oversight activities. SSOAs may use demonstrations, previous training and education, and written and oral examinations to determine if contractors possess the skill and qualification required to perform their tasks.
- Periodically assess the effectiveness of the technical training. One method of validation and assessment could be through the use of efficiency tests or periodic review of employee performance.

B. Voluntary Curriculum

- *Bus transit system personnel with direct safety oversight responsibility and State DOTs overseeing safety programs for 5311 sub-recipients*
  - FTA-sponsored Bus Safety Programs
  - One (1) hour course on SMS Awareness—e-learning delivery
  - SMS for Bus Operations
  - TSSP Certificate (Bus)

VI. Paperwork Reduction Act

In February 2014, in compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.13, FTA received approval from OMB for an Information Collection for the State Safety Oversight Program (Information Collection number 2132–0558). The recordkeeping necessary to comply with the interim program would be consistent with the recordkeeping required for SSOA and rail fixed guideway public transportation agency training in the approved information collection.

VII. Next Steps

1. FTA will host an informational webinar discussing the interim training program on or about 45 days after publication.

2. Covered personnel will be able to log-in to FTA's Web site *safety.fta.dot.gov* and establish a user ID and password (the Web site link provided will be live at least 30 days after publication, periodic updates will be provided on the landing page for users). Once this is completed, each participant will be provided with a curriculum which is associated with their category. The dates that registration will open for courses listed in each participant's profile will be provided with the learning profile. Participants will be notified by email when there has been an update to their profile. Once the Web site registration process is completed, users will be able to register for available classroom training, participate in e-learning opportunities and track their progress towards completion of their requirements. If a participant has previously completed a course that is listed in their profile (*e.g.,* TSSP), they may upload a copy of the certificate to their profile at *safety.fta.dot.gov.*

3. FTA will provide technical assistance to SSOAs at *safety.fta.dot.gov.* Each SSOA should submit their technical training plan to FTA via the following Web site: *safety.fta.dot.gov* no later than May 28, 2015.

Therese McMillan,

Acting Administrator.

[FR Doc. 2015–03842 Filed 2–26–15; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 80, No. 39
Friday, February 27, 2015

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2014–0095]

RIN 0579–AE08

Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are soliciting public comment regarding the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins and the revision of the list as necessary. Accordingly, we are soliciting public comment on the current list of select agents and toxins in our regulations and suggestions regarding any addition or reduction of the animal or plant pathogens currently on the list of select agents.

DATES: We will consider all comments that we receive on or before April 28, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0095.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0095, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0095* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Divan, Unit Director, Agricultural Select Agent Services, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 provides for the regulation of certain biological agents and toxins that have the potential to pose a severe threat to human, animal, and plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the primary responsibility for implementing the provisions of the Act within the U.S. Department of Agriculture (USDA). Veterinary Services (VS) select agents and toxins, listed in 9 CFR 121.3, are those that have been determined to have the potential to pose a severe threat to animal health or animal products. Plant Protection and Quarantine (PPQ) select agents and toxins, listed in 7 CFR 331.3, are those that have been determined to have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins, listed in 9 CFR 121.4, are those that have been determined to pose a severe threat to public health and safety, to animal health, or to animal products. Overlap select agents are subject to regulation by both APHIS and the Centers for Disease Control and Prevention, which has the primary responsibility for implementing the provisions of the Act for the Department of Health and Human Services.

Title II, Subtitle B of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002'' and referred to below as the Act), section 212(a), provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products.

In determining whether to include an agent or toxin in the list, the Act requires that the following criteria be considered:

- The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;
- The pathogenicity of the agent or the toxin and the methods by which the agent or toxin is transferred to animals or plants;
- The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and
- Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

Paragraph (a)(2) of section 212 of the Act requires the Secretary to review and republish the list of select agents and toxins every 2 years and to revise the list as necessary. To fulfill this statutory mandate, PPQ and VS each convene separate interagency working groups in order to review the lists of PPQ and VS select agents and toxins, as well as any overlap select agents and toxins, and develop recommendations regarding possible changes to the list using the four criteria for listing found in the Act. In this document, we are asking for comments on the current list [1] of select agents and toxins and on any other significant pathogens so as to inform the working groups as they begin the biennial review process.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, 371.3, and 371.4.

Done in Washington, DC, this 23rd day of February 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–04180 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–34–P

[1] You may view the lists of select agents and toxins on the Internet at *http://www.selectagents.gov/SelectAgentsandToxinsList.html.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–STD–0033]

RIN 1904–AD02

Energy Conservation Standards for Portable Air Conditioners: Public Meeting and Availability of the Preliminary Technical Support Document

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the preliminary analysis it has conducted for purposes of establishing energy conservation standards for portable air conditioners (ACs). The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product; and any other issues relevant to the development of energy conservation standards for portable ACs. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=76.*

DATES: Meeting: DOE will hold a public meeting on Wednesday, March 18, 2015, from 1 p.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this preliminary analysis before and after the public meeting, but no later than April 28, 2015. See section IV, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Any comments submitted must identify docket number EERE–2013–BT–STD–0033 and/or regulatory information number (RIN) number 1904–AD02. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PortableAC2013STD0033@ee.doe.gov.* Include the docket number EERE–2013–BT–STD–0033 and/or RIN 1904–AD02 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0033.* The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *ronald.majette@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products or equipment that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) In addition to specifying a list of covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. For a given product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary for the purposes of EPCA; and

(2) The average annual per-household energy use by products of each type is

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

likely to exceed 100 kilowatt-hours (kWh) per year. (42 U.S.C. 6292(b)(1))

To prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(b)(1), the Secretary must also determine that:

(1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;

(2) The aggregate 12-month energy use of the products has exceeded 4.2 terawatt-hours (TWh);

(3) Substantial improvement in energy efficiency is technologically feasible; and

(4) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

In prescribing a new or amended energy conservation standard, DOE is required to consider standards that: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, using the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;

3. The total projected amount of energy savings likely to result directly from the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product. This notice announces the availability of the preliminary TSD, which details the preliminary analyses, discusses the comments DOE received from interested parties that are relevant to the rulemaking, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

II. History of Energy Conservation Standards Rulemaking for Portable Air Conditioners

A. Background

Under the authority established in EPCA, DOE published a notice of proposed determination that tentatively determined that portable ACs qualify as a covered product. 78 FR 40403 (July 5, 2013). DOE tentatively determined that (1) classifying portable ACs as a covered product is necessary or appropriate to carry out the purposes of EPCA, and (2) the average U.S. household energy use for portable ACs is likely to exceed 100 kilowatt-hours (kWh) per year. (42 U.S.C. 6292(b)(1))

DOE published a Notice of Data Availability (NODA) on May 9, 2014 (the May 2014 NODA), reviewing various industry test procedures for portable ACs and presenting results from its investigative testing. DOE requested comment and additional information regarding the results and potential methodologies. 79 FR 26639. Comments received in response to the May 2014 NODA have helped DOE identify issues related to the preliminary analyses, as well as informed the analysis for the test procedure rulemaking. On February 12, 2015, DOE issued a notice of proposed rulemaking (NOPR) for a portable AC test procedure which is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/79.*

B. Current Rulemaking Process

DOE typically first develops a framework document that describes the approaches and methods DOE will use in evaluating the need for new or amended standards. For this rulemaking, DOE began the rulemaking process by publishing a notice of proposed determination (NOPD) on July 5, 2013 (hereinafter the ''July 2013 NOPD''). 78 FR 40403. After the framework stage, or in this case the NOPD, DOE then presents the initial analytical results in a preliminary TSD such as this one.

Comments received since publication of the July 2013 NOPD have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts analysis (NIA). The preliminary TSD that presents the methodology and results of each of these analyses is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=76.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses listed above or are preliminary analyses that will be expanded upon for a NOPR if DOE determines to proceed with an energy conservation standards rulemaking for portable ACs. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the Life-Cycle Costs (LCC) and Payback Period (PBP) analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in any subsequent NOPR.

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of portable ACs. This relationship serves as the basis for the cost-benefit calculations performed for individual consumers and the nation.

As a first step in the engineering analysis, DOE established one product class, based on a characterization of the relevant portable AC products and markets. For this product class, DOE identified existing technology options that could improve the energy efficiency of portable ACs. DOE then reviewed each technology option to decide whether it (1) is technologically feasible; (2) is practicable to manufacture, install, and service; (3) would adversely affect product utility or product availability; or (4) would have adverse impacts on health and safety. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline product'' refers to a model or models having features and technologies typically found in minimally efficient products currently available on the market. DOE then identified design options to improve the efficiency of portable ACs and considered these options in the analysis as candidate standard levels (CSLs). DOE estimated the manufacturer production costs for the baseline and each of the four CSLs. The manufacturer production costs were derived from product teardowns, using more efficient components and modeling efficiency savings from alternative product configurations. The main outputs of the engineering analysis are the manufacturer production costs (including material, labor, and overhead) and efficiencies at the baseline and each of 4 CSLs as a function of cooling capacity for the single product class. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Markups To Determine Prices

DOE derives customer prices based on manufacturer markups, retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving these markups, DOE determines the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the markups at each step in each distribution channel. Chapter 6 of the preliminary TSD addresses the markups analysis.

C. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of portable ACs. The energy use analysis seeks to estimate the range of energy consumption of the products that meet each of the efficiency levels considered in a given rulemaking as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

D. Life-Cycle Cost and Payback Period Analyses

The life-cycle cost (LCC) and payback period (PBP) analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing, and operating a portable AC over the course of its lifetime. The LCC analysis compares the LCC of a portable AC designed to meet possible energy conservation standards with the LCC of a portable AC likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the consumer (which consists of manufacturer selling price, distribution chain markups, and sales taxes); (2) the range of annual energy consumption of portable ACs that meet each of the efficiency levels considered as they are used in the field; (3) the operating cost of portable ACs (*e.g.,* energy cost); (4) portable AC lifetime; and (5) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price of higher efficiency portable ACs through savings in the operating cost. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs.

For portable ACs, DOE determined the range in annual energy consumption using outputs from the engineering analysis (power consumption at each efficiency level) and from publically available information on portable ACs. Total installed costs at each CSL are based on the engineering and markups analysis. Recognizing that several inputs to the determination of consumer LCC and PBP are either variable or uncertain (*e.g.,* annual energy consumption, product lifetime, electricity price, discount rate), DOE conducts the LCC and PBP analysis by modeling both the uncertainty and variability in the inputs using Monte Carlo simulation and probability distributions.

The average annual energy consumption derived in the LCC analysis is used as an input in the NIA. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from potential new standards at each CSL. DOE calculated NES and NPV for each CSL as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of portable ACs shipped during the analysis period. Energy savings include the full-fuel cycle energy savings (*i.e.,* the energy needed to extract, process, and deliver primary fuel sources such as coal and natural gas, and the conversion and distribution losses of generating electricity from those fuel sources). The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. NPV results are reported for discount rates of 3 percent and 7 percent.

To calculate the NES and NPV, DOE projected future shipments and efficiency distributions (for each CSL) for the single portable AC product class. DOE recognizes the uncertainty in projecting shipments and efficiency distributions, and as a result the NIA includes several different scenarios for each. Other inputs to the NIA include the estimated portable AC lifetime, consumer product costs, and average annual energy savings. Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites input from the public on all the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule establishing any new energy conservation standards will contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's

Web site and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=76.* However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this product or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by April 28, 2015 comments, data, and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for portable ACs.

The public meeting will be conducted in an informal conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, the Department will publish either a determination that standards for portable ACs are not appropriate or a NOPR proposing to establish standards. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to with laptop computers and other devices, such as tablets, to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=76.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's document or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this document between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–20XX–BT–STD–0033 and/or RIN 1904–AD02 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPM.

Issued in Washington, DC, on February 13, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–04110 Filed 2–26–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.FAA–2015–0426; Notice No. 25–15–03–SC]

Special Conditions: Bombardier Aerospace Incorporated, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Electronic Flight Control System: Pitch and Roll Limiting Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 Series Airplanes. These airplanes will have a novel or unusual design feature associated with the fly-by-wire electronic flight control system (EFCS) that limits pitch- and roll-attitude functions to prevent the airplane from attaining certain pitch attitudes and roll angles. This system generates the actual surface commands that provide for stability augmentation and flight control for all three-airplane axes (longitudinal, lateral, and directional). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before April 13, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0426 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Standardization Branch, ANM–113 Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with an aluminum alloy fuselage, sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. The CSeries airplanes will have a fly-by-wire EFCS.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Aerospace must show that the CSeries airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–129.

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

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

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

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

Novel or Unusual Design Features

The Bombardier CSeries airplane will incorporate the following novel or unusual design feature: Fly-by-wire EFCS that will limit pitch and roll attitude functions to prevent the airplane from attaining certain pitch attitudes and roll angles greater than plus or minus 65 degrees, and positive spiral stability introduced for roll angles greater than 30 degrees at speeds below V_{MO}/M_{MO}. This system generates the actual surface commands that provide for stability augmentation and flight control for all three-airplane axes (longitudinal, lateral, and directional).

Discussion

Part 25 does not specifically relate to flight characteristics associated with fixed attitude limits. Bombardier proposes on the CSeries to implement pitch and roll attitude-limiting functions via the EFCS normal mode. This will prevent the airplane from attaining certain pitch attitudes and roll angles greater than plus or minus 65 degrees. In addition, positive spiral stability, introduced for roll angles greater than 30 degrees at speeds below $V_{MO}/M_{MO,}$ and spiral stability characteristics must not require excessive pilot strength to achieve bank angles up to the bank angle limit.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier CSeries airplane. Should Bombardier Aerospace apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier CSeries airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Bombardier CSeries airplanes.

In addition to § 25.143, the following requirements apply to the EFCS pitch and roll limiting functions:

1. The pitch limiting function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff, plus a suitable margin to allow for satisfactory speed control.

2. The pitch and roll limiting functions must not restrict or prevent attaining pitch attitudes necessary for emergency maneuvering or roll angles up to 65 degrees. Spiral stability, which is introduced above 30 degrees roll angle, must not require excessive pilot strength to achieve these roll angles. Other protections, which further limit the roll capability under certain extreme angle-of-attack, attitude, or high-speed conditions, are acceptable, as long as they allow at least 45 degrees of roll capability.

3. A lower limit of roll is acceptable beyond the overspeed warning if it is possible to recover the airplane to the normal flight envelope without undue difficulty or delay.

Issued in Renton, Washington, on February 19, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–04050 Filed 2–26–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2015–0002]

Special Meeting: Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of special meeting of the ACCSH.

SUMMARY: ACCSH will hold a special meeting March 31–April 1, 2015, in Washington, DC, to consider a proposed rule to revise OSHA's crane operator qualification requirement in the Cranes and Derricks in Construction standard.

DATES: ACCSH will meet from 9 a.m. to 5 p.m., Tuesday, March 31, 2015, and from 9 a.m. to 1 p.m., Wednesday, April 1, 2015.

Submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH meeting by March 20, 2015.

ADDRESSES:

Submission of comments, requests to speak, and speaker presentations for the ACCSH meeting: Submit comments, requests to speak, and speaker presentations for the ACCSH meeting, using one of the following methods:

Electronically: Submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If the submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger (courier) service: Submit materials to the OSHA Docket

Office, Docket No. OSHA–2015–0002, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger service) during normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Instructions: Submissions must include the agency name and docket number for this **Federal Register** document (Docket No. OSHA–2015–0002). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this document.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Location of the ACCSH meeting: ACCSH will meet in Room N–4437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Requests for special accommodations: Please submit requests for special accommodations to attend the ACCSH meeting to Ms. Gretta Jameson, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *jameson.grettah@dol.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH and ACCSH meetings: Mr. Damon Bonneau, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov.*

Copies of this ***Federal Register*** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

Background: ACCSH will meet March 31–April 1, 2015, in Washington, DC. The meeting is open to the public. OSHA transcribes ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes speaker presentations, comments, and other materials submitted to ACCSH.

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the OSH Act and CSA require that the Assistant Secretary consult with ACCSH before the Agency proposes any occupational safety and health standard affecting construction activities (29 CFR 1911.10; 40 U.S.C. 3704).

Meeting agenda: The tentative agenda for this meeting includes:

- Assistant Secretary's Agency update and remarks;
- Presentation on OSHA's Proposed Rule to revise the Crane Operator Qualification requirement in the Cranes and Derricks in Construction standards (29 CFR part 1926, subpart CC).
- Public Comment Period.
- ACCSH's consideration of, and recommendation on, OSHA's Proposed Rule to revise the Crane Operator Qualification requirement in the Cranes and Derricks in Construction standards (29 CFR part 1926, subpart CC).

Attending the meeting: Individuals attending the meeting at the U.S. Department of Labor must enter the building at the visitors' entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification (such as a driver's license) to enter the building. For additional information about building-security measures for attending ACCSH meetings, please contact Ms. Jameson (see ''*Requests for special accommodations''* in the **ADDRESSES** section of this document).

Requests to speak and speaker presentations: ACCSH will receive public comments on March 31, 2015, from 10:30 a.m. to 5 p.m. Attendees who want to address ACCSH at the meeting must submit a request to speak, as well as any written or electronic presentation, by March 20, 2015, using one of the methods listed in the **ADDRESSES** section. All public comments to ACCSH will be limited to 15 minutes per person or organization. The request to speak must state:

- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, at the ACCSH meeting, you may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) you will address. You also must provide 20 hard copies of any materials, written or electronic, you want to present to ACCSH.

The ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Public docket of the ACCSH meeting: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change, and those documents may be available online at: *http://www.regulations.gov.* OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, and other documents pertaining to the ACCSH meeting. These documents are available online at: *http://www.regulations.gov.*

Access to the public record of ACCSH and ACCSH Workgroup meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2015–0002 at: *http://www.regulations.gov.* The *http://www.regulations.gov* index also lists all documents in the public record for this meeting; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for

Occupational Safety and Health, directed the preparation of this document under the authority granted by 29 U.S.C. 656; 40 U.S.C. 3704; 5 U.S.C. App. 2; 29 CFR parts 1911 and 1912; 41 CFR 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on February 23, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–03990 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–1017]

RIN 1625–AA00

Safety Zone; Marine Safety Unit Savannah Safety Zone for Heavy Weather and Other Natural Disasters, Savannah Captain of the Port Zone, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone throughout the Marine Safety Unit Savannah Captain of the Port Zone. This action is necessary to consolidate, clarify, and otherwise modify safety zone regulations to better meet the needs of the Ports of Savannah and Brunswick. This action would establish safety zones in the event natural or manmade disasters affect navigable waterways within the Marine Safety Unit Savannah Captain of the Port Zone.

DATES: Comments and related material must be received by the Coast Guard on or before April 1st, 2015. Requests for a public meeting must be received by the Coast Guard by April 1st, 2015.

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

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Zeke Rissman, Marine Safety Unit Savannah Prevention Department, Coast Guard; telephone (912) 652–4353 ext.241, email *Harold.E.Rissman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2014–1017] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–1017) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

C. Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of these proposed regulations is to ensure the safety of life on navigable waters of the United States through the addition of regulations in the event of natural and other disasters.

D. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone throughout the Marine Safety Unit Savannah Captain of the Port Zone. This action is necessary to consolidate, clarify, and otherwise modify safety and security zone regulations within the Ports of Savannah and Brunswick. This action would establish a safety zone in the event of a disaster affecting navigable waterways within the Marine Safety Unit Savannah Captain of the Port Zone.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The regulations that are being added are not expected to have a significant regulatory action due to the infrequency of use for the safety zones.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves waterway use restrictions that would be otherwise published as a Temporary Final Rule within the Savannah Captain of the Port Zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.732 to read as follows:

§ 165.732 Safety Zone; Marine Safety Unit Savannah Safety Zone for Heavy Weather and other Natural Disasters, Savannah Captain of the Port Zone, Savannah, GA.

(a) *Regulated Areas.* The following areas are established as safety zones during the specified conditions:

(1) *Savannah, GA.* All waters within the Port of Savannah, GA, encompassed within following locations: starting at the demarcation line drawn across the seaward extremity of the Savannah River entrance, and encompassing all of the waters of the Savannah River, Savannah GA.

(2) *Brunswick, GA.* All waters starting at the demarcation line drawn across the seaward extremity of the Savannah River entrance, and encompassing all of the waters of the Brunswick River, Brunswick GA.

(3) All coordinates are North American Datum 1983.

(b) *Definition.*

(1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Savannah in the enforcement of the regulated area.

(2) *Hurricane Port Condition YANKEE.* Set when weather advisories indicate that sustained Gale Force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(3) *Hurricane Port Condition ZULU.* Set when weather advisories indicate that sustained Gale Force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.*

(1) *Hurricane Port Condition YANKEE.* All commercial, oceangoing vessels and barges over 500 gross tons are prohibited from entering the regulated areas designated as being in Port Condition YANKEE; within 24 hours of anticipated landfall of gale force winds (39mph) from tropical or hurricane force storm; or upon the Coast Guard setting Port Condition YANKEE for inbound ocean going commercial vessel traffic over 500 GT. Oceangoing commercial vessel traffic outbound will be authorized to transit through the regulated areas until Port Condition ZULU.

(2) *Hurricane Port Condition ZULU.* All commercial, oceangoing vessels and barges over 500 gross tons are prohibited from entering the regulated areas designated as being in Port Condition ZULU; within 12 hours of anticipated landfall of a tropical storm or hurricane; or upon the Coast Guard setting Port Condition ZULU, unless written permission is obtained from the Captain of the Port. All ship-to-shore cargo operations must cease six hours prior to setting Port Condition Zulu.

(3) *Emergency Waterway Restriction for Other Disasters.* Any natural or other disasters that are anticipated to affect the Captain of the Port Savannah area of responsibility will result in the prohibition of commercial vessel traffic transiting or remaining in any of the two regulated areas predicted to be affected as designated by the Captain of the Port Savannah.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the Captain of the Port Savannah via telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

(5) Coast Guard Marine Safety Unit Savannah will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

(6) The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives.

(7) This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: February 2, 2015.

A.M. Beach,

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

[FR Doc. 2015–04163 Filed 2–26–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AP13

Schedule for Rating Disabilities; Gynecological Conditions and Disorders of the Breast

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the portion of the VA Schedule for Rating Disabilities (VASRD or rating schedule) that addresses gynecological conditions and disorders of the breast. The purpose of these changes is to incorporate medical advances that have occurred since the last review, update current medical terminology, and provide clear evaluation criteria. The proposed rule reflects advances in medical knowledge, recommendations from the Gynecological Conditions and Disorders of the Breast Work Group (Work Group), which is comprised of subject matter experts from both the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA), and comments from experts and the public gathered as part of a public forum. The public forum, focusing on revisions to the gynecological conditions and disorders of the breast section of the VASRD, was held on January 24, 2012.

DATES: Comments must be received on or before April 28, 2015.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP13—Schedule for Rating Disabilities; Gynecological Conditions and Disorders of the Breast.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, Medical Officer, Part 4 VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: As part of VA's ongoing revision of the VA Schedule for Rating Disabilities (VASRD or rating schedule), VA proposes changes to 38 CFR 4.116, which pertains to gynecological conditions and disorders of the breast. The proposed changes will: (1) Update the medical terminology of certain gynecological conditions and disorders of the breast, (2) add medical conditions not currently in the rating schedule, and (3) refine evaluation criteria based on medical advances that have occurred since the last revision and current understanding of functional changes associated with or resulting from disease or injury (pathophysiology).

Schedule of Ratings—Gynecological Conditions and Disorders of the Breast

Section 4.116 currently lists 19 diagnostic codes encompassing conditions involving injury or disease of female reproductive organs and of the breast. VA proposes to revise these codes, through addition, removal, or other revisions, to reflect current medical science and terminology, and functional impairment.

Diagnostic Code 7610 ''Vulva, disease or injury of (including vulvovaginitis)''

Current diagnostic code 7610 addresses impairments associated with disease or injury of the vulva. The vulva refers to the exterior anatomical portion of the female genitalia and includes the clitoris. ''Vulva,'' Mayo Clinic, *http://www.mayoclinic.org/vulva/img-20005974* (last visited June 20, 2014). To provide clarity as to the applicability of this diagnostic code and to promote consistent and adequate evaluations, VA proposes to update the title of this diagnostic code to specifically include injury or disease of the clitoris, in addition to the vulva.

Diagnostic Code 7615 ''Ovary, disease, injury, or adhesions of''

Current diagnostic code 7615 addresses impairments associated with disease, injury or adhesions of the ovaries. VA proposes to place a note under diagnostic code 7615 to identify two common diseases associated with ovarian dysfunction resulting in abnormal menstrual cycles: Dysmenorrhea and secondary amenorrhea. Dysmenorrhea is pain associated with menstruation and is the most commonly reported menstrual disorder. ''Dysmenorrhea,'' American College of Obstetricians and Gynecologists (July 2012), *http://www.acog.org/~/media/For%20Patients/faq046.pdf?dmc=1&ts=20130904T1049007771* (last visited Jan. 21, 2014). Secondary amenorrhea occurs when a woman who has been having normal menstrual cycles stops menstruating for 6 or more months. Tarannum Master-Hunter & Diana L. Heiman, ''Amenorrhea: Evaluation and Treatment,'' 73 American Family Physician 1374, 1374–82 (2006). The proposed note will state that for the purpose of disability evaluation, a disease, injury, or adhesions of the ovaries resulting in ovarian dysfunction affecting the menstrual cycle, such as dysmenorrhea and secondary amenorrhea, shall be rated under diagnostic code 7615.

Diagnostic Code 7619 ''Ovary, removal of''

Diagnostic code 7619, ''Ovary, removal of,'' addresses impairment associated with complete and partial removal of the ovaries. Service-connected complete removal of both ovaries is currently evaluated at 100 percent for the three months following removal and then 30 percent thereafter. With the continued expansion of women's roles in military service, better understanding of the health effects on women during and after service is essential. Women who suffer premature loss of function in both ovaries are at increased risk for cardiovascular disease, stroke, lung cancer, cognitive impairment or dementia, Parkinsonism, osteoporosis, depressive or anxiety symptoms, and sexual dysfunction. The risks appear to be greater for women who are younger at the time of premature loss of ovarian function. Studies have shown that even women who have both ovaries removed ''after the onset of natural menopause had an increased risk of deleterious outcomes.'' Lynne T. Shuster et al., ''Prophylactic bilateral oophorectomy jeopardizes long-term health,'' 18(4), American Society for Reproductive Medicine, Menopausal Medicine S1, S1–S5 (2010).

Currently, a male Veteran is entitled to a 30 percent evaluation for service-connected removal of one testicle when the second testicle, for reasons unrelated to service, is absent or ceases to function. 38 CFR 4.115b, Diagnostic Code 7524, Note. However, the current VASRD does not provide a similar evaluation for a female Veteran whose second ovary is absent or ceases to function for reasons unrelated to service. With consideration of the studies discussed above demonstrating the significant health risks from removal or loss of function of both ovaries, VA proposes to add a note to diagnostic code 7619 in order to equalize VA compensation for female Veterans.

Diagnostic Codes 7621 ''Uterus, prolapse,'' 7622 ''Uterus, displacement of,'' and 7623 ''Pregnancy, surgical complications of''

Current diagnostic codes 7621 through 7623 address impairment associated with various degrees of female pelvic organ prolapse. Uterine prolapse is evaluated under current diagnostic code 7621, as either (1) complete uterine prolapse through the vagina and introitus at 50 percent, or (2) incomplete uterine prolapse at 30 percent. Uterine displacement is evaluated under current diagnostic code 7622, as either (1) marked uterine displacement and frequent or continuous menstrual disturbances at 30 percent, or (2) uterine displacement with adhesions and irregular menstruation at 10 percent. Finally, surgical complications of pregnancy are evaluated under current diagnostic code 7623, as either (1) with rectocele or cystocele at 50 percent, or (2) with relaxation of perineum at 10 percent.

To update VASRD, VA proposes to consolidate these three diagnostic codes into one diagnostic code. Specifically, VA proposes to amend diagnostic code

7621 to be titled, ''Pelvic organ prolapse due to injury, disease, or surgical complications of pregnancy.'' VA proposes this consolidation because all of these diagnostic codes represent different types of pelvic organ prolapse (displacement) and describe various degrees of their displacement to or beyond the vaginal walls. Furthermore, as discussed in more detail below, current medicine has a reliable classification system that provides for uniform evaluation of functional impairment due to pelvic organ prolapse (displacement), regardless of which pelvic organ is involved. Therefore, combining the evaluations currently found in diagnostic codes 7621 through 7623 would better reflect the current understanding of anatomy, physiology, and functional impairment due to disease or injury of pelvic organs. VA also proposes to place a note under diagnostic code 7621 that will describe pelvic organ prolapse and identify common types of prolapse, including uterine or vaginal vault prolapse, cystocele, urethrocele, rectocele, enterocele, or any combination. This note would assist field personnel in selecting the appropriate diagnostic code for these diagnosed conditions.

Currently, diagnostic codes 7621 and 7622 address uterine prolapse and uterine displacement, respectively; however, uterine displacement is just an outdated reference to uterine prolapse. Therefore, separate diagnostic codes are redundant and unnecessary. As for diagnostic code 7623, it provides for evaluation of pelvic organ displacement such as rectocele, cystocele, and relaxation of perineum when due to surgical complications of pregnancy. However, all of these pelvic organ displacements can occur independently from surgical complications of pregnancy. Therefore, an update to VASRD is needed to account for these situations.

This proposed revision is also necessary to eliminate disparate treatment of pelvic organ displacement found in the current VASRD. In this regard, rectocele or cystocele are rated under current diagnostic code 7623 without regard to the severity of the displacement (and, in turn, the symptoms associated with the displacement), whereas uterine prolapse and displacement (rated under diagnostic codes 7621 and 7622) are evaluated based on the degree of displacement.

Pelvic organs, such as the uterus, bladder or bowel, may protrude into the vagina due to weakness in the tissues that normally support them. In the most severe cases, part or all of the uterus or vagina can protrude beyond the vaginal opening (introitus). Pelvic organ prolapse includes anterior vaginal wall prolapse (cystocele, urethrocele), posterior vaginal wall prolapse (enterocele, rectocele, perineal deficiency) and uterine or vaginal vault prolapse. A woman can present with prolapse of one or more of these sites. Christopher Maher et al., ''Surgical management of pelvic organ prolapse in women,'' Cochrane Database of Systematic Reviews (2010), *http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD004014.pub4/abstract* (last accessed Jan. 21, 2014). A woman's symptoms are largely based on the severity of her prolapse. Women with mild cases of uterine prolapse may have no obvious symptoms or require no active intervention. However, as the uterus slips further out of normal position, it can place pressure on other pelvic organs (such as the bladder or bowel) causing a variety of symptoms such as a feeling of heaviness or pressure in the pelvis, pelvic pain, abdomen or lower back pain, pain during intercourse, a protrusion of tissue from the opening of the vagina, recurrent bladder infections, constipation, difficulty with urination or urinary frequency or urgency. G. Willy Davila et al., ''Vaginal Vault Suspension'' (updated Sept. 6, 2013), Medscape, *http://emedicine.medscape.com/article/1848619-overview#aw2aab6b9* (last accessed Jan. 21, 2014). Therefore, it is essential to identify the severity of any pelvic organ prolapse in order to determine the level of functional impairment.

To ensure consistent evaluation of pelvic organ prolapse, VA proposes to base its rating criteria on the pelvic organ prolapse (POP) classification system. POP presents the herniation of the pelvic organs to or beyond the vaginal opening (at the level of the hymen) and is described using the findings during pelvic examination. ''Pelvic Organ Prolapse,'' American College of Obstetricians and Gynecologists Practice Bulletin, Vol. 110, No. 3 (Sept. 2007). The severity of prolapse is graded using the standard Pelvic Organ Prolapse Quantification (POP–Q) classification system. The POP–Q examination is an objective, site-specific system that is used to quantify, describe, and stage pelvic support. The POP–Q system has proven interobserver and intraobserver reliability. A.F. Hall et al., ''Interobserver and intraobserver reliability of the proposed International Continence Society, Society of Gynecologic Surgeons, and American Urogynecologic Society pelvic organ prolapse classification system,'' 175 Am J Obstet Gynecol 1467, 1467–70 (1996).

As for the functional impairment associated with each stage of severity, VA proposes to assign a 50 percent evaluation in cases of severe pelvic organ prolapse, where on examination complete or almost complete eversion of the total length of the vagina is present, and the length of the protrusion beyond the hymen is within 2 centimeters of the total vaginal length. VA proposes to assign a 30 percent evaluation in cases of moderate prolapse, where on examination, the most severe portion of the prolapse is more than 1 centimeter below the hymen, but no further than 2 cm less than the total vaginal length. Finally, VA proposes to assign a 10 percent evaluation in cases of mild prolapse, where on examination, the most severe portion of the prolapse is between 1 cm or less above and 1 cm or more below the hymen.

VA also proposes to eliminate references to frequent or continuous menstrual disturbances, adhesions, and irregular menstruation as a measure of the degree of uterine displacement, because the symptoms noted are either outdated or adequately contemplated by the POP–Q system. For example, uterine displacement, also known as uterine prolapse, occurs when pelvic floor muscles and ligaments stretch and weaken and the uterus slips down into or protrudes out of the vagina. Minimal uterine prolapse generally does not require therapy or cause any impairment because the patient usually does not have any symptoms. However, uterine descent of the cervix at or through the vaginal opening (introitus) can become symptomatic. Symptoms of moderate and severe uterine prolapse include a sensation of vaginal fullness or pressure, back pain, vaginal spotting from ulceration of the protruding cervix or vagina, difficulty with sexual intercourse, lower abdominal discomfort, and voiding and difficulties with defecation. Typically, the patient feels a bulge in the lower vagina or the cervix protruding through the vaginal opening. Cystoceles, rectoceles, or enteroceles may cause symptoms commonly associated with pelvic organ prolapse and lead to patient complaints of difficulty with voiding or bowel movements, recurrent urinary infections, and/or ''splinting'' (manually supporting the perineum) to defecate. Cespedes RD, Cross CA, McGuire EJ., ''Pelvic Prolapse: Diagnosing and Treating Uterine and Vaginal Vault Prolapse,'' 1(3) MedGenMed (1999). Menstrual abnormalities may occur in women with or without pelvic organ

prolapse, but there is usually no causal relationship or association. Therefore, the references to menstrual disturbances, irregular menstruation and adhesions as symptoms of uterine prolapse (displacement) should be removed, because they do not reflect current medical science and practice.

Finally, and as a consequence of this proposed consolidation, VA also proposes to delete current diagnostic codes 7622 ''Uterus, displacement of'' and 7623 ''Pregnancy, surgical complications of'' as the evaluation criteria are now contained in the proposed diagnostic code 7621.

Diagnostic Codes 7627 ''Malignant neoplasms of gynecological system or breast'' and 7628 ''Benign neoplasms of the gynecological system or breast''

Current diagnostic codes 7627 and 7628 address impairment associated with malignant and benign neoplasms of the gynecological system and the breast. VA proposes to restructure the current rating criteria by separating the evaluations for impairments due to gynecological neoplasms from the evaluations for impairments due to breast neoplasms. This proposed separation keeps disability compensation data related to male breast cancer and non-cancerous tumors separate from disability compensation data related to gynecological neoplasms and also provides ease of use for disability rating specialists. Men possess a small amount of nonfunctioning breast tissue (breast tissue that cannot produce milk) that is concentrated in the area directly behind the nipple on the chest wall. Like breast cancer in women, cancer of the male breast is the uncontrolled growth of the abnormal cells of this breast tissue. Male breast cancer constitutes about 1 percent of all cases of breast cancers. ''Male Breast Cancer,'' National Cancer Institute—National Institutes of Health (Updated Sept. 19, 2013), *http://www.cancer.gov/cancertopics/pdq/treatment/malebreast/Patient/page1* (last accessed Jan. 21, 2014).

Therefore, VA proposes to retitle diagnostic code 7627 as, ''Malignant neoplasms of gynecological system'' and diagnostic code 7628 as, ''Benign neoplasms of gynecological system.'' Additionally, under diagnostic codes 7627 and 7628, VA proposes to clarify the existing note which instructs rating specialists to rate chronic residuals (following surgery or other treatments). Specifically, VA proposes to identify those chronic residuals commonly associated with treatment for neoplasms of the gynecological system, to include impairment of function due to scars, lymphedema, or disfigurement, as well as to direct rating specialists to evaluate any other residual impairment of function, including gynecological, under appropriate diagnostic code(s) within the appropriate body system. The surgical management of gynecologic malignancies and benign diseases has evolved over the last decades. However, these sometimes complex procedures encompass radical pelvic and upper abdominal surgery, including associated urologic and intestinal procedures that may be required to remove the neoplasm. Oliver Zivanovic & Dennis Chi, ''Surgical Resection and Reconstruction for Advanced and Recurrent Gynecologic Malignancies,'' 3 Expert Rev. of Obstetrics & Gynecology 677, 677–690 (2008). Additionally, VA proposes a minor editorial revision of replacing the word ''X-ray'' with the word ''radiation'' as it pertains to therapeutic procedure to reflect a change in medical terminology.

Within this reorganization, VA also proposes to add two new diagnostic codes, 7630 ''Malignant neoplasms of the breast'' and 7631 ''Benign neoplasms of the breast and other injuries of the breast'' in order to account for impairment due to benign and malignant breast tumors (neoplasms) as well as other injuries to the breast not included elsewhere in the VASRD. This addition would allow VA to adequately evaluate and track disabilities due to benign breast neoplasms as well as other injuries, such as blast trauma. VA proposes to place two notes under diagnostic codes 7630 and 7631 to identify common chronic residuals associated with injuries of the breast and benign and malignant breast tumors and to instruct rating specialists to rate accordingly. Breast surgery is the most common choice of treatment for benign and malignant tumors of the breast and is an established risk factor for development of scars, lymphedema, or disfigurement. These chronic post-treatment residuals result in functional impairment such as limitation of arm, shoulder, and wrist motion, or loss of grip strength, or loss of sensation, or residuals from harvesting of muscles for reconstructive purposes. Angelique F. Vitug & Lisa A. Newman, ''Complications in Breast Surgery,'' 87 Surgical Clinics of North America 431, 431–451 (2007).

The proposed notes will therefore instruct rating specialists to rate chronic residuals according to impairment of function due to scars, lymphedema, or disfigurement (*e.g.,* limitation of arm, shoulder, and wrist motion, or loss of grip strength, or loss of sensation, or residuals from harvesting of muscles for reconstructive purposes), and/or under diagnostic code 7626, if appropriate. Again, no change to the existing evaluation criteria (found in current diagnostic codes 7627 and 7628) is proposed.

New Diagnostic Code 7632 ''Female sexual arousal disorder (FSAD)''

VA proposes to add a new diagnostic code 7632, titled ''Female sexual arousal disorder (FSAD),'' in order to account for impairment due to this condition in the female Veteran population. FSAD refers to the continual or recurrent inability of a woman to accomplish or maintain an ample lubrication-swelling reaction during sexual intercourse. This lack of physical response may be either lifelong or acquired, and either generalized or situation-specific. FSAD is the second most common sexual health concern for women, affecting 26 percent of adult women. Emma Hitt, ''Alprostadil Shows Efficacy in Female Sexual Arousal Disorder'' (May 25, 2012), Medscape, *http://www.medscape.com/viewarticle/764590* (last accessed Jan. 21, 2014). Current statistics show that FSAD affects an estimated 30 to 45 million women in the United States alone. Medscape Medical News, ''Potential Drug Therapy for Female Sexual Dysfunction Presented'' (June 28, 2000), Medscape, *http://www.medscape.com/viewarticle/411930* (last accessed Jan. 21, 2014). Clinical research shows that some aspects of FSAD are likely caused in part by decreased blood flow to the genital area. Therefore, poor genital blood flow is believed to contribute to FSAD similar to the role of vascular disease in male erectile dysfunction. Medscape Medical News, ''New Approaches to Female Sexual Arousal Disorder'' (May 31, 2001), Medscape, *http://www.medscape.com/viewarticle/434478* (last accessed Jan. 21, 2014). Although treatment of sexual dysfunction in men has been improved by currently marketed pharmaceuticals there are no US Food and Drug Administration (FDA) approved treatments for FSAD. FDA recently issued draft guidance for industry regarding clinical development of drug products for FSAD.

Currently, male Veterans with service connected penile deformity and loss of erectile power receive a 20 percent disability evaluation under diagnostic code 7522 and are eligible for special monthly compensation. In cases where there is no penile deformity present, but there is service connected loss of erectile power, VA's policy is to evaluate male Veterans analogous to diagnostic code 7522, assigning a 0 percent rating; Eligibility for special

monthly compensation due to loss of use of a creative organ (SMC–K) is also considered. See 38 CFR 4.20 and 4.115b, Diagnostic Code 7522.

In order to ensure gender parity, VA proposes the creation of a new diagnostic code 7632 ''Female sexual arousal disorder (FSAD).'' There is no diagnostic code in current § 4.116 which allows for analogous rating of female sexual arousal disorder, to include consideration of special monthly compensation. Under proposed diagnostic code 7632, female Veterans with service connected FSAD but without physical damage to female genitalia would be evaluated at 0 percent with a note directing rating personnel to consider eligibility for special monthly compensation (SMC–K).

Technical Amendments

VA also proposes several technical amendments. We would add a citation reference to 38 U.S.C. 1155 at the end of § 4.116, and we would update Appendix A, B, and C of part 4 to reflect the above noted proposed amendments.

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 1, 2014, for publication.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Dated: February 20, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 4 as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Amend § 4.116 as follows:
■ a. Revise the entry for diagnostic code 7610;
■ b. Add a note at the end of the entries for diagnostic codes 7615 and 7619;
■ c. Revise the entry for diagnostic code 7621;
■ d. Remove the entries for diagnostic codes 7622 and 7623;
■ e. Revise the entries for diagnostic codes 7627 and 7628;
■ f. Add entries for diagnostic codes 7630 through 7632 in numerical order; and
■ g. Add an authority citation at the end of the section.

The revisions and additions to read as follows:

§ 4.116 Schedule of ratings—gynecological conditions and disorders of the breast.

	Rating
* * * * * * *	
7610 Vulva or clitoris, disease or injury of (including vulvovaginitis).	
* * * * * * *	
7615 * * *	
Note: For the purpose of VA disability evaluation, a disease, injury, or adhesions of the ovaries resulting in ovarian dysfunction affecting the menstrual cycle, such as dysmenorrhea and secondary amenorrhea, shall be rated under diagnostic code 7615.	
* * * * * * *	
7619 * * *	
Note: In cases of the removal of one ovary as the result of a service-connected injury or disease, with the absence or nonfunctioning of a second ovary unrelated to service, an evaluation of 30 percent will be assigned for the service-connected ovarian loss.	
* * * * * * *	
7621 Pelvic organ prolapse due to injury, disease, or surgical complications of pregnancy.	
Severe prolapse: Complete or almost complete eversion of the total length of the vagina shown on examination, with the length of the protrusion (or prolapse) extending beyond the hymen within 2 cm of total vaginal length	50
Moderate prolapse: On examination the most severe portion of the prolapse is more than 1 cm below the hymen, but protrudes no further than 2 cm less than the total vaginal length	30
Mild prolapse: On examination the most severe portion of the prolapse is between 1 cm or less above the hymen and 1 cm or more below the hymen	10
Note: Pelvic organ prolapse occurs when a pelvic organ such as bladder, urethra, uterus, vagina, small bowel, or rectum drops (prolapse) from its normal place in the abdomen. Conditions associated with pelvic organ prolapse include: Uterine or vaginal vault prolapse, cystocele, urethrocele, rectocele, enterocele, or any combination thereof.	
* * * * * * *	
7627 Malignant neoplasms of gynecological system	100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate chronic residuals to include scars, lymphedema, disfigurement, and/or other impairment of function under the appropriate diagnostic code(s) within the appropriate body system.	
7628 Benign neoplasms of gynecological system. Rate chronic residuals to include scars, lymphedema, disfigurement, and/or other impairment of function under the appropriate diagnostic code(s) within the appropriate body system.	
* * * * * * *	
7630 Malignant neoplasms of the breast	100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate chronic residuals according to impairment of function due to scars, lymphedema, or disfigurement (e.g., limitation of arm, shoulder, and wrist motion, or loss of grip strength, or loss of sensation, or residuals from harvesting of muscles for reconstructive purposes), and/or under diagnostic code 7626.	
7631 Benign neoplasms of the breast and other injuries of the breast. Rate chronic residuals according to impairment of function due to scars, lymphedema, or disfigurement (e.g., limitation of arm, shoulder, and wrist motion, or loss of grip strength, or loss of sensation, or residuals from harvesting of muscles for reconstructive purposes), and/or under diagnostic code 7626.	
7632 Female sexual arousal disorder (FSAD)	[1] 0

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

(Authority: 38 U.S.C. 1155)

■ 3. Amend Appendix A to Part 4 as follows:

■ a. At Sec. 4.116, revise the entries for diagnostic codes 7610, 7615, 7619, 7621, 7622, 7623, 7627, and 7628; and

■ b. At Sec. 4.116, add entries for diagnostic codes 7630 through 7632 in numerical order.

The revisions and additions to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
* * * * * * *		
4.116.		
* * * * * * *		
	7610	Criterion May 22, 1995; title [*effective date of final rule*].

Sec.	Diagnostic code No.	
*	*	* * * * * * *
	7615	Criterion May 22, 1995; note *[effective date of final rule*].
*	*	* * * * * * *
	7619	Criterion May 22, 1995; note [*effective date of final rule*].
*	*	* * * * * * *
	7621	Criterion May 22, 1995; evaluation [*effective date of final rule*].
	7622	Removed [*effective date of final rule*].
	7623	Removed [*effective date of final rule*].
*	*	* * * * * * *
	7627	Criterion March 10, 1976; criterion May 22, 1995; title, note [*effective date of final rule*].
	7628	Added May 22, 1995; title, criterion [*effective date of final rule*].
*	*	* * * * * * *
	7630	Added [*effective date of final rule*].
	7631	Added [*effective date of final rule*].
	7632	Added [*effective date of final rule*].
*	*	* * * * * * *

■ 4. Amend Appendix B to Part 4 as follows:

■ a. Revise the entries for diagnostic codes 7610, 7621, 7627, and 7628; and

■ b. Add entries for diagnostic codes 7630 through 7632 in numerical order.

The revisions and additions to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.	
*	* * * * * * *
	Gynecological Conditions and Disorders of the Breast
7610	Vulva or clitoris, disease or injury of (including vulvovaginitis).
*	* * * * * * *
7621	Pelvic organ prolapse due to injury or disease or surgical complications of pregnancy.
*	* * * * * * *
7627	Malignant neoplasms of gynecological system.
7628	Benign neoplasms of gynecological system.
*	* * * * * * *
7630	Malignant neoplasms of the breast.
7631	Benign neoplasms of the breast and other injuries of the breast.
7632	Female sexual arousal disorder (FSAD).
*	* * * * * * *

■ 5. Amend Appendix C to Part 4 as follows:

■ a. Add in alphabetical order the heading ''Female sexual arousal disorder (FSAD)'' and its diagnostic code ''7632''.

■ b. Under the heading ''Injury'' add in alphabetical order new entry ''Breast'' and its diagnostic code ''7631''.

■ c. Under the heading ''Neoplasms: Benign:'' add in alphabetical order an entry ''Breast'' and its diagnostic code ''7631''.

■ d. Under the heading ''Neoplasms: Benign:'' remove ''Gynecological or breast'' and in its place add the entry ''Gynecological''.

■ e. Under the heading ''Neoplasms: Malignant:'' add in alphabetical order new entry ''Breast'' and its diagnostic code ''7630''.

■ f. Under the heading ''Neoplasms: Malignant:'' remove ''Gynecological or breast'' and in its place add the entry ''Gynecological''.

■ g. Add in alphabetical order the heading ''Pelvic organ prolapse due to injury or disease or surgical complications of pregnancy, including uterine or vaginal vault prolapse, cystocele, urethrocele, rectocele, enterocele, or combination'' and its diagnostic code ''7621''.

■ h. Remove the heading ''Pregnancy, surgical complications'' and its diagnostic code ''7623''.

■ i. Under the heading ''Uterus'' remove the entry ''Displacement'' and its diagnostic code ''7622''.

■ j. Remove the heading ''Vulva disease or injury of'' and add in its place ''Vulva or clitoris, disease or injury of''.

The additions and revisions to read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic code No.
* * * * * * *	
Female sexual arousal disorder (FSAD)	7632
* * * * * * *	
Injury:	
* * * * * * *	
Breast	7631
* * * * * * *	
Neoplasms:	
Benign:	
Breast	7631
* * * * * * *	
Gynecological	7628
* * * * * * *	
Malignant:	
Breast	7630
* * * * * * *	
Gynecological	7627
* * * * * * *	
Pelvic organ prolapse due to injury or disease or surgical complications of pregnancy, including uterine or vaginal vault prolapse, cystocele, urethrocele, rectocele, enterocele, or combination	7621
* * * * * * *	
Vulva or clitoris, disease or injury of	7610
* * * * * * *	

[FR Doc. 2015–03851 Filed 2–26–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9923–43–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Infrastructure SIP Requirements for the 2010 NO_2 and SO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions from Indiana regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2010 nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before March 30, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure SIP elements) and Docket ID No. EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure SIP elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2012–0991 and EPA–R05–OAR–2013–0435. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The

www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Indiana Department of Environmental Management (IDEM). The state submitted its infrastructure SIP for the 2010 NO_2 NAAQS on January 15, 2013, and the 2010 SO_2 NAAQS on May 22, 2013.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2010 NO_2 and SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo) and has issued additional guidance documents, the most recent on September 13, 2013, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and address the 2010 NO_2 and SO_2 NAAQS. To the extent that the prevention of significant deterioration (PSD) program is non-NAAQS specific, a narrow evaluation of other NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from IDEM that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 and SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to

acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of this memorandum (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. EPA issued additional guidance documents, the most recent being the 2013 Memo which further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

As noted in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. IDEM provided the opportunity for public comment for its 2010 NO_2 NAAQS infrastructure SIP that ended on January 14, 2013. The state did not receive any comments during the comment period. IDEM provided the opportunity for public comment for its 2010 SO_2 NAAQS infrastructure SIP that ended on May 17, 2013. The state did not receive any comments during the comment period. EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submission in this notice of proposed rulemaking. IDEM provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 2010 NO_2 and SO_2 NAAQS, as applicable. The following review evaluates the state's submissions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[1] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

IDEM's authority to adopt emissions standards and compliance schedules is found at Indiana Code (IC) 13–14–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. To maintain the 2010 NO_2 NAAQS, Indiana implements nitrogen oxide controls and emission limits in 326 Indiana Administrative Code (IAC) 10–1, 326 IAC 10–3, 326 IAC 10–5, and 326 IAC 10–6. To maintain the 2010 SO_2 NAAQS, Indiana implements SO_2 controls and emission limits in 326 IAC 7–1.1, 326 IAC 7–3, 326 IAC 7–4, and 326 IAC 7–4.1 EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2010 NO_2 and SO_2 NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

IDEM continues to operate an air monitoring network; EPA approved the state's 2014 Annual Air Monitoring Network Plan on October 30, 2013, including the plan for NO_2 and SO_2. IDEM enters air monitoring data into Air Quality System (AQS), and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2010 NO_2 and SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD provisions that explicitly identify oxides of nitrogen (NO_X) as a precursor to ozone in the PSD program; (iii) identification of precursors to fine particulate matter ($PM_{2.5}$) and the identification of $PM_{2.5}$ and PM_{10} [2] condensables in the PSD program; (iv) $PM_{2.5}$ increments in the PSD program; and, (v) GHG permitting and the ''Tailoring Rule.'' [3]

[1] See, *e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964 at 67034.

[2] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[3] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPS for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2010 NO_2 NAAQS.

Sub-Element 1: Enforcement of SIP Measures

IDEM maintains an enforcement program to ensure compliance with SIP requirements. IC 13–14–1–12 provides the Commissioner with the authority to enforce rules ''consistent with the purpose of the air pollution control laws.'' Additionally, IC 13–14–2–7 and IC 13–17–3–3 provide the Commissioner with the authority to assess civil penalties and obtain compliance with any applicable rule a board has adopted in order to enforce air pollution control laws. Lastly, IC 13–14–10–2 allows for an emergency restraining order that prevents any person from causing, or introducing contaminants, that cause or contribute to air pollution. EPA proposes that Indiana has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 2: PSD Provisions that Explicitly Identify NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.[4]

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NO_X as a precursor to ozone provisions, by June 15, 2007 (*see* 70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Indiana's PSD SIP reflecting these requirements on July 2, 2014 (*see* 79 FR 37646, July 2, 2014), and therefore proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 3: Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tpy of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341, May 16, 2008).[5]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341, May 16, 2008).

EPA approved revisions to Indiana's PSD SIP reflecting these requirements on July 2, 2014 (*see* 79 FR 37646), and therefore proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 4: $PM_{2.5}$ Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are

[4] Similar changes were codified in 40 CFR 52.21.

[5] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Indiana's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5.}$ This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On July 12, 2012, and supplemented on December 12, 2012, IDEM submitted revisions intended to address the increments established by the 2010 NSR Rule for incorporation into the SIP, as well as the revised major source baseline date, trigger date, and baseline area level of significance for $PM_{2.5}$. IDEM also requested that these revisions satisfy any applicable infrastructure SIP requirements related to PSD. Specifically, revisions to 326 IAC 2–2–6(b) contain the Federal increments for $PM_{2.5}$, 326 IAC 2–2–1(ee)(3) contains the new major source baseline date for $PM_{2.5}$ of October 20, 2010, 326 IAC 2–2–1(gg)(1)(C) contains the new trigger date for $PM_{2.5}$ of October 20, 2011, and 326 IAC 2–2–1(f)(1) contains the new baseline area level of significance for $PM_{2.5}$. It should be noted that Indiana's submitted revisions explicitly include only the $PM_{2.5}$ increments as they apply to Class II areas, and not the $PM_{2.5}$ increments as they apply to Class I or Class III areas. However, Indiana's requested revisions specify that if areas in the state are classified as Class I or III in the future, it would require that the PSD increments pursuant to 40 CFR 52.21 be adhered to.

On August 11, 2014 (79 FR 46709), EPA finalized approval of the applicable infrastructure SIP PSD revisions; therefore, we are proposing that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 5: GHG Permitting and the ''Tailoring Rule''

With respect to Elements C and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Indiana has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA is proposing that Indiana's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Indiana PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2010 NO_2 and SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Indiana. EPA approved Indiana's minor NSR program on October 7, 1994 (*see* 59 FR 51108);[6] and since that date, IDEM and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2010 NO_2 and SO_2 NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

[6] EPA proposed approval of revisions updating Indiana's minor NSR construction permit rules on January 5, 2015 (*see* 80 FR 201). However, EPA believes that the rules that were in place at the time of Indiana's submittal were adequate for the purposes of infrastructure for the 2010 NO_2 and SO_2 NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

On February 17, 2012, EPA promulgated designations for the 2010 NO_2 NAAQS, stating for the entire country that, ''The EPA is designating areas as ''unclassifiable/attainment'' to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO_2 NAAQS'' (*see* 77 FR 9532). For comparison purposes, EPA examined the design values[7] from NO_2 monitors in Indiana and surrounding states. The highest design value based on data collected between 2011 and 2013 was 64 ppb at a monitor in Chicago, IL, compared to the standard which is 100 ppb for the 2010 NO_2 NAAQS. Additionally, Indiana has SIP approved rules that limit NO_X emissions, including rules in response to the Clean Air Interstate Rule at 326 IAC 24–1, controls for Clark and Floyd Counties at 326 IAC 10–1, specific source categories at 326 IAC 10–3, limits on Internal Combustion Engines at 326 IAC 10–5 and limits for Indiana Gas and Electric Company at 326 IAC 10–6. EPA believes that, in conjunction with the continued implementation of the state's SIP-approved PSD and NNSR regulations found in 26 IAC 2–2, these low monitored values of NO_2 will continue in and around Indiana. In other words, the NO_2 emissions from Indiana are not expected to cause or contribute to a violation of the 2010 NO_2 NAAQS in another state, and these emissions are not likely to interfere with the maintenance of the 2010 NO_2 NAAQS in another state. Therefore, EPA proposes that Indiana has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS. EPA is not taking action on this infrastructure element in regards to the 2010 SO_2 NAAQS and will do so in a future rule making.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Indiana's satisfaction of the applicable infrastructure SIP PSD requirements for the 2010 NO_2 NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Indiana's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO_X as a precursor to ozone, explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$, and regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Indiana's SIP that incorporate the $PM_{2.5}$ increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for $PM_{2.5}$ per the 2010 NSR Rule. EPA is proposing that Indiana's SIP contains provisions that adequately address the 2010 NO_2 and SO_2 NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Indiana's EPA-approved NNSR regulations are contained as part of its PSD program regulations, and can be found in 326 IAC 2–3 consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51. Therefore, EPA proposes that Indiana has met all of the applicable PSD requirements for the 2010 NO_2 and SO_2 NAAQS related to section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Memo states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

In this rulemaking, EPA is not proposing to approve or disapprove Indiana's satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2010 NO_2 or SO_2 NAAQs. Instead, EPA will evaluate Indiana's compliance with these requirements in a separate rulemaking.[8]

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Indiana has provisions in its EPA-approved PSD program in 326 IAC 2–2–15(b)(3) requiring new or modified sources to notify neighboring states of potential negative air quality impacts, and has referenced this program as having adequate provisions to meet the requirements of section 126(a). EPA is proposing that Indiana has met the infrastructure SIP requirements of section 126(a) with respect to the 2010 NO_2 and SO_2 NAAQS. Indiana does not have any obligations under any other subsection of section 126, nor does it have any pending obligations under section 115. EPA, therefore, is proposing that Indiana has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii).

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Indiana's biennial budget and its environmental performance partnership agreement with EPA document funding and personnel levels for IDEM every two years. As discussed in earlier

[7] The level of the 2010 NO_2 NAAQS for is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98th percentile of the daily 1-hour maximum. For the most recent design values, see *http://www.epa.gov/airtrends/values.html.*

[8] Indiana does have an approved regional haze plan for non-EGUs. Indiana's plan for EGUs relied on the Clean Air Interstate Rule that has been recently superseded by the Cross State Air Pollution Rule to which Indiana EGU sources are also subject.

sections, IC 13–14–1–12 provides the Commissioner of IDEM with the authority to enforce air pollution control laws. Furthermore, IC 13–14–8, IC 13–17–3–11, and IC 13–17–3–14 contain the authority for IDEM to adopt air emissions standards and compliance schedules. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On November 29, 2012, IDEM submitted rules regarding its Environmental Rules Board at IC 13–13–8 for incorporation into the SIP, pursuant to section 128 of the CAA. On December 12, 2012, IDEM provided a supplemental submission clarifying that the Environmental Rules Board established by IC 13–13–8, which has the authority to adopt environmental regulations under IC 4–22–2 and IC 13–14–9, does not have the authority to approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA. Therefore, section 128(a)(1) of the CAA is not applicable in Indiana.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. IC 13–13–8–11 ''Disclosure of conflicts of interest'' contains provisions that adequately satisfy the requirements of section 128(a)(2). This section requires that each member of the board shall fully disclose any potential conflicts of interest relating to permits or enforcement orders under the Federal CAA, as amended by the CAA Amendments of 1990. IC 13–13–8–4 defines the membership of the board, and the commissioner (of IDEM) or his/her designee is explicitly included as a member of the board. Therefore, when evaluated together in the context of section 128(a)(2), the commissioner (of IDEM) or his/her designee must fully disclose any potential conflicts of interest relating to permits or enforcement orders under the CAA. EPA concludes that IDEM's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. EPA approved these rules on December 6, 2013 (78 FR 77599). Therefore, EPA is proposing that IDEM has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2010 NO_2 and SO_2 NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

The Indiana state rules for monitoring requirements are contained in 326 IAC 3. Additional emissions reporting requirements are found in 326 IAC 2–6. Emission reports are available upon request by EPA or other interested parties. EPA proposes that Indiana has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2010 NO_2 and SO_2 NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

326 IAC 11–5 establishes air pollution episode levels based on concentrations of criteria pollutants. This rule requires that emergency reduction plans be submitted to the Commissioner of IDEM by major air pollution sources, and these plans must include actions that will be taken when each episode level is declared, to reduce or eliminate emissions of the appropriate air pollutants. Similarly, under IC 13–17–4, Indiana also has the ability to declare an air pollution emergency and order all persons causing or contributing to the conditions warranting the air pollution emergency to immediately reduce or discontinue emission of air contaminants. EPA proposes that Indiana has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to authority to implement measures to restrain sources from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment with respect to the 2010 NO_2 and SO_2 NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

IDEM continues to update and implement needed revisions to Indiana's SIP as necessary to meet ambient air quality standards. As discussed in previous sections, authority to adopt emissions standards and compliance schedules is found at IC 13–4–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2010 NO_2 and SO_2 NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submissions from Indiana with respect to the requirements of section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

IDEM actively participates in the regional planning efforts that include state rule developers, representatives from the FLMs, and other affected stakeholders. Additionally, Indiana is an active member of the Lake Michigan Air Director's Consortium, which consists of collaboration with the States of Illinois, Wisconsin, Michigan, Minnesota, and Ohio. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

IDEM monitors air quality data daily, and reports the air quality index to the interested public and media if necessary. IDEM also participates and submits information to EPA's AIRNOW program, and maintains SmogWatch, which is an informational tool created by IDEM to share air quality forecasts for each day. SmogWatch provides daily information about ground-level ozone, particulate matter concentration levels, health information, and monitoring data for seven regions in Indiana. IDEM also maintains a publicly available Web site that allows interested members of the community and other stakeholders to view current monitoring data summaries, including those for NO_2 and SO_2.[9] EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. IDEM's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes that Indiana has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2010 NO_2 and SO_2 NAAQS.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2010 NO_2 and SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

IDEM continues to review the potential impact of major and some minor new and modified sources using computer models. Indiana's rules regarding air quality modeling are contained in 326 IAC 2–2–4, 326 IAC 2–2–5, 326 IAC 2–2–6, and 326 IAC 2–2–7. These modeling data are available to EPA or other interested parties upon request. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2010 NO_2 and SO_2 NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

IDEM implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to the program were approved on August 13, 2002 (67 FR 52615). In addition to the title V permit program, IDEM's EPA-approved PSD program, specifically contained in 326 IAC 2–1.1–07 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2010 NO_2 and SO_2 NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

Any IDEM rulemaking procedure contained in IC 13–14–9 requires public participation in the SIP development process. In addition, IDEM ensures that the requirements of 40 CFR 51.102 are satisfied during the SIP development process. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2010 NO_2 and SO_2 NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most elements of submissions from IDEM certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2010 NO_2 and SO_2 NAAQS. EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	A	A
(B): Ambient air quality monitoring and data system	A	A
(C): Program for enforcement of control measures	A	A
(D)1: Interstate Transport- Significant contribution	A	NA
(D)2: Interstate Transport- interfere with maintenance	A	NA
(D)3: PSD	A	A

[9] See *http://www.in.gov/idem/airquality/2489.htm.*

Element	2010 NO_2	2010 SO_2
(D)4: Visibility	NA	NA
(D)5: Interstate and International Pollution Abatement	A	A
(E): Adequate resources	A	A
(E): State boards	A	A
(F): Stationary source monitoring system	A	A
(G): Emergency power	A	A
(H): Future SIP revisions	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+
(J)1: Consultation with government officials	A	A
(J)2: Public notification	A	A
(J)3: PSD	A	A
(J)4: Visibility protection	+	+
(K): Air quality modeling and data	A	A
(L): Permitting fees	A	A
(M): Consultation and participation by affected local entities	A	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
+	Not germane to infrastructure SIPs.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: February 12, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–04014 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9923–42–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Emission Limit Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve some elements of a state implementation plan (SIP) submission from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 8-hour ground level ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action is specifically looking at infrastructure requirements concerning emission limits and other control measures.

DATES: Comments must be received on or before March 30, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What is the background of these SIP submissions?

This rulemaking addresses a December 31, 2012, submission and a January 9, 2015, clarification from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

This specific rulemaking is only taking action on the CAA 110(a)(2)(A) requirements of these submittals. The majority of the other infrastructure elements were finalized in an October 16, 2014 (79 FR 62042), rulemaking.

III. What is EPA's review of these SIP submissions?

On September 13, 2013, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 Memo). This guidance provides, among other things, advice on the development of infrastructure SIPs for the 2008 ozone, the 2010 NO_2, the 2010 SO_2 NAAQS. As noted in the 2013 Memo, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. The public comment period for Illinois EPA's infrastructure SIP submission ended on December 26, 2012; during this period, the state did not receive any written comments, nor was there a request for a public hearing.

EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submission in this notice of proposed rulemaking. Illinois provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review only evaluates the state's submissions for CAA section 110(a)(2)(A) requirements.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[1] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides Illinois EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, the IPCB ensures compliance with required laws and other elements of the state's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA (415 ILCS 5/10).

The 2013 Memo described above states that to satisfy section 110(a)(2)(A) requirements, ''an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable'' (2013 Memo at page 18). In its January 9, 2015 clarification letter, Illinois EPA identified regulations with existing controls and emission limits that can be applied to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO_X) which are ozone precursors. Existing controls and emission limits which control VOC as an ozone precursor and can be applied to the 2008 ozone NAAQS are found in 35 Illinois Administrative Code (IAC) Parts 205, 215, 218, 219, and 233. Existing controls and emission limits which control NO_X as an ozone precursor and can be applied to the 2008 ozone and the 2010 NO_2 NAAQS are found in 35 IAC Parts 217 and 225. Existing controls and emission limits which control SO_2 and can be applied to the 2010 SO_2 NAAQS are found in 35 IAC Parts 214 and 225. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

In this rulemaking, EPA is not proposing to approve any new provisions in 35 IAC Parts 205, 214, 215, 217, 218, 219, 223, and 225 that have not been previously approved by EPA. In addition, as stated in the October 16, 2014 (79 FR 62042), rulemaking approving the majority of the other infrastructure elements in the state's submission, EPA is not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A).

IV. What action is EPA taking?

EPA is proposing to approve submissions from Illinois certifying that its current SIP is sufficient to meet the required infrastructure element under CAA section 110(a)(2)(A) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: February 12, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–04015 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

[1] See, *e.g.,* EPA's 73 FR 66964 at 67034, final rule on ''National Ambient Air Quality Standards for Lead.''

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0888; EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9923–47–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; PSD Infrastructure SIP Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan submissions from Ohio regarding the Prevention of Significant Deterioration infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before March 30, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 17, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–04010 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2014–0811; FRL–9923–39–Region 8]

Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Negative Declarations; Control of Emissions From Existing Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to publish negative declarations for sewage sludge incineration (SSI) units for the State of Colorado, the State of Montana, the State of North Dakota, the State of South Dakota, the State of Utah, and the State of Wyoming. Each state notified EPA in its negative declaration letter that there are no SSI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) currently operating within the jurisdictional boundaries of the state.

DATES: Written comments must be received on or before April 3, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2014–0811, by one of the following methods:

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

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kendra Morrison, Air Program, 1595

Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6145, *morrison.kendra@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is publishing these negative declarations as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for publication is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: January 30, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2015–03921 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket No. CDC–2015–0006]

RIN 0920–AA59

Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: In accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Subtitle A (Department of Health and Human Services) of Title II (Enhancing Controls on Dangerous Biological Agents and Toxins) of Public Law 107–188 (June 12, 2002) (the Bioterrorism Response Act), the Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) has initiated the review of the HHS list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. We are considering whether to propose amending the HHS list by removing six biological agents.

DATES: Comments should be received on or before April 28, 2015.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN), 0920–AA59 or Docket Number CDC–2015–0006 in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, Select Agent Program, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30329, ATTN: RIN 0920–AAxx.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket Access: For access to the docket to read background documents or comments received or to download an electronic version of the ANPRM, go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road NE., Atlanta, GA 30329. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Select Agents and Toxins to schedule your visit. Please be aware that comments and other submissions from members of the public are made available for public viewing without changes.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30329. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: The Preamble to this notice of proposed rulemaking is organized as follows:

I. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, recommendations, and data. Comments are invited on any topic related to this rulemaking.

In addition, HHS/CDC invites comments specifically as to whether there are biological agents or toxins that should be added or removed from the HHS list of select agents and toxins based on the following criteria, or any other appropriate criteria:

(1) The effect on human health of exposure to the agent or toxin;

(2) The degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans; and

(3) The availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or exposure to the toxin.

(4) The needs of children and other vulnerable populations.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. HHS/CDC will carefully consider all comments submitted in preparation of a proposed final rule.

II. Background

The Bioterrorism Response Act requires the HHS Secretary to establish by regulation a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. In determining whether to include an agent or toxin on the list, the HHS Secretary considers criteria such as the effect on human health of exposure to an agent or toxin; the degree of contagiousness of the agent and the methods by which the agent or toxin is transferred to humans; the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from an agent or toxin; and the needs of children and other vulnerable populations. The current list of HHS select agents and toxins can be found at 42 CFR 73.3 (HHS select agents and toxins) and 42 CFR 73.4 (Overlap select agents and toxins). The list of HHS and Overlap

select agents and toxins is available at: *http://www.selectagents.gov/Select%20Agents%20and%20Toxins%20List.html.*

The HHS Secretary last republished the list of HHS select agents and toxins in the **Federal Register** on October 5, 2012 (77 FR 61084). The list of HHS select agents and toxins is divided into two sections. The select agents and toxins listed in § 73.3 (HHS select agents and toxins) are those regulated only by HHS under the authority of the Bioterrorism Response Act (42 U.S.C. 262a). The select agents and toxins listed in § 73.4 (Overlap select agents and toxins) are those regulated by HHS under the authority of the Bioterrorism Response Act and regulated by the U.S. Department of Agriculture under the authority of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

The Bioterrorism Response Act requires the HHS Secretary to review and republish the list of select agents and toxins on at least a biennial basis. Using government subject matter experts, HHS/CDC conducts the biennial review process in consultation with the HHS/CDC Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC recommends changes to the list of HHS select agents and toxins. The ISATTAC is comprised of Federal government employees from CDC, Biomedical Advanced Research and Development Authority (BARDA) within the Office of the Assistant Secretary for Preparedness and Response, the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the Department of Homeland Security (DHS), the Department of Defense (DOD), the USDA/Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), and USDA/CVB (Center for Veterinary Biologics). Based on the criteria outlined in the Bioterrorism Response Act, the ISATTAC used the following measures in its review: the degree of pathogenicity (ability of an organism to cause disease), communicability (ability to spread from infected to susceptible hosts), ease of dissemination, route of exposure, environmental stability, ease of production, ability to genetically manipulate or alter, long-term health effects, acute morbidity (illness), acute mortality (death), available treatment, status of host immunity, vulnerability of special populations, and the burden or impact on the health care system.

III. Proposed Changes to 42 CFR Part 73, Modifications to the List of Select Agents and Toxins Being Considered

The purpose of this advanced notice of proposed rulemaking is to seek public comment on the appropriateness of the current list of HHS and Overlap select agents and toxins. Specifically, we are providing an opportunity for interested persons to submit comments, research data, and other information that will better inform us as to whether: (1) There are any other biological agents or toxins that should be added to the list because they have the potential to pose a severe threat to public health and safety; (2) there are any other biological agents or toxins currently on the list that should be removed because they no longer have the potential to pose a severe threat to public health and safety, and/or (3) the biological agents specifically listed in the following paragraphs should be removed or remain on the list.

HHS/CDC is also seeking comments on the following considerations regarding the list of HHS and Overlap select agents:

A. Coxiella burnetii

Coxiella burnetii causes a disease called Q fever. Q fever is an acute febrile rickettsial disease that varies in severity and duration. Should *Coxiella burnetii* be removed or retained as a HHS select agent? Are there other reasons or research data to support the removal besides the following reasons?

- It is not easily transmitted from person to person (1);
- It has a low mortality rate with antibiotic treatment (2); and
- There is an investigational new drug (IND) vaccine available for at-risk personnel (3).

B. Rickettsia prowazekii

Rickettsia prowazekii causes epidemic typhus. Epidemic typhus is a potentially lethal, louse-borne, disease caused by *R. prowazekii.* Should *Rickettsia prowazekii* be removed or retained as a HHS select agent? Are there other reasons or research data to support the removal besides the following reasons?

- It is readily treatable with antibiotics (4);
- The risk of mass casualties is low because *R. prowazekii* can be treated with a single dose of doxycycline when symptoms are present (4); and
- Transmissibility from person to person is low due to the fact that *R. prowazekii* is usually transmitted via blood, although it can be spread through inhalation of louse feces.

C. Bacillus anthracis Pasteur Strain

Bacillus anthracis is the bacterium that causes anthrax, an acute disease in animals and humans. However, different strains of *B. anthracis* have different abilities to cause disease. The Pasteur strain, for example, is unable to produce toxic factors and is not considered harmful to humans. Should *B. anthracis* Pasteur strain be removed or retained as an Overlap select agent? Are there other reasons or research data to support the removal besides the following reasons?

- *B. anthracis* Pasteur strain lacks the plasmid that encodes the toxin genes causing disease (6);
- *B. anthracis* Sterne strain, which lacks the plasmid that encodes for the capsule, was excluded from the requirements of the regulations effective on February 27, 2003 (7–8); and
- Historically, the *B. anthracis* Pasteur strain has been retained as a select agent to allow for continued oversight of laboratories in which the accidental (or intentional) combination of this strain with the Sterne strain could occur to produce de novo the wild type phenotype *B. anthracis.* However, a recent study indicates that bacterial transformation of *B. subtilis* with plasmid DNA (*e.g.* pXO1 into *Bacillus anthracis* Pasteur strain) is inefficient; indicating that transformation with bacteria such as *B. anthracis* would also be inefficient (9).

D. Brucella abortus, B. melitensis, and B. suis

Brucella abortus, B. melitensis, and B. suis bacteria cause brucellosis, a disease that can spread from animals to humans. Should *B. abortus, B. melitensis, and B. suis* be removed or retained as select agents? Are there other reasons or research data to support the removal besides the following reasons?

- *B. abortus* has a low human mortality rate (10);
- *B. abortus, B. melitensis, and B. suis* are readily treatable with antibiotics (10); and
- Human-to-human transmission is extremely rare, and wildlife carriers in the United States often come into contact with humans without significant transmission (10).

IV. References

1. T.J. Marrie. Q fever. In: Marrie TJ, editor. Q fever. Vol. 1. Boca Raton, FL: CRC Press; 1990. (The disease).
2. M. Maurin and D. Raoult. Q fever. Clin Microbiol Rev. Oct. 1999;12(4):518–53.
3. Biosafety in Microbiological and Biomedical Laboratories (BMBL) 5th Edition, *http://www.cdc.gov/biosafety/*

publications/bmbl5/BMBL5_sect_VIII_d.pdf.

4. D. Raoult, J.B. Ndihokubwayo, H. Tissot-Dupont, V. Roux, B. Faugere, R. Abegbinni, and R.J. Birtles. Outbreak of epidemic typhus associated with trench fever in Burundi. The Lancet. Aug. 1998; 352 (3125):353–358.
5. D. Raoult, T. Woodward, and J.S. Dumler. The history of epidemic typhus. Infect Dis Clin N Am. Mar. 2004; 18(1):127–140.
6. B.E. Ivins, J.W. Ezzell, J. Jemski, K.W. Hedlund, J.D. Ristroph, and S.H. Leppla. Immunization Studies with Attenuated Strains of *Bacillus anthracis.* Infection and Immunity. May 1986; 52(2):454–458.
7. Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases ''Anthrax Sterne strain (34F2) of Bacillus anthracis,'' *http://www.cdc.gov/nczved/divisions/dfbmd/diseases/anthrax_sterne/.*
8. Federal Select Agent Program, ''Select Agents and Toxins Exclusions,'' *http://www.selectagents.gov/SelectAgentsandToxinsExclusions.html.*
9. C. Johnston, B. Martin, G. Fichant, P. Polard, and J.P. Claverys. Bacterial transformation: distribution, shared mechanisms and divergent control. Nature Rev. Microbiol. 2014; 12: 181–196.
10. Center for Food Security and Public Health, ''Brucellosis Technical fact sheet,'' *http://www.cfsph.iastate.edu/Factsheets/pdfs/brucellosis.pdf.*

Dated: February 5, 2015.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2015–04169 Filed 2–26–15; 8:45 am]

BILLING CODE 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, 14–259; DA 15–140; DA 15–158]

Wireline Competition Bureau Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In these documents, the Wireline Competition Bureau seeks comment more generally on letter of credit proposals raised by several petitions for waiver and their potential applicability to the Phase II competitive bidding process.

DATES: Comments are due on or before March 30, 2015 and reply comments are due on or before April 13, 2015.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90 and 14–259, 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/.*
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Heidi Lankau, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notices (Notices) in WC Docket No. 10–90, 14–259; DA 15–140, released January 30, 2015 and DA 15–158, released February 4, 2015. The complete text of these documents are available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via Internet at *http://www.bcpiweb.com.*

I. Introduction

1. On January 27, 2015, the Alliance of Rural Broadband Applicants filed a petition for limited waiver of certain letter of credit (LOC) requirements applicable to the rural broadband experiments. On February 3, 2015, NTCA—The Rural Broadband Association filed an emergency petition for limited waiver of the LOC bank eligibility requirements applicable to the rural broadband experiments. On January 21, 2015, the National Rural Utilities Cooperative Finance Corporation and its affiliate, the Rural Telephone Finance Cooperative, also filed a petition for waiver of one aspect of the Commission's LOC bank eligibility requirements.

2. The Bureau notes that these petitions for waiver raise issues that may be relevant to broader pending questions regarding possible LOC requirements for recipients of funding awarded through the Phase II competitive bidding process. Thus, during the comment period established, the Bureau encourages parties to comment on the petitions' LOC proposals more generally and their potential applicability to the Phase II competitive bidding process.

3. In order to develop a complete record on the issues presented in the waiver petition, the request for more general comment will be treated, for *ex parte* purposes, as ''permit-but-disclose'' in accordance with section 1.1200(a) of the Commission's rules, subject to the requirements under section 1.1206(b).

II. Procedural Matters

1. Initial Regulatory Flexibility Act Analysis

4. The *USF/ICC Transformation Order and FNPRM* 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 proposal. We invite parties to file comments on the IRFA in light of this additional notice.

2. Initial Paperwork Reduction Act of 1995 Analysis

5. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised information collection requirement, the Commission will publish a separate notice 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, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

3. Filing Requirements

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for the additional docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

7. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Parties should also send a copy of their filings to Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B511, Washington, DC 20554, or by email to *Heidi.Lankau@fcc.gov.*

8. Documents are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Furthermore, the documents may be viewed in and downloaded from ECFS.

9. For additional information on this proceeding, contact Heidi Lankau (*Heidi.Lankau@fcc.gov*) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

Federal Communications Commission.

Ryan B. Palmer,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2015–04201 Filed 2–26–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 80, No. 39
Friday, February 27, 2015

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

February 23, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Infant and Toddler Feeding Practices Study-2 (ITFPS–2) Age 3 Extension.

OMB Control Number: 0584–0580.

Summary of Collection: The Health, Hunger-Free Kids Act of 2010 (Pub. L.111–296, Sec. 305) mandates programs under its authorization, including WIC, to cooperate with USDA program research and evaluation activities. The United States Department of Agriculture's (USDA) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) serves a highly-vulnerable population low-income pregnant and post-partum women, infants, and children through their fifth birthday who are at nutritional risk. The program provides supplemental food packages, health referrals and nutrition education for participants. The Age 3 Extension will provide the data to answer research questions relevant to WIC program and policy as well as the nutrition and wellbeing of children up to their 3rd birthday.

Need and Use of the Information: The study is needed to provide FNS with information on the factors that influence feeding practices and the nutrition and health outcomes of infants and toddlers in the first two years of their lives. The Age 3 Extension study will expand the data collection to their third year of life.

Description of Respondents: Not-for-profit institutions; Individual or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,353.

Frequency of Responses: Reporting: On occasion; Other (alt month).

Total Burden Hours: 5,409.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–04088 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Reestablishment of the Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture intends to reestablish the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21) for a two-year period.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; email *michael.schechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Advisory Committee Purpose: USDA supports the responsible development and application of biotechnology within the global food and agricultural system. Biotechnology intersects many of the policies, programs, and functions of USDA. The charge for the AC21 is two-fold: To examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. The AC21 will meet in Washington, DC, up to four (4) times per year.

Done at Washington, DC, this 11th day of February 2015.

Catherine E. Woteki,

Under Secretary, REE, Chief Scientist, USDA.

[FR Doc. 2015–04107 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–14–0083]

Plant Variety Protection Board; Renewal of the Plant Variety Protection Board Charter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), this notice announces that the Secretary of Agriculture intends to renew the Plant Variety Protection Board (PVP Board).

FOR FURTHER INFORMATION CONTACT: Paul Zankowski, USDA, Agricultural Marketing Service (AMS), Plant Variety Protection Office; 1400 Independence Avenue SW., Room 4512; Washington, DC 20250 or by phone at (202) 720–1128 or by Internet: *http://www.regulations.gov* or by email: *Paul.Zankowski@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines.

The PVPA also provides for a statutory Board (7 U.S.C. 2327) to be appointed by the Secretary of Agriculture. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under section 44 of the Act, ''Public Interest in Wide Usage'' (7 U.S.C. 2404). Renewing the PVP Board is necessary and in the public interest.

The PVPA provides that ''the Board shall consist of individuals who are experts in various areas of varietal development covered by this Act.'' The Board membership ''shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public.'' The Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. Nominations are made by farmers' associations, trade associations in the seed industry, professional associations representing expertise in seed technology, plant breeding, and variety development, public and private research and development institutions (13 members) and the USDA (one member).

Equal opportunity practices, in agreement with USDA nondiscrimination policies, will be followed in all membership appointments to the Board. To ensure that the suggestions of the Board have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The Charter for the PVP Board will be available on the Web site at: *http://www.facadatabase.gov/download.aspx?fn=Charters/1309_2013.09.11_PVPBCharter2.7.13_(2013-09-11-05-03-31).pdf* or may be requested by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

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. Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape) 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.

Dated: February 23, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–04086 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0007]

Notice of Availability of a Treatment Evaluation Document; Methyl Bromide Fumigation of Figs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have determined that it is necessary to immediately add to the Plant Protection and Quarantine Treatment Manual a new treatment schedule for methyl bromide fumigation of figs for external pests, including Chilean false red mite. We have prepared a treatment evaluation document that describes the new treatment schedule and explains why we have determined that it is effective at neutralizing these pests. We are making the treatment evaluation document available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 28, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0007.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0007, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0007* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager–Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2018.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out standards for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and

Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

A treatment schedule currently listed in the PPQ Treatment Manual (T101–i–2–1) requires baby kiwi (*Actinidia arguta*), fig (*Ficus carica*), grape (*Vitis* spp.), and pomegranate (*Punica granatum*) to be treated with methyl bromide (MB) to prevent the introduction into the United States of external pests, including Chilean false red mite (*Brevipalpus chilensis*). The treatment as originally approved required the use of 1.5 lb □ 4.0 lb of MB gas per 1,000 ft^3 for 2 hours at temperatures of 40 °F or above. However, in 2006, APHIS determined that this treatment was insufficient to mitigate the risk from the mite on grapes. Therefore, as an emergency measure, the treatment was amended to require a longer exposure time of up to 3 hours under tarpaulin or 2.5 hours in chamber. As an emergency measure, this action was done administratively and was not meant to be permanent.

On April 4, 2011, APHIS published a notice[2] in the **Federal Register** (76 FR 18511–18512, Docket No. APHIS–2009–0097) that approved the use of this revised treatment to treat figs from Chile in order to meet U.S. entry requirements. Since publication of that notice, we have determined that figs have a higher sorption rate of the MB gas than other commodities. Therefore, in order to achieve 100 percent mortality of Chilean false red mite on figs, the figs must be exposed to a higher dose of MB.

In accordance with § 305.3(b)(2), we are providing notice that we have determined that it is necessary to add new treatment schedule T101–i–2–22, which provides for a MB treatment schedule for figs during an exposure period of 3 hours in a chamber at a dosage rate of 3.5 lbs gas/1,000 ft^3 at a temperature between 50 °F and 59 °F, 3 lbs gas/1,000 ft^3 at a temperature between 60 °F and 69 °F, and 2.5 lbs gas/1,000 ft^3 at a temperature of 70 °F or above. Since the efficacy of new schedule T101–i–2–2 was not verified under tarpaulin, the new treatment schedule is applicable only in chambers. This action also amends treatment schedule T101–i–2–1 by removing figs from the schedule and making the revised treatment schedule permanent. Revised treatment schedule T101–i–2–1 will continue to be applicable both in chambers and under tarpaulin for grapes, baby kiwis, and pomegranates. APHIS' experience with successful importation of these commodities using the existing treatment schedule has provided sufficient evidence to prove the effectiveness of the treatment. In order to have minimum adverse impact on the ongoing trade of figs and using the immediate process as provided in § 305.3(b), these changes are effective immediately upon publication of this notice. The new treatment schedule will be listed in a separate section of the PPQ Treatment Manual, which will indicate that T101–i–2–22 was added through the immediate process described in paragraph (b) of § 305.3 and that it is subject to change or removal based on public comment.

The reasons for the addition of this treatment schedule are described in detail in a treatment evaluation document we have prepared to support this action. The treatment evaluation document may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the treatment evaluation document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the treatment evaluation document when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the new treatment schedule that is described in the treatment evaluation document in a subsequent notice, in accordance with paragraph (b)(3) of § 305.3. If we do not receive any comments, or the comments we receive do not change our determination that the treatment is effective, we will affirm the treatment schedule's addition to the PPQ Treatment Manual and make available a new version of the PPQ Treatment Manual in which T101–i–2–2 is listed in the main body of the PPQ Treatment Manual. If we receive comments that cause us to determine that T101–i–2–2 needs to be changed or removed, we will make available a new version of the PPQ Treatment Manual that reflects changes to or the removal of T101–i–2–2.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of February 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–04172 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–34–P

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

[2] To view the notice and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0097*.

DEPARTMENT OF AGRICULTURE

Forest Service

[EIS No. 2011–13640]

Retraction of Salt River Allotments Vegetative Management EIS

AGENCY: Forest Service, USDA.

ACTION: Retraction of NOI.

SUMMARY: The Forest Service has published a Notice of Intent (NOI) on May 25, 2011 for Salt River Allotments Vegetative Management EIS. This Environmental Impact Statement was first designed due to complexities encountered with a variety of current activities and environmental conditions that interconnect along Salt River. These activities include: White water rafting, wilderness values, critical habitat of aquatic and terrestrial species. Planned livestock grazing project included a desire by term-grazing permittees to graze livestock (*i.e.,* cattle) along river.

DATES: Not Applicable.

ADDRESSES: No further comments will be received on this project.

FOR FURTHER INFORMATION CONTACT: A. Jamie Wages 7680 South Sixshooter Canyon Road Globe, Arizona 85501,

ajwages@fs.fed.us or 928–402–6222. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Selecting to do an EIS upfront was a shortcut for doing an EA and then not being able to certify proposed action did not have a significant impact in a FONSI. However, through discussions with term-grazing permittees, it was determined that if livestock were allowed to graze along river that neither Forest Service nor term-grazing permittees had time or money to conduct monitoring necessary to determine appropriateness of this proposed action along river corridor. By withdrawing complexity inherent in proposed action to graze along river, need for an EIS evaporated. Therefore, project planning will continue through an EA process. Environmental Impact Statement will be retracted on February 18, 2015.

Dated: February 17, 2015.

Richard Reitz,

Globe Ranger District, Tonto National Forest.

Dated: February 18, 2015.

Kelly Jardine,

Tonto Basin Ranger District, Tonto National Forest.

[FR Doc. 2015–04073 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest, CA; Notice of Intent To Prepare an Environmental Impact Statement for Rim Fire Reforestation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Stanislaus National Forest proposes about 42,000 acres of reforestation, plantation thinning, additional deer habitat and noxious weed treatments on National Forest System (NFS) lands within the 2013 Rim Fire in order to: Return mixed conifer forest to the landscape; restore old forest for wildlife; reduce fuels; enhance deer habitat; and, eradicate noxious weeds.

DATES: Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. Completion of the Draft Environmental Impact Statement (EIS) is expected in November 2015 followed by the Final EIS and Draft Record of Decision (ROD) in May 2016. A final decision is expected in August 2016.

ADDRESSES: Comments may be: mailed to the Stanislaus National Forest; Attn: Rim Reforestation; 19777 Greenley Road; Sonora, CA 95370; delivered to the address shown during business hours (M–F 8:00 am to 4:30 pm); or, submitted by FAX (209) 533–1890. Submit electronic comments, in common (.doc, .pdf, .rtf, .txt) formats, to: *comments-pacificsouthwest-stanislaus@fs.fed.us* with Subject: Rim Reforestation.

FOR FURTHER INFORMATION CONTACT: Maria Benech, Stanislaus National Forest; 19777 Greenley Road; Sonora, CA 95370; phone (209) 532–3671; or email: *mbenech@fs.fed.us.* A scoping package, maps and other information are online at: *http://www.fs.usda.gov/project/?project=45612.*

SUPPLEMENTARY INFORMATION:

General Background

The Rim Fire started on August 17, 2013 in a remote area of the Stanislaus National Forest near the confluence of the Clavey and Tuolumne Rivers about 20 miles east of Sonora, California. Over the next several weeks it burned 257,314 acres, including 154,430 acres of NFS lands, becoming the third largest wildfire in California history. The Rim Fire Reforestation project is located within the Rim Fire perimeter in the Stanislaus National Forest on portions of the Mi-Wok and Groveland Ranger Districts.

Purpose and Need for Action

The primary purposes of the project are to: (1) Return Mixed Conifer Forest to the Landscape; (2) Restore Old Forest for Wildlife Habitat and Connectivity; (3) Reduce Fuels for Future Fire Resiliency; (4) Enhance Deer Habitat; and, (5) Eradicate Noxious Weeds.

Proposed Action

The Forest Service proposed action includes about 42,000 acres of reforestation, plantation thinning, additional deer habitat and noxious weed eradication treatments on NFS lands within the 2013 Rim Fire.

Reforestation treatments (30,065 acres) include: Hand, mechanical and manual herbicide site preparation (Glyphosate); prescribed burning; planting a diversity of conifer tree species using various patterns and densities (trees per acre) across the landscape (up and down slopes with fewer on ridges and more in drainage bottoms) to develop resilient mixed conifer forest and enhance wildlife (including deer) habitat; manual herbicide release (Glyphosate) when vegetation competition begins to inhibit survival and growth; and, noxious weed eradication as described below. The reforestation treatment (30,065 acres) includes thinning and planting on 7,307 acres of existing plantations currently under-stocked due to high burn severity from the 2013 Rim Fire.

Plantation Thinning treatments (11,359 acres) include: Hand and mechanical site preparation; prescribed burning and thinning to achieve an Individual, Clumpy, Open (ICO) pattern to maximize heterogeneity and wildlife (including deer) habitat while creating more fire resilient stands; and, noxious weed eradication as described below.

Additional Deer Habitat treatments (407 acres) include: Prescribed burning; and, noxious weed eradication as described below.

Noxious Weed Eradication treatments (4,160 acres) include: Weed treatments with a variety of EPA approved herbicides (such as Glyphosate, Clopyralid, Aminopyralid, Clethodim and Fluazifop-P-butyl). These noxious weed treatments overlap (within and up to 100 feet adjacent to) the reforestation, plantation thinning and additional deer habitat treaments described above.

No treatments are proposed within Wilderness, Inventoried Roadless Areas, or the wild classification segments of Wild and Scenic Rivers or Proposed Wild and Scenic Rivers. Project design will incorporate Best Management Practices (BMPs) according to regional and national guidance. Implementation is expected to begin in fall 2016 and continue for up to 10 years.

Possible Alternatives

In addition to the Proposed Action, the EIS will evaluate the required No Action alternative and likely consider other alternatives identified through the inderdisciplinary process and public participation.

Responsible Official

Jeanne M. Higgins, Forest Supervisor; Stanislaus National Forest; 19777 Greenley Road; Sonora, CA 95370.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action with respect to the Rim Fire Reforestation project.

Scoping Process

Public participation is important at numerous points during the analysis. The Forest Service seeks information,

comments and assistance from federal, state, and local agencies and individuals or organizations that may be interested in or affected by the proposed action.

The Forest Service conducts scoping according to the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7). In addition to other public involvment, this Notice of Intent initiates an early and open process for determining the scope of issues to be addressed in the EIS and for identifying the significant issues related to a proposed action. This scoping process allows the Forest Service to not only identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)).

Comment Requested

This Notice of Intent initiates the scoping proces which guides the development of the EIS. Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be available for comment when the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate during the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: February 20, 2015.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2015–04109 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces our intention to request a 3-year extension and revision of a currently approved information collection for ''Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers.''

DATES: We will consider comments that we receive by April 28, 2015.

ADDRESSES: We invite you to submit comments on this notice by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail,* hand deliver, or courier to Irene Omade, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- Fax to (202) 690–2173.

Instructions: All comments should be identified as ''High Quality Specialty Grain Exported in Containers Information Collection,'' and should reference to the date and page number of this issue of the **Federal Register.** The information collection package, public comments, and other documents relating to this action will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA's Management and Budget Services at (202) 720–7486 to arrange a viewing of these documents.

FOR FURTHER INFORMATION CONTACT: For information regarding the collection of information activities and the use of the information, contact Candace Hildreth at (202) 720–0203.

SUPPLEMENTARY INFORMATION: Congress enacted The United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) to facilitate the marketing of grain in interstate and foreign commerce. The USGSA, with few exceptions, requires that all grain shipped from the United States must be officially inspected and officially weighed. The USGSA authorizes the Department of Agriculture to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) amended section 7 CFR 800.18 of the regulations to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. GIPSA determined that this action was consistent with the objectives of the USGSA and would promote the continuing development of the high quality specialty grain export market.

To ensure that exporters of high quality specialty grain complied with this waiver, GIPSA required exporters to maintain records generated during the normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes (76 FR 45397). These records shall be maintained for a period of 3 years. This information collection requirement is essential to ensure that exporters who ship high quality specialty grain in containers comply with the waiver provisions. GIPSA does not require exporters of high quality specialty grain to complete and submit new Federal government record(s), form(s), or report(s).

Title: Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers.

OMB Number: 0580–0022.

Expiration Date of Approval: July 31, 2015.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: GIPSA amended the regulations under the USGSA to waive the mandatory inspection and weighing requirements for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. To ensure compliance with this wavier, GIPSA required these exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to GIPSA upon request, for review and copying purposes.

Grain Contracts

Estimate of Burden: Public reporting and recordkeeping burden for maintaining contract information averages 6.0 hours per exporter.

Respondents: Exporters of high quality specialty grain in containers.

Estimated Number of Respondents: 40.

Estimated Number of Respondents per Request: 1.

Estimated Total Burden on Respondents: 240 Hours.

Estimated Total Cost: $1,780.

Comments: 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 will have practical utility; (b) the accuracy of agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2015–04200 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Open Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on March 12, 2015, 8:45 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Thursday, March 12

Open Session

1. Welcome and Introductions
2. Opening Remarks by the Assistant Secretary for Export Administration
3. Report on Association of University Export Control Officials, Washington, DC Conference
4. Presentation by Dr. Peter M. Vallone, National Institute of Standards and Technology
5. Tentative-Update on Wassenaar deliberations
6. Cuba Update
7. Recruitment of ETRAC members
8. Harmonization of definitions-fundamental research
9. Report: Export Control Classification Number Review
10. Review by ETRAC committee members of their assigned categories to determine viability

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than March 5, 2015.

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.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 23, 2015.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2015–04268 Filed 2–26–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on circular welded carbon quality steel pipe from the People's Republic of China (''PRC'') for the period July 1, 2013, through June 30, 2014.

DATES: *Effective Date:* February 27, 2015.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2014, based on a timely request for review by Wheatland Tube Company (''Wheatland''), the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on circular welded carbon quality steel pipe from the PRC with respect to 20 companies covering the period July 1, 2013, through June 30, 2014.[1] On November 21, 2014, Wheatland withdrew its request for an administrative review of all of the companies listed in its review request.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 51548 (August 29, 2014).

days of the publication of the notice of initiation of the requested review. In this case, Wheatland timely withdrew its review request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, we are rescinding the administrative review of circular welded carbon quality steel pipe from the PRC for the period July 1, 2013, through June 30, 2014.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 23, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–04203 Filed 2–26–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Chinook Salmon Economic Data Report (EDR).

OMB Control Number: 0648–0633.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 133.

Average Hours per Response: 40 hours for Compensated Transfer Report; 4 hours each for Vessel Fuel Survey, Vessel Master Survey; and Chinook EDR Verification/Audit.

Burden Hours: 1,168.

Needs and Uses: National Marine Fisheries Service (NMFS), Alaska Region manages the groundfish fisheries in the Exclusive Economic Zone off Alaska. The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMP is implemented under regulations at 50 CFR part 679.

NMFS manages the Bering Sea pollock fishery under the American Fisheries Act (AFA) (16 U.S.C. 1851). The AFA ''rationalized'' the Bering Sea pollock fishery in part by allowing for the formation and management of fishery cooperatives. AFA fishing vessels harvest pollock using pelagic (mid-water) trawl gear, which consists of large nets towed through the water by the vessel. At times, Chinook salmon and pollock occur in the same locations in the Bering Sea. Consequently, Chinook salmon are incidentally caught in the nets as pollock is harvested. This incidental catch is called bycatch and is also called prohibited species catch (PSC). Chinook Salmon are defined as a prohibited species because they are caught by a vessel issued a Federal Fisheries Permit under § 679.4(b) while fishing for groundfish (pollock) in the Bering Sea and Aleutian Islands Management Area (BSAI) or Gulf of Alaska.

In December 2009, the Council recommended that NMFS implement the Chinook Salmon Economic Data Report (Chinook Salmon EDR) to evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the BSAI FMP (75 FR 53026, August 30, 2010).

The Chinook EDR Program provides information to the analysts and the Council for determining the effectiveness of the Incentive Plan Agreement (IPA). The Chinook EDR Program evaluates the effectiveness of the IPA incentives, the PSC limits, and the performance standard in terms of minimizing salmon bycatch in times of high and low levels of salmon abundance, and evaluates how Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur. The data collection program also provides data for NMFS and the Council to study and verify conclusions drawn by industry in the IPA annual reports.

Affected Public:

Frequency:

Respondent's Obligation:

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 24, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–04145 Filed 2–26–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 28, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Melissa Garcia, National Marine Fisheries Service (NMFS), Office for International Affairs and Seafood Inspection, 1315 East West Hwy, Silver Spring, MD 20910; (301) 427–8385 or *melissa.garcia@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

Native Americans may conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission (IWC), which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone, fax, email, or in writing. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Control Number: 0648–0311.

Form Number(s): None.

Type of Review: Regular submission (extension of current information collection).

Affected Public: Individuals or households; state, local, or tribal governments.

Estimated Number of Respondents: 158 (157 whaling captains, one Native American whaling organization).

Estimated Time per Response: 30 minutes for reports on whales struck or on recovery of dead whales, including providing the information to the relevant Native American whaling organization; 5 minutes for the relevant Native American whaling organization to type in each report; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.

Estimated Total Annual Burden Hours: 86.

Estimated Total Annual Cost to Public: $100 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–04144 Filed 2–26–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Finding That Oregon Has Not Submitted a Fully Approvable Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce; Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) announce the availability of the federal agencies' finding that Oregon has not submitted a fully approvable Coastal Nonpoint Pollution Control Program that meets the requirements of the Coastal Zone Act Reauthorization Amendments (CZARA). CZARA directs states and territories with coastal management programs previously approved under Section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs which must be submitted to NOAA and EPA for approval.

FOR FURTHER INFORMATION CONTACT: Allison Castellan, Stewardship Division, (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x125, email *Allison.Castellan@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

SUPPLEMENTARY INFORMATION: NOAA and EPA (federal agencies) announce the availability of the federal agencies' finding that Oregon has not submitted a fully approvable coastal nonpoint pollution control program (coastal nonpoint program). Section 6217(a) of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b(a), requires that each state (or territory) with a coastal management program previously approved under section 306 of the Coastal Zone Management Act must prepare and submit to the federal agencies a coastal

nonpoint program for approval by the federal agencies. State coastal nonpoint programs were to be submitted to the federal agencies for approval by July 1995, and Oregon submitted its program by that date. The federal agencies provided public notice of, and invited public comment on, their proposal to approve, with conditions, the Oregon program (62 FR 6216). The federal agencies approved the program by letter dated January 13, 1998, subject to the conditions specified in the letter (63 FR 11655). All of the conditions identified at that time must be met for Oregon to have a fully approvable coastal nonpoint program. The federal agencies' finding announced in this notice addresses only the additional management measures related to forestry, which were conditioned in the 1998 approval.

Prior to making this finding, the federal agencies invited public input on the federal agencies' proposed decision and the reasoning for such a decision and provided a 90-day public comment period on the proposed decision (see December 20, 2013, **Federal Register** Notice 78 FR 77104). The federal agencies also announce their publication of a response to the comments received regarding the proposed decision.

Over time, Oregon has made considerable progress in its coastal nonpoint program in order to satisfy the conditions the federal agencies identified. As explained in the decision document containing the rationale for the federal agencies' decision, however, the federal agencies find that Oregon has not yet submitted a fully approvable program that meets the condition set for developing additional management measures for forestry, and consequently, the federal agencies find that Oregon has not submitted a program that is approvable under CZARA. The decision document describes why Oregon's program has not yet satisfied the remaining conditions that relate to reducing the adverse effects of certain forestry-related activities on Oregon's coastal water quality.

References: The decision document, response to comments, public comments received, and other supporting information used to make the finding announced here are available on the NOAA Web site at *http://coast.noaa.gov/czm/pollutioncontrol/.* Hard copies are available at: U.S. Environmental Protection Agency, Oregon Operations Office, 805 SW. Broadway, Suite 500, Portland, Oregon 97205, Tom Townsend, phone (503) 326–3250.

Dated: February 24, 2015.

W. Russell Callender,

Acting Assistant Administrator for Ocean Services, National Oceanic and Atmospheric Administration.

Dennis J. McLerran,

Regional Administrator, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 2015–04230 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities and to delete products and service previously furnished by such agencies.

Comments Must Be Received on or Before: 3/30/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service

Service Type: Mail Service.
Service is Mandatory for: U.S. Air Force, Official Mail Center & Postal Service Center, 740 Arnold Avenue, Suite 1B, Whiteman AFB, MO.
Mandatory Source of Supply: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN.
Contracting Activity: Dept of the Air Force, FA4890 ACC AMIC, Newport News, VA.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN: 8345–00–NSH–0013—Case, Flag, Hardwood.
NSN: 8345–00–NSH–0014—Case, Flag, Hardwood.
Previous Manadatory Source: None Identified.
Was Manadatory for: U.S. Fleet Forces Command, Norfolk, VA.
NSN: 7530–01–498–1089—Envelope, Inter-Departmental, Red Kraft.
NSN: 7530–01–498–1088—Envelope, Inter-Departmental, Yellow Kraft.
NSN: 7530–01–498–1086—Envelope, Inter-Departmental, Blue Kraft.
NSN: 7530–01–463–3910—Envelope, Inter-Departmental, 5-column, 100% recycled.
NSN: 7530–01–463–3909—Envelope, Inter-Departmental, 3-column.
NSN: 7530–01–463–3908—Envelope, Inter-Departmental, 5-column.
Previous Manadatory Source: Gateway Community Industries, Inc., Kingston, NY.
NSN: 7510–01–558–6166—HP C4092A compatible.
NSN: 7510–00–NIB–0641—Skilcraft Toner Cartridge.
Previous Manadatory Source: Alabama Industries for the Blind, Talladega, AL.
NSN: 7530–00–989–0698—Card Set, Guide, File, Pressboard, Alphabetical, 1/5 Cut, Light Green, 8½″ x 11″.
Previous Manadatory Source: Georgia Industries for the Blind, Bainbridge, GA.
Was Mandatory for: General Services Administration, New York, NY.

Service

Service Type: Grounds Maintenance.
Service is Mandatory for: Oakland Army Base and Naval Supply Center, Oakland, CA.
Previous Manadatory Source Rubicon Programs, Inc., Richmond, CA.
Was Mandatory for: Dept of the Navy, U.S. Fleet Forces Command, Norfolk, VA.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2015–04096 Filed 2–26–15; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0005]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the approval for an existing information collection, titled, ''CFPB State Official Notification Rule.''

DATES: Written comments are encouraged and must be received on or before March 30, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select ''information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: CFPB State Official Notification Rule.

OMB Control Number: 3170–0019.

Type of Review: Extension without change of a currently approved collection.

Affected Public: State governments, District of Columbia, and U.S. Territories.

Estimated Number of Respondents: 56.

Estimated Total Annual Burden Hours: 2.

Abstract: Section 1042 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5552 (Act), gave authority to certain State and US territorial officials to enforce the Act and regulations prescribed thereunder. Section 1042 also requires that the Bureau issue a rule establishing how states are to provide notice to the Bureau before taking action to enforce the Act (or, in emergency situations, immediately after taking such an action). In accordance with the requirements of the Act, the Bureau issued a final rule (12 CFR 1082.1) establishing that notice should be provided at least 10 days before the filing of an action, with certain exceptions, and setting forth a limited set of information which is to be provided with the notice.

OMB's approval for this collection of information is scheduled to expire on 04/30/2015. Pursuant to the requirements set forth in the PRA implementing regulations at 5 CFR 1320.12, *Clearance of collections of information in current rules,* this request is for OMB to extend (renew) its approval for this collection of information for an additional three years.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on November 14, 2014 (79 FR 67426). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: February 19, 2015.

Nellisha Ramdass,

Acting Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–04153 Filed 2–26–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2015–0008]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, Army Headquarters Services (OAA–AHS) DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Administrative Assistant to the Secretary of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 28, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Administrative Assistant to the Secretary of the Army, Logistics Services Washington, Travel Services Division, 9301 Chapek Road, Fort Belvoir, VA 22060, ATTN: Ms. Nicole Jungermann, LSW, at (703) 545–0376.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense (DoD) Passport and Passport Agent Services, Authorization to apply for ''No-Fee'' Passport and/or request for Visa, DD Form 1056, 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and record the personally identifiable information of official passport and/or visa applicants. This information is used to process, track, and verify no-fee passport and visa applications and requests for additional visa pages and Status of Forces Agreement (SOFA) endorsements.

Affected Public: Individuals or Households and Federal Government.

Annual Burden Hours: 175,000.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Average Burden per Response: 60 minutes.

Frequency: On occasion

Respondents are DoD civilian and military personnel and eligible accompanying family members traveling on official government orders to a country requiring a no-fee passport and/or visa. Authorization to apply for a no-fee passport is granted to those who can verify U.S. citizenship and legitimate official travel needs. Authorization to request a visa may also be granted to non-U.S. citizen family members, whose names are listed on the sponsor's official travel orders. The information collected on this form is shared with the Department of State (DoS) and the designated foreign embassies.

Dated: February 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–04076 Filed 2–26–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket Number 2015–0005]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS 234.2, Earned Value Management System.

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice correction.

SUMMARY: This document corrects the date in a notice published in the **Federal Register** on February 23, 2015, (80 FR 9445) concerning request for comments on the proposed extension of OMB control number 0704–0479, DFARS 234.2, Earned Value Management System. The document contained an incorrect date for submission of public comments. The new date is April 24, 2015.

Correction

DATES: DoD will consider all comments received by April 24, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, at (571) 372–6099.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–04051 Filed 2–26–15; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; March 10–11, 2015

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, March 10, 2015. A business meeting will be held the following day on Wednesday, March 11, 2015. The hearing and business meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania.

Public Hearing. The public hearing on March 10, 2015 will begin at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges and other water-related projects subject to the Commission's review, and resolutions: (1) Authorizing the Executive Director to award a contract to the lowest responsible bidder for taxonomic identification of benthic macroinvertebrates in samples collected from the Delaware River and its tributaries; (2) authorizing the Executive Director to award a contract to the lowest responsible bidder for analysis of water, sediment and tissue samples from ambient waters of the Delaware River Basin for organic chemicals including PCBs, and mercury; (3) delegating limited authority to the Executive Director to enter into settlement agreements and to waive administrative late fees for good cause shown; and (4) authorizing and directing the Executive Director to initiate rulemaking to provide for the One Process—One Permit Program and to enter into an Administrative Agreement with the New Jersey Department of Environmental Protection for demonstration of the program. The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. Written comments on draft dockets and resolutions scheduled for hearing on March 10 will be accepted through the close of the hearing that day. After the hearing on all scheduled matters has been completed, there will be an opportunity for public dialogue.

The public is advised to check the Commission's Web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on March 11, 2015 will begin at 1:00 p.m. and will include: adoption of the Minutes of the Commission's December 10, 2014 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and consideration of any items for which a hearing has been completed or is not required. In the latter category, the meeting will include resolutions for the Minutes: (a) Authorizing the Executive Director to execute an agreement for the preparation of the

triennial actuarial evaluation for post-retirement benefits required by GASB 45; and (b) authorizing the Executive Director to retain an independent accounting firm to perform required annual audits for fiscal years 2015 through 2017, with an option to continue these services through 2019.

There will be no opportunity for additional public comment at the March 11 business meeting on hearing items for which the hearing was completed on March 10 or a previous date. Commission consideration on March 11 of items for which the public hearing is closed may result in either approval of the item (docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment for the record at the public hearing on March 10 or to address the Commissioners informally during the public dialogue portion of the hearing that day are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Addresses for Written Comment. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or in advance of the hearing, either: by hand, U.S. Mail or private carrier to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522; or by email to *paula.schmitt@drbc.state.nj.us.* If submitted by email in advance of the hearing date, written comments on a docket should also be sent to Mr. William Muszynski, Manager, Water Resources Management at *william.muszynski@drbc.state.nj.us.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Updates. Items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Other meeting items also are subject to change. Please check the Commission's Web site, *www.drbc.net,* closer to the meeting date for changes that may be made after the deadline for filing this notice.

Additional Information, Contacts. The list of projects scheduled for hearing, with descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. Draft dockets and resolutions for hearing items will be available as hyperlinks from the posted notice. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Project Review Section assistant Victoria Lawson at 609–883–9500, ext. 216.

Dated: February 18, 2015.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2015–03956 Filed 2–26–15; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program.

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

DATES: Applications Available: February 27, 2015.

Deadline for Transmittal of Applications: April 28, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays DDRA Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority, three competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute and competitive preference priorities are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2015, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific Geographic Regions of the World.

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, or Vatican City.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address one or more of the following priorities.

Under 34 CFR 75.105(c)(2)(i), for FY 2015, we award an additional three points to an application that meets Competitive Preference Priority 1; two points for an application that meets Competitive Preference Priority 2; and five points for an application that meets Competitive Preference Priority 3 (up to 10 additional points possible).

These priorities are:

Competitive Preference Priority 1: Specific Geographic Regions of the World (3 points).

A research project that focuses on one or more of the following geographic areas: Sub-Saharan Africa (Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mayotte, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Réunion, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland,

Tanzania, Togo, Uganda, Zambia, Zimbabwe), Southeast Asia (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Timor-Leste, Vietnam), and South Asia (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka).

Competitive Preference Priority 2: Focus on Priority Languages (2 points).

A research project that focuses on any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs), as follows:

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 3: Thematic Focus on Academic Fields and Advanced Proficiency in Less Commonly Taught Languages (5 points).

A research project in the field of economics, engineering, international development, global education, mathematics, political science, public health, science, or technology proposed by an applicant who will use advanced language proficiency in one of the 78 LCTLs listed in Competitive Preference Priority 2 of this notice in his or her research. An applicant must meet all three components of this priority in order to be awarded points: Propose a research project in one of the fields listed above, be proficient in the language of research at an advanced level, and propose using as a language of research one of the 78 LCTLs listed in this notice.

Invitational Priority: For FY 2015, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications from Minority-Serving Institutions as well as other institutions that promote the participation of students from minority backgrounds in research abroad projects in foreign languages and international studies. For purposes of this invitational priority, Minority-Serving Institution means an institution that is eligible to receive assistance under part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended (HEA).

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: $3,011,692.

Estimated Range of Awards: $15,000 to $60,000.

Estimated Average Size of Awards: $33,463.

Estimated Number of Awards: 90.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months, beginning October 1, 2015. Students may request funding for a period of no less than six months and no more than 12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

Note: As part of its FY 2015 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan both to utilize their language skills in world areas vital to United States national security and to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields and those planning teaching careers are eligible to apply to IHEs for funds from this program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the Internet at *www.G5.gov.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.022A.

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms the applicant must submit, are in the application package for this program.

Page Limits: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than two pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, both sides, and portrait orientation.

Note: For purposes of determining compliance with the page limits, each page on which there are words will be counted as one full page.

• Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). Student applicants may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424), the supplemental information form required by the Department of Education, or the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: February 27, 2015.

Deadline for Transmittal of Applications: April 28, 2015.

Applications for grants under this program must be submitted electronically using G5, the Department's grant management system, accessible through the Department's G5 site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays DDRA Fellowship Program, CFDA number 84.022A, must be submitted electronically using the G5 system, accessible through the Department's G5 site at: *www.G5.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may email an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays DDRA Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major steps are:

(1) IHEs must email the following information to *ddra@ed.gov:* Name of university and full name and email address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that they obtain access to G5 well before the application deadline

date. We suggest that applicant IHEs send this information no later than two weeks prior to the closing date in order to facilitate timely submission of their applications;

(2) Students must complete their individual applications and submit them to their IHE's project director using G5;

(3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using G5; and

(4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using G5.

• The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m., Wednesday; and 6:00 a.m. Thursday until 8:00 p.m., Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.

• Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents electronically, including all information typically provided on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Both IHEs and student applicants must upload any narrative sections and all other attachments to their application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Student transcripts must be submitted electronically through the G5 system.

• Both the IHE's and the student applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the its electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from G5.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the G5 system is unavailable, we will grant the IHE an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of the G5 system and the IHE has initiated an electronic application for this competition; and

(2) (a) The G5 system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgment of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see Section VII. Agency Contact) or (2) the G5 help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through G5 because—

• The IHE or a student applicant does not have access to the Internet; or

• The IHE or a student applicant does not have the capacity to upload large documents to G5; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Pamela J. Maimer, Ph.D., U.S. Department of Education, 1990 K Street NW., Room 6106, Washington, DC 20006–6078. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The

IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does not receive this grant notification within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2015, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 662.21 and are listed in the following paragraphs. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The maximum score for all criteria, including the competitive preference priorities, is 110 points.

Quality of proposed project (60 points): The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (15 points);

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality, and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (5 points); and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record (10 points);

(2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project (10 points);

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Under 34 CFR 662.22(b), no applicant may receive concurrently a grant from the Fulbright US Student Program (FUSP) and a grant from the Fulbright-Hays DDRA Fellowship Program. Once a candidate has accepted an award from FUSP and FUSP has expended funds on the student, the student is then ineligible for a grant under the Fulbright-Hays DDRA Fellowship Program. A student applying for a grant under the Fulbright-Hays DDRA Fellowship Program must indicate on the application if the student has currently applied for a FUSP grant. If, at any point, the candidate accepts a FUSP award prior to being notified of the candidate's status with the Fulbright-

Hays DDRA Fellowship Program, the candidate should immediately notify the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If, after consultation with FUSP, we determine that FUSP has expended funds on the student (*e.g.,* the candidate has attended the pre-departure orientation or was issued grant funds), the candidate will be deemed ineligible for an award under the Fulbright-Hays DDRA Fellowship Program at that time.

4. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN); or we may send the IHE an email containing a link to access an electronic version of the GAN. We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved application as part of the binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays DDRA Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following measures to evaluate its success in meeting this objective:

DDRA GPRA Measure 1: The percentage of DDRA fellows who increased their foreign language scores in speaking, reading, and/or writing by at least one proficiency level.

DDRA GPRA Measure 2: The percentage of DDRA fellows who complete their degree in their program of study within four years of receipt of the fellowship.

DDRA GPRA Measure 3: The percentage of DDRA fellows who found employment that utilized their language and area studies skills within eight years of receiving their award.

DDRA GPRA Measure 4: Efficiency Measure—The cost per DDRA fellow who found employment that utilized their language and area studies skills within eight years.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at: *http://iris.ed.gov/iris/pdfs/DDRA_director.pdf. http://iris.ed.gov/iris/pdfs/DDRA_fellow.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pamela J. Maimer, Ph.D., International and Foreign Language Education, U.S. Department of Education, 1990 K Street NW., Room 6106, Washington, DC 20006–6078. Telephone: (202) 502–7704 or by email: *ddra@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.022A.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: February 24, 2015.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2015–04137 Filed 2–26–15; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–37–000]

Order Instituting Section 206 Proceeding and Directing Filing To Establish Reliability Must Run Tariff Provisions: New York Independent System Operator, Inc

Before Commissioners: Cheryl A. LaFleur, Chairman; Philip D. Moeller, Tony Clark, Norman C. Bay, and Colette D. Honorable.

1. The Commission, pursuant to section 206 of the Federal Power Act (FPA),[1] takes action through this order to address a recurring issue in the wholesale markets administered by the New York Independent System Operator, Inc. (NYISO). NYISO, as the

[1] 16 U.S.C. 824e (2012).

independent system operator, is responsible for efficiently and reliably administering the resources and transmission facilities under its control. As with certain other regions of the country, NYISO is facing challenges with temporarily retaining certain generation resources needed to ensure reliable transmission service until more permanent reliability solutions are in place. This has manifested itself in proceedings before this Commission initiated by generation resources that had sought to deactivate [2] but were determined to be needed for reliability by the New York Public Service Commission (New York Commission). These generation resources sought this Commission's approval of agreements under which the generation resources would continue to operate and recover costs that would not otherwise be recovered through generator sales of energy, capacity and ancillary services in NYISO's markets. The services provided under these agreements, commonly referred to as ''must run'' or ''reliability must run'' (RMR) services,[3] provide for the retention of generation units wishing to deactivate, often because they have become uneconomic, but which are needed for transmission system reliability. NYISO was not a party to any of the agreements or applications filed for approval.

2. Given the foregoing, the Commission is concerned that NYISO's Market Administration and Control Area Services Tariff (NYISO Tariff) is unjust and unreasonable. Although NYISO is the entity responsible for providing open access transmission service on the New York transmission system and ensuring the reliability and efficiency of that transmission service,[4] the NYISO Tariff lacks provisions governing the rates, terms and conditions for RMR service. While the Commission has repeatedly stated that our jurisdictional markets should utilize market mechanisms to ensure that the resulting rates are just and reasonable,[5] the Commission has also recognized that short-term remedies, such as RMR agreements, may be appropriate in certain circumstances to address an immediate problem at hand. Indeed, pursuant to our authority under the FPA, the Commission has accepted tariff provisions filed by other independent system operators (ISOs) and regional transmission organizations (RTOs) to implement and govern RMR service.[6] In doing so, the Commission has emphasized that RMR agreements should be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation.[7]

3. As further discussed below, the provision of RMR services has been an ongoing concern in NYISO's markets. Accordingly, to ensure the proper and efficient operation of NYISO's markets, we find that NYISO should have on file the rates, terms, and conditions for RMR service. Without such provisions, there is no assurance that generation resources will be treated on a not unduly discriminatory basis and have the opportunity to collect compensatory rates without a protracted proceeding. The uncertainty created for resources by the lack of clear tariff provisions has the potential to exacerbate the very concerns an RMR service is meant to address—ensuring the continued reliable and efficient operation of the grid, and of NYISO's markets.[8] NYISO is uniquely positioned to assess the need for RMR service and the appropriate entity to assess the potential impacts RMR agreements may have on its markets in New York. Thus, NYISO should be the entity that administers RMR service in New York, and should do so pursuant to the provisions of its Commission-jurisdictional Tariff required by this order to be filed with the Commission.

4. As discussed below, NYISO's Tariff is unjust and unreasonable because it does not contain provisions governing the retention of and compensation to generating units needed for reliability. The Commission, pursuant to section 206 of the FPA, will require NYISO to submit to the Commission within 120 days of the date of this order fully supported proposed tariff provisions governing the retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.[9]

I. Background

5. Multiple filings have been made by generators that had applied to the New York Commission to mothball certain facilities but which were determined to be needed for transmission system reliability. These generators then pursued agreements to provide RMR-type service for a limited term until permanent solutions to transmission system reliability issues are addressed by transmission upgrades. The range of RMR-type services to be provided by these units were substantially similar, but involved a number of different agreements some of which were filed at the Commission and others at the New York Commission.

6. Specifically, on July 12, 2012, pursuant to FPA section 205,[10] Dunkirk Power LLC (Dunkirk) filed in Docket No. ER12–2237–000, an unexecuted RMR agreement with cost-of-service pricing net of revenues, under which Dunkirk would provide RMR service to

[2] For purposes of this order, references to generator ''deactivation'' encompass generator retirements, mothballing, or any other long-term outages or suspension of service.

[3] The services are designated as RMR or ''Reliability Support Services'' (RSS) in the various agreements. We will generally refer to such services as RMR services here.

[4] Article 2.01 of the ISO/TO Agreement, which governs the relationship between NYISO and its transmission owners, explains that NYISO has operational control over certain transmission facilities, while Transmission Owners have responsibility for the operation of Local Area Transmission System Facilities. It further explains that such operation by each Transmission Owner shall not compromise the reliable and secure operation of the New York State Transmission System, and that each Transmission Owner shall promptly comply to the extent practicable with a request from the NYISO to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

[5] *PJM Interconnection, LLC,* 110 FERC ¶ 61,053, at P 31 (2005) (''market clearing prices that reflect [reliability] costs better support efficient consumption and investment decisions''). *See also, ISO New England, Inc.,* 148 FERC ¶ 61,179 (2014), *order on clarification,* 150 FERC ¶ 61,029, at P 10 (2015) (if future winter reliability program is found to be necessary, it must be a market-based, rather than out-of-market, solution*); ISO New England, Inc.,* 144 FERC ¶ 61,204, at P 42 (2013), *reh'g denied,* 147 FERC ¶ 61,026 (2014) (market-based solutions preferable to out-of-market solutions to address winter reliability issues); *See Midwest Indep. Transmission Sys. Operator, Inc.,* 108 FERC ¶ 61,163 at n. 226 (''The Commission favors market design remedies, where possible, to provide needed revenues to support reliability-based generators and other needed investments''), *reh'g denied,* 109 FERC ¶ 61,157 (2004)*; see also Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 63 (2012), *order on compliance,* 148 FERC ¶ 61,056, at P 42 (2014).

[6] *See, e.g., PJM Interconnection, L.L.C.,* 107 FERC ¶ 61,112, at P 8 (2004); *Calif. Indep. Sys. Operator Corp.,* 138 FERC ¶ 61,112 (2012); *Calif. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211 (2011); *ISO New England, Inc.* 125 FERC 61,102, *order on clarification,* 125 FERC ¶ 61,234 (2008), *order denying reh'g,* 130 FERC ¶ 61,089 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237 (2012).

[7] *See, e.g., PJM Interconnection, L.L.C.,* 107 FERC ¶ 61,112, at PP 20–21 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.,* 108 FERC ¶ 61,163, at P 368, *reh'g denied,* 109 FERC ¶ 61,157 (2004) (RMR program is backstop measure designed to meet short-term reliability need).

[8] *See* 16 U.S.C. 824(b)(1) (2012) (the FPA gives the Commission jurisdiction over ''the transmission of electric energy in interstate commerce and . . . the sale of electric energy at wholesale in interstate commerce'').

[9] The Commission is acting on two filings concerning agreements for RMR service in NYISO concurrently with this order in Docket Nos. ER12–2237–002 and ER13–405–000.

[10] 16 U.S.C. 824d (2012).

Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) from two of Dunkirk's generation units.[11] Concurrently, however, Dunkirk had been engaged in negotiations with National Grid for the same type of services for the same units but with different compensation provisions. Dunkirk filed a ''Term Sheet'' summarizing the RSS agreement (RSSA) with the New York Commission on July 20, 2012. Accordingly, Dunkirk submitted a request on August 1, 2012, for the Commission to hold the RMR proceeding in abeyance to provide the New York Commission time to review the Term Sheet for the RSSA. On August 16, 2012, the New York Commission approved the Dunkirk/National Grid RSSA Term Sheet. On August 22, 2012, Dunkirk filed a further request that the Commission hold the RMR proceeding in abeyance indefinitely to provide time for the parties to execute a final contract and for any subsequent New York Commission order to issue.[12]

7. On March 29, 2013, National Grid proposed in Docket No. ER13–1182–000 to amend certain components of its Wholesale Transmission Service Charge formula under Attachment H of the NYISO Tariff to incorporate the costs it incurs pursuant to the above-described RSSAs covering the Dunkirk services as approved by the New York Commission. National Grid proposed to add a new item, ''Reliability Support Services Expense,'' that would have included expenses incurred pursuant to agreements entered into with generators or other similar resources for the purpose of supporting transmission reliability. On August 30, 2013, noting protestors' arguments about the unique rate and reliability implications inherent in National Grid's proposed revisions, the Commission rejected National Grid's filing, without prejudice to National Grid making a new filing under FPA section 205 providing additional support for recovery of RSS costs. The Commission found that the proposed formula rate revisions would essentially establish a placeholder that would allow the future pass-through of RSS costs. In order for the Commission to approve such a pass-through, the Commission explained that National Grid would, at a minimum, need to file any underlying RSSAs for Commission review, and support the proposed rates.[13] On December 6, 2013, in Docket No. ER14–543–000, National Grid filed different revised provisions to its Wholesale Transmission Service Charge formula to pass through RSS costs and included the two RSSAs pursuant to the Commission's directive. On February 4, 2014, the Commission accepted and suspended National Grid's revisions, and made them effective subject to refund and further order.[14]

8. Similar to Dunkirk, Cayuga Operating Company, LLC (Cayuga) sought approval from the New York Commission to mothball its generation units, but it was determined that its units are needed for transmission system reliability. On November 16, 2012, pursuant to FPA section 205, Cayuga filed an unexecuted RMR agreement with the Commission under which Cayuga would provide RMR service to New York State Electric & Gas Corporation (NYSEG). This agreement was based on cost-of-service rates less the revenues earned by Cayuga from the sale of energy, capacity and ancillary services in the NYISO markets. In the meantime, similar to Dunkirk, Cayuga was in negotiations with NYSEG for an RSSA and filed a ''Term Sheet'' with the New York Commission summarizing the proposed RSSA, which differed from its FPA section 205 RMR agreement only as to the rate. Cayuga also requested that the Commission hold Cayuga's RMR filing in abeyance until Cayuga notified it to do otherwise.[15] Following the New York Commission's December 17, 2012 order approving the RSSA Term Sheet and directing the parties to execute and subsequently file the RSSA with the New York Commission,[16] Cayuga submitted an expedited motion for the Commission to hold the RMR proceeding in abeyance until further notice.[17] On February 28, 2013, Cayuga filed a motion to withdraw its FPA section 205 RMR filing as moot on the grounds that it would never make sales to NYSEG under the RMR agreement it had filed with the Commission, but, rather, any sales would be pursuant to the RSSA that NYSEG filed with the New York Commission.[18]

II. Discussion

9. As noted above,[19] NYISO's having on file rates, terms and conditions for RMR service is fundamental to the proper and efficient operation of NYISO's markets. Without such provisions, there is no assurance that generation resources will be treated on a not unduly discriminatory basis and have the opportunity to collect compensatory rates without a protracted proceeding. Thus, pursuant to FPA section 206, the Commission finds that the omission of procedures in the NYISO Tariff governing the rates, terms, and conditions of FERC-jurisdictional RMR service needed to ensure reliable transmission service renders the NYISO Tariff unjust and unreasonable and inadequate to prevent undue discrimination among similarly-situated resources. The uncertainty created for resources by the lack of clear tariff provisions has the potential to exacerbate the very concerns an RMR service is meant to address—ensuring the continued reliable and efficient operation of the grid, and of NYISO's markets. NYISO, as the independent system operator in New York, is uniquely positioned to assess the need for RMR service. Moreover, given its role, NYISO is the appropriate entity to assess the potential impacts RMR agreements may have on its markets in New York. Therefore, NYISO should be the entity that administers RMR service in New York, pursuant to the provisions of its Commission-jurisdictional Tariff required by this order to be filed with the Commission.

10. NYISO has filed status reports on matters concerning RMR service and compensation for nearly four years now and there has been no consensus regarding tariff provisions governing compensation for generators needed for reliability.[20] The Commission thus has no expectation of NYISO and its stakeholders addressing the matter on their own. Yet, the need for RMR service remains as evidenced by the aforementioned cases, and NYISO, as the independent system operator is responsible for efficiently and reliably administering the resources under its

[11] Dunkirk Filing, Docket No. ER12–2237–000, at 1 (filed July 12, 2012).

[12] On March 4, 2013, National Grid and Dunkirk entered into a second RSSA (2013 Dunkirk RSSA) to cover the period following termination of the August 2012 RSSA. On May 20, 2013, the New York Commission approved the 2013 Dunkirk RSSA. *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements—Order Deciding Reliability Need Issues and Addressing Cost Allocation and Recovery,* Case 12–E–0136 (New York Public Service Commission, May 20, 2013.

[13] *New York Independent System Operator, Inc.,* 144 FERC ¶ 61,172, at P 39 (2013).

[14] *New York Independent System Operator, Inc.,* 146 FERC ¶ 61,065 (2014).

[15] Cayuga Transmittal, Docket No. ER13–405–000, at 4 (filed Nov. 16, 2012).

[16] *Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2,* Case 12–E–0400, New York Public Service Commission, (issued and effective December 17, 2012).

[17] Cayuga Expedited Motion to Hold Proceeding in Abeyance, Docket No. ER13–405–000, at 2 (filed Dec. 31, 2012).

[18] Cayuga Expedited Motion to Withdraw Filing, Docket No. ER13–405–000, at 3 (filed Feb. 28, 2013).

[19] *See supra* note 8 and accompanying text.

[20] *NYISO Eighth Informational Report on Efforts to Develop Rules Addressing Compensation to Generators that Are Determined to be Needed for Reliability,* Docket No. ER10–2220–000, at 2 (filed Sep. 23, 2014).

control, particularly including the generation resources needed to ensure reliable transmission service.

11. If left unresolved, uncertainty regarding NYISO's RMR procedures and compensation policies could undermine NYISO's access to generation units needed for reliability. That is, in the absence of tariff provisions that would allow NYISO to secure RMR services, NYISO may not be able to ensure both that there is indeed adequate generation, and at the appropriate locations, to ensure reliable and efficient operations, and that such generation is adequately compensated so that it will be available when needed. NYISO's inability to secure adequate RMR services could impede its ability to ensure the reliable and efficient operation of the electric grid and its markets. Therefore, pursuant to FPA section 206, we direct NYISO to submit proposed tariff provisions setting forth its proposals to establish an appropriate RMR process in the NYISO tariff. The filing should consist of fully supported proposed tariff provisions governing the retention of and compensation to generating units required for reliability, including procedures for designating such resources, the rates, terms and conditions for RMR service, provisions for the allocation of costs of RMR service, and a *pro forma* service agreement for RMR service.[21]

12. In order to assist NYISO in the development of a compliance proposal, the Commission provides general guidance on the elements that should be addressed by NYISO.[22] NYISO's proposal should be consistent with this general guidance.[23]

A. RMR Process

13. As an initial matter, as part of its RMR mechanism, NYISO should include Tariff provisions governing the schedule by which a generation owner must notify NYISO that it intends to deactivate.[24] These provisions should also include a clear timeline by which NYISO will notify the generation owner that its unit is required for reliability, or, alternatively, determine that the deactivation will not impact reliability and the unit can be deactivated as planned.[25] Provisions establishing a schedule by which a generator must notify NYISO of deactivation and clear timelines for action will ensure that NYISO, generation owners, all relevant transmission owners, and other concerned parties have sufficient time to plan and implement the reliability solutions necessary to address any identified reliability issue, which may ultimately mitigate the need for an RMR designation. In this regard, NYISO should describe the process for conducting the reliability analyses necessary to determine that there is a reliability need for the unit. NYISO may elect to address these requirements by expanding upon its OATT Attachment Y planning process, or developing another process as it deems appropriate for inclusion in the NYISO Tariff. We believe it is appropriate to require the NYISO Tariff to provide transparency with respect to such timelines, processes, and schedules, not just for the practical administration of the NYISO Tariff, but also to help ensure that there is no undue discrimination or preference in the handling of RMR service and agreements pursuant to the NYISO Tariff.

14. After considering the necessary reliability studies, NYISO must be the entity that makes the determination whether a specific generator is needed to ensure reliable transmission service and thus whether the facility is designated an RMR unit. As indicated earlier, NYISO is uniquely positioned to assess the need for RMR service. Further, given that it is not only the independent system operator in New York but also is responsible for administering the markets in New York, NYISO is the appropriate entity to assess the potential impacts RMR agreements may have on its markets. To avoid requiring NYISO to study steps necessary to ensure reliable operation of transmission facilities over which NYISO does not have direct operational control, we require that the NYISO Tariff indicate the entity that will conduct the study in such cases. In order to avoid any potential for bias among stakeholders, NYISO may elect to conduct the necessary reliability studies itself, including any studies necessitated by local reliability standards, such as those developed by the New York State Reliability Council (NYSRC). Under that approach, NYISO would need to identify in the NYISO Tariff how it will coordinate the necessary reliability studies with the affected transmission owners. Alternatively, NYISO may elect to allow the relevant transmission owner to conduct the necessary reliability studies. If an entity other than NYISO is to conduct the initial reliability study, NYISO must review and verify any local or regional reliability studies conducted, and notify stakeholders as to whether or not it agrees with the outcome of those studies, independent of any other relevant authority's determination that a particular unit is needed for reliability. NYISO's proposal may also include a process for it to take into consideration the relevant reliability studies and evaluations made by the New York Commission and/or NYSRC.

15. In addition, regardless of the approach chosen by NYISO for conducting the necessary reliability studies, NYISO's proposal must include the requirement that any future generation resource-specific RMR filing made with the Commission fully describe, at a minimum, the methodologies and findings in the underlying reliability studies and clearly state all potential reliability criteria violations. NYISO's including such a requirement is important to ensuring that, when a resource-specific RMR filing is made with the Commission, the Commission will be able to evaluate NYISO's assessment of the need for operation of the resource in judging the reasonableness of the agreement including whether there has been any undue discrimination or

[21] However, the Commission clarifies that NYISO's RMR proposal will not require Dunkirk to enter into new *pro forma* agreements for the 2012 and 2013 RSS agreements or for Cayuga to enter into new *pro forma* agreements for the Cayuga RSSA–1 and RSSA–2 agreements referenced above. The Commission also notes that the costs at issue in the Niagara Mohawk Power Corp. filing in Docket No. ER14–543–000, related to the 2012 and 2013 Dunkirk RSSAs, remain pending before the Commission in Docket No. ER14–543–000.

[22] In its evaluation of what to include in its submission, we encourage NYISO to consider the RMR tariff provisions of other RTOs/ISOs. However, we recognize that there may be reasons to allow variation among RTOs/ISOs, so we will not at this time direct NYISO to adopt any particular mechanism. *See PJM Interconnection, LLC,* 112 FERC ¶ 61,031, at P 21 (2005) (PJM's procedures need not precisely match procedures of another ISO).

[23] NYISO, however, is not limited to filing proposed tariff provisions that meet the general guidance provided in this order. NYISO's compliance filing may contain additional provisions as long as they are fully supported and are shown to be just and reasonable and not unduly discriminatory.

[24] *See, e.g.,* Midcontinent Independent System Operator, Inc. (MISO), FERC Electric Tariff 38.2.7 (requiring 26 weeks' notice); PJM Interconnection, LLC (PJM), FERC Electric Tariff Part V Section 113.1 (requiring 90 days' notice); California Independent System Operator Corp. (CAISO) FERC Electric Tariff, Section 43 (requiring 180 days' notice). *See generally, Calif. Indep. Sys. Operator Corp.,* 138 FERC ¶ 61,112 (2012); *Calif. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211 (2011); *ISO New England, Inc.* 125 FERC 61,102, *order on clarification,* 125 FERC ¶ 61,234 (2008), *order denying reh'g,* 130 FERC ¶ 61,089 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 18 (2012).

[25] *See, e.g., Calif. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211 (2011); *Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 18 (2010); *PJM Interconnection, L.L.C.,* 112 FERC ¶ 61,031, at P 31 (2005).

preference.[26] Where an RMR determination is based on local planning criteria, any filing also must similarly provide, and for the same reasons, a full discussion of those local criteria, including, for example, documentation as to when the criteria became effective, how the criteria were applied, which regulatory body approved the standard, and any other supporting information.[27]

16. Finally, NYISO's proposal must describe the process NYISO will use to evaluate alternatives for addressing the identified reliability need. The evaluation of alternatives to an RMR designation is an important step that deserves the full consideration of NYISO and its stakeholders to ensure that RMR agreements are used only as a limited, last-resort measure. To this end, NYISO, in its proposed tariff language, should explain its process for identifying RMR alternatives in detail, including how the process will ensure a thorough consideration of all types of RMR alternatives in an open and transparent manner.[28] For example, MISO applies an open and transparent process to consider with its stakeholders feasible alternatives to an RMR designation, including (depending on the type of reliability concern identified) transmission upgrades, demand-side resources, and generator alternatives, as well as alternative operating procedures (*e.g.,* re-dispatch, temporary rating increases, special protection systems).[29] Our requiring that NYISO describe this process promotes the transparency needed to ensure that the process has indeed not been unduly discriminatory or preferential. Furthermore, NYISO's proposal must include the requirement that any future generation resource-specific RMR filing made with the Commission should detail the alternative solutions evaluated and justify the term of the proposed RMR agreement vis-à-vis the timing of alternative solutions to the identified reliability need.[30] This last requirement reflects our belief that RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.

B. RMR Compensation

17. As RMR agreements are for Commission jurisdictional services, we require NYISO's RMR proposal to include provisions dealing with compensation for RMR services. The Commission believes that NYISO's RMR compensation provisions should reflect the nature of NYISO's RMR proposal. That is, should NYISO choose an exclusively voluntary RMR regime, under which a generator wishing to deactivate could reject the reliability needs determination and continue to deactivate absent the establishment of acceptable compensation, the tariff should provide for the parties to agree to an appropriate cost-based rate. Compensation to an RMR generator must at a minimum allow for the recovery of the generator's going-forward costs,[31] with parties having the flexibility to negotiate a cost-based rate up to the generator's full cost of service.[32] This ensures that generators are appropriately compensated for agreeing to provide RMR service. Thus, if NYISO chooses an exclusively voluntary RMR regime, the tariff must include a process by which NYISO and the RMR unit may negotiate an appropriate cost-based rate, to minimize the potential for protracted disputes concerning that unit's compensation. The participation of the NYISO Independent Market Monitor in negotiations with the generator regarding the appropriate level of charges to include in the negotiated RMR rate should also be considered. Alternatively, should NYISO choose an exclusively mandatory RMR regime, under which a generator wishing to deactivate but determined by NYISO to be needed for reliability is required to remain in operation, NYISO's proposal should provide for compensation at a full cost-of-service rate.[33]

18. NYISO's proposal should also contain procedures requiring the filing of RMR agreements for review and approval by the Commission, including, among other provisions, a *pro forma* RMR Agreement; [34] a filing requirement for RMR agreements will ensure Commission review of the agreements and thus ensure that they are just and reasonable and not unduly discriminatory or preferential.[35] Specifically, regardless of whether NYISO adopts a voluntary approach or an involuntary approach, NYISO's proposal should provide authorization for a generator to file, for Commission review, an RMR agreement under FPA section 205 in the form of the Tariff's *pro forma* RMR Agreement containing cost-based rates (and provisions for filings to change such rates) [36] for the provision of RMR service in accordance with the NYISO Tariff.[37] Providing for such FPA section 205 filings will ensure that generators delaying deactivation for transmission system reliability reasons will have the authority to seek just and reasonable rates when they delay deactivation. In the case where a generator seeks to file such rates under FPA section 205, NYISO should provide

[26] *See, e.g., Calif. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,211, at P 130 (2011) (directing tariff provisions providing that risk of retirement designation may be exercised ''only if all other available procurement measures fail to procure the resources needed for reliable operation''); *ISO New England, Inc.* 125 FERC 61,102, at P 110, *order on clarification,* 125 FERC ¶ 61,234 (2008), *order denying reh'g,* 130 FERC ¶ 61,089 (2010), *Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,337, at PP 10, 36 (2012).

[27] *See, e.g.,* MISO, FERC Electric FPA Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, C., Planning Activities., 1.0.0 (''planning shall conform to applicable reliability requirements of NERC, applicable Regional Entities, or any successor organizations, each Owner's specific reliability requirements and operating guidelines, and all applicable requirements of federal or state laws or regulatory authorities''); PJM Operating Agreement 462 (Jan. 6, 2014), *available at: http://www.pjm.com/~/media/documents/agreements/oa.ashx (addressing Regional Transmission Expansion Plan criteria).*

[28] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 36 (2012).

[29] *See, e.g.,* Midcontinent Independent System Operator, Inc., FERC Electric Tariff, § 38.2.7.

[30] *See, e.g., Midwest Independent Transmission System Operator, Inc.,* 140 FERC ¶ 61,237, at PP 10, 106 (2012).

[31] With respect to the going-forward costs rate, the Commission recognizes that the NYISO Services Tariff already defines Going Forward Costs. NYISO Services Tariff, Attachment H, 23.2.1. However, for purposes of its RMR proposal, NYISO may wish to define going-forward costs differently in the context of RMR unit compensation.

[32] *PJM Interconnection, LLC,* 107 FERC ¶ 61,112, at P 40 (2004).

[33] *Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057, at P 84 (2014) (''While the Commission has accepted a range of reasonable compensation methodologies for RMR units in RTOs/ISOs, we find that it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO's authority under its Tariff to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns'').

[34] The filing of RMR agreements should be done consistent with the requirements of the Commission's eTariff system.

[35] *Midwest Indep. Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 10 (2012).

[36] For example, a generator should have the ability to file to change that rate under section 205 in the event, among other things, that materially adverse unforeseen circumstances affecting the unit increase its costs, or, alternatively, if circumstances result in a decrease in costs.

[37] *See, e.g., PJM Interconnection, L.L.C.,* 112 FERC ¶ 61,031, at PP 18–20 (2005); *see also* PJM OATT 119. (''A generator seeking to provide RMR services under a non-conforming RMR Agreement must file that agreement for Commission review and approval, and demonstrate that it is consistent with or superior to the *pro forma* agreement''); *see also Midcontinent Indep. Sys. Operator, Inc.,* 148 FERC ¶ 61,057, at P 92 (2014) (''the MISO Tariff should allow generation or SCU owners designated as SSRs to file their own revenue requirement in order to protect that generation or SCU owner's rights under FPA section 205'').

the generator the reliability study report and NYISO's RMR proposal should address which entity will file the reliability report(s) with the Commission.

19. NYISO's RMR proposal should address the circumstance of accelerated cost recovery for generators that require upgrades, retrofitting, repowering, or some other form of additional investment required to continue operating during the term of the RMR agreement, to ensure that in such circumstances generators are appropriately compensated.[38] In addition, the proposal should likewise address recovery of such investments from RMR generators should the RMR unit receive compensation for the investment during the term of the RMR agreement but then continue to operate as a merchant unit after the term of the RMR agreement.[39] Such provisions should ensure that generators under RMR agreements will not recover more than an allocable portion of the cost of such investments from providing RMR service.

C. RMR Cost Allocation

20. NYISO's RMR compliance filing should include tariff provisions specifying a methodology for allocating the costs of RMR agreements, as appropriate cost allocation is essential to ensuring that the rates charged are just and reasonable and not unduly discriminatory or preferential.[40] Moreover, disclosing the allocation of RMR costs in this manner will enable the entities to whom the costs may be allocated to better understand their potential responsibility for the RMR costs.[41] Other RTOs and ISOs have adopted different approaches to address the recovery of the costs associated with agreements like the RMR agreements discussed in this order. For example, in PJM Interconnection, L.L.C. (PJM), RMR costs are allocated to the load in the zone(s) of the transmission owners that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact that would result from the unit's deactivation.[42] NYISO should ensure that any cost allocation regime is consistent with the Commission's cost allocation principles and precedents.

D. Toggling Provisions

21. NYISO's proposal should also include rules to eliminate, or at least minimize, incentives for a generator needed for reliability to toggle between receiving RMR compensation and market-based compensation for the same units.[43] The Commission appreciates that uneconomic units could become economic for a number of reasons, including changing market conditions and the need for and timing of capital investments. However, the Commission is concerned that any proposed provisions not provide an incentive for a generation resource to propose to deactivate earlier than it otherwise would have in expectation of being needed for reliability and, therefore, be able to receive more revenues under an RMR service agreement than by remaining in the market. As noted above, the tariff provisions should not provide an incentive for a generation resource to re-enter the market after having received accelerated recovery of the cost of additional investments made under its RMR agreement.[44] Accordingly, to address the Commission's concerns related to toggling, NYISO should craft tariff provisions that provide clear guidance to generators regarding the implications of a deactivation notice.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), the Commission hereby institutes a proceeding in Docket No. EL15–37–000 concerning the justness and reasonableness of NYISO's Tariff with regard to RMR issues, as discussed in the body of this order.

(B) Within 120 days of the date of issuance of this order, NYISO shall submit a compliance filing containing a proposed RMR Rate Schedule and *pro forma* RMR agreement, as discussed in the body of this order.

(C) Any interested person desiring to be heard in this proceeding must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (2014)) within 21 days of the date of this order.

(D) The Secretary is hereby directed to promptly publish this order in the **Federal Register.**

By the Commission.

Issued: February 19, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–04119 Filed 2–26–15; 8:45 am]

BILLING CODE 6717–01–P

[38] *See, e.g., ISO New England, Inc.* 125 FERC 61,102, at PP 82–84, *order on clarification,* 125 FERC ¶ 61,234 (2008), *order denying reh'g,* 130 FERC ¶ 61,089 (2010).

[39] *Midwest Indep. Transmission Sys. Operator, Inc.,* 140 FERC ¶ 61,237, at P 138 (2012), *order on compliance,* 148 FERC ¶ 61,056, at P 44 (2014).

[40] *PJM Interconnection, L.L.C.,* 107 FERC ¶ 61,112, at P 22 (2004).

[41] Midwest Indep. Transmission Sys. Operator, Inc., 140 FERC ¶ 61,237, at P 154 (2012).

[42] *See, e.g.,* PJM OATT 120.

[43] *See, e.g.,* PJM OATT 118; ISO–NE, Transmission Markets and Services Tariff, III.13.2.5.2.5 (18.0.0); MISO, FERC Electric Tariff, 38.2.7 (4.0.0); CAISO, eTariff, 43.2.6 (1.0.0).

[44] *See, ISO New England Inc.,* 125 FERC ¶ 61,102, at PP 45–48 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–33–000]

DATC Path 15, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 17, 2014, the Commission issued an order in Docket No. EL14–33–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation to determine the justness and reasonableness of DATC Path 15, LLC's proposed transmission revenue requirement reduction. *DATC Path 15, LLC,* 147 FERC ¶ 61,035 (2014).

The refund effective date in Docket No. EL14–33–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: February 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–04082 Filed 2–26–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–1–000]

PennEast Pipeline Company, LLC; Notice of Postponement of Public Scoping Meeting for the Penneast Pipeline Project

On January 13, 2015, the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Intent to Prepare an Environmental*

Impact Statement for the Planned PennEast Pipeline Project, Requests for Comments on Environmental Issues, and Notice of Public Scoping Meetings. The notice solicited comments on the potential environmental impacts of the planned project and announced the time and location of five public scoping meetings being held for the environmental proceedings.

Due to unforeseen circumstances, the Commission staff is postponing the scoping meeting planned for Wednesday, January 28, 2015 at Bucks County Community College, Kevin and Sima Zlock Performing Arts Center Gateway Auditorium, 275 Swamp Road, Newtown, Pennsylvania 18940. Once a new venue is established and scheduled, the Commission will issue another notice advising of the new location and time.

Dated: January 26, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–04049 Filed 2–26–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–86–000]

El Paso Natural Gas Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on February 12, 2015, El Paso Natural Gas Company, L.L.C. (EPNG), P.O. Box 1087, Colorado Springs, Colorado, 80944 filed a prior notice request pursuant to sections 157.205 and 157.213 of the Commission's regulations under the Natural Gas Act for authorization to construct and operate certain natural gas storage field facilities within EPNG's existing Washington Ranch Storage Field located in Eddy County, New Mexico. Specifically, EPNG proposes to: (i) Drill and connect two new injection/withdrawal wells, (ii) construct two appurtenant six-inch outside diameter storage pipelines totaling up to 2,400 feet, and (iii) install new well pad measurements. The project is referred to as the Washington Ranch Project. EPNG states that the two new wells and associated laterals are designed to better access existing working capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Francisco Tarin, Director, Regulatory Affairs Department, El Paso Natural Gas Company, LLC, P.O. Box 1087, Colorado Springs, Colorado, 80944, or by calling (719) 667–7517.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: February 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–04125 Filed 2–26–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9923–28]

Access to Confidential Business Information by the Food and Drug Administration, Office of Foods and Veterinary Medicine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized, the Food and Drug Administration, Office of Foods and Veterinary Medicine (FDA), to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA) and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than March 9, 2015.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone

number: (202) 564–1404; email address: *lintner.colby@epa.gov.*

Additional information on this activity can be obtained from: Scott M. Sherlock, Attorney Advisor, Office of Pollution Prevention and Toxics (OPPT), Office of Chemical Safety, Pesticides and Prevention (OCSPP), Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460–0001; telephone number (202) 564–8257; email address: *sherlock.scott@*epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

In the Spring of 2014, consistent with 40 CFR 2.209, the FDA requested access to information substances that may be present in foods (including animal food and feed), animal drugs, and cosmetics which is collected under the authority of the TSCA and FIFRA. This action gives notice that FDA will be given access to materials collected through the authority of TSCA and FIFRA, including information claimed as CBI. The access to this material is contemplated in a memorandum of understanding between the two agencies. The expectation is that the two agencies will share, on a reciprocal and as-needed basis, information, including non-public information, which may facilitate implementation of the agencies' respective programs. This activity is intended to maximize the utility of data collected under those statutes, and enhance the efficiency of the participants' regulatory processes and facilitate better risk management activities.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA and FIFRA, that EPA may provide FDA access to these CBI materials on a need-to-know basis only. All access to TSCA and FIFRA CBI under this agreement will take place at FDA Headquarters located at 4300 River Road, College Park, MD.

Clearances for access to TSCA and FIFRA CBI under this arrangement may continue until terminated by either party.

FDA personnel will be briefed on appropriate security procedures before they are permitted access to the CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: February 23, 2015.

Mario Caraballo,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–04149 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9019–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 02/16/2015 Through 02/20/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20150041, Draft EIS, NPS, CA, Alcatraz Ferry Embarkation, Comment Period Ends: 05/20/2015, Contact: Samantha Pollak (415) 561–4700.

EIS No. 20150042, Final EIS, NPS, NV, Jimbilnan, Pinto Valley, Black Canyon, Eldorado, Ireteba Peaks, Nellis Wash, Spirit Mountain, and Bridge Canyon Wilderness Areas, Lake Mead Wilderness Management Plan, Review Period Ends: 04/03/2015, Contact: Greg Jarvis (303) 969–2263.

EIS No. 20150043, Final EIS, FERC, PR, Aguirre Offshore GasPort Project, Review Period Ends: 03/30/2015, Contact: Gertrude Johnson (202) 502–6692.

EIS No. 20150044, Draft EIS, USACE, CA, San Joaquin River Basin Project, Comment Period Ends: 04/13/2015, Contact: Tanis Toland (916) 557–6717.

EIS No. 20150045, Final Supplement, USDA, BLM, UT, Leasing and Underground Mining of the Greens Hollow Federal Coal Lease Tract UTU–102, Review Period Ends: 04/17/2015, Contact: Thomas Lloyd (USDA) (435) 636–3596 and Steve Rigby (BLM) (435) 636–3604.

The U.S. Department of the Interior's Bureau of Land Management and the U.S. Department of Agriculture's Forest Service are joint lead agencies for above project.

EIS No. 20150046, Final EIS, USFS, MT, East Deer Lodge Valley Landscape Restoration Management Project, Review Period Ends: 03/30/2015, Contact: Alex Dunn (406) 683–3864.

Amended Notices

EIS No. 20140300, Draft EIS, BLM, NV, Las Vegas and Pahrump Field Offices Draft Resource Management Plan, Comment Period Ends: 03/09/2015, Contact: Lee Kirk (702) 515–5026. Revision to FR Notice Published 10/10/2014; Extending Comment Period from 02/06/2015 to 03/09/2015.

Dated: February 24, 2015.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–04139 Filed 2–26–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–184]

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting in accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold its first meeting of the Technological Advisory Council for 2015.

DATES: Wednesday, April 1, 2015, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 15–184 released February 10, 2015, announcing the first meeting of the Technological Advisory Council for 2015. At its prior meeting on December 4, 2014, the Council had discussed possible work initiatives for 2015. These initiatives have been discussed in the interim within the FCC, with the TAC chairman, as well as with individual TAC members. At the April meeting, the FCC Technological Advisory Council will discuss its proposed work program for 2015. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

[FR Doc. 2015–04202 Filed 2–26–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10201, American National Bank, Parma, Ohio

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for American National Bank, Parma, Ohio (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of American National Bank on March 19, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: February 23, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–04043 Filed 2–26–15; 8:45 am]

BILLING CODE 6714–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]; [Docket 2015–0001; Sequence 2]

General Services Administration Acquisition Regulation; Information Collection; Contract Financing Final Payment (GSA Form 1142 Release of Claims)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement and the reinstatement of GSA Form 1142, Release of Claims, regarding final payment under construction and building services contract. GSA Form 1142 was inadvertently deleted as part of the rewrite of GSAR regulations on Contract Financing. GSA Contracting Officers have used this form to achieve uniformity and consistency in the release of claims process.

DATES: Submit comments on or before: April 28, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, (202) 357–9652 or email *Dana.Munson@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB Control number 3090–0080. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims).'' Follow the instructions on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims),'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW.,

Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims).

Instructions: Please submit comments only and cite Information Collection 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) clause 552.232–72 requires construction and building services contractors to submit a release of claims before final payment is made to ensure contractors are paid in accordance with their contract requirements and for work performed. GSA Form 1142, Release of Claims is used to achieve uniformity and consistency in the release of claims process.

B. Annual Reporting Burden

Respondents: 2000.

Responses per Respondent: 1.

Hours per Response: .10.

Total Burden Hours: 200.

C. Public Comment

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0080, Contract Financing Final Payment; (GSA Form 1142, Release of Claims), in all correspondence.

Dated: February 24, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–04116 Filed 2–26–15; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination and Declaration Regarding Emergency Use of New In Vitro Diagnostics for Detection of Enterovirus D68

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, 21 U.S.C. 360bbb–3. On February 6, 2015, the Secretary determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves enterovirus D68 (EV–D68). On the basis of this determination, she also declared that circumstances exist justifying the authorization of emergency use of new in vitro diagnostics for detection of EV–D68 pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

DATES: The determination and declaration are effective February 6, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Mason, Centers for Disease Control and Prevention, 1600 Clifton Road MS–A34, Atlanta, GA 30333, Telephone (404) 639–1297 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FD&C Act, the Commissioner of the Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four determinations: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a chemical, biological, radiological, or nuclear (''CBRN'') agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act [1] sufficient to affect national security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a CBRN agent or agents; or (4) a determination by the Secretary that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.[2]

Based on any of these four determinations, the Secretary of HHS may then declare that circumstances exist that justify the EUA, at which point the FDA Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FD&C Act are met. The Centers for Disease Control and Prevention (CDC), HHS, requested that the FDA, HHS, issue an EUA for new in vitro diagnostics for detection of EV–D68 to allow the Department to take preparedness measures based on information currently available about the EV–D68.

The determination of a significant potential for a public health emergency, and the declaration that circumstances exist justifying emergency use of new in vitro diagnostics for detection of EV–D68 by the Secretary of HHS, as described below, enable the FDA Commissioner to issue an EUA for in vitro diagnostics for detection of EV–D68 for emergency use under section 564 of the FD&C Act.

II. Determination by the Secretary of Health and Human Services

On February 6, 2015, pursuant to section 564 of the FD&C Act, I determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and

[1] 42 U.S.C. 247d–6b

[2] As amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, the Secretary may make determination of a public health emergency, or a significant potential for a public health emergency, under section 564 of the FD&C Act. The Secretary is no longer required to make a determination of a public health emergency in accordance with section 319 of the PHS Act, 42 U.S.C. 247d, to support a determination or declaration made under section 564 of the FD&C Act.

security of United States citizens living abroad and that involves EV–D68.

III. Declaration of the Secretary of Health and Human Services

Also on February 6, 2015, on the basis of my determination of a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves EV–D68, I declared that circumstances exist justifying the authorization of emergency use of new in vitro diagnostics for detection of EV–D68 pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

Notice of the EUAs issued by the FDA Commissioner pursuant to this determination and declaration will be provided promptly in the **Federal Register** as required under section 564 of the FD&C Act.

Dated: February 6, 2015.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2015–04121 Filed 2–26–15; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP Web site at: *http://www.dhhs.gov/ohrp/sachrp/mtgings/index.html.*

DATES: The meeting will be held on Tuesday, March 24, 2015, from 8:30 a.m. until 5:00 p.m. and Wednesday, March 25, 2015, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: Fishers Lane Conference Center, Terrace Level, 5635 Fishers Lane, Rockville, Maryland 20852.

FOR FUTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The meeting will open to the public at 8:30 a.m., on Tuesday, March 24. Following opening remarks from Dr. Jerry Menikoff, Executive Secretary of SACHRP and OHRP Director, and Dr. Jeffrey Botkin, SACHRP Chair, Dr. Botkin and invited speakers will discuss issues surrounding the use of newborn dried bloodspots in research. The Subpart A Subcommittee (SAS) report will follow; SAS will discuss draft recommendations on the research uses of newborn dried bloodspots and the Newborn Screening Saves Lives Reauthorization Act of 2014. SAS was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

In the afternoon of March 24, the Subcommittee on Harmonization (SOH) will present their report; SOH was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. SOH will present recommendations on the research use of ''big data'' and the intersection of the HHS and FDA regulations.

On March 25, the SOH will discuss the return of individual research results with special considerations regarding HIPAA and CLIA; this will be followed by presentation of SOH recommendations on the FDA draft guidance ''General Clinical Pharmacology Considerations for Pediatric Studies for Drugs and Biologics.'' The meeting will adjourn at 4:30 p.m. March 25, 2015. Time for public comment sessions will be allotted both days.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify one of the designated SACHRP points of contact at the address/phone number listed above at least one week prior to the meeting. Pre-registration is required for participation in the on-site public comment session; individuals may pre-register the day of the meeting. Individuals who would like to submit written statements should email or fax their comments to SACHRP at *SACHRP@hhs.gov* at least five business days prior to the meeting.

Dated: February 23, 2015.

Jerry Menikoff,

Executive Secretary, Secretary's Advisory Committee on Human Research Protections, Director, Office for Human Research Protections.

[FR Doc. 2015–04120 Filed 2–26–15; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1696 and CMS–10417]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

DATES: Comments must be received by *April 28, 2015.*

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–1696 Appointment of Representative

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* The Appointment of Representative form is completed by beneficiaries, providers and suppliers, and any party seeking to appoint a representative to assist them with their initial determinations and filing appeals. This extension request proposes non-substantive changes to the form. *Form Number:* CMS–1696 (OMB control number 0938–0950); *Frequency:* Once; *Affected Public:* Individuals and households and the Private sector (Business or other for-profits); *Number of Respondents:* 4,073,960; *Total Annual Responses:* 407,396; *Total Annual Hours:* 101,849. (For policy questions regarding this collection contact Katherine Hosna at 410–786–4993).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Fee-for-Service Prepayment Medical Review; *Use:* The information required under this collection is requested by Medicare contractors to determine proper payment or if there is a suspicion of fraud. Medicare contractors request the information from providers or suppliers submitting claims for payment from the Medicare program when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program. *Form Number:* CMS–10417 (OMB control number: 0938–0969); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 3,211,800; *Total Annual Responses:* 3,211,800; *Total Annual Hours:* 1,597,950. (For policy questions regarding this collection contact Debbie Skinner at 410–786–7480.)

Dated: February 24, 2015.

William N. Parham, III

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–04115 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10341 and CMS–10522]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 30, 2015.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the

proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Affordable Care Act Information and Collection Requirements for Section 1115 Demonstration Projects; *Use:* This collection is necessary to ensure that states comply with regulatory and statutory requirements related to the development, implementation and evaluation of demonstration projects. States seeking waiver authority under Section 1115 are required to meet certain requirements for public notice, the evaluation of demonstration projects, and reports to the Secretary on the implementation of approved demonstrations. *Form Number:* CMS–10341 (OMB control number 0938–1162); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 37; *Total Annual Responses:* 130; *Total Annual Hours:* 13,910. (For policy questions regarding this collection contact Lane Terwilliger at 410–786–2059.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Executive Summary Form for Research Identifiable Data; *Use:* The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare, Medicaid and State Children's Health Insurance Programs. We collect data to support the Agency's mission and operations. These data include information about Medicare beneficiaries, Medicare claims, Medicare providers, and Medicaid eligibility and claims. We disclose the identifiable data consistent with the routine uses identified in the Privacy Act Systems of Records notices that are published in the **Federal Register** and the limitations on uses and disclosures that are set out in the HIPAA Privacy Rule.

All requests for identifiable data are received and reviewed by the Division of Privacy Operations & Compliance (DPOC) in the Office of E-Health Standards and Services. The DPOC staff and the CMS Privacy Officer review the requests to determine if there is legal authorization for disclosure of the data. If legal authorization exists, the request is reviewed to ensure that the minimal data necessary is requested and approved for the project. Requests for identifiable data for research purposes must be submitted to and approved by the CMS Privacy Board. To assist the CMS Privacy Board with its review of research data requests, OIPDA has developed the Executive Summary (ES) forms. The ES collects all the information that the CMS Privacy Board needs to review and make a determination on whether the request meets the requirements for release of identifiable data for research purposes. We currently have three versions of the ES Form and an ES Supplement for Requestors of the National Death Index (NDI) Causes of Death Variables. Each meets the need for a different type of requestor. *Form Number:* CMS–10522 (OMB control number: 0938–New); *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 325; *Total Annual Responses:* 325; *Total Annual Hours:* 650. (For policy questions regarding this collection contact Kim Elmo at 410–786–0161.)

Dated: February 24, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–04113 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7036–N]

Health Insurance Marketplace, Medicare, Medicaid, and Children's Health Insurance Programs; Renewal of the Advisory Panel on Outreach and Education (APOE) and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the renewal of the Advisory Panel (the Panel) on Outreach and Education (APOE) charter. It also requests nominations for individuals to serve on the APOE.

DATES: Nominations will be considered if we receive them at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., Eastern Daylight Time (e.d.t.) on March 30, 2015.

ADDRESSES: Mail nominations to the following address: Abigail Huffman, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–13–05, Baltimore, MD 21244–1850 or email nominations to *Abigail.Huffman1@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Abigail Huffman, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–13–05, Baltimore, MD 21244, 410–786–0897, email *Abigail.Huffman1@cms.hhs.gov* or visit the Web site at *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel (the Panel) on Medicare Education (the predecessor to the APOE) was created in 1999 to advise and make recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS), and

the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. Successful MA program implementation required us to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, the Secretary, and by delegation, the Administrator of CMS was authorized under Title I of MMA to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111–148 and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other option for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplace called Affordable Insurance Exchange, (also called Health Insurance Marketplace, or ''Marketplace''). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders pursuant to education and outreach programs regarding how these programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace. The APOE allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

II. Provisions of This Notice

A. Renewal of the APOE

Pursuant to the charter approved on January 21, 2015, the APOE was renewed. The APOE will advise HHS and CMS on developing and implementing education programs that support individuals with or who are eligible for Health Insurance Marketplace, Medicare, Medicaid, and the CHIP about options for selecting health care coverage under these and other programs envisioned under health care reform to ensure improved access to quality care, including prevention services. The scope of this Federal Advisory Committee Act (FACA) group also includes advising on education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

The charter will terminate on January 21, 2017, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Pursuant to the renewed charter, the APOE will advise the Secretary and the Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through the Health Insurance Marketplace.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance Marketplace, Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment; which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

B. Requests for Nominations

The APOE shall consist of no more than 20 members. The Chair shall either be appointed from among the 20 members, or a federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately four times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in one or more of the following fields:

- Senior citizen advocacy
- Outreach to minority and underserved communities
- Health communications
- Disease-related advocacy
- Disability policy and access
- Health economics research
- Behavioral health
- Health insurers and plans
- Health IT
- Social media
- Direct patient care
- Matters of labor and retirement

Representatives of the general public may also serve on the APOE.

This notice also announces that in July 2015, there will be 11 expired terms of membership and in October 2015, there will be an additional 2 expired terms of membership. This notice is an invitation to interested organizations or individuals to submit their nominations for membership for all 13 vacancies on the APOE (no self-nominations will be accepted). The Administrator will appoint new members to the APOE from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership. We have an interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and disabled individuals are adequately represented on the APOE. Therefore, we encourage nominations of qualified candidates

who can represent these interests. Any interested organization or person may nominate one or more qualified persons.

Each nomination must include a letter stating that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a curricula vitae and a brief biographical summary of the nominee's experience.

While we are looking for experts in a number of fields, our most critical needs are for experts in aging, social media, tribal affairs, matters of labor and retirement, health economics research, behavioral health, health insurers and plans, direct patient care, racial/ethnic health/disparities, disability, quality, pharmacy, social work, rural health, CHIP, and state programs/Medicaid.

We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- Email address
- List of areas of expertise

Phone interviews of nominees may also be requested after review of the nominations.

In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts.

Members are invited to serve for 2-year terms, contingent upon the renewal of the APOE by appropriate action prior to its termination. A member may serve after the expiration of that member's term until a successor takes office. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term.

III. Copies of the Charter

The Secretary's Charter for the APOE is available on the CMS Web site at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–04174 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1636–N]

Medicare Program: Notice of Four Membership Appointments to the Advisory Panel on Hospital Outpatient Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces four new membership appointments to the Advisory Panel on Hospital Outpatient Payment (the Panel). The four new appointments to the Panel will each serve a four-year period. The new members have terms that began on January 14, 2015 and continue through January 31, 2019. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of the Ambulatory Payment Classification groups and their relative payment weights. The Panel also addresses and makes recommendations regarding supervision of hospital outpatient services. The advice provided by the Panel will be considered as we prepare the annual updates for the hospital outpatient prospective payment system.

DATES: March 30, 2015.

ADDRESSES: *Web site:* For additional information on the Panel meeting dates, agenda topics, copy of the charter, and updates to the Panel's activities, we refer readers to our Web site at the following address: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Official (DFO): Carol Schwartz, DFO, 7500 Security Boulevard, Mail Stop: C4–04–25, Woodlawn, MD 21244–1850. Phone: (410) 786–3985. Email: *APCPanel@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) (42 U.S.C. 1395l(t)(9)(A)) and is allowed by section 222 of the Public Health Service Act (PHS Act) (42 U.S.C. 217(a)) to consult with an expert outside advisory panel on the clinical integrity of the Ambulatory Payment Classification groups and relative payment weights, which are major elements of the Medicare Hospital Outpatient Prospective Payment System (OPPS), and the appropriate supervision level for hospital outpatient services. The Panel is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels. The Panel Charter provides that the Panel shall meet up to three times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the following calendar year.

The Panel shall consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations. New appointments are made in a manner that ensures a balanced membership under the FACA guidelines.

The Panel presently consists of the following members and a Chair.

- Edith Hambrick, M.D., J.D., Chair, CMS Medical Officer
- Karen Borman, M.D., F.A.C.S.
- Jim Nelson, M.B.A., C.P.A., F.H.F.M.A.
- Leah Osbahr, M.A., M.P.H.
- Jacqueline Phillips
- Johnathan Pregler, M.D.
- Traci Rabine
- Michael Rabovsky, M.D.
- Wendy Resnick, F.H.F.M.A.
- Marianna V. Spanaki-Varelas, M.D., Ph.D., M.B.A.
- Gale Walker
- Kris Zimmer

II. Provisions of the Notice

We published a notice in the **Federal Register** on September 23, 2014, entitled ''Medicare Program; Solicitation of Nominations to the Advisory Panel on Hospital Outpatient Payment (79 FR 56808). The notice solicited nominations for up to four new members to fill the vacancies on the

Panel beginning September 30, 2014. As a result of that notice, we are announcing four new members to the Panel. The Panel currently consists of 11 members. The four new Panel members appointments are for four-year terms beginning on January 14, 2015.

New Appointments to the Panel

The four new members of the Panel with terms beginning on January 14, 2015 and continuing through January 31, 2019 are as follows:

- Dawn L. Francis, M.D.
- Ruth Lande
- Michael K. Schroyer
- Norman B. Thomson III, M.D.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Dated: February 18, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–04175 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1465–N]

Medicare Program; Public Meetings in Calendar Year 2015 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2015 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda. (Please note that two of CMS' 2015 HCPCS public meetings have a late starting time.)

DATES: *Meeting Dates:* The following are the 2015 HCPCS public meeting dates:

1. Thursday, May 7, 2015, 12 p.m. (noon) to 5 p.m. eastern daylight time (e.d.t.) (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).
2. Friday, May 8, 2015, 9 a.m. to 5 p.m. eastern daylight time (e.d.t.) (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).
3. Thursday, May 21, 2015, 10 a.m.. to 5 p.m. eastern daylight time (e.d.t.) (Supplies and Other).
4. Friday, May 22, 2015, 9 a.m. to 5 p.m. eastern daylight time (e.d.t.) (Supplies and Other).
5. Wednesday, May 27, 2015, 9 a.m. to 5 p.m. e.d.t. Durable Medical Equipment (DME) and Accessories; and Orthotics and Prosthetics (O&P).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- April 22, 2015 for the May 7, 2015 and May 8, 2015 public meetings.
- May 7, 2015 for the May 21, 2015 and May 22, 2015 public meetings.
- May 13, 2015 for the May 27, 2015 public meeting.

Registration Deadline for Attendees That are Foreign Nationals: Attendees that are foreign nationals (as described in section IV. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 12 business days in advance of the date of the public meeting the individual plans to attend. Therefore, the registration deadlines for attendees that are foreign nationals are as follows:

- April 20, 2015 for the May 7, 2015 and May 8, 2015 public meetings.
- May 5, 2015 for the May 21, 2015 and May 22, 2015 public meetings.
- May 11, 2015 for the May 27, 2015 public meeting.

Registration Deadlines for all Other Attendees: All individuals who are not foreign nationals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- April 30, 2015 for the May 7, 2015 and May 8, 2015 public meetings.
- May 14, 2015 for the May 21, 2015 and May 22, 2015 public meeting dates.
- May 20, 2015 for the May 27, 2015 public meeting date.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- April 23, 2015 for the May 7, 2015 and May 8, 2015 public meetings.
- May 7, 2015 for the May 21, 2015 and May 22, 2015 public meetings.
- May 13, 2015 for the May 27, 2015 public meeting.

Deadline for Submission of Written Comments: Written comments and other documentation in response to a preliminary coding or payment determination that are received by no later than the date of the public meeting at which the code request is scheduled for discussion, will be considered in formulating a final coding decision.

ADDRESSES:

Meeting Location: The public meetings will be held in the main auditorium of the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be emailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Jennifer Carver, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *www.cms.hhs.gov/ medhcpcsgeninfo* or by contacting Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Carver at (410)786–6610 or *Jennifer.Carver@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME)

under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinator will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.
- Email address.
- Special needs information.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice.

Please note CMS' page limit for primary speaker presentation materials. The sum of all presentation materials and additional supporting documentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit only for relevant studies newly published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the submission deadline.

The materials may be emailed or delivered by regular mail to the HCPCS Public Meeting Coordinator as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. ''5-Minute Speakers''

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under ''Registration Deadlines for all Other Attendees'' in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

Please note that two of CMS' 2015 HCPCS public meetings have a late starting time as noted in the **DATES** section of this notice. Also, we were able this year to combine the Orthotics/Prosthetics and DME meeting into one public meeting date as noted in the **DATES** section of this notice.

The product category reported in the HCPCS code application by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and our preliminary decision will be posted on our HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo.* The document titled ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)'' will be made available on the HCPCS Web site at least 4 weeks before the first public meeting in 2015 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site also contains a document titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled ''HCPCS Decision Tree & Definitions'' which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2015.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled ''Meeting Registration.'' Materials and writings that will be used in support of an oral presentation should be submitted to the HCPCS Public Meeting Coordinator.

The materials may be emailed or delivered by regular mail to the HCPCS Public Meeting Coordinator as specified in the **ADDRESSES** section of this notice. The materials must be emailed or

postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate any demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the ''Meeting Registration'' section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make presentations for up to 5 minutes on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many ''5-minute speakers'' can be accommodated and/or whether the 5-minute time allocation would be reduced, to accommodate the number of speakers.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Every primary speaker and 5-minute speaker must declare at the beginning of their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held within the CMS Complex which is not open to the general public. Visitors to the complex are required to show a valid Government issued photo identification preferably a driver's license, at the time of entry. Participants will also be subject to a vehicle security inspection before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on federal property include but are not limited to, alcoholic beverages, illegal narcotics, explosives, firearms or other dangerous weapons (including pocket knives), dogs or other animals except service animals. Once cleared for entry to the complex participants will be directed to visitor parking by a security officer.

In order to ensure expedited entry into the building it is recommended that participants have their ID and a copy of their written meeting registration confirmation readily available and that they do not bring large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The invited guests may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Guest access to the complex is limited to the meeting area, the main entrance lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort they may be escorted off of the premises. Also be mindful that there will be an opportunity for everyone to speak and we request that everyone waits for the appropriate time to present their product or opinions. Disruptive behavior will not be tolerated and may result in removal from the meetings and escort from the complex. No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required at least 2 weeks prior to each public meeting in order to bring pieces of equipment or medical devices. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures. Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

Foreign National Visitors are defined as Non-U.S. Citizens, and non-lawful permanent residents, non-resident aliens or non-green-card holders.

Attendees that are foreign nationals must identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Building to Visit/Destination.
- Visit start date, start time, end date, end time.
- Visitor full name.
- Gender.
- Visitor Title.
- Visitor Organization/Employer.
- Citizenship.
- Birth Place (City, Country).
- Date of Birth.
- ID Type (Passport or State Department ID).
- Passport issued by Country.
- ID (passport) Number.
- ID (passport) issue date.
- ID (passport)expiration date.
- Visa Type.
- Visa Number.

- Purpose of Visit.

Dated: February 18, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–04178 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7035–N]

Health Insurance Marketplace, Medicare, Medicaid, and Children's Health Insurance Programs; Meeting of the Advisory Panel on Outreach and Education (APOE), March 19, 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, March 19, 2015, 8:30 a.m. to 4:00 p.m. eastern standard time (e.s.t.).

Deadline for Meeting Registration, Presentations and Comments: Thursday, March 5, 2015, 5:00 p.m., e.s.t.

Deadline for Requesting Special Accommodations: Thursday, March 5, 2015, 5:00 p.m., e.s.t.

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 738 G, Conference Room, Washington, DC 20201.

Presentations and Written Comments: Abigail Huffman, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Huffman via email at *Abigail.Huffman1@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site *https://www.regonline.com/apoemar2015meeting* or by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Abigail Huffman, (410) 786–0897. Additional information about the APOE is available on the Internet at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html.*

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel). Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed * * * by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing the Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on December 18, 2012 (78 FR 32661, May 31, 2013).

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111 148 and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplace called Affordable Insurance Exchange, (also called Health Insurance Marketplace, or ''Marketplace''). In order to effectively implement and administer these changes, we must provide information to consumers, providers and other stakeholders pursuant to education and outreach programs regarding how these programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace. The APOE allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

This FACA group also advises on issues pertaining to education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

Pursuant to the amended charter, the Panel advises and makes recommendations to the Secretary of HHS and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or health coverage available through the Health Insurance Marketplace.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders pursuant to education and outreach programs of issues regarding these and other health coverage programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance

Marketplace, Medicare, Medicaid, and CHIP education programs.

• Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.

• Building and leveraging existing community infrastructures for information, counseling, and assistance.

• Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Samantha Artiga, Principal Policy Analyst, Kaiser Family Foundation; Joseph Baker, President, Medicare Rights Center; Kellan Baker, Senior Fellow, Center for American Progress; Philip Bergquist, Manager, Health Center Operations, Children's Health Insurance Program Reauthorization Act (CHIPRA) Outreach & Enrollment Project and Director, Michigan Primary Care Association; Marjorie Cadogan, Executive Deputy Commissioner, Department of Social Services; Jonathan Dauphine, Senior Vice President, AARP; Barbara Ferrer, Chief Strategy Officer, W. K. Kellogg Foundation; Shelby Gonzales, Senior Health Outreach Associate, Center on Budget & Policy Priorities; Jan Henning, Benefits Counseling & Special Projects Coordinator, North Central Texas Council of Governments' Area Agency on Aging; Louise Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Ana Natale-Pereira, M.D., Associate Professor of Medicine, Rutgers-New Jersey Medical School; Roanne Osborne-Gaskin, M.D., Associate Medical Director, Neighborhood Health Plan of Rhode Island; Megan Padden, Vice President, Sentara Health Plans; Jeanne Ryer, Director, New Hampshire Citizens Health Initiative, University of New Hampshire; Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Winston Wong, Medical Director, Community Benefit Director, Kaiser Permanente and Darlene Yee-Melichar, Professor & Coordinator, San Francisco State University.

The agenda for the March 19, 2015 meeting will include the following:

• Welcome and listening session with CMS leadership
• Recap of the previous (December 15, 2014) meeting
• Affordable Care Act initiatives
• An opportunity for public comment
• Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

Dated: February 23, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–04173 Filed 2–26–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Understanding the Intersection Between TANF and Refugee Cash Assistance Services.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of a project to understand the intersection between Temporary Assistance for Needy Families (TANF) and Refugee Cash Assistance (RCA). The goal of this project is to help ACF better understand how the variety of systems that assist refugees collaborate to promote common goals of self-sufficiency and employment, and how refugees' experiences might differ depending on the structure of the state (or local) program arrangements. To achieve this goal, this study aims to document what states are doing to help refugees gain self-sufficiency; if and how states are integrating RCA, TANF, and associated services to better meet the needs of refugees; and what data is collected currently, or might be collected in the future, to better understand refugee resettlement services and suggest future areas for inquiry.

The proposed data collection activities described in this notice will collect data about state policies and practices; how TANF, RCA, and associated services are provided; the respective roles of the various agencies and organizations in serving participants; how the agencies and organizations integrate services internally and/or collaborate with other organizations; refugee populations served; approaches to addressing the particular barriers refugees face; promising practices and strategies for assisting refugees; gaps in services; local labor market conditions; and experiences of refugees accessing services through these programs.

The proposed information collection activities include:

(1) The *survey of state refugee coordinators* will be administered to state refugee coordinators in each state and the District of Columbia. The survey will collect information about state policies and practices.

(2) The four *site visit interview guides* will collect information about how TANF, RCA, and associated services are provided; the respective roles of the various agencies and organizations in serving participants; how the agencies and organizations integrate services internally and/or collaborate with other organizations; approaches to addressing the particular barriers refugees face; promising practices and strategies for assisting refugees; gaps in services; data maintained by programs serving refugees; and local labor market conditions.

(3) The *focus group guide* will collect information from program participants about the services they received how they were delivered, their experiences attempting to achieve self—sufficiency within a rapid timeframe, and the challenges they have faced.

Respondents: Individuals receiving RCA, TANF, and related services; State Refugee Coordinators; Managers and staff at local TANF offices; local resettlement agency staff; community-based organization staff providing services to refugees; staff operating alternative cash assistance programs for refugees such as Public/Private Partnerships(s) and Wilson/Fish programs (if different from the local resettlement agency); and staff from other programs providing employability and social adjustment and cultural orientation services to refugees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of State Refugee Coordinators	50	25	1	.5	13
Site Visit Interview Guide for Public Agency Temporary Assistance for Needy Families Managers and Staff	40	20	1	1.5	30
Site Visit Interview Guide for Public Agency Refugee Cash Assistance Managers and Staff	40	20	1	1.5	30
Site Visit Interview Guide for Voluntary Agency Staff	40	20	1	1.5	30
Site Visit Interview Guide for Other Community- Based Organization Staff	40	20	1	1.5	30
Focus Group Guide	72	36	1	1.5	54

Estimated Total Annual Burden Hours: 187.

In compliance with the requirements of Section 3506(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: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@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.

Karl Koerper,

Reports Clearance Officer.

[FR Doc. 2015–04101 Filed 2–26–15; 8:45 am]

BILLING CODE 4184–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Collection Requirements for the Low Income Home Energy Assistance Program (LIHEAP) ACF–535 Quarterly Allocation Estimates.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates, ACF Form-535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. Grantees are asked to complete and submit the form in the 4th quarter of each year for the upcoming federal fiscal year. The data collected on the form are grantees' estimates of obligations based on percent of funds they expect to make each quarter for the upcoming federal fiscal year for LIHEAP. This is the only method used to request anticipated distributions of the grantees LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantees anticipated needs. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: State Governments and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Quarterly Allocation Estimates, ACF–535	51	1	0.25	12.75
Estimated Total Annual Burden Hours				12.75

In compliance with the requirements of Section 3506(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. 2015–04138 Filed 2–26–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Annual Report on Households Assisted by the Low Income Home Energy Assistance (LIHEAP).

OMB No. 0970–0060.

Description: This report is an annual activity required by statute (42 U.S.C. 8629) and Federal regulations (45 CFR 96.92) for the Low Income Home Energy Assistance Program (LIHEAP). Submission of the completed report is one requirement for LIHEAP grantees applying for Federal LIHEAP block grant funds.

States, the District of Columbia, and the Commonwealth of Puerto Rico are required to report statistics for the previous Federal fiscal year on:

- Assisted and applicant households, by type of LIHEAP assistance;
- Assisted and applicant households, by type of LIHEAP assistance and poverty level;
- Assisted households receiving only utility payment assistance;
- Assisted households, regardless of the type(s) of LIHEAAP assistance;
- Assisted households, by type of LIHEAP assistance, having at least one vulnerable member broken out; by a person at least 60 years or younger, disabled person, or a child five years older of younger;
- Assisted households, by type of LIHEAP assistance, with least one member age 2 years or under;
- Assisted households, by type of LIHEAP assistance, with at least one member ages 3 years through 5 years; and
- Assisted households, regardless of the type(s) of LIHEAP assistance, having at least one member 60 years or older, disabled, or five years old or younger.

Insular areas (other than the Commonwealth of Puerto Rico) and Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, and/or weatherization benefits.

The information is being collected for the Department's annual LIHEAP Report to Congress. The data also provides information about the need for LIHEAP funds. Finally, the data are used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993. The data elements will allow the accuracy of measuring LIHEAP targeting performance and LIHEAP cost efficiency.

Respondents: State Governments, Tribal Governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Assisted Household Report-Long Form	52	1	25	1,300
Assisted Household Report-Short Form	155	1	1	155
Applicant Household Report	52	1	13	676
Estimated Total Annual Burden Hours				2,131

In compliance with the requirements of Section 3506(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. 2015–04141 Filed 2–26–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0279]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements

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 March 30, 2015.

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 0910–0435. 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, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *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.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR Part 203—(OMB Control No. 0910–0435)—(Extension)

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following existing reporting and recordkeeping requirements:

TABLE 1—REPORTING REQUIREMENTS

21 CFR section	Requirement
203.11	Applications for re-importation to provide emergency medical care.
203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
203.37(a)	Investigation of falsification of drug sample records.
203.37(b)	Investigation of a significant loss or known theft of drug samples.
203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.

TABLE 2—RECORDKEEPING REQUIREMENTS

21 CFR section	Requirement
203.23(a) and (b)	Credit memo for returned drugs.
203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
203.30(a)(2) and 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized by the appropriate State authority to prescribe the product.
203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
203.31(e)	Lists of manufacturers' and distributors' representatives.
203.34	Written policies and procedures describing administrative systems.
203.37(a)	Report of investigation of falsification of drug sample records.
203.37(b)	Report of investigation of significant loss or known theft of drug samples.
203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed. (The information collection in 21 CFR 203.38(b) is already approved under OMB control number 0910–0139).
203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
203.39(e)	Record of drug samples donated to a charitable institution.
203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
203.50(a)	Drug origin statement.
203.50(b)	Retention of drug origin statement for 3 years.
203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals: (1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) to ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample; (3) to limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner; (4) to require licensed or authorized practitioners to request prescription drug samples in writing; (5) to mandate storage, handling, and recordkeeping requirements for prescription drug samples; (6) to prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; and (7) to require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of November 14, 2014 (79 FR 68273), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual respondents	Average burden per response	Total hours
203.11 Re-importation	1	1	1	.50 (30 minutes)	1
203.30(a)(1) and (b) Drug sample requests	61,961	12	743,532	.06 (4 minutes)	44,612
203.30(a)(3), (a)(4), (c) Drug sample receipts	61,961	12	743,532	.06 (4 minutes)	44,612
203.31(a)(1) and (b) Drug sample requests	232,355	135	31,367,925	.04 (2 minutes)	1,254,717
203.31(a)(3), (a)(4), (c) Drug sample receipts	232,355	135	31,367,925	.03 (2 minutes)	941,038
203.37(a) Falsification of records	50	4	200	.25 (15 minutes)	50
203.37(b) Loss or theft of samples	50	40	2,000	.25 (15 minutes)	500
203.37(c) Convictions	1	1	1	1	1
203.37(d) Contact person	50	1	50	.08 (5 minutes)	4
203.39(g) Reconciliation report	1	1	1	1	1
Total					2,285,536

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
203.23(a) and (b) Returned drugs	31,676	5	158,380	.25 (15 minutes)	39,595
203.23(c) Returned drugs documentation	31,676	5	158,380	.08 (5 minutes)	12,670
203.30(a)(2) and 203.31(a)(2) Practitioner verification	2,208	100	220,800	.50 (30 minutes)	110,400
203.31(d)(1) and (d)(2) Inventory record and reconciliation report.	2,208	1	2,208	40	88,320
203.31(d)(4) Investigation of discrepancies and losses.	442	1	442	24	10,608
203.31(e) Representatives lists	2,208	1	2,208	1	2,208
203.34 Administrative systems	90	1	90	40	3,600
203.37(a) Falsification of drug sample records	50	4	200	6	1,200
203.37(b) Loss or theft of drug samples	50	40	2,000	6	12,000
203.39(d) Destroyed or returned drug samples	65	1	65	1	65
203.39(e) Donated drug samples	3,221	1	3,221	.50 (30 minutes)	1,611
203.39(f) Distribution of donated drug samples	3,221	1	3,221	8	25,768
203.39(g) Drug samples donated to charitable institutions.	3,221	1	3,221	8	25,768
203.50(a) Drug origin statement	125	100	12,500	.17 (10 minutes)	2,125
203.50(b) Drug origin statement retention	125	100	12,500	.50 (30 minutes)	6,250
203.50(d) Authorized distributors of record	691	1	691	2	1,382
Total					343,570

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–04131 Filed 2–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 15, 2015, from 8 a.m. to 4 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20903–0002, 301–796–9001, FAX: 301–847–8533, *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application New Drug Application 204958, cangrelor injection, submitted by The Medicines Company, for the proposed indication of reduction of thrombotic cardiovascular events including stent thrombosis (events related to blood clots in a stent, a device inserted to keep the artery open) in patients with coronary artery disease undergoing percutaneous coronary intervention (PCI). PCI refers to the opening of narrowed blood vessels supplying the heart muscle by a balloon inserted through an artery puncture with or without a stent.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 1, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 24, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 25, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 24, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–04128 Filed 2–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

The 2015 Office of Regulatory Science and Innovation Science Symposium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: The 2015 Office of Regulatory Science and Innovation (ORSI) Science Symposium.

The purpose of the public workshop is to increase scientific collaborations with government institutions, academia, industry and other stakeholders, working to improve science, training, and networking in accordance with the FDA mission of the advancement of regulatory science. This venue will also enhance knowledge and awareness of the FDA ORSI resources and provide guidance of its available services.

Date and Time: The public workshop will be held on Monday, April 27, 2015, from 8:15 a.m. to 5:30 p.m.

Location: The public workshop will be held at the FDA White Oak Campus located at 10903 New Hampshire Ave., Bldg. 31, Great Room, Silver Spring, MD 20903. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm* or contact us at *2015ORSIScienceSymposium@fda.hhs.gov.*]

Contact Person: Diane Rose, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 1, Rm. 4233, Silver Spring, MD 20993. 301–796–9600, *diane.rose@fda.hhs.gov.*

Registration: On-line registration is required (including name, title, affiliation, address, email, telephone and FAX numbers) by April 15, 2015. Those without Internet access should contact Diane Rose (see *Contact Person*) to register. There is no fee for the public workshop. Early registration is recommended as seating is limited to the first 300 registrants. Registration on the day of the public workshop will be provided on a space available basis from 7:45 a.m. to 8:15 a.m. provided the 300-person registration limit has not been met. Please register at: *https://www.eventbrite.com/e/2015-orsi-science-symposium-tickets-14591440391?utm_campaign=new_event_email&utm_medium=email&utm_source=eb_email&utm_term=viewmyevent_button* or email us at *2015ORSIScienceSymposium@fda.hhs.gov* if you have additional questions. A lite breakfast and lunch are available for pre-purchase.

If you need special accommodations due to a disability, please contact Diane Rose (see *Contact Person*) at least 7 days in advance.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online or call us at 301–796–9600 by April 15, 2015. Early registration is recommended because Webcast lines are limited. Organizations are required to register all participants, but to view the Webcast using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after April 23, 2015. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://inside.fda.gov:9003/ora/southwestregion/dallas/ucm234468.htm.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Dated: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–04123 Filed 2–26–15; 8:45 am]

BILLING CODE 4164–01–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: Pathways, Biomarkers in Addiction and Schizophrenia.

Date: March 12, 2015.

Time: 2:00 p.m. to 5:30 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: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@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: Synaptic Development and Function.

Date: March 13, 2015.

Time: 12:00 p.m. to 2:30 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: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@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: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: March 19, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: March 24, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@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: February 23, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04057 Filed 2–26–15; 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; Cardiovascular Development Consortium.

Date: March 19, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pulmonary Trials Cooperative.

Date: March 20, 2015.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@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: February 23, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04056 Filed 2–26–15; 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; Bioreactor Technology.

Date: March 17, 2015.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Bioreactor Technology.

Date: March 17, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.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: February 23, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04053 Filed 2–26–15; 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 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: March 20, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301–435–0303, *hurstj@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: February 23, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04055 Filed 2–25–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; IMAT Biospecimen Science Part 2.

Date: March 17, 2015.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Donald L. Coppock, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892, 240–276–6382, *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus SEP–5.

Date: March 26–27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Pediatric Preclinical Testing Consortium.

Date: March 27, 2015.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W104, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Chief, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W104, Bethesda, MD 20892–9750, 240–276–6342, *choe@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cell-Free Nucleic Acid-Based Assays.

Date: April 13–14, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Thomas M. Vollberg, Ph.D., Chief, Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Rockville, MD 20850, 240–276–6341, *vollbert@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 23, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–04054 Filed 2–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: 30-Day Notice and request for comments; extension without change of a currently approved collection, 1600–0005.

SUMMARY: The Department of Homeland Security, Office of the Chief Procurement Officer, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on Wednesday, December 10, 2014 at 79 FR 73329 for a 60-day public comment period. No comments were received by DHS. The 60 Day in error identified the OMB Control No. as 1601–0005. The correct OMB Control No. for this collection is 1600–0005. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until March 30, 2015. 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 and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) and the Office of the Chief Procurement Officer (OCPO) collect information when inviting firms to submit bids, proposals, and offers for public contracts for supplies and services. The information collection is necessary for compliance with the Homeland Security Acquisition Regulation (HSAR), 48 CFR Chapter 30, and the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs 15 U.S.C 628.

For solicitations to contract made through a variety of means, whether conducted orally or in writing, contracting officers normally request information from prospective offerors such as pricing information, delivery schedule compliance, and whether the offeror has the resources (both human and financial) to accomplish requirements. Examples of the kinds of information collected can be found in the HSAR in Part 9, Part 19 and Part 47, along with associated solicitation provisions and contract clauses.

Examples where collections of information occur in soliciting for supplies/services include the issuance of draft Requests for Proposal (RFP), Requests for Information (RFI), and Broad Agency Announcements (BAA). The Government generally issues an RFP using the uniform contract format with the intent of awarding a contract to one or more prospective offerors. The RFP can require those interested in making an offer to provide information in the following areas: Schedule (FAR 15.204–2); contract clauses (FAR 15.204–3); list of documents, exhibits and other attachments (FAR 15.204–4) or representations and instructions (15.204–5). Examples of collections under the HSAR include:

3052.209–70 Prohibition on Contracts with Corporate Expatriates

3052.209–72 Organizational Conflict of Interest

3052.209–74 Limitations on Contractors Acting as Lead System Integrators

3052.209–76 Prohibition on Federal Protective Service Guard Services Contracts with Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony

3052.219–72 Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program

3052.247–70 F.o.b. Origin Information

The DHS Science and Technology (S&T) Directorate issues BAAs soliciting white papers and proposals from the public. DHS S&T evaluates white papers and proposals received from the public in response to a DHS S&T BAA using the evaluation criteria specified in the BAA through a peer or scientific review process in accordance with FAR 35.016(d). White paper evaluation determines those research ideas that merit submission of a full proposal and proposal evaluation determines those proposals that merit selection for contract award. Unclassified white papers and proposals are typically collected via the DHS S&T BAA secure Web site, while classified white papers and proposals must be submitted via proper classified courier or proper classified mailing procedures as described in the National Industrial Security Program Operating Manual (NSPOM).

Federal agencies with an annual extramural research and development (R&D) budget exceeding $100 million are required to participate in the SBIR Program. Similarly, Federal agencies with an extramural R&D budget exceeding $1 billion are required to participate in the STTR Program.

Federal agencies who participate in the SBIR and STTR programs must collect information from the public to:

(1) Meet their reporting requirements under 15 U.S.C. 638(b)(7), (g)(8), (i), (j)(1)(E), (j)(3)(C), (l), (o)(10), and (v);

(2) Meet the requirement to maintain both a publicly accessible database of SBIR/STTR award information and a government database of SBIR/STTR award information for SBIR and STTR program evaluation under 15 U.S.C. 638g(10), (k), (o)(9), and (o)(15); and

(3) Meet requirements for public outreach under 15 U.S.C. 638(j)(2)(F), (o)(14), and (s).

The prior information collect request for OMB No. 1600–0005 was approved through February 28, 2015 by OMB in a Notice of OMB Action.

The information being collected is used by the Government's contracting officers and other acquisition personnel, including technical and legal staffs to determine adequacy of technical and management approach, experience, responsibility, responsiveness, expertise of the firms submitting offers, identification of members of the public (*i.e.,* small businesses) who qualify for, and are interested in participating in, the DHS SBIR Program, facilitate SBIR outreach to the public, and provide the DHS SBIR Program Office necessary and sufficient information to determine that proposals submitted by the public to the DHS SBIR Program meet criteria for consideration under the program.

Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. Potentially, contracts would be awarded to firms without sufficient experience and expertise, thereby placing the Department's operations in jeopardy. Defective and inadequate contractor deliverables would adversely affect DHS's fulfillment of the mission requirements in all areas. Additionally, the Department would be unsuccessful in identifying small businesses with research and development (R&D) capabilities, which would adversely affect the mission requirements in this area.

Many sources of the requested information use automated word processing systems, databases, and web portal to facilitate preparation of material to be submitted and to post and collect information. It is common place within many of DHS's Components for submissions to be electronic as a result of implementation of e-Government initiatives.

Information technology (*i.e.,* electronic web portal) is used in the collection of information to reduce the data gathering and records management burden. DHS uses a secure Web site which the public can propose SBIR research topics and submit proposals in response to SBIR solicitations. In addition, DHS uses a web portal to review RFIs and register to submit a white paper or proposal in response to a specific BAA. The data collection forms standardize the collection of information that is necessary and sufficient for the DHS SBIR Program Office to meet its requirements under 15 U.S.C. 638.

There has been no change in the information being collected. The reduction in the total annual burden is based on agency estimates. First, the estimate is based on the number of expected contract awards requiring the submission of information has been declining in the last three years.

The Office of Management and Budget is particularly interested in comments which:

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.

Analysis:

AGENCY: Office of the Chief Procurement Officer, DHS.

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Number: 1600–0005.

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 13,612.

Estimated Time per Respondent: 7 hours.

Total Burden Hours: 285,852.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2015–04126 Filed 2–26–15; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–1178]

National Preparedness for Response Exercise Program (PREP) Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comment.

SUMMARY: The U.S. Coast Guard (USCG) announces that the updated draft PREP Guidelines are available for public comment. The USCG is publishing this notice on behalf of the National Scheduling Coordination Committee (NSCC), which is comprised of representatives from the USCG; Environmental Protection Agency (EPA); Pipeline and Hazardous Materials Safety Administration (PHMSA) under the Department of Transportation (DOT); and the Bureau of Safety and Environmental Enforcement (BSEE) under the Department of the Interior (DOI).

DATES: Comments must reach USCG by April 28, 2015.

ADDRESSES: You may submit comments and additional materials, identified by USCG docket number USCG–2011–1178, using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT:

For USCG: Mr. Jonathan Smith, Office of Marine Environmental Response Policy, 202–372–2675.

For BSEE: Mr. John Caplis, Oil Spill Preparedness Division, 703–787–1364.

For EPA: Mr. Troy Swackhammer, Office of Emergency Management, Regulation and Implementation Division, 202–564–1966.

For PHMSA: Mr. Eddie Murphy, Office of Pipeline Safety, 202–366–4595.

For questions on viewing or submitting material to the docket: Ms. Cheryl Collins, Program Manager, DOT Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in the revision of the PREP Guidelines by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number (USCG–2011–1178), indicate the specific section of the PREP Guidelines to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type ''USCG–2011–1178'' in the search box, and click ''Search.'' Then click ''Comment Now!'' on the appropriate line. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the DOT Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov,* type ''USCG–2011–1178'' and click ''Search.'' Then click the ''Open Docket Folder.'' Additional relevant comments are available in docket BSEE–2014–0003 and may be viewed online using the same procedure as for docket USCG–2011–1178. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the DOT to use the Docket Management Facility.

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

Public meeting: We do not currently plan to hold a public meeting, but you may request one using any of the methods listed under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid the revision of the PREP Guidelines, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Acronyms

ACP Area Contingency Plan
AMPD Average Most Probable Discharge
APC Alternative Planning Criteria
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
DOI Department of the Interior
DOT Department of Transportation
EPA Environmental Protection Agency
FOSC Federal On-Scene Coordinator
FPSO Floating Production, Storage, and Offloading
FR Federal Register
GIUE Government-Initiated Unannounced Exercise
GRPs Geographic Response Plans
GRS Geographic Response Strategies
HSEEP Homeland Security Exercise and Evaluation Program
IMT Incident Management Team
MFF Marine Firefighting
MMPD Maximum Most Probable Discharge
MOA Memorandum of Agreement
MODU Mobile Offshore Drilling Unit
MOU Memorandum of Understanding
NRT National Response Team
NSCC National Scheduling Coordination Committee
NTV Nontank Vessels
OPA 90 Oil Pollution Act of 1990
OSPD Oil Spill Preparedness Division
OSRO Oil Spill Removal Organization
OSRP Oil Spill Response Plan
PHMSA Pipeline and Hazardous Materials Safety Administration
PREP Preparedness for Response Exercise Program
QI Qualified Individual
SMFF Salvage and Marine Firefighting
SMT Spill Management Team
SONS Spill of National Significance
TTX Tabletop Exercise
USCG U.S. Coast Guard
VRP Vessel Response Plan
WCD Worst Case Discharge

III. Background

On February 22, 2012, the USCG, on behalf of the NSCC, invited comments and suggestions for updating the PREP Guidelines (77 FR 10542). The NSCC received public comments in docket number USCG–2011–1178, and those comments can be viewed online as described in the ''Public Participation'' section earlier in this document. After considering those comments, the NSCC issued a draft update to the PREP Guidelines. The NSCC also issued a notice (79 FR 16363, March 24, 2014) that announced the availability of the draft update to the PREP Guidelines, invited comment on the draft, and provided responses to the comments received in docket USCG–2011–1178. That second notice (79 FR 16363) was published as a BSEE-issued document in docket BSEE–2014–0003. The NSCC has considered the comments received in docket BSEE–2014–0003, and today announces the availability of an updated draft, invites public comment on the updated draft, and responds to comments received in the BSEE docket in response to the March 24, 2014, notice. Although this document responds to comments received in the BSEE docket, all further comments should be directed to the docket USCG–2011–1178.[1] The NSCC does not plan to use other dockets for this revision of the PREP Guidelines.

IV. Summary of Comments and Changes

When BSEE, on behalf of the NSCC, requested public review of the first updated draft PREP Guidelines in its March 2014 notice, BSEE received 83 comments from government agencies, regulated communities, private industry, and non-governmental organizations. All of the comments received are posted on *http://www.regulations.gov,* under docket number BSEE–2014–0003. This document summarizes and responds to those comments that were within the scope of the proposed update.

The NSCC has incorporated numerous changes to the draft PREP Guidelines document as a result of these public comments, and has also updated the document to reflect other new planning requirements such as the recent regulatory requirements relating to

[1] On July 16, 2014, BSEE published a notice indicating that an updated draft would be made available for public comment in the original USCG docket, USCG–2011–1178 (79 FR 41592).

nontank vessels (NTVs). In the following sections, we summarize the comments that the NSCC received and the changes it has made to the revised update of the PREP Guidelines.

A. Summary of Changes

Definitions and Terminology: The NSCC has changed certain exercise-related terms in order to harmonize PREP with other national-level exercise programs. In particular, the term ''Spill Management Team (SMT)'' has been replaced by the term ''Incident Management Team (IMT).'' The term ''Tabletop Exercise (TTX)'' has been removed from the PREP terminology and will now simply be referred to as an exercise. For example, an SMT TTX will now be called an IMT exercise.

Salvage and Marine Firefighting (SMFF) Additions: The draft PREP Guidelines now include guidance for including SMFF providers and equipment into a plan holder's exercise program, in response to regulatory requirements at 33 Code of Federal Regulations (CFR) 155.4052. These updates appear throughout the Guidelines in applicable sections.

NTV Additions: The PREP Guidelines now include guidance for exercises for NTV response plans, in response to regulatory requirements at 33 CFR 155.5060.

Use of Alternative Worst Case Discharges (WCD) Scenarios during IMT Exercises: The draft Guidelines have been revised to allow for alternative WCD scenarios to be exercised. Some Facilities and Complex Facilities have more than one possible WCD, for example a storage tank and a pipeline section. Such plan holders are encouraged to consider adverse environmental impacts and to exercise more than just their largest volume WCD scenario.

Exercise Frequency: The draft Guidelines have been updated to ensure consistency among NSCC agencies regarding the frequency of equipment deployment exercises. In particular, the frequency of deployment exercises for equipment that is owned by the facility, operated by Oil Spill Removal Organizations (OSROs), and listed in EPA-regulated plans has been changed from annually to semi-annually. This change will ensure the readiness of equipment that is not regularly used in actual spill response operations.

Oil Spill Surveillance and Tracking Systems: USCG and BSEE regulations require plan holders to ensure available resources for oil spill surveillance and tracking. The PREP Guidelines establish a list of the types of equipment to be exercised during internal deployment exercises. This latest version of the Guidelines specifically identifies oil spill surveillance and tracking systems as a type of response equipment to be exercised during internal equipment deployment exercises in order to test the plan holders abilities to effectively support and direct other response activities and equipment, such as the use of dispersants, *in-situ* burning, mechanical recovery, shoreline protection, or wildlife recovery.

Area-level Exercise Cycle: The exercise frequency for Area-level exercises has been changed from three to four years. This change applies only to the Area-level exercise cycle and does not change an industry plan holder's exercise cycle as recommended in the draft PREP Guidelines, nor does it change the frequency of any industry plan holder exercises required by any oil spill planning regulations.

B. Summary of Comments and Responses

General Comments

Additional Time to Review the Guidelines: One commenter asked for an extended review period as they were not aware of the previous posting of the Guidelines in the **Federal Register**.

Response: In addition to the comment in the docket, the NSCC has received numerous comments through other channels requesting additional time to review the Guidelines. This version of the Guidelines is being released today for public comment by the NSCC for a period of sixty days to accommodate the numerous requests.

Aligning PREP Terminology and Processes with Other National Exercise Programs: Three commenters recommended aligning the PREP Guidelines with various elements of the Homeland Security Exercise and Evaluation Program (HSEEP).

Response: The NSCC has decided to adopt certain terminology from HSEEP in order to better align the two programs, especially where HSEEP terms are more reflective of the lexicon used today within the National Incident Management System. As a result, the term ''SMT'' has been replaced by the term ''IMT.'' The term ''TTX'' has also been replaced with the term ''exercise.'' Recommendations for replacing other terms, such as changing deployment ''exercises'' to ''drills,'' were not adopted because the NSCC did not want to introduce confusion by changing established, recognized terms. The NSCC also did not believe it was within the scope of the existing PREP mandate under OPA90 to completely adopt the HSEEP exercise design and evaluation processes. While the NSCC would encourage plan holders to consider adopting various HSEEP best practices, HSEEP procedures are currently not required by any of the Oil Pollution Act of 1990 (OPA90) implementing regulations established by the NSCC member agencies.

Unified Command during PREP Exercises: One commenter stated that the definition of Unified Command in the PREP Guidelines was too broad and should be more constrained to agencies with primary jurisdiction in the incident.

Response: The National Response Team (NRT) states in its Technical Assistance Document on Unified Command that for entities to be considered for inclusion within a Unified Command, they should have authority or functional responsibility for an area of responsibility that may be affected by an incident, as well as authority to command, coordinate, or manage a major aspect of the response. The NSCC has clarified the language within the definition to more closely align with the NRT guidance.

Use of the Acronym ''OSRO'' in PREP Terminology: One commenter stated that the acronym ''OSRO'' was being used for two different terms and definitions, *i.e.,* ''Oil Spill Removal Organization'' and ''Oil Spill Response Organization,'' which can create confusion.

Response: The NSCC has removed the definition for Oil Spill Response Organization from the Guidelines. The acronym ''OSRO'' now only refers to an Oil Spill Removal Organization as defined in this latest version of the draft PREP Guidelines.

Use of Electronic Messaging for Qualified Individual (QI) Notification Exercises (Section 2): One commenter requested that electronic messaging be allowed as a primary means for notifying QIs of a spill.

Response: The NSCC has reviewed the language within the draft PREP Guidelines and has determined that the language will remain the same. The NSCC determined that voice should remain the primary means of communication because it quickly confirms that the notification has been received, and allows for immediate questions that may save time in emergencies; however, electronic messaging is an acceptable alternative if voice is unavailable. Confirmation of notification must be received with any communication method.

Equipment Deployment Exercises and Lessons Learned Regarding Equipment Performance: One commenter noted a concern regarding the conditions under

which equipment deployment exercises are conducted, as well as the lack of mechanisms in place to capture field deployment information. This commenter recommended that the USCG and BSEE develop a standard system to evaluate the performance of spill response equipment under a range of environmental conditions and capture that information in a lessons learned database.

Response: The primary purpose of the PREP Guidelines is to provide guidance to industry on oil spill response exercises as required by OPA 90. The collection of information concerning the performance of spill response equipment in a database is outside the scope of these Guidelines.

Dispersant-Related Objectives during PREP Exercises: One commenter submitted an extensive set of recommendations regarding the need to incorporate more specific dispersant-related objectives in unannounced, deployment, IMT, and Area-level exercises.

Response: Both BSEE and USCG regulations have requirements concerning dispersant capabilities for many of their plan holders. Most coastal Regional and Area Contingency Plans (ACPs) now have preauthorization agreements in place for the use of dispersants and *in-situ* burning. In order to ensure both government and industry preparedness to use all available response countermeasures, the NSCC incorporated additional recommended guidance regarding dispersants and *in-situ* burning into the various exercise objectives. In particular, the NSCC included in the draft Guidelines an exercise objective for industry IMT exercises to prepare and submit usage plans for Federal On-Scene Coordinator (FOSC) review and approval for each chemical, biological, or *in-situ* burning countermeasure that is cited as a response strategy within an Oil Spill Response Plan (OSRP) during the course of their exercise cycle. The NSCC has similarly incorporated a specific objective for Area-level IMT exercises to prepare usage plans and recommendations for FOSC review and approval for any chemical or biological countermeasures or *in-situ* burning that are identified as response strategies in the ACP. Finally, the NSCC has provided additional guidance necessary for properly conducting internal equipment deployment exercises of dispersant and *in-situ* burning equipment and procedures.

Tidal Seal Boom Deployment: One commenter pointed out that under the previous Guidelines, only fifty feet of tidal seal boom need be deployed and that the revised version no longer included this information.

Response: The statement ''Only 50 feet of this type of boom need be deployed'' has been included in this latest version of the draft Guidelines.

Government-Initiated Unannounced Exercises (GIUEs): One commenter drew attention to the fact that guidelines for GIUEs are agency-specific and that the NSCC gave a timeframe for when it will conduct unannounced exercises in the area.

Response: The timeframe has been removed to harmonize the Guidelines.

Area-Level Exercise Goals: One commenter noted that Area-level exercise goals appear aggressive and that some Area-level exercises approach a Spill of National Significance (SONS) in scope and complexity, and recommended that the Guidelines limit exercises to a single day.

Response: NSCC members have determined that the language in the PREP Guidelines will remain the same. The NSCC does not want to limit the flexibility of Area Committees in designing exercises that meet their needs.

Testing Geographic Response Plans (GRPs) during PREP Exercises: One commenter noted that GRPs and Geographic Response Strategies (GRSs), which have been incorporated into many ACPs, should be incorporated into PREP, tested during deployment exercises, and the resultant data collected to be used to improve the GRPs/GRSs.

Response: The NSCC agrees that the targeted testing of certain GRPs and GRSs is a desirable preparedness activity that could improve the quality of the strategies contained within an ACP. The PREP Guidelines cover the testing of response strategies at Section 2, Guiding Principles, Subpart J, Area Exercises. The NSCC encourages Area Committees and FOSCs to consider exercising and evaluating GRPs as part of the Area Exercise Cycle, subject to their discretion and available funding.

Removal of PREP Documentation and Certification Forms from Appendix: One commenter raised concern about the removal of the forms from the PREP Guidelines for documentation for self-certification.

Response: The forms were removed from the PREP Guidelines to avoid the appearance that any particular form of documentation was required. While the forms are no longer in the Guidelines, industry may choose to use those or any other form or template, at their own discretion, for their internal documentation.

Multi-Agency Regulated Facility and Vessel Comments

Complex Facilities Regulated by More Than One Federal Agency: One commenter raised concern that complex facilities are addressed by WCD amounts and not in average most probable discharge (AMPD) or maximum most probable discharge (MMPD).

Response: The NSCC has updated the definitions for AMPD and MMPD with language about complex facilities similar to WCD for complex facilities regulated by more than one federal agency.

Agency Jurisdiction for PREP with Respect to Mobile Offshore Drilling Units (MODU) and Floating Production, Storage, and Offloading (FPSO) Vessels: One commenter asked for clarification of agency jurisdiction for PREP with respect to MODUs and FPSO vessels.

Response: MODUs and FPSO vessels may be properly characterized as both offshore facilities and vessels. Multi-function offshore units such as FPSOs and MODUs are regulated by both USCG and BSEE with respect to these different functions, and each agency will have its own separate jurisdiction and regulatory oversight of these functional areas. In addition, the USCG and BSEE have entered into a general Memorandum of Understanding (MOU), along with specific Memorandums of Agreement (MOAs), with respect to jurisdictional oversight. As such, it is up to each agency to provide guidance regarding the applicability of its regulations and PREP Guidelines. When MODUs and FPSO vessels are conducting operations as an offshore facility, the offshore facility PREP Guidelines overseen by BSEE apply. When MODUs and FPSO are operating as vessels, vessel PREP Guidelines overseen by USCG apply. BSEE and the USCG will work closely together to ensure a coordinated approach to PREP guidance and oversight with respect to these dual purpose entities whenever possible.

USCG-Regulated Vessels and Marine Transportation-Related Facilities Comments

Economic Analysis for SMFF Requirements: Multiple commenters requested that an economic analysis be conducted for the PREP Guidelines regarding the SMFF exercise requirements.

Response: The PREP Guidelines are voluntary guidelines that only provide optional, recommended methods for complying with the existing regulatory requirements. As such, economic analyses are not required to be prepared

for the PREP Guidelines. The regulations themselves were subjected to an economic analysis prior to their promulgation.[2]

To address the concern about the economic burden of new exercise requirements on vessel owners and operators, several modifications have been made to the PREP Guidelines as follows:

1. To comply with PREP Guidelines, vessels must conduct a Remote Assessment and Consultation Exercise for Vessels annually. PREP exercise requirements for Remote Assessment and Consultation Exercises have been more completely defined to improve the effectiveness of response planning for this service.

2. PREP exercises for SMFF emergency lightering and MFF services do not apply to NTVs with an oil capacity under 250 barrels.

3. Plan holders may claim credit for combined PREP exercises, incidents, and in the case of SMFF, they may claim PREP exercise credit for non-emergency equipment deployments during large-scale operations.

NTV and SMFF Definitions: Multiple comments were received asking for clarification of the definitions related to new NTV and SMFF regulations. In addition, one commenter noted that the PREP Guidelines emphasize spill cleanup; however, the principle purpose of SMFF is spill prevention and the commenter requested that spill prevention language be included in the PREP Guidelines.

Response: The following definitions have been reviewed and/or updated within the PREP Guidelines: Marine Firefighting (MFF) Organization, Plan Holder, Primary Resource Provider, Resource Provider, Salvage Organization, SMFF Provider, and SMFF Response Services. The USCG has replaced the words ''spill response'' with ''response, and ''spill management'' with ''incident management'' throughout the document to reflect that certain exercises may not include a spill, but rather the prevention of a potential spill.

Remote Assessment and Consultation Exercises for Vessels—Value: Multiple commenters questioned the value of the remote assessment and consultation exercise. Others suggested that the exercise be applied to Vessel Response Plans (VRPs) instead of vessels.

Response: These exercises ensure that professional remote assessment and consultation services can be effectively activated within one hour of the time anyone in the response organization receives notification of the spill or potential spill. The early initiation of a situational assessment by a competent SMFF professional may prevent potential spills from turning into spills, and prevent actual spills from escalating in size.

Because of the short timeframe involved and the vessel-specific response required, this exercise must be conducted by each vessel covered under the response plan.

Remote Assessment and Consultation Exercises for Vessels—Participants: Several commenters expressed concern that the PREP Guidelines' remote assessment and consultation exercise description of participants did not reflect the process outlined in the VRP which involves initial notification via the QI. In contrast, one commenter said that since SMFF contractual agreements are directly between the owner/operator and SMFF provider, the remote assessment and consultation exercise participants should be the SMFF provider and vessel owner/operator, excluding the QI.

Response: In response to these comments, the PREP Guidelines' new remote assessment and consultation exercise description reflects that participants should be consistent with the VRP for notification/activation and provision of remote assessment and consultation services.

Emergency Procedures Exercises for Vessels—Participating Elements and Applicability to SMFF Providers: One commenter asked for clarification about whether or not the emergency procedures exercise includes SMFF resource providers.

Response: The PREP Guidelines' description of On-Board Emergency Procedures Exercise for vessels clearly indicates that the exercise applies to manned tank vessels and NTVs carrying oil as cargo or fuel, and that the participating elements are vessel personnel. Both the PREP On-Board Emergency Procedures Exercises and PREP's Remote Assessment and Consultation Exercises are based on scenarios found in the shipboard response chapter of the VRP. These exercises may be conducted separately. PREP allows exercises to be combined, and a vessel owner/operator may choose to combine these two exercises to multiply the benefits obtained in terms of reinforcing the procedures to achieve quicker and more effective initial response to a spill or the threat of a spill.

Incident Management Exercises for Vessels—Participating Elements: One commenter suggested that the plan holder be added to participating elements of the IMT exercise for vessels because plan holders should be aware of the IMT capabilities and their own requirements during an incident from one of their vessels.

Response: The USCG agrees that the regulated party should be involved in the exercise, as reflected in the VRP. No change was necessary to reflect this.

Shore-Based Salvage and Shore-Based MFF Exercises for Vessels—Separate or Combined Exercises: Multiple commenters requested that the shore-based salvage and shore-based MFF exercises not be held separately from IMT exercises. Some suggested that the salvage and MFF exercises be combined with each other since the services for each will, in most cases, be provided by the same primary resource provider.

Response: To comply with the PREP Guidelines, salvage and MFF components of the VRP must be exercised annually, either separately or combined. IMT, salvage, and MFF exercises may also be combined.

It is a basic PREP tenet that plan holders may claim credit for exercises when conducted in conjunction with other exercises, and a proper record is generated. Credit should be claimed for an actual response when the objectives of the exercise(s) are met, the response is evaluated, and a proper record is generated. Third party salvage and MFF teams may provide documentation of their incidents and exercises to their clients, and their clients may claim credit for the portions of the exercise that are applicable to their VRPs.

Shore-Based Salvage and Shore-Based MFF Exercises for Vessels—Participating Elements: Several commenters requested that the vessel owner/operator be included as a participating element for the shore-based salvage and shore-based MFF exercises.

Response: The management team, as established in a plan holder's VRP, must participate in PREP annual shore-based exercises for salvage and for MFF. The vessel owner/operator is not necessarily part of the management team established in the VRP, but the vessel owner/operator (or representative) may participate in the exercise.

SMFF Equipment Deployment Exercises for Vessels—Participating Elements: Multiple commenters requested removal of the requirement that all SMFF equipment-operating personnel participate in an annual equipment deployment exercises

[2] Economic analysis information is found in the preambles to the final rule for salvage and marine firefighting (73 FR 80618, December 31, 2008) and the final rule for nontank vessel response plans (78 FR 60099, September 30, 2013).

because their routine work involves the deployment of this equipment.

Response: SMFF providers may claim PREP exercise credit for operational equipment deployments if exercise objectives are met and a proper record is documented. This would include claiming credit for participation of all SMFF personnel that were involved in the operational deployment of the equipment.

SMFF Equipment Deployment Exercises for Vessels—Exercise Documentation: One commenter recommended that all vessel plan holders identifying a contracted SMFF provider in their response plans must be able to document completion of SMFF equipment deployment requirements.

Response: It is the vessel plan holder's responsibility to ensure that the contracted SMFF provider completes PREP equipment deployment exercise requirements. All vessel plan holders identifying a contracted SMFF provider in their response plans may claim PREP credit for their SMFF provider's equipment deployment exercises following receipt of exercise documentation from the provider.

Equipment Deployment Exercises for Vessels—Regional Exercises: Some commenters recommended a regional approach to SMFF equipment deployment exercises involving exercises in the Atlantic, Gulf, and Pacific regions, conducted on a rotational basis once every three years.

Response: When an SMFF provider proposes to conduct regional large-scale equipment deployment exercises to meet equipment deployment exercise requirements for their clients, the provider should request Alternative Planning Criteria (APC) approval from the USCG for the proposed exercises as described in 33 CFR 155.1055 and 155.5067.

All vessel plan holders identifying a contracted SMFF provider in their response plans may claim PREP credit for their SMFF provider's equipment deployment exercises following receipt of exercise documentation from the provider.

GIUEs—SMFF Services: Multiple commenters recommended that GIUEs not apply to SMFF services.

Response: SMFF GIUE requirements have been removed from this revision of the PREP Guidelines, and will not apply to SMFF services.

BSEE-Regulated Offshore Facilities Comments

Notification Exercises for BSEE-Regulated Facilities: Three commenters raised concerns over the Notification Exercises for offshore facilities. One comment indicated that requiring notifications within two weeks of beginning operations was too vague. Another comment raised a concern that this two-week requirement may conflict with provisions established by plan holders in their OSRP. A third commenter suggested that the elements of information listed as objectives that must be communicated during Notification Exercises greatly exceeds what is currently contained within OSRPs or is required in the regulations.

Response: Due to the criticality of the spill notification process to an effective response, BSEE strongly recommends testing the plan holder's notification processes very early in their operational lifecycle, as well as preparing to gather and convey as much pertinent information as possible, in the early phase of an incident. BSEE has amended the language to clarify that for 24-hour manned production facilities, a Notification Exercise should be conducted within two weeks of beginning production operations. BSEE did not amend the language that pertains to mobile drilling units in this section, as BSEE believes that OSRPs should align, to the maximum extent possible, with the guidance recommended in the PREP Guidelines, which provide important additional detail concerning the implementation of the regulations. BSEE acknowledges that the elements of information now requested for a Notification Exercise is more detailed than the information that is currently required by the regulations. As a result, BSEE has amended the language in this section to indicate that a plan holder should, rather than must, communicate as many of the elements of information as possible during the Notification Exercise.

Deployment Exercises for Source Control, Subsea Containment, and Supporting Equipment: Two commenters raised concerns about exercises involving source control and subsea containment equipment. One commenter stated that there are high risks and time burdens associated with unannounced exercises of this equipment, and questioned their utility to demonstrate real readiness. One commenter stated that the costs associated with conducting annual or biennial deployment exercises for this equipment is too burdensome, and that such exercises should only be conducted when there has been a material change to equipment design, provider, or means of deployment, or at a minimum frequency of five years.

Response: When source control, subsea containment, and supporting equipment are listed in an OSRP as a means for regaining control of a well and securing a threatened or actual discharge of oil, the PREP Guidelines allow for Regional BSEE Oil Spill Preparedness Division (OSPD) representatives to direct an OSRP holder to conduct a deployment exercise of this equipment. As the scope and cost of such deployment exercises can be quite large, BSEE does not intend to require plan holders or providers of source control, subsea containment, and supporting equipment to conduct deployment exercises at the same semi-annual or annual frequency as required for other spill response equipment. BSEE also does not intend to routinely conduct GIUEs that include the deployment of source control, subsea containment, and supporting equipment as part of the scope of a GIUE; however, BSEE has the authority and retains the prerogative to require GIUEs that have the deployment of source control, subsea containment, and/or supporting equipment as an element of that exercise, or to require deployment exercises of this equipment that are coordinated in advance but have some elements and objectives that will remain undisclosed until the commencement of the exercise. As organizations that provide source control, subsea containment, and supporting equipment cover multiple plan holders, credit for any deployment exercise successfully conducted by such a service provider will be extended to all plan holders who contract with the provider for those services. This extension of credit does not extend to IMT exercises where the management and oversight of source control activities must be exercised to ensure proper integration with other surface response activities and the overall management of the incident. These IMT exercises must include interaction between officials from a plan holder's specific organization and its IMT, including those officials who would manage source control and subsea containment capabilities, and therefore should be conducted separately and singularly for each OSRP.

GIUEs for BSEE-Regulated Facilities: One commenter requested clarification regarding whether there is an annual limit to the number of GIUEs that are conducted by BSEE.

Response: The previous PREP Guidelines indicated that BSEE may exceed 50 GIUEs per year nationally. It is unlikely that BSEE would conceivably conduct 50 or more GIUEs in any given year. There is no specified limit to the number of GIUEs that BSEE may conduct in a calendar year. BSEE will use a number of factors that vary

from year to year in order to determine the need to conduct GIUEs, and will use risk-based decision-making tools whenever possible. The language in the revised Guidelines has been amended to indicate that the number of GIUEs conducted by BSEE will be determined by the BSEE OSPD Chief, and does not make any reference to a specific number that may be conducted in a given year.

V. Request for Comments

The NSCC members request public comments on the updated draft PREP Guidelines, which are available in docket USCG–2011–1178 as described in the **ADDRESSES** section of this notice.

Dated: February 23, 2015.

P.J. Brown,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Response Policy.

[FR Doc. 2015–04160 Filed 2–26–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)-443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202)–720–8873; *Air Force:* Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236–9853; *NASA:* Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)–358–1124; (These are not toll-free numbers).

Dated: February 19, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 02/27/2015

Suitable/Available Properties

Building

Wyoming

Jackson V.I.C.
644 N. Cache St.
Jackson WY 83001
Landholding Agency: Agriculture
Property Number: 15201510011
Status: Excess
Directions: TN825007, RPUID–B1252.002791
Comments: off-site removal only; 48+ yrs. old; 1,472 sq. ft.; office; contamination ; wood stretchered; contact Agriculture for more inf.

Bridger-Teton Supervisor's Office
340 N Cache St.
Jackson WY 83001
Landholding Agency: Agriculture
Property Number: 15201510012
Status: Excess
Comments: off-site removal only; 50+ yrs. old; 10,080 sq. ft.; office; contamination; wood stretchered; contact Agriculture for more inf.

Unsuitable Properties

Building

Alabama

4660 Boiler House (MSFC)
Off of Dodd Road
Marshall Space Flight AL 35812
Landholding Agency: NASA
Property Number: 71201510006
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

4675 Boiler House (MSFC)
West Test Area on Lem Road
Marshal Space Flight AL 35812
Landholding Agency: NASA
Property Number: 71201510007
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Indiana

Building 00796
3005 Ferguson Road
Ft. Wayne IN 46809
Landholding Agency: Air Force
Property Number: 18201510008
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Montana

Loundberg Cabin Infra #1100
14 Miles East of Townsend off Hwy. 12
Townsend Banger District MT
Landholding Agency: Agriculture
Property Number: 15201510009
Status: Excess
Comments: property located in a floodway that has not been contained or corrected.
Reasons: Floodway

Lundberg Pump house Infra #1101
14 Miles E. of Townsend off Hwy. 12
Townsend Ranger District MT
Landholding Agency: Agriculture
Property Number: 15201510010
Status: Excess
Comments: property located in floodway which has not been corrected or contained.
Reasons: Floodway

New York

Building 620
2245 McGuire Street
Niagara Falls NY 14304
Landholding Agency: Air Force
Property Number: 18201510007
Status: Underutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Ohio

Reactor Office Bldg. 1142
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510009
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

EPA Bldg. 7145
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510013
Status: Unutilized
Directions: 7145
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Warehouse 9201
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510014
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Warehouse 9202
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510015
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Reactor Security Bldg. 1191
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510016
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Texas

72/1047/142 Mission Simulation
Dev. Facility Building 35
2101 NASA Pkwy/Johnson Space Ctr.
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201510008
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

72/1047/68 Storage Bldg. #1
Bldg. 262A
Johnson Space Ctr.; 2101 NASA Pkwy
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201510010
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

72/1047/169 Storage Bldg.
No. 2, Bldg. 262B
Johnson Space Ctr. 2101 NASA Pkwy
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201510011
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Land

Texas

72/1047/138 Storage Bldg. #3,
Bldg. 264
Johnson Space Ctr., 2101 NASA Pkwy
Houston TX 77058
Landholding Agency: NASA
Property Number: 71201510012
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

[FR Doc. 2015–04031 Filed 2–26–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS01000.L16100000.DR0000]

Notice of Availability of the Record of Decision for the Tres Rios Field Office Approved Resource Management Plan/ Final Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Tres Rios Field Office located in Archuleta, Dolores, Hinsdale, La Plata, Montezuma, Montrose, San Juan and San Miguel counties in southwest Colorado. The document also serves as the BLM's decision to adopt the U.S. Forest Service oil and gas leasing decisions for Federal mineral estate administered by the San Juan National Forest in Archuleta, Dolores, Hinsdale, La Plata, Mineral, Montezuma, Rio Grande and San Juan counties. The Colorado State Director signed the ROD on February 27, 2015, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/ Approved RMP are available upon request from the Field Manager, BLM Tres Rios Field Office, 29211 Highway 184, Dolores, CO 81323; or via the internet at *http://www.blm.gov/co/st/en/fo/sjplc/land_use_planning.html.* The ROD/Approved RMP are available for public inspection at the Tres Rios Field Office, and the San Juan Public Lands

Center, 15 Burnett Court, Durango, CO 81301.

FOR FURTHER INFORMATION CONTACT: Gina Jones, Southwest District NEPA Coordinator; telephone 970–240–5381; address 2465 South Townsend Avenue, Montrose, CO 81401; email *gmjones@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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The RMP provides management for 503,589 acres of BLM land in southwest Colorado. The RMP describes the actions to meet desired resource conditions for upland and riparian vegetation; fish and wildlife habitat; water resources; air quality; cultural, paleontological and visual resources; as well as livestock grazing; mineral and alternative energy; and recreation.

The BLM and the U.S. Forest Service initiated scoping for the RMP in 1999. The agencies sought public input via meetings and interviews, including an intensive year of facilitated public meetings in 2005, in order to develop the Draft Land and Resource Management Plan (LRMP)/Environmental Impact Statement (EIS). The Draft was published for a 90-day public comment period in December 2007. Based on public comments, the agencies identified the need to prepare a Supplement to the Draft EIS to consider the Reasonable Foreseeable Development potential of oil and gas in the Gothic Shale Gas Play, which was published in August 2011. The preferred alternative for the Draft LRMP was carried forward into the Proposed LRMP/Final EIS, which was published in September 2013, initiating the protest period and Governor's Consistency Review. During the protest period for the Proposed LRMP, the BLM received 14 valid protest submissions. The BLM granted one protest in part and dismissed the remaining protests. The BLM granted in part one protest regarding 15 potential Areas of Critical Environmental Concern (ACEC) that BLM determined met both the relevance and importance criteria, but were not analyzed in the range of alternatives in the Draft EIS due to a procedural error. The BLM will evaluate these areas, as well as the two existing ACECs that will continue to be designated as ACECs in the Approved RMP, in a future plan amendment. The decisions in the Approved RMP will protect these areas from impairment of their identified relevant and important values.

As a result of the Governor's Consistency Review, the BLM modified its direction to maintain minimum instream flow levels for the benefit of fisheries from a standard to a guideline. The BLM has also made minor editorial modifications to the Approved RMP to provide further clarification of some of the decisions.

The ROD also serves as the BLM's decision to adopt the U.S. Forest Service oil and gas leasing decision for Federal mineral estate administered by the San Juan National Forest. The U.S. Forest Service outlined its decision in the San Juan National Forest's September 2013 Record of Decision, Oil and Gas Leasing Availability. The BLM concurs with the selection of Alternative B as described in the U.S. Forest Service Record of Decision. In the Approved RMP, the BLM also designates routes for mechanized travel in the Phil's World and Mud Springs portion of the planning area that were analyzed in the 2008 Cortez-Mancos Travel Management Plan Environmental Assessment (CO–800–2006–090–EA). These route designations are implementation decisions and are appealable under 43 CFR part 4. These decisions are contained in Section 2.13 of the Approved RMP. Any party adversely affected by the proposed route designations may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR part 4, subpart E. The appeal should state the specific route(s), as identified in Appendix A of the Approved RMP, for which the decision is being appealed. The appeal must be filed with the Tres Rios Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2015–04075 Filed 2–26–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02054000, 15XR0687NA, RX.18527901.3000000]

Central Valley Project Improvement Act Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation has made available to the public the Water Management Plans for 10 entities. For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. Reclamation is publishing this notice in order to allow the public an opportunity to review the Plans and comment on the preliminary determinations.

DATES: Submit written comments on the preliminary determinations on or before March 30, 2015.

ADDRESSES: Send written comments to Ms. Angela Anderson, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825; or email at *aanderson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Anderson at the email address above or 916–978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: To meet the requirements of the Central Valley Project Improvement Act of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). Each of the 10 entities listed below has developed a Plan that has been evaluated and preliminarily determined to meet the requirements of these Criteria. The following Water Management Plans are available for review:

- City of Fairfield
- City of Vacaville
- City of Vallejo
- Glide Water District
- Kanawha Water District
- San Joaquin River Exchange Contractors: Consisting of Central California Irrigation District, Columbia Canal Company, Firebaugh Canal Water District, and San Luis Canal Company
- Solano County Water Agency
- Suisun-Solano Water Authority
- West Stanislaus Irrigation District
- City of West Sacramento

We are inviting the public to comment on our preliminary (*i.e.,* draft)

determination of Plan adequacy. Section 3405(e) of the Central Valley Project Improvement Act (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall ''develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by Section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria must be developed ''with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare a Plan that contains the following information:

1. Description of the District;
2. Inventory of Water Resources;
3. Best Management Practices (BMPs) for Agricultural Contractors;
4. BMPs for Urban Contractors;
5. Plan Implementation;
6. Exemption Process;
7. Regional Criteria; and
8. Five-Year Revisions.

Reclamation evaluates Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office, 2800 Cottage Way, MP–410, Sacramento, California 95825. Our practice is to make comments, including names and home addresses of respondents, available for public review. If you wish to review a copy of these Plans, please contact Ms. Anderson.

Public Disclosure

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.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2015–03950 Filed 2–26–15; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–458 and 731–TA–1154 (Review)]

Certain Kitchen Appliance Shelving and Racks From China: Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the existing antidumping and countervailing duty orders on certain kitchen appliance shelving and racks from China would be likely to lead to continuation or recurrence of material injury to a U.S. industry producing refrigeration shelving and a U.S. industry producing oven racks within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 1, 2014 (79 FR 44862) and determined on November 4, 2014 that it would conduct expedited reviews (79 FR 69525, November 21, 2014).

The Commission completed and filed its determinations in these reviews on February 24, 2015. The views of the Commission are contained in USITC Publication 4520 (February 2015), entitled *Certain Kitchen Appliance Shelving and Racks from China: Investigation Nos. 701–TA–458 and 731–TA–1154 (Review).*

Issued: February 24, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–04114 Filed 2–26–15; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–924]

Certain Light Reflectors and Components, Packaging, and Related Advertising Thereof; Notice of Commission Determination Not To Review Initial Determinations Granting Motions To Terminate the Investigation as to the Remaining Respondents; Termination of the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review: (1) An initial determination (''ID'') (Order No. 17) issued by the presiding administrative law judge (''ALJ'') on January 22, 2015, granting a motion to terminate the investigation as to respondents Sinowell (Shanghai) Co. Ltd. and Sinohydro Ltd. (collectively, ''Sinowell''), based on a settlement agreement; and (2) an ID (Order No. 18) issued by the ALJ on January 27, 2015, granting a motion to terminate the investigation as to the remaining respondents based on withdrawal of the amended complaint.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 12, 2014, based on a complaint filed on June 20, 2014, amended on July 11, 2014, and supplemented on July 18, 2014, on behalf of Sunlight Supply, Inc. of Vancouver, Washington and IP Holdings, LLC of Vancouver, Washington (collectively, ''Sunlight''). 79 FR 47156 (Aug. 12, 2014). The amended complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, and sale within the United States after importation of certain light reflectors and components, packaging, and related advertising thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,641,367; D634,469; D644,185; D545,485; and by reason of infringement of U.S. Trademark Registration Nos. 3,871,765; and

3,262,059. The amended complaint also alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The amended complaint further alleges violations of section 337 based upon the importation into the United States, or in the sale of, certain light reflectors and components, packaging, and related advertising thereof by reason of false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission's notice of investigation named numerous respondents including Sinowell. *See* 79 FR 47156–57. The Office of Unfair Import Investigations was named as a party to the investigation. *Id.* at 47157.

On December 16, 2014, the Commission determined not to review an ID (Order No. 12) granting a motion to terminate the investigation as to respondents The Hydro Source II, Inc.; Bizright, LLC; and Silversun, Inc., based upon settlement agreements.

On December 16, 2014, Sunlight moved to terminate the investigation as to Sinowell based upon a settlement agreement between Sunlight and Sinowell. That same day, Sunlight also moved to terminate the investigation as to the remaining respondents Groco Enterprises, LLC; Good Nature Garden Supply; Aqua Serene, Inc.; Aurora Innovations, Inc.; Big Daddy Garden Supply, Inc.; Insun, LLC; Lumz'N Blooms, Ltd. Corp; ParluxAmerica LLP; and Zimbali Group, Inc., based on withdrawal of the amended complaint as to these respondents. Sunlight asserted that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of this investigation, other than the confidential settlement agreement between Sunlight and Sinowell. Sunlight also asserted that granting the motions is in the public interest and will conserve the resources of the Commission. The Commission's Investigative Attorney filed responses in support of the motions.

On January 22, 2015, the ALJ issued an ID (Order No. 17), granting the motion to terminate the investigation as to Sinowell. The ALJ found that the settlement agreement appears to resolve the dispute between Sunlight and Sinowell, and that granting the motion would not adversely affect the public interest factors. No petitions for review were filed.

On January 27, 2015, the ALJ issued an ID (Order No. 18), granting the motion to terminate the investigation as to the remaining respondents. The ALJ found that no extraordinary circumstances exist that would prevent the requested termination of the remaining respondents from the investigation. The ALJ also found that the parties have complied with the requirements of Rule 210.21(a). No petitions for review were filed.

The Commission has determined not to review the two subject IDs.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 23, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–04089 Filed 2–26–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of an Existing Collection in Use Without an OMB Control Number; FBI Expungement Form (FD–1114)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 28, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rachel K. Hurst, Management and Program Analyst, FBI, CJIS, Biometric Services Section, Customer Support Unit, Module E–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304–625–5392).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of collection in use without an OMB control number.

(2) *Title of the Form/Collection:* FBI Expungement Form.

(3) *Agency form number:* FD–1114.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by criminal justice and affiliated judicial agencies to request appropriate removal of criminal history information from an individual's record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 152,430 respondents are authorized to complete the form which would require approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 89,591 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 23, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–04122 Filed 2–26–15; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on January 14, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cetecom, Milpitas, CA; and PG&E, San Francisco, CA, have been added as parties to this venture. Also, Smarthome Laboratories, Boulder, CO; Gridtest Systems, Inc., Westlake Village, CA; Eaton Corporation, Arden, NC; Hypertek, Inc., North Potomac, MD; Pepco Holdings, Inc., Washington, DC; Schneider Electric, Norcross, GA; SunSpec Alliance, Scotts Valley, CA; Tendril, Boulder, CO; American Association for Laboratory Accreditation (A2LA), Frederick, MD; PPL Corporation, Louisville, KY; Alliant Energy, Madison, WI; EnerNOC, Inc., Boston, MA; and Newport Consulting Group, San Francisco, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on October 27, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 2014 (79 FR 71447).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–04099 Filed 2–26–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 16, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, REDERESIDUO, São Paulo, BRAZIL; Bell Integrator, Moscow, RUSSIA; Packet One Networks (Malaysia) Sdn Bhd, Petaling Jaya, MALAYSIA; PT Indonesia Comnets Plus (ICON+), Jakarta, INDONESIA; Inabox Group Limited, Sydney, AUSTRALIA; Mobitel (Pvt) Ltd., Colombo, SRI LANKA; Nextel Brazil, São Paolo, BRAZIL; Orange Espagne S.A.U, Pozuelo de Alarcón, SPAIN; Telenor d.o.o. Serbia, Beograd, SERBIA; DiGi Telecommunications Sdn Bhd, Shah Alam, MALAYSIA; Bharti Airtel Ltd., Delhi, INDIA; Netcomp Peru, Santiago de Surco, PERU; CanGo Networks Private Ltd., Chennai, INDIA; Trust5, Dublin, IRELAND; Wind Telecomunicazioni SpA, Roma, ITALY; Torry Harris Business Solutions Pvt Ltd., Bangalore, INDIA; DonRiver, Inc., Toronto, CANADA; Neural Technologies, Petersfield, UNITED KINGDOM; North State Communications, High Point, NC; Salesforce.com, San Francisco, CA; Coriant GmbH, Munich, GERMANY; Amcom Telecommunications Ltd., Perth, AUSTRALIA; FirstNet, Reston, VA; mm1 Consulting & Management PartG, Stuttgart, GERMANY; CrEAting Waves AS, Kongsberg, NORWAY; IT SERVICES & GOUVERNANCE, Paris, FRANCE; Pelatro, Bangalore, INDIA; Sistema Turkey, Istanbul, TURKEY; ChikPea, San Francisco, CA; Invercloud, Cork, IRELAND; and Stelligence Co.LTD, Bangkok, THAILAND, has been added as parties to this venture.

The following members have changed their names: Elion Ettevõtted AS to AS Eesti Telekom, Tallinn, ESTONIA; LeanMeanBusinessMachine to BumpConductor B.V., Driehuis, NETHERLANDS; and Nextel del Perú SA to Entel Peru SA, Lima, PERU.

The following members have withdrawn as parties to this venture: 6fusion USA, Inc., Raleigh, NC; ArenaCore Pty Ltd., Melbourne, AUSTRALIA; Ariston Global, Pittsford, NY; Aspivia Ltd., Illovo, SOUTH AFRICA; Atoll Solution Ltd., Urom, HUNGARY; BEISIS, Ceroux Mousty, BELGIUM; Cloudscaling© (The Cloudscaling Group, Inc.), San Francisco, CA; Competitiveness Cluster Secured Communications Solutions, Valbonne Sophia Antipolis, FRANCE; Concordus Applications Inc., Sacramento, CA; Delta Partners FZ LLC, Dubai, UNITED ARAB EMIRATES; Desfossés Consultation, Québec, CANADA; Digital Enterprise Research Institute—NUI Galway, Galway, IRELAND; Dimetis GmbH, Dietzenbach, GERMANY; EuroCloud Netherlands, Haarlem, NETHERLANDS; First Derivatives Ireland Ltd., Dublin, IRELAND; Gilgamesh OSS Services, Weybridge, UNITED KINGDOM; Global Consultants Group 2020 C.A., Chacao, VENEZUELA; ICT Solutions Central America, Guatemala, GUATEMALA; Inetra, Novosibirsk, RUSSIA; Kreare Assessoria Empresarial, São Paulo, BRAZIL; Lyatiss, Lyon, FRANCE; Maveric Systems Limited, Chennai, INDIA; Network Laboratory, Department of Information and Communication Engineering, The University of Tokyo, Tokyo, JAPAN; Objective Systems Integrators, Folsom, CA; OneNet Ingeniería S.A., Santiago, CHILE; OSS Evolution, Ottawa, CANADA; PiA Bilişim Hizmetleri Ltd., Ataşehir—İstanbul, TURKEY; Pictor Consulting, Danderyd, SWEDEN; Proxwel, Bizerte, TUNISIA; Sagacity Softwares Private Limited, Pune, INDIA; Swiss Mobility Solutions, Alicante, SPAIN; Tele Greenland, Nuuk, GREENLAND; TM Forum Test, Morristown, NJ; TMSConsult.net, Kuala Lumpur, MALAYSIA; TURKSAT AS, Ankara, TURKEY; Universidad de Alcalá, Madrid, SPAIN, Laboratorio de Medición de Software, Madrid, SPAIN; University of Deusto—Deusto Institute of Technology, Bilbao, SPAIN; Winitu Communications B.V., Bodegraven, NETHERLANDS; XINTEC S.A., Munsbach, LUXEMBOURG; Xirrus, Thousand Oaks, CA; ARSAT, Buenos Aires, ARGENTINA; ATANOO Europe GmbH, Zug, SWITZERLAND; CA

Technologies, Inc., Portsmouth, NH; CommProve Ltd., Dublin, IRELAND; Entel Chile PCS Telecomunicaciones SA, Santiago, CHILE; Episteme Systems Limited, Blanchardstown, IRELAND; ieon consulting Ltd., London, UNITED KINGDOM; International Engineering Consortium, Chicago, IL; Janus Consulting Partners, Addison, TX; Japan Mobile Platform, Tokyo, JAPAN; Johns Hopkins University Applied Physics Lab, Laurel, MD; Millicom International Cellular S.A., Leudelange, LUXEMBOURG; Mobinets, Puteaux, FRANCE; Netadmin Systems, Linkoping, SWEDEN; New Generation Management Consulting Pty Ltd., Rivonia, SOUTH AFRICA; Ogilvy, London, UNITED KINGDOM; Perpetual Solutions, London, UNITED KINGDOM; Telecom Egypt, Giza, EGYPT; Telkom SA, Pretoria, SOUTH AFRICA; and Visa, San Francisco, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 3, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 14, 2014 (79 FR 68302).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–04102 Filed 2–26–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program

Notice is hereby given that, on January 23, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bollinger Shipyards, Inc., has changed its name to Bollinger Shipyards, L.L.C., Lockport, LA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notifications disclosing all changes in membership.

On March 13, 1998, NSRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on November 5, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 16, 2014 (79 FR 74767).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–04100 Filed 2–26–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on January 27, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kaltura, Inc., New York, NY; McClure, Brown & Associates LLC, Chantilly, VA; Tom Forrest, LLC, Thousand Oaks, CA; and Humanity Road, Boydton, VA, have been added as parties to this venture.

In addition, Fimeccanica, Roma, Italy; and FacetApp LLC, Seattle, WA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on October 14, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 5, 2014 (79 FR 65703).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–04098 Filed 2–26–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Record of Vote of Meeting Closure

I, J. Patricia W. Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:00 a.m., on Tuesday, February 24, 2015 at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss five original jurisdiction cases pursuant to 28 CFR Section 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the Acting General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia W. Smoot, Cranston Mitchell, Patricia Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 24, 2015.

J. Patricia W. Smoot,

Acting Chairman, U.S. Parole Commission.

[FR Doc. 2015–04219 Filed 2–25–15; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Section 2715 Summary Disclosures

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Affordable Care Act Section 2715 Summary Disclosures,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 30, 2015.

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=201502-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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 by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Affordable Care Act Section 2715 Summary Disclosures information collection. Public Health Service Act section 2715 directed the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage. The subject information collection relates to the provision of the following: A summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and notice of modifications. Group health plans and health insurance issuers is required to use the Summary of Benefits and Coverage template and instructions for completing the template, as authorized by the Departments, to satisfy the section 2715 disclosure requirements. Affordable Care Act section 2715 authorizes this information collection. *See* Public Law 111–148 sec. 2715.

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 1210–0147.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 15, 2014 (79 FR 61903).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0147. 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-EBSA.

Title of Collection: Affordable Care Act Section 2715 Summary Disclosures.

OMB Control Number: 1210–0147.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,388,923.

Total Estimated Number of Responses: 62,909,329.

Total Estimated Annual Time Burden: 387,040 hours.

Total Estimated Annual Other Costs Burden: $8,188,015.

Dated: February 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–04094 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Controversion of Right to Compensation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Notice of Controversion of Right to Compensation,'' 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.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 30, 2015.

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=201411-1240-001* (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–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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: This ICR seeks approval under the PRA for revisions to the Notice of Controversion of Right to Compensation information collection. Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions. This information collection has been classified as a revision, because the Department has made cosmetic changes to Form LS–207, such as expanding the size of boxes used for responding, updating the instructions, and addition of instructions for injured workers and beneficiaries. These changes are not expected to change the public burden. Longshore and Harbor Worker's Compensation Act section 901(d) authorizes this collection. *See* 33 U.S.C. 914(d).

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 1240–0042. The current approval is scheduled to expire on February 28, 2015; 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 December 1, 2014 (79 FR 71130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0042. 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–OWCP.

Title of Collection: Notice of Controversion of Right to Compensation.

OMB Control Number: 1240–0042.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 600.

Total Estimated Number of Responses: 18,000.

Total Estimated Annual Time Burden: 4,500 hours.

Total Estimated Annual Other Costs Burden: $9,360.

Dated: February 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–04079 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Contribution Operations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment & Training Administration (ETA) sponsored information collection request (ICR) titled, ''Contribution Operations,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 30, 2015.

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=201502-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Contribution Operations information collection. In support of Unemployment Insurance statutory and regulatory requirements, ETA 581 provides quarterly data on State agencies' volume and performance in wage processing, promptness of liable employer registration, timeliness of filing contribution and wage reports, extent of tax delinquency, and results of the field audit program. Social Security Act section 303(a)(6) authorizes this information collection. *See* 42 U.S.C. 503(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0178.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 1, 2014 (79 FR 37353).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0178. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Contribution Operations.

OMB Control Number: 1205–0178.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 1,802 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–04093 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Coverage of Certain Preventive Services Under the Affordable Care Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Coverage of Certain Preventive Services Under the Affordable Care Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 30, 2015.

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=201412-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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 by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the ''Coverage of Certain Preventive Services Under the Affordable Care Act'' information collection. The information collection requires any plan established or maintained by certain religious employers (and group health insurance coverage provided in connection with such a plan) claiming exemption to providing contraceptive service to self-certify that it meets the definition of an eligible organization. The eligible organization provides its health insurance issuer or third-party administrator with a copy of the self-certification. A third-party administrator arranging or providing payments for contraceptive services at no cost to participants and beneficiaries in insured or self-insured plans (or student enrollees and covered dependents in student health insurance coverage) of an eligible organization is to provide a written notice to plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments. The notice must be provided contemporaneous with (to the extent possible) but separate from plan enrollment (or re-enrollment) materials, and must specify that contraceptive coverage will not be provided by the eligible organization but that the third-party administrator will separately arrange or provide payments for contraceptive services. The notice must also provide contact information for the third-party administrator for questions and complaints. To satisfy the notice requirement, a third-party administrator may use the model language set forth in the final regulations or substantially similar language. Form EBSA–700, Eligible Organization Self-Certification, may be used to make the certification to the insurer. Interim final regulations issued in 2014 provide for an alternative notification to the Federal government when an eligible organization has a religious objection to providing contraceptive coverage that still preserves participants' and beneficiaries' access to coverage for the full range of Food and Drug Administration approved contraceptives, as prescribed by a health care provider, without cost sharing. Employee Retirement Income Security Act of 1974 section 307 authorizes this collection. *See* 29 U.S.C. 1185b.

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 1210–0150.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 11, 2014 (79 FR 73629).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0150. 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–EBSA.

Title of Collection: Coverage of Certain Preventive Services Under the Affordable Care Act.

OMB Control Number: 1210–0150.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 61.

Total Estimated Number of Responses: 61.

Total Estimated Annual Time Burden: 51 hours.

Total Estimated Annual Other Costs Burden: $33.

Dated: February 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–04095 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Final Payment or Suspension of Compensation Benefits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Notice of Final Payment or Suspension of Compensation Benefits,'' 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.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 30, 2015.

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=201411-1240-003* (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–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Notice of Final Payment or Suspension of Compensation Benefits information collection. The Notice of Final Payment or Suspension of Compensation Benefits, Form LS–208, is used by insurance carriers and self-insured employers to report the payment of benefits under the Longshore and Harbors Workers Compensation Act. This information collection has been classified as a revision, because the Department has made cosmetic changes to the Form LS–208, such as expanding the size and types of boxes used for responding. These changes are not expected to change the public burden. Longshore and Harbor Workers' Compensation Act section 914(g) authorizes this collection. *See* 33 U.S.C. 914(g).

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 1240–0041. The current approval is scheduled to expire on February 28, 2015; 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 December 1, 2014 (79 FR 71130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0041. 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–OWCP.

Title of Collection: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Control Number: 1240–0041.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 600.

Total Estimated Number of Responses: 21,000.

Total Estimated Annual Time Burden: 5,250 hours.

Total Estimated Annual Other Costs Burden: $10,920.

Dated: February 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–04078 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice To Ensure State Workforce Agencies Are Aware of the Revised Schedule of Remuneration for the Unemployment Compensation for Ex-Servicemembers (UCX) Program That Reflects the Military Pay Increase Effective January 1, 2015

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Each year, the Department of Defense issues a Schedule of Remuneration that may be used by states, as needed, for UCX purposes. States must use the schedule to determine Federal military wages for UCX ''first claims'' only when the Federal Claims Control Center (FCCC) responds to a request for information indicating that there is no Copy 5 of the Certificate of Release or Discharge from Active Duty (DD Form 214) for an individual under the social security number provided. A response from the FCCC that indicates ''no DD214 on file'' will prompt the state to start the affidavit process and to use the attached schedule to calculate the Federal military wages for an unemployment insurance or UCX monetary determination.

The schedule applies to UCX ''first claims'' filed beginning with the first day of the first week that begins on or after January 1, 2015, pursuant to the UCX program regulations (see 20 CFR 614.12(c)). States must continue to use the existing schedule for UCX ''first claims'' filed before the effective date of the revised schedule.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

2015 FEDERAL SCHEDULE OF REMUNERATION

[20 CFR 614.12(d)]

Pay grade	Monthly rate	Weekly (7/30th)	Daily (1/30th)
1. Commissioned Officers			
O–10	$19,253.20	$4,492.41	$641.77
O–9	19,229.10	4,486.79	640.97
O–8	18,088.33	4,220.61	602.94
O–7	16,189.37	3,777.52	539.65
O–6	14,154.10	3,302.62	471.80
O–5	11,964.91	2,791.81	398.83
O–4	10,221.50	2,385.02	340.72
O–3	8,041.90	1,876.44	268.06
O–2	6,518.94	1,521.09	217.30
O–1	5,027.02	1,172.97	167.57
2. Commissioned Officers With Over 4 Years Active Duty as an Enlisted Member or Warrant Officer			
O–3E	$9,372.56	$2,186.93	$312.42
O–2E	7,771.02	1,813.24	259.03
O–1E	6,708.67	1,565.36	223.62
3. Warrant Officer			
W–5	$11,017.38	$2,570.72	$367.25
W–4	9,711.73	2,266.04	323.72
W–3	8,332.22	1,944.18	277.74
W–2	7,201.87	1,680.44	240.06
W–1	6,188.09	1,443.89	206.27
4. Enlisted Personnel			
E–9	$9,254.52	$2,159.39	$308.48
E–8	7,631.63	1,780.71	254.39
E–7	6,788.74	1,584.04	226.29
E–6	5,986.63	1,396.88	199.55
E–5	5,101.84	1,190.43	170.06
E–4	4,202.56	980.60	140.09
E–3	3,764.43	878.37	125.48
E–2	3,649.37	851.52	121.65
E–1	3,355.91	783.05	111.86

The Federal Schedule includes columns reflecting derived weekly and daily rates. This revised Federal Schedule of Remuneration is effective for UCX ''first claims'' filed beginning with the first day of the first week which begins on or after January 1, 2015, pursuant to 20 CFR 614.12(c).

[FR Doc. 2015–04117 Filed 2–26–15; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–007)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, March 30, 2015, 10:00 a.m. to 5:00 p.m., and Tuesday, March 31, 2015, 8:30 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 5H41A, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 844–467–4685, passcode 863162, followed by the # sign, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*; the meeting number on March 30 is 394 353 454, Password is PSS@Mar30; and the meeting number on March 31 is 390 606 220, Password is PSS@Mar31. The agenda for the meeting includes the following topics:

—Planetary Science Division Update

—Planetary Science Division Research and Analysis Program Update

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth;

citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ann Delo.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Harmony R. Myers,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–04105 Filed 2–26–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–005)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, March 17, 2015, 8:30 a.m. to 4:30 p.m., and Wednesday, March 18, 2015, 9:00 a.m. to 3:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 877–917–4912, Passcode APSMARCH to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*; the meeting number on March 17 is 394 075 603, Password is APS@March17; and the meeting number on March 18 is 393 861 072, Password is APS@March18. The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Update of Flight missions
—Reports from Program Analysis Groups

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ann Delo.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Harmony R. Myers,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–04103 Filed 2–26–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–006)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, March 30, 2015, 9:00 a.m.–5:00 p.m., and Tuesday, March 31, 2015, 9:00 a.m.–4:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically. Any interested person may call the USA toll free conference call number 1–800–779–8718, passcode 13089, to participate in this meeting by telephone. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—Heliophysics Budget Update
—Flight Mission Status Report
—Senior Review Guidelines

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ann Delo. It is imperative that the meeting be held on this date to

accommodate the scheduling priorities of the key participants.

Harmony R. Myers,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–04104 Filed 2–26–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation'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 those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by April 28, 2015, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title Of Collection: Generic Clearance of Survey Improvement Projects From the National Science Foundation.

OMB Number: 3145—NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish a generic clearance for survey improvement projects for the National Science Foundation.

Abstract: The National Science Foundation (NSF) requests that the Office of Management and Budget (OMB) grant a generic clearance that will allow NSF to rigorously develop, test, and evaluate its survey instruments and methodologies. NSF has a mandate to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal Government.'' This request is part of an ongoing initiative to improve NSF surveys as recommended by both its own guidelines and those of OMB.[1]

In the last decade, state-of-the art data collection and analysis methods have been increasingly instituted by NSF and other federal agencies, and are now routinely used to improve the quality and timeliness of data and analyses. These new methods or techniques many times help reduce respondents' cognitive workload and burden. The purpose of this generic clearance is to allow NSF to continue to adopt and use these methods or techniques to improve its current data collections on science, engineering, and technology inputs, outputs and outcomes. They will be used to improve the content of existing surveys, to aid in the development of new data collections to capture changes in the U.S. science and engineering (S&E) enterprise, and to fill gaps in coverage of the S&E enterprise in the existing NSF portfolio.

Following standard OMB requirements, NSF will submit to OMB an individual request for each survey improvement project it undertakes under this generic clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire (if one is used) and materials describing the project.

NSF envisions using a variety of survey improvement techniques, as appropriate to the individual projects, such as focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot studies, pretests and split-panel tests. NSF has used such techniques in previous activities conducted under generic clearances granted to individual divisions.

a. *Focus Groups.* A qualitative methodology that brings together a small number of relatively homogenous subjects to discuss pre-identified topics. A protocol containing questions or topics focused on a particular issue or issues is used to guide these sessions, and is administered by a trained facilitator. Focus groups are useful for exploring and identifying issues with either respondents or stakeholders. Focus groups are a good choice during the development of a survey or survey topic, when a pre-existing questionnaire or survey questions on the topic do not yet exist. NSF has used focus groups for several projects under the Science Resources Statistics generic clearance (OMB Control Number 3145–0174) to assist with redesign of surveys when it became evident that the content of a survey was outdated and did not reflect current issues or the context that respondents were facing.

b. *Cognitive and Usability Laboratory and Field Techniques.* A qualitative methodology that refers to a set of tools employed to study and identify errors that are introduced during the survey process. These techniques are generally conducted by a researcher with an individual respondent, though observers may sometimes be present. Cognitive techniques are generally used to understand the question-response process, whereas usability is generally used to understand respondent reactions to the features of an electronic survey instrument, for instance, its display and navigation. In concurrent interviews, respondents are asked to think aloud as they actually answer the survey. In retrospective interviews, respondents answer the survey as they would normally, then 'think aloud' afterwards. Other techniques, which are described in the literature and which will be employed as appropriate include: Follow-up probing, memory cue tasks, paraphrasing, confidence rating, response latency measurements, free and dimensional sort classification tasks, and vignette classifications. The objective of all of these techniques is to aid in the development of surveys that work with respondents' thought processes, thus reducing response error and burden. These techniques are generally very useful for studying and revising a pre-existing questionnaire. NSF has used cognitive and usability testing in previous generic clearance projects (OMB Control Numbers 3145–

[1] NSF Information Quality Guidelines are available on *http://www.nsf.gov/policies/infoqual.jsp.* OMB Information Quality Guidelines are available on *http://www.whitehouse.gov/omb/inforeg/infopoltech.html.* OMB standards and guidelines for statistical surveys are available on *http://www.whitehouse.gov/omb/inforeg/statpolicy/standards_stat_surveys.pdf.*

0157 and 3145–0174) to improve existing survey items, to develop and refine new content on existing surveys, and to explore content for new surveys.

c. *Exploratory Interviews.* A technique where interviews are conducted with individuals to gather information about a topical area. These may be used in the very early stages of developing a new survey. They may cover discussions related to administrative records, subject matter, definitions, etc. Exploratory interviews may also be used to investigate whether there are sufficient issues related to an existing data collection to consider a redesign. NSF has used such interviews extensively in recordkeeping studies with respondents to several of its establishment surveys to determine both what types of records institutions keep (and therefore what types of information they can supply), as well as where and in what format such records are kept.

d. *Respondent Debriefing.* A technique in which individuals are queried about how they have responded to a particular survey, question, or series of questions. The purpose of the debriefing is to determine if the original survey questions are understood as intended, to learn about respondents' form filling behavior and recordkeeping systems, or to elicit respondents' satisfaction with the survey. This information can then be used (especially if it is triangulated with other information) to improve the survey. This technique can be used as a qualitative or quantitative measurement, depending on how it is administered. This technique has been employed in NSF generic clearance projects (OMB Control Number 3145–0174) to identify potential problems with existing survey items both quantitatively (response behavior study, or RBS, using web survey questions with respondents to the Survey of Graduate Students and Post-doctorates in Science and Engineering, or GSS) and qualitatively (interviews using semi-structured protocols with Higher Education R&D Survey respondents).

e. *Pilot Studies/Pretests.* These methodologies are used to test a preliminary version of the data collection instrument, as was done with the Early Career Doctorate Project. Pretests are used to gather data to refine questionnaire items and scales and assess reliability, validity, or other survey measurement issues. Pilot studies are also used to test aspects of implementation procedures. The sample may be purposive in nature, or limited to particular groups for whom the information is most needed. Alternatively, small samples can be selected to statistically represent at least some aspect of the survey population.

f. *Split Panel Tests.* A technique for controlled experimental testing of alternatives. Thus, they allow one to choose from among competing questions, questionnaires, definitions, error messages, surveys, or survey improvement methodologies with greater confidence than other methods alone. Split panel tests conducted during the actual fielding of the survey are superior in that they support both internal validity (controlled comparisons of variables under investigation) and external validity (represent the population under study). Nearly any of the previously mentioned survey improvement methods can be strengthened when teamed with this method.

g. *Behavior Coding.* A quantitative technique in which a standard set of codes is systematically applied to respondent/interviewer interactions in interviewer-administered surveys or respondent/questionnaire interactions in self-administered surveys. Though this technique can quantifiably identify problems with the wording of questions, it does not necessarily illuminate the underlying causes.

Use of the Information: The information obtained from these efforts will be used to develop new NSF surveys and improve current ones. These surveys will generally be used to monitor outputs and outcomes of NSF funding over time (particularly data that is not being collected in annual and final reports), and manage and improve programs. Data collected through survey questionnaires can be used in program evaluation studies and can be matched to administrative data to understand NSF's portfolio of investments. Specifically, the information from the survey questionnaire improvement projects will be used to reduce respondent burden and to improve the quality of the data collected in these surveys. These objectives are met when respondents are presented with plain, coherent, and unambiguous questionnaires asking for data compatible with respondents' memory and/or current reporting and recordkeeping practices. The purpose of the survey improvement projects will be to ensure that NSF surveys are continuously attempting to meet these standards of excellence. Improved NSF surveys will help policy makers make decisions on R&D funding, graduate education, scientific and technical workforce, innovation, as well as contribute to increased agency efficiency and reduced survey costs. In addition, methodological findings have broader implications for survey research and may be presented in technical papers at conferences or published in the proceedings of conferences or in journals.

Estimate of Burden: NSF estimates that a total reporting burden of 171,000 hours over the three years of the requested generic clearance is possible from working to evaluate/improve existing surveys and to develop new ones. This includes both the burden placed on respondents participating in each activity as well as burden imposed on potential respondents during screening activities. Table 1 provides a list of potential improvement projects for which generic clearance activities might be conducted, along with estimates of the number of respondents and burden hours that might be involved in each.

TABLE 1—POTENTIAL IMPROVEMENT PROJECTS

Improvement project type	Number of respondents [2]	Hours
Cognitive Testing	5,000	15,000
Focus Groups	5,000	10,000
Card Sorting	5,000	5,000
Interviews	5,000	5,000
Panelist Survey	7,000	12,000
Past Awardee Survey	9,000	14,000
Usability Testing	5,000	10,000

[2] Number of respondents listed for any individual survey may represent several methodological improvement projects.

TABLE 1—POTENTIAL IMPROVEMENT PROJECTS—Continued

Improvement project type	Number of respondents [2]	Hours
Additional surveys not specified	35,000	100,000
Total	76,000	171,000

Respondents: The respondents are PIs, program coordinators, or participants in NSF activities.

Estimates of Annualized Cost to Respondents for the Hour Burdens

The cost to respondents generated by the list of potential projects is estimated to be $3,205,680 over the three years of the clearance. No one year's cost would exceed $3,205,680. In other words, if all work were done in one year, costs in that one year would be $3,205,680 and the costs in each of the other 2 years would be zero. As in previous requests for generic clearance authority, the total cost was estimated by summing all the hours that might be used on all projects over the three years (76,000) and multiplying that figure by the hourly wage ($42.18) of the level of employee who typically answers NSF questionnaires or attends NSF workshops. This wage amount is the May 2011 national cross-industry estimate of the mean hourly wage for a financial analyst, or Job Category 13–2051, by the Bureau of Statistics. *http://www.bls.gov/oes/#data.* The total hours are based on similar NSF projects over the past few years.

There are no capital, startup, operation or maintenance costs to the respondents. The costs generated by future data collections will be described in the clearance request for each specific data collection. NSF does not anticipate any capital, startup, operation, or maintenance costs for future surveys.

Dated: February 23, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–04097 Filed 2–26–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16; NRC–2014–0154]

North Anna Power Station Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a license amendment request for the Special Nuclear Materials (SNM) License SNM–2507 for the North Anna Power Station (NA) independent spent fuel storage installation (ISFSI) located in Louisa County, Virginia.

DATES: The environmental assessment and finding of no significant impact referenced in this document are available on February 27, 2015.

ADDRESSES: Please refer to Docket ID NRC–2014–0154 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0154. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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 obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5137, email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering a license amendment request for Special Nuclear Materials License Number SNM–2507 for the NA ISFSI located in Louisa County, Virginia (ADAMS Accession No. ML14160A707). The applicant, Virginia Electric and Power Company (Dominion), is proposing to amend Technical Specifications (TS) 4.2.3, ''Storage Pad,'' to define the minimum center-to-center spacing for Transnuclear-32 spent nuclear fuel storage casks, with heat loads no greater than 27.1 kilowatts (kW), from 16 feet (feet) to 14 feet. The NRC staff has prepared a final environmental assessment (EA) as part of its review of this proposed license amendment in accordance with the requirements in part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR). Based on the final EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment pursuant to 10 CFR part 72, and the results will be documented in a separate Safety Evaluation Report (SER). If Dominion's request is approved, the NRC will issue the license amendment following publication of this final EA and FONSI and the SER.

II. Final Environmental Assessment Summary

On August 23, 2011, during an earthquake centered in Mineral, Virginia, 25 of 27 of the Transnuclear-32 casks on NA ISFSI Pad I shifted from their original positions. The shifting changed the center-to-center spacing of the casks from 16 feet to a range of 15 feet 2.25 inches to 16 feet 11.25 inches. Dominion is proposing to amend SNM–2507 TS 4.2.3, which would change the allowable distance between individual casks (center-to-center) from a nominal 16 feet to a minimum of 14 feet for those casks with heat loads no greater than 27.1 kW. Dominion is requesting this license amendment in lieu of moving

the 25 casks back to their original, pre-earthquake positions and spacing. If approved, the proposed license amendment would allow the casks to remain in their current positions.

The NRC has assessed the potential environmental impacts associated with the proposed action of amending SNM–2507 TS 4.2.3, as well as the no-action alternative, and has documented the results in the final EA (ADAMS Accession No. ML15022A575). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC considered information in the license amendment application; information in the responses to the NRC's requests for additional information (RAIs); communications with Dominion, the Virginia State Historic Preservation Office, the Virginia Department of Game and Inland Fisheries and the Virginia Department of Health; information from the NRC inspections; and the NRC's independent analysis.

Approval of Dominion's proposed license amendment would allow the casks to remain in place at their current post-earthquake positions and spacing, and no changes to Dominion's operation and maintenance of the NA ISFSI are associated with the proposed action. Because the proposed action would authorize Dominion to leave the casks in their current positions, rather than taking action to return the casks to their pre-earthquake positions, no significant radiological or non-radiological impacts are expected to result from approval of the license amendment request, and the proposed action would not significantly contribute to cumulative impacts at the NA site. There would be no disproportionally high and adverse impacts on minority and low-income populations. The Virginia State Historic Preservation Office concurred with the NRC's determination that the proposed action would not affect historic properties, and the U.S. Fish and Wildlife Service concurred with the NRC's determination that the proposed action would not affect listed species or critical habitats. Furthermore, the NRC determined that the proposed action is more favorable than the no-action alternative (denial of the license amendment request), which would require movement of the casks back to their pre-earthquake positions and spacing. Thus, the NRC concludes that the proposed action will not result in a significant effect on the quality of the human environment.

III. Finding of No Significant Impact

Based on its review of the proposed action, in accordance with the requirements in 10 CFR part 51, the NRC has concluded that the proposed action, amendment of NRC Special Nuclear Materials License No. SNM–2507 for the NA ISFSI located in Louisa County, Virginia, will not significantly affect the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated at Rockville, Maryland, this 20th day of February, 2015.

For the Nuclear Regulatory Commission.

Marissa G. Bailey,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–04133 Filed 2–26–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

TENNESSEE VALLEY AUTHORITY

[Docket No. 50–391–OL; ASLBP No. 15–938–01–0L–BD01]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2)

This proceeding concerns motions, dated February 5, 2015 and filed February 6, 2015, by Southern Alliance for Clean Energy to (1) reopen the record; and (2) admit a new contention in the captioned matter regarding the updated application by Tennessee Valley Authority for a facility operating license for Watts Bar Nuclear Plant, Unit 2, to be located in Rhea County, Tennessee.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR. 2.302.

Rockville, Maryland.

Dated: February 23, 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2015–04130 Filed 2–26–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; NRC–2015–0039]

Westinghouse Electric Company, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application from the Westinghouse Electric Company, LLC (Westinghouse or the licensee) to renew special nuclear material (SNM) license number SNM–1107 that authorizes Westinghouse to manufacture nuclear fuel assemblies at the Columbia Fuel Fabrication Facility (CFFF) in Hopkins, SC, for use in commercial nuclear power plants. The license renewal would allow Westinghouse to continue licensed activities for 40 years from the date that a renewed license is issued.

DATES: A request for a hearing or petition for leave to intervene must be filed by April 28, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0039 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0039. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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 obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

• *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: Christopher Ryder, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–0651; email: *Christopher.Ryder@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated November 30, 2012, and revised/supplemented on July 31, 2014, and December 27, 2014, a request to renew SNM license number SNM–1107, authorizing Westinghouse to manufacture nuclear fuel assemblies at the CFFF in Hopkins, South Carolina, for use in commercial nuclear power plants. The manufacturing operations consist of receiving low-enriched (*i.e.,* less than or equal to 5.0 weight percent U–235) uranium in the form of uranium hexafluoride; converting the uranium hexafluoride into uranium dioxide powder using the ammonium diuranate process; pressing the uranium dioxide powder into fuel pellets; loading the fuel pellets into fuel rods; and bundling the fuel rods into fuel assemblies. The license renewal would allow Westinghouse to continue licensed activities for 40 years from the date that the license is issued. The current license was issued on September 30, 2007, for a period of 20 years. The expiration date of the current license is September 30, 2027. The licensee is authorized to use SNM under Part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR).

An NRC administrative completeness review, dated December 30, 2014, found the application acceptable for a technical review. During the technical review, the NRC will be reviewing the application in areas of the site description, organization of the CFFF, integrated safety analysis, radiation protection, nuclear criticality safety, chemical process safety, fire safety, emergency management, environmental protection, decommissioning, management measures, physical security, and nuclear material control. Prior to approving the request to renew SNM license number SNM–1107, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report. Regarding the proposed action, the NRC will also make findings consistent with the National Environmental Policy Act and 10 CFR part 51.

II. Opportunity To Request a Hearing and Petition To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1–F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying

the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 28, 2015. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by April 28, 2015.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's

E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the

E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the

document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Availability of Documents

The documents identified in the following table are available in ADAMS to interested persons.

Document	Adams Accession No.	Description
Letter from G. Couture, Westinghouse, ''Westinghouse License Renewal Application'', November 30, 2013.	ML12338A041	Initial application to renew license SNM–1107 for a period of 40 years.
Letter to C. Snyder, Westinghouse, Deferring Review Of Application For A 40-Year Renewal Of Special Nuclear Materials License SNM–1107'', February 7, 2013.	ML13024A083	Letter informing Westinghouse that NRC intends to defer the review of the renewal application so as to budget and plan for the review.
Letter from N. Parr, Westinghouse, ''SNM–1107 License Renewal'', July 31, 2014.	ML14213A105	Resubmitted application to renew license SNM–1107 for a period of 40 years.
Note from C. Ryder, U.S. Nuclear Regulatory Commission, ''Summary of Meetings: Westinghouse 40-Year License Renewal: Acceptance Review'', October 3, 2014.	ML14276A432	Summary of a meeting between NRC and Westinghouse to discuss supplementing the application to renew license SNM–1107.
Letter from R. Johnson, U.S. Nuclear Regulatory Commission, ''Supplemental Information Needed To Begin A Technical Review Of The 40-Year License Renewal Application'', October 24, 2014.	ML14295A208	Letter from NRC to Westinghouse discussing the information that is needed to begin a technical review of the application to renew license SNM–1107.
Memorandum from C. Ryder, U.S. Nuclear Regulatory Commission, ''Westinghouse Electric Company: Meeting Summary—Nuclear Regulatory Commission Staff Expectations For Supplementing The License Renewal Application Dated July 31, 2014, Of The Columbia Fuel Fabrication Facility'', January 12, 2015.	ML14356A353	Summary of meeting between NRC and Westinghouse discussing the letter Westinghouse dated October 24, 2014, regarding information to supplement license SNM–1107.
Letter from N. Parr, Westinghouse, ''SNM–1107 License Renewal Supplement'', December 17, 2014.	ML14352A111	Revised application to renew license SNM–1107.
Letter from C. Ryder, U.S. Nuclear Regulatory Commission, ''Acceptance For Technical Review: ''SNM–1107 License Renewal Supplement,'' Dated December 17, 2014 (Technical Assignment Control Number L33317)'', December 30, 2014.	ML14364A017	Letter from NRC to Westinghouse informing Westinghouse that the revised application dated December 17, 2014, has sufficient information for the NRC staff to perform a technical review.

Dated at Rockville, Maryland, this 18th day of February 2015.

For the Nuclear Regulatory Commission.

Robert K. Johnson,

Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 2015–04136 Filed 2–26–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: Week of February 23, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of February 23, 2015

Thursday, February 26, 2015

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)

Petitions to Suspend Reactor Licensing Decisions and Reactor License Renewal Decisions Pending Issuance of ''Waste Confidence'' Safety Findings (Filed on Multiple Dockets). (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

Additional Information

By a vote of 4–0 on February 23 and 24, 2015, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on February 26, 2015.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@*

nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: February 24, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–04199 Filed 2–25–15; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form 40–F; SEC File No. 270–335, OMB Control No. 3235–0381.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register a class of securities under Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required in the Form 40–F is used by investors in making investment decisions with respect to the securities of such Canadian companies. We estimate that Form 40–F takes approximately 427 hours per response and is filed by approximately 160 respondents. We estimate that 25% of the 427 hours per response (106.75 hours) is prepared by the issuer for a total reporting burden of 17,080 (106.75 hours per response x 160 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 23, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04066 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form 20–F; SEC File No. 270–156, OMB Control No. 3235–0288.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 20–F (17 CFR 249.220f) is used to register securities of foreign private issuers pursuant to Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or as annual and transitional reports pursuant to Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)). The information required in the Form 20–F is used by investors in making investment decisions with respect to the securities of such foreign private issuers. We estimate that Form 20–F takes approximately 2,645.52 hours per response and is filed by approximately 725 respondents. We estimate that 25% of the 2,645.52 hours per response (661.38 hours) is prepared by the issuer for a total reporting burden of 479,501 (661.38 hours per response × 725 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 23, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04065 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17Ac2–2 and Form TA–2; SEC File No. 270–298, OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ac2–2 (17 CFR 240.17Ac2–2) and Form TA–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the

Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ac2–2 and Form TA–2 require registered transfer agents to file an annual report of their business activities with the Commission. These reporting requirements are designed to ensure that all registered transfer agents are providing the Commission with sufficient information on an annual basis about the transfer agent community and to permit the Commission to effectively monitor business activities of transfer agents.

The amount of time needed to comply with the requirements of amended Rule 17Ac2–2 and Form TA–2 varies. Of the total 429 registered transfer agents, approximately 9.1% (or 39 registrants) would be required to complete only questions 1 through 3 and the signature section of amended Form TA–2, which the Commission estimates would take each registrant approximately 30 minutes, for a total burden of 19.5 hours (39 × .5 hours). Approximately 26.7% of registrants (or 115 registrants) would be required to answer questions 1 through 5, question 11 and the signature section, which the Commission estimates would take approximately 1 hour and 30 minutes, for a total of 172.5 hours (115 × 1.5 hours). Approximately 64.2% of the registrants (or 275 registrants) would be required to complete the entire Form TA–2, which the Commission estimates would take approximately 6 hours, for a total of 1,650 hours (275 × 6 hours). The aggregate annual burden on all 429 registered transfer agents is thus approximately 1,842 hours (19.5 hours + 172.5 hours + 1,650 hours) and the average annual burden per transfer agent is approximately 4.3 hours (1,842 ÷ 429).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 23, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04064 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15g–6; SEC File No. 270–349, OMB Control No. 3235–0395.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15g–6—Account Statements for Penny Stock Customers—(17 CFR 240.15g–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15g–6 requires brokers and dealers that sell penny stocks to provide their customers monthly account statements containing information with regard to the penny stocks held in customer accounts. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 221 broker-dealers will spend an average of 78 hours annually to comply with this rule. Thus, the total compliance burden is approximately 17,238 burden-hours per year.

Written 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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to *PRA_Mailbox@sec.gov.*

Dated: February 23, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04063 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, March 4, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On February 17, 2015 the Commission published notice of the Committee meeting (Release No. 33–9724), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 25, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04264 Filed 2–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74349; File No. SR–FINRA–2015–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt FINRA Rule 4517 (Member Filing and Contact Information Requirements) in the Consolidated FINRA Rulebook

February 23, 2015.

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 12, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, of which Items I and II have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rules 3170 (Mandatory Electronic Filing Requirements), 1150 (Executive Representative), and 1160 (Contact Information Requirements) as FINRA Rule 4517 (Member Filing and Contact Information Requirements) without any substantive changes. FINRA also proposes to update references and cross-references within other FINRA rules accordingly.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] FINRA is proposing to transfer NASD Rules 3170 (Mandatory Electronic Filing Requirements), 1150 (Executive Representative), and NASD Rule 1160 (Contact Information Requirements) into the Consolidated FINRA Rulebook as FINRA Rule 4517 (Member Filing and Contact Information Requirements) without any substantive changes.

Proposed FINRA Rule 4517(a): Mandatory Electronic Filing Requirements

Proposed FINRA Rule 4517(a) would transfer without substantive change NASD Rule 3170 (Mandatory Electronic Filing Requirements) which requires each member to file with or otherwise submit to FINRA, in such electronic format as FINRA may require, all regulatory notices or other documents required to be filed or otherwise submitted to FINRA, as specified by FINRA. FINRA will advise firms via the *Regulatory Notice* process or other similar communication, as appropriate, as to each regulatory notice or document that members will be required to file with or submit in electronic format to FINRA, the compliance date for the electronic filing or submission, and the requisite manner and format.[5]

Proposed FINRA Rule 4517(b): Executive Representative

Proposed FINRA Rule 4517(b) would transfer without substantive change NASD Rule 1150, the provision requiring that each member must identify, review and, if necessary, update its executive representative designation and contact information as required by Article IV, Section 3 of the NASD By-Laws in the manner prescribed by NASD Rule 1160. The proposed rule would replace the references to the legacy NASD By-Laws and rule with FINRA By-Laws and rule.

Proposed FINRA Rule 4517(c): Review and Update of Contact Information

Proposed FINRA Rule 4517(c) would transfer without substantive changes the requirements of NASD Rule 1160 (Contact Information Requirements). The only changes to the proposed rule text are minor editorial changes to reflect current nomenclature, and to assist and enhance readability. NASD Rule 1160 requires members to report and update contact information to FINRA via the ''NASD Contact System or such other means as NASD may specify,'' and to promptly comply with any FINRA request for the required contact information. Currently, NASD Rule 1160 supports members' compliance with NASD Rule 1150 (Executive Representative) and FINRA Rules 1250 (Continuing Education Requirements), 3310.02 (Review of Anti-Money Laundering Compliance Person Information), and 4370 (Business Continuity Plans and Emergency Contact Information), which all require members to provide FINRA with designated contact person information.

Proposed FINRA Rule 4517(c) would require each member to report and update to FINRA all contact information applicable to the member that FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] The proposed rule change does not affect any current filing or submission requirements issued pursuant to NASD Rule 3170, which remain effective, subject to any future changes FINRA may make pursuant to proposed FINRA Rule 4517 once the rule becomes effective. *See, e.g., Notice to Members* 06–61 (November 2006) (announcing SEC approval of NASD Rule 3170 and specifying various financial notices to which NASD Rule 3170 would apply), *Regulatory Notice* 08–67 (November 2008) (requiring electronic submission of, among other things, qualification examination waivers pursuant to NASD Rule 3170), and *Regulatory Notice* 11–46 (October 2011) (requiring electronic submission of annual audit reports pursuant to NASD Rule 3170). *See also Regulatory Notice* 08–11 (March 2008) (addressing frequently asked questions on NASD Rule 3170).

requires via the Firm Gateway® or such other means as FINRA may specify. Member firms already use the Firm Gateway, a web-based tool that provides consolidated access to FINRA regulatory and filing applications, to access the FINRA Contact System. Proposed FINRA Rule 4517(c) would reflect the current nomenclature of a FINRA application that has been in use by its members since 2007.[6]

In addition, proposed FINRA Rule 4517(c)(1) would require a member to update its contact information promptly, but in any event not later than 30 days following any change in such information, and review, and if necessary, update the required contact information within 17 business days after the end of each calendar year. This proposed provision replaces the nearly identical provision in NASD Rule 1160(b) but with a minor editorial change to delete the phrase ''via the NASD Contact System or such other means as NASD may specify'' from the proposed rule text, because the phrase already appears in proposed paragraph (c). Furthermore, proposed FINRA Rule 4517(c)(2) would require that each firm comply promptly with any FINRA request for the required contact information, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff. This proposed provision replaces the nearly identical provision in NASD Rule 1160(c) but with the minor editorial change from NASD Rule 1160(c)'s ''such information'' to ''the required contact information'' to enhance the readability of the proposed rule. As with NASD Rule 1160, the proposed rule change would not relieve firms from any separate requirements to update such information.[7]

The proposed rule change would also replace all references to NASD Rules 1150 and 1160 in FINRA Rules 1250 (Continuing Education Requirements), 3310.02 (Review of Anti-Money Laundering Compliance Person Information), 4370 (Business Continuity Plans and Emergency Contact Information), and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) with references to proposed FINRA Rule 4517 accordingly.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change, which does not substantively change the rules, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE and FINRA rules into one rule set.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, this proposal will not substantively change either the text or application of the rules. FINRA would like to proceed with the rulebook consolidation process expeditiously, which it believes will provide additional clarity and regulatory efficiency to members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to this proposal to transfer NASD Rules 1150, 1160 and 3170 into the Consolidated FINRA Rulebook without any substantive changes.[9]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Section 19(b)(3)(A) of the Act[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because FINRA is proposing to transfer

[6] *See* FINRA News Release, Clicking on Compliance: FINRA Launches Firm Gateway (Oct. 11, 2007).

[7] For example, a member must identify, among others, its Chief Executive Officer and Chief Compliance Officer on Form BD, and promptly update such information by submitting an amendment whenever the information becomes inaccurate or incomplete for any reason. *See also* Article IV, Section 1(c) of the FINRA By-Laws, requiring each member to ensure that its membership application is kept current at all times by supplementary amendments, and to file such amendment no later than 30 days after learning of the facts or circumstances giving rise to the amendment.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] FINRA previously solicited comment on a proposal to adopt FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements) which, among other things, would have incorporated the substance of NASD Rules 1160 and 3170, and deleted NASD Rule 1150. *See Regulatory Notice* 09–02 (January 2009). Given that FINRA would like to proceed with the rulebook consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing in this rule change to adopt NASD Rules 1150, 1160 and 3170 without substantive changes, and will consider at a later date whether to propose substantive changes to these rules. FINRA has determined to transfer NASD Rule 1150 into the Consolidated FINRA Rulebook rather than delete its content in the interest of providing clarity to member firms of their obligation under the FINRA By-Laws to appoint an Executive Representative. One commenter to *Regulatory Notice* 09–02 suggested that FINRA extend from 17 business days to 30 days the period in which a member must annually review and update its contact information. *See* Letter from Dale E. Brown, Financial Services Institute, to Marcia E. Asquith, FINRA, dated February 20, 2009. The proposed rule change, however, would retain NASD Rule 1160's requirement that a member update its contact information promptly, but no later than 30 days following any change in the information, and annually verify the information within 17 business days after the end of the calendar year. As FINRA stated when it proposed NASD Rule 1160, the 17-business day window is consistent with the requirement that a member's FOCUS report be submitted within 17 business days after the end of each quarter. *See* Securities Exchange Act Release No. 55810 (May 24, 2007), 72 FR 30404 (May 31, 2007) (Notice of Filing of File No. SR–NASD–2007–034). FINRA reminds its members to annually review and update, if necessary, their designated contact information through several ways such as announcements and alerts in the Firm Gateway, and electronic communications to the firm's Chief Compliance Officer(s) and Executive Representative.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii).

NASD Rule 3170 (Mandatory Electronic Filing Requirements), NASD Rule 1150 (Executive Representative), and NASD Rule 1160 (Contact Information Requirements) into the Consolidated FINRA rulebook as FINRA Rule 4517 (Member Filing and Contact Information Requirements) without any substantive changes, to update cross-references accordingly and reflect current nomenclature, and to thereby clarify FINRA's rules, and because the rulebook consolidation process is designed to provide additional clarity and regulatory efficiency to members, the Commission believes that a waiver of the requirement is appropriate so that the rule change may become operative immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–004. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–004, and should be submitted on or before March 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04084 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

[14] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74352; File No. SR–BATS–2015–13]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to: (1) remove the reference to ROLF from fee code BO; (2) make certain changes to Cross-Asset Step-Up Tier 3; and (3) make certain non-substantive clean-up changes to the fee schedule.

Deleting Reference to ROLF

The Exchange proposes to amend its fee schedule to remove the reference to

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

ROLF from fee code BO. Fee code BO currently provides that the Exchange will charge $0.0030 per share for any order routed using ROLF or Destination Specific routing strategy unless otherwise specified. Under the ROLF routing strategy, an order will check the Exchange for available shares and then will be sent to LavaFlow ECN (''LavaFlow''). This change is being proposed in response to LavaFlow's announcement that it will cease market operations and its last day of trading will be Friday, January 30, 2015. As such, beginning on February 2, 2015, the Exchange will no longer route orders to LavaFlow. As proposed, the Exchange would continue to charge $0.0030 per share for orders routed using a Destination Specific routing strategy.

Step-Up Add TCV Definition

The Exchange is also proposing to make a non-substantive change to the definition of ''Step-Up Add TCV'' in its fee schedule. Currently, Step-Up Add TCV means ADAV[6] as a percentage of TCV[7] in January 2014 subtracted from current ADAV as a percentage of TCV. In order to add an additional month to use as a baseline for calculating Step-Up Add TCV, as further described below, the Exchange is proposing to amend the fee schedule such that Step-Up Add TCV means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. The Exchange is also proposing to make a corresponding non-substantive change to footnote 2, titled ''Step-Up Tiers,'' such that the criteria to qualify for the tiers is described as the ''Member's Step-Up TCV from January 2014 is equal to or greater than'' instead of ''Member's Step-Up TCV is equal to or greater than.'' This change is non-substantive because the Exchange is not proposing to amend any fees, rebates, or the calculation thereof, but rather making the requisite change in order for the rebate and the criteria associated with meeting the tiers to remain the same in conjunction with the proposed changes to the definition of Step-Up Add TCV outlined above.

Cross-Asset Step-Up Tiers

The Exchange is also proposing to amend the criteria for meeting Tier 3 in the Cross-Asset Step-Up Tiers. Specifically, the Exchange is proposing to make two changes: to base the tier calculation on a Member's Step-Up Add TCV from December 2014; and to lower the threshold required to meet Tier 3 from 0.20% to 0.15%. Currently, in order to meet Tier 3 of the Cross-Asset Step-Up Tier and receive a $0.0032 rebate per share that adds liquidity: (i) a Member's ADAV as a percentage of TCV must be equal to or greater than 0.20%; and (ii) the Member's Options Step-Up Add TCV[8] must be equal to or greater than 0.60%. The Exchange is not proposing to amend requirement (ii). The Exchange is proposing to amend requirement (i) such that a Member must have a Step-Up Add TCV from December 2014 of at least 0.15% instead of an ADAV as a percentage of TCV of at least 0.20%, which will encourage increased participation on the Exchange by requiring that a Member increases its participation on the Exchange as compared to December 2014, rather than maintaining a static ADAV as a percentage of TCV.

The Exchange proposes to implement the amendments to its fee schedule effective February 10, 2015.

2. Statutory Basis

The Exchange believes 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, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) of the Act and 6(b)(5) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that its proposal to eliminate ROLF from fee code BO represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The proposed change is in response to LavaFlow's announcement that it will cease market operations and its last day of trading will be Friday, January 30, 2015. The Exchange notes that the proposed change is not designed to amend any fee or rebate, nor alter the manner in which the Exchange assesses fees and rebates. As of February 2, 2015, the Exchange will no longer route orders to LavaFlow and, therefore, proposes to remove ROLF from the fee schedule, which will make the fee schedule clearer and less confusing for investors as well as help to eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange also believes that the proposed non-substantive change to the definition of Step-Up Add TCV and the corresponding non-substantive change to the Step-Up Tiers are reasonable, fair, and equitable because they are designed to make the fee schedule easier to comprehend in light of the decision to add an additional baseline month, as described above. The Exchange notes that neither of the proposed changes are designed to amend any fee or rebate, nor alter the manner in which the Exchange assesses fees and rebates. These non-substantive changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange also believes that the proposed change to measure the Member's Step-Up Add TCV from December 2014 instead of ADAV as a percentage of TCV is reasonable, fair, and equitable because it will incentive Members to increase their participation on the Exchange as compared to December 2014, rather than maintaining a static ADAV as a percentage of TCV. The Exchange further believes that the proposal is reasonable, fair, and equitable because the increased liquidity from incentivizing Members to increase their participation on the Exchange will benefit all investors by deepening the liquidity pool on the Exchange, supporting the quality of price discovery, promoting market transparency, and improving investor protection. The Exchange also believes that lowering the threshold to meet the requirement from 0.20% to 0.15% is reasonable, fair, and equitable because the measurement is changing from a measure of total added volume (ADAV

[6] ''ADAV'' means average daily volume calculated as the number of shares added per day on a monthly basis.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] ''Options Step-Up Add TCV'' means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV, using the definitions of ADAV and TCV as provided under the Exchange's fee schedule for BATS Options.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

as a percentage of TCV) into a measure of the increase of added volume as compared to December 2014 (Step-Up Add TCV from December 2014) and the reduction will make it easier for Members to achieve Cross-Asset Step-Up Tier 3. The Exchange believes that step-up pricing programs such as that proposed herein reward a Member's growth pattern and that such increased volume increases the potential revenue to the Exchange, which will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. Such pricing programs are also fair and equitable in that they are available to all Members. Further, volume-based rebates and fees such as the ones maintained by the Exchange, including those amendments proposed herein, have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Further, the Exchange believes that the Cross-Asset Step-Up Tiers will provide such enhancements in market quality on the Exchange by incentivizing increased participation by Members attempting to meet Tier 3. Accordingly, the Exchange believes that the proposed amendments to the Cross-Asset Step-Up Tiers and the incentives associated therewith are not unfairly discriminatory because they will apply uniformly to all Members and are consistent with the overall goals of enhancing market quality on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes that the proposed changes to the Cross-Asset Step-Up Tiers will allow the Exchange to compete more ably with other execution venues by drawing additional volume to the Exchange, thereby making it a more desirable destination venue for its customers. Further, the Exchange does not believe that these proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange also believes that its proposal to remove ROLF from fee code BO would not affect intermarket nor intramarket competition because the change is not designed to amend any fee or rebate or to alter the manner in which the Exchange assesses fees or calculates rebates. It is simply proposed in response to LavaFlow's announcement that it will cease market operations following the close of business on Friday, January 30, 2015.

The Exchange believes that the non-substantive and organizational changes to the fee schedule would not affect intermarket nor intramarket competition because none of the proposed changes are designed to amend any fee or rebate or to alter the manner in which the Exchange asses fees or rebates. The changes are intended to make the fee schedule as clear and concise as possible.

As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–13. 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–BATS–2015–13 and should be submitted on or before March 20, 2015.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04068 Filed 2–26–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74351; File No. SR–CBOE–2015–021]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Chicago Board Options Exchange, Incorporated's Order Handling System and Order Management Terminal

February 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 19, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a rule that further describes its existing order handling system (also referred to below as ''OHS'') and order management terminal (also referred to below as ''OMT'') operations, and to make corresponding amendments to its opening, automatic execution and complex order processing rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 6.12 to further describe its existing OHS and OMT operations, and to make corresponding amendments to its opening, automatic execution and complex order processing rules (Rules 6.2B, 6.13, and 6.53C, respectively). The Exchange notes that these OHS and OMT operations are currently in use and referenced in the Exchange Rules. The purpose of this rule change is simply to codify further details of the existing operations within the Exchange Rules.

Background

The CBOE Hybrid System [5] is a trading platform that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. To operate in this ''hybrid'' environment, the Exchange has made available to Trading Permit Holders (''TPHs'') a dynamic order handling system, also referred herein as OHS, that has the capability to route orders to the Hybrid System for automatic execution and book entry, to PAR workstations located in the trading crowds for open outcry and other manual handling by TPHs and Exchange PAR Officials, and/or to other order management terminals generally located in booths on the trading floor for manual handling. Where an order is routed for processing by the Exchange order handling system depends on various parameters configured by the Exchange and the order entry firm itself. Thus, the OHS provides TPHs with some flexibility to determine how to process their orders in the CBOE Hybrid System.

The Exchange believes these routing parameters assist with the maintenance of a fair and orderly market and help to mitigate potential risks associated with orders executing at potentially erroneous prices or inconsistent with a particular investment strategy by routing certain orders to a PAR workstation or a booth order management terminal for manual handling based on parameters determined by the Exchange under Rule 6.2B, 6.13 or 6.53C, by routing certain orders to an order management terminal based on parameters prescribed by the Exchange, by routing certain orders to an order management terminal or a PAR workstation or for electronic process, based on parameters prescribed by the order entry firm itself, and by routing certain orders to an order management terminal in the event of certain Exchange system disruptions or malfunctions. The order handling system also permits orders to be routed from a PAR workstation to an order management terminal (and vice versa) and from a PAR workstation or an order management terminal to the Hybrid System for automatic execution or book entry. The Exchange also views the order handling system as an important tool to assist order entry firms in their ability to efficiently manage, process and execute orders in a ''hybrid'' trading environment. The Exchange believes this, again, promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors.

Regarding booth routing parameters in particular, an order may route to an order management terminal generally located in a booth depending on various circumstances. One such set of circumstances pertains to automatic execution/book ''kick-outs.'' In that regard, the electronic processes under Rules 6.2B (pertaining to opening transactions), 6.13 (pertaining to simple orders) and 6.53C (pertaining to complex orders), provide that an order that is not eligible for automatic

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE ''Hybrid System'' or ''Hybrid Trading System'' refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The ''Hybrid 3.0 Platform'' is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. Classes authorized by the Exchange for trading on the Hybrid Trading System shall be referred to as Hybrid classes. Classes authorized by the Exchange for trading on the Hybrid 3.0 Platform shall be referred to as Hybrid 3.0 classes. References to ''Hybrid,'' ''Hybrid System,'' or ''Hybrid Trading System'' in the Exchange's Rules shall include all platforms unless otherwise provided by rule. *See, e.g.,* Rule 1.1(aaa).

execution or book entry due to certain Exchange-defined parameters may route to PAR or, at the order entry firm's discretion, to the order entry firm's booth.[6] In the event an order is not eligible to route to PAR, the order would be cancelled.[7] Once routed to a PAR workstation or a booth, an order can be manually addressed (*e.g.,* an individual might determine to resubmit the order to the Hybrid System for automatic execution, route the order from a booth to a PAR workstation, represent the order in open outcry, cancel the order, etc.). Thus, as part of establishing their connectivity for routing orders to the Exchange, order entry firms designate PAR workstations and/or booth order management terminals as the destination for their automatic execution/book kick-outs.

Apart from the foregoing processes for automatic execution/book kick-outs, orders may be routed through the order handling system to an order management terminal under various other circumstances. For instance, orders may route to an order management terminal from a PAR workstation. In addition, certain orders may route directly from an order entry firm to an order management terminal for manual handling based on certain limit order price parameter settings established by the Exchange[8] or based on certain other parameters established by the order entry firm itself.[9] Orders may also route to a booth order management terminal in the event of certain system disruptions or malfunctions (*e.g.,* if the Exchange's experiences a system outage that prevents orders from routing to a particular PAR workstation, the order will route to the firm's next available alternate destination listed in the order handling system, which is usually defined as an order management

[6] For example, under Rule 6.13(b)(v), a marketable order may not be eligible for automatic execution because the execution would follow an initial partial execution on the Exchange and would be at a subsequent execution price that is not within an acceptable tick distance from the initial execution (the ''acceptable tick distance'' is determined by the Exchange on a series-by-series and premium basis and may not be less than 2 minimum increment ticks). Under this ''drill through'' provision, for example, if the acceptable tick distance in a series quoted in $0.01 increments is set at 3 ($0.03), then a marketable buy order that received an initial partial execution at $1.20 would not automatically execute at a subsequent price of $1.25 (which is $0.02 beyond the acceptable tick distance). In such a circumstance, the execution of the order would be suspended and any remaining portion would be exposed for price improvement pursuant to the HAL process in Rule 6.14A, *Hybrid Agency Liaison,* using the acceptable tick distance as the exposure price. If a quantity remains at the conclusion of the HAL process, the remaining quantity will route to PAR or, at the order entry firm's discretion, to the order entry firm's booth, so that the order can be manually addressed. (In the event an order is not eligible to route to PAR, the order will be cancelled).

[7] For example, assume an order entry firm has chosen to route its orders that are not eligible for automatic execution to a PAR workstation (and the order entry firm has also not specified that its orders can route to a booth order management terminal if PAR is unavailable). With this configuration, if an order is routed by that firm to the CBOE Hybrid System but the order is not eligible for automatic execution or book entry (*e.g.,* because an incoming order is marketable and would execute at a price outside an acceptable price range under Rule 6.13(b)(v)), then: (i) The order would route to a PAR workstation so the order can be manually addressed, or (ii) if it is not eligible to route to PAR (*e.g.,* because the particular order type is not eligible for PAR and the order entry firm has not specified that its orders can route to a booth if PAR is unavailable), then the remaining balance of the order will be cancelled.

[8] Currently the Exchange has determined for all classes where the limit order price parameters are activated, except those noted below, that the limit order price parameters would be applied for the series within each class such that the Exchange would not accept the following simple limit orders for execution: (i) If the market quote is less than or equal to $3, limit orders to buy priced more than $0.50 above the offer and limit orders to sell priced more than $0.50 below the bid; (ii) if the market quote is greater than $3 and less than or equal to $10, limit orders to buy priced more than $1.00 above the offer and limit orders to sell priced more than $1.00 below the bid; (iii) if the market quote is greater than $10 and less than or equal to $30, limit orders to buy priced more than $1.50 above the offer and limit orders to sell priced more than $1.50 below the bid; (iv) if the market quote is greater than $30 and less than or equal to $50, limit orders to buy priced more than $2.00 above the offer and limit orders to sell priced more than $2.00 below the bid; or (v) if the market quote is equal to or greater than $50, limit orders to buy priced more than $3.00 above the offer and limit order to sell priced more than $3.00 below the bid. For the same classes, the Exchange has determined that limit orders received before a series is opened (including before a series is opened following a halt) will be checked against the previous trading day's closing price using the same parameters noted above. Exchange Market Maker and away Market Maker orders received pre-open are excluded from this pre-opening aspect of the limit order price parameters. The foregoing limit order price parameters, which are referred to as the ''Price Check Level A'' or ''Level A'' settings, are in effect in all classes except option classes AAPL, DJX, NDX, OEX, RUT, SPX (which includes symbols SPX, SPXW and SPXQ), SPXpm, SPY andSPY7. There is no limit order price parameter currently activated for option class AAPL. (According to the Exchange, volume for options class AAPL is higher and trading is more volatile, while the price of the underlying stock is higher (*e.g.,* Apple Inc. closed at $94.72 on July 22, 2014). The Exchange believes that application of the limit order price parameter in these circumstances may serve as more of a hindrance to the orderly processing orders (*e.g.,* application of the parameter may result in an inordinate number of orders being excepted from automated process and instead routing for manual handling) and, as a result, has determined to not apply the parameter to option class AAPL for the time being.) However, the Exchange may evaluate whether to apply the parameter to the option class and any determination to do so would be announced via Regulatory Circular.

For the remaining seven classes, the limit order price parameter levels for the premium ranges noted above are $1.00, $2.00, $3.00, $4.00 and $6.00, respectively. These limit order price parameters are referred to as the ''Price Check Level B'' or ''Level B'' settings. The Exchange has determined to apply the settings to immediate-or-cancel orders in option classes SPX (which includes symbols SPX, SPXW and SPXQ), SPXpm and SRO. For all other classes where the limit order price parameter is activated, it is not applied to immediate-or-cancel orders. For complex limit orders, the limit order price parameters are the same as the parameters for simple orders, but the complex order parameter levels are based on the derived net market (as opposed to an individual bid or offer).

See CBOE Regulatory Circular RG13–145, which is available at *http://www.cboe.com/publish/RegCir/RG13-145.pdf.*

The senior official in the Help Desk or two Floor Officials might also widen or inactivate one or more of these price check parameters for simple and/or complex orders on an intra-day basis in the interest of a fair and orderly market. For example, if an underlying stock is high priced or volatile and is experiencing significant price movement and the existing parameters would result in an inordinate number of limit orders not being accepted, the senior official in the Help Desk may determine to widen the parameters on an intra-day basis in the overlying or related options series. As another example, if the overall market is experiencing significant volatility, the senior official in the Help Desk or two Floor Officials may determine to widen the parameters for a group of series or classes. In that regard, the Exchange has determined that on any trading day where the front-month E-mini S&P 500 Futures (symbol ES/1) are trading more than 20 points above or below the previous day's closing values by 8:00 a.m. (all times noted are Central Time), the Exchange will widen the Price Check Level A settings to the Price Check Level B settings for the trading day for all classes where the limit order price check is activated at the Level A setting (referred to herein as the ''Standing Intraday Relief Condition''). *See* CBOE Regulatory Circular RG13–145. The next trading day, the parameter levels for those classes would revert back to the normal Level A setting, unless the E-mini S&P 500 Future is more than 20 points above or below the previous day's closing values by 8:00 a.m.

Example of Standing Intraday Relief Condition: If on Monday the E-mini S&P 500 Futures close at 1700 and by 8:00 a.m. on Tuesday the E-mini S&P 500 Future is trading at 1730 (30 points above the prior day's close of 1700), then the Exchange would adjust the limit order price parameter settings from Level A to Level B in all classes where Level A is the normal setting). If the E-mini S&P 500 Futures close on Tuesday at 1725 and by 8:00 a.m. on Wednesday are trading at 1720 (only 5 points below the prior day's close of 1725), then the limit order price parameter settings would revert back to the Level A settings that were in place on Monday. However, if by 8:00 a.m. on Wednesday the E-mini S&P 500 Futures are trading at 1700 (25 points below the prior day's close of 1725), then the limit order price parameter settings would remain at the Level B settings that were in place on Tuesday.)

The Exchange notes that these examples are non-exhaustive and for illustrative purposes only. (For example, *see also* CBOE Regulatory Circular RG14–019, which is available at *http://www.cboe.com/publish/RegCir/RG14-019.pdf* and which sets forth limit order price parameters settings for certain option classes on volatility index product settlement days.) The Exchange also notes that it may determine for the parameters to differ among classes and between pre-open and intra-day.

[9] For example, a firm might establish routing parameters so that all its orders, or a subset of orders that exceed certain size, price or other parameters, submitted to the Exchange order handling system route directly to a booth OMT (while other orders might route directly to a PAR workstation or for electronic processing).

terminal).[10] Thus, as part of establishing their connectivity for routing orders to the Exchange, order entry firms designate booth order management terminals as a destination for routes from PAR, direct routes from an order entry firm due to Exchange settings and/or optional order entry firm settings, and routes due to Exchange system disruption or malfunction.

When it comes to selecting an order management terminal, some order entry firms elect to route orders to terminals located in their own booths on the floor, others elect to route orders to terminals located in another TPH's booth, and still others a combination of the foregoing. For example, a firm that only trades remotely and does not maintain a physical presence on the Exchange trading floor may elect to route its orders to one or more TPHs' booth order management terminals, or a firm might elect to have all equity option orders route to its own booth order management terminal and all index option trades route to another TPH's booth order management terminal because the firm does not wish to maintain a physical presence on the floor for index trades. A firm may also elect to route orders to another TPH's booth order management terminal because the firm may have a large number of orders to address or is experiencing system issues and has designated the other TPH's booth as a back-up.

Proposal

While there are various references to the Exchange's order routing system and order management terminal functions throughout the Exchange Rules (*see, e.g.,* Rules 6.2B, 6.8B, 6.13, 6.53C), the Exchange believes it would be useful to have a more detailed description of the functionality within the rule text. Therefore, the Exchange is proposing to adopt new Rule 6.12 and amend existing Rules 6.2B, 6.13 and 6.53C to include additional information about the foregoing OHS and OMT functionality. These changes are intended to more fully describe the existing operation of the routing parameters and conditions necessary for an order entry firm to elect to route orders to an order management terminal.

Proposed Rule 6.12 will include an introductory paragraph indicating that the rule describes the process for routing orders through the Exchange's OHS, which is available for classes designated for trading on the CBOE Hybrid System. The introduction will also indicate that the OHS is a feature within the Hybrid System to route orders for automatic execution, book entry, open outcry, or further handling by a broker, agent, or PAR Official, in a manner consistent with Exchange Rules and Section 6(b) of the Act.[11]

Paragraph (a) of proposed Rule 6.12 includes a general description of the OHS's existing parameters for routing orders to OMTs. The proposed text provides that orders may route through the OHS to an OMT designated by an order entry firm in any of the circumstances described below. (The particular routing designations may be established based on various parameters established by the Exchange or order entry firm, as applicable.)

- *AutoEx and Book Kick-Outs:* Under Rules 6.3B, 6.13 and 6.53C, orders or the remaining balance of orders initially routed from an order entry firm for electronic processing that are not eligible for automatic execution or book entry will by default route to a PAR workstation designated by the order entry firm. If an order entry firm has not designated a PAR workstation or if a PAR workstation is unavailable, the remaining balance will route to an OMT designated by the firm. If it is not eligible to route, the remaining balance of the order will be returned to the order entry firm.
- *OMT/PAR Workstation Routing:* Orders may be routed back and forth between an OMT and a PAR workstation by TPHs. Orders may also be routed from a PAR workstation to an order management terminal by a PAR Official based on instructions from the TPH or if the PAR Official is unable to book or execute the order from, or maintain the order on, the PAR workstation.
- *Limit Order Price Parameter for Simple Orders:* Limit orders will route directly from an order entry firm to an OMT designated by the order entry firm when initially routed to the Exchange if: (i) Prior to the opening (including before a series is opened following a halt),[12] the order is to buy at more than an acceptable tick distance above the Exchange's previous day's close or the order is to sell at more than an acceptable tick distance below the Exchange's previous day's close (not applicable to Exchange Market-Makers or away Market-Makers),[13] or (ii) once a series has opened, the order is to buy at more than an acceptable tick distance above the disseminated Exchange offer or the order is to sell at more than an acceptable tick distances below the disseminated Exchange bid. For purposes of this provision, an acceptable tick distance or ''ATD'' will be determined by the Exchange on a series by series and premium basis and announced to TPHs via Regulatory Circular, and shall be no less than 5 minimum increment ticks. The Exchange may also determine on a class by class basis and announce via Regulatory Circular whether to apply the parameters in (i) and/or (ii) above to immediate-or-cancel orders.[14] In addition, the senior official on the Exchange Help Desk[15] or two Floor Officials may widen or inactivate one or more of the applicable ATD parameter settings on an intra-day basis in the interest of a fair and orderly market.[16]

[10] The Exchange notes that CBOE also utilizes the OMT technology as a back-up in the event of a system failure, malfunction or other issue where an order does not route to an OMT. In these circumstances where an order(s) fails to route to an OMT, the order would route to an Exchange Help Desk OMT. Once on the Exchange Help Desk terminal, orders with an immediate-or-cancel (''IOC'') contingency are manually cancelled and all other orders are manually routed by the Help Desk to the respective firm's OMT. To be clear, the use of the Help Desk terminal is a back-up, safety feature that is designed to assist the Exchange in maintaining an orderly market. The back-up terminal is used by the Exchange for all order entry firms' and Trading Permit Holders' orders.

[11] 15 U.S.C. 78f(b).

[12] This includes halts that may occur at any time after the opening of trading on a particular trading day. The Exchange notes that this is the manner in which the limit order price parameter functionality currently operates. The Exchange believes that this functionality provides an additional safeguard to consider the reasonableness of limit order pricing prior to a reopening following a trading halt.

[13] This parameter for limit orders received prior to the opening (including before a series is opened following a halt) is not applicable to limit orders of Exchange Market-Makers and away Market-Makers. The Exchange believes that Market-Makers actively evaluate the pre-opening market and utilize their own risk management parameters when entering, maintaining and cancelling orders prior to the opening, minimizing the likelihood of a Market-Maker order resulting from an error from being entered and continuing to rest prior to the opening of trading. In that regard, while the Exchange believes that the application of its limit order price parameters serve to promote a fair and orderly market, the parameters are not a substitute for a broker-dealer's compliance with Rule 15c3–5 under the Act, 17 CFR 240.15c3–5 (commonly referred to as the ''Market Access Rule'').

[14] *See* note 8, *supra,* for current parameter settings.

[15] The Help Desk is sometimes referred to elsewhere within the Exchange Rules as the ''Control Room'' and these two terms are used interchangeably. For consistency, the Exchange is proposing to change a reference in Rule 6.13 from the ''Control Room'' to the ''Exchange Help Desk.''

[16] Under proposed Rule 6.12.01, (i) notification of such intra-day relief will be announced as soon as reasonably practical via verbal message to the trading floor, OMT message to TPH organizations on the trading floor, and electronic message to TPHs that request to receive such messages; (ii) such intra-day relief will not extend beyond the trade day on which it is granted, unless a determination to extend such relief is announced to TPHs via Regulatory Circular; and (iii) the Exchange will make and keep records to document all determinations to grant intra-day relief under this

If a limit order is routed to an OMT because the ATD has not been met, the order can be manually addressed (*e.g.,* an individual might determine to route the order to the Hybrid System for automatic execution or book entry (and the limit order price parameter would not be applied for such routing), route the order from a booth to a PAR workstation, represent the order in open outcry, cancel the order, etc.).[17]

• *Limit Order Price Parameter for Complex Orders:* Under this parameter, which is comparable to the parameter applicable to simple orders described above, incoming limit priced complex orders will route directly from an order entry firm to an OMT designated by the order entry firm if: (i) Prior to the opening (including before a series is opened following a halt), the order is priced at a net debit that is more than an acceptable tick distance above the derived net market using the Exchange's previous day's close in the individual series legs comprising the complex order or priced at a net credit that is more than an acceptable tick distance below the derived net market using the Exchange's previous day's close in the individual series legs comprising the complex order (such ATD will be as determined by the Exchange on a class by class and net premium basis and announced via Regulatory Circular); [18] or (ii) once a series has opened, the order is priced at a net debit that is more than an acceptable tick distance above the opposite side derived net market using the Exchange's best bid or offer in the individual series legs comprising the complex order or priced at a net credit that is more than an acceptable tick distance below the opposite side derived net market using the Exchange's best bid or offer in the individual series legs comprising the complex order (such ATD will be as determined by the Exchange on a class by class and net premium basis and announced via Regulatory Circular). The Exchange may determine on a class by class basis and announce via Regulatory Circular whether to apply the parameters in (i) and/or (ii) above to immediate-or-cancel complex orders (similar to the discussion above for simple orders). The Exchange also notes that the limit order price parameter is not applicable to stock-option orders.[19] Similar to simple orders, the ATD for the limit order price parameter will be no less than 5 minimum net price increment ticks (where the ''minimum net price increment'' is the minimum increment for net priced bids and offers for the given complex order strategy). For example, if the minimum net price increment for complex orders in a given series in a class is $0.01, then the ATD would be no less than $0.05 (5 X $0.01). If the minimum net price increment is $0.05, then the ATD would be no less than $0.25 (5 X $0.05). Also similar to simple orders, the senior official on the Exchange Help Desk or two Floor Officials may widen or inactivate one or more of the applicable ATD parameter settings for complex orders on an intra-day basis in the interest of a fair and orderly market.[20]

• *Direct Routing:* Orders may route directly from an order entry firm to an OMT (or to a PAR workstation or to the Hybrid System for electronic processing) based on parameters prescribed by the order entry firm itself.[21]

• *System Disruptions or Malfunctions:* Orders will route to an OMT designated by the order entry firm or TPH, or a terminal designated and maintained by the Exchange as a back-up to order entry firms' and TPHs' designated order management terminals, in the event of certain system disruptions or malfunctions that affect the ability of orders to reach or be processed at their intended destination. For example, if an order cannot route to a PAR workstation due to a malfunction of the PAR workstation, the order will route to an OMT either automatically or by Exchange personnel, as necessary.[22]

Paragraph (b) of proposed Rule 6.12 would provide that each order entry firm must designate an OMT(s) for receiving routed orders and would reflect the Exchange's current practice that permits an order entry firm to elect to have its orders routed to a booth OMT operated by the order entry firm itself and/or a booth OMT operated by another TPH.

In conjunction with the foregoing, various corresponding changes to Rules 6.2B, 6.13 and 6.53C are being proposed. In particular, existing references in the rule text to routing orders to ''. . . PAR or, at the order entry firm's discretion, to the order entry firm's booth [and, if] an order is not eligible to route to PAR, then the remaining balance will be cancelled'' (or substantially similar wording) will be replaced with references to routing orders ''. . . via the order handling system pursuant to Rule 6.12'' (or substantially similar wording).) [sic] Given the above-described proposal to further describe the routing process in proposed Rule 6.12 and to include cross-references to proposed Rule 6.12 within Rules 6.2B, 6.13 and 6.53C, the Exchange does not believe it is necessary to continue to include the routing process descriptions within Rules 6.2B, 6.13 and 6.53C.

The Exchange is proposing various miscellaneous changes to the existing text of Rule 6.13. In particular, the Exchange is proposing to include a title for each type of price check parameter within the existing rule text (*i.e.,* the existing market width and drill through price parameters). The addition of these titles is non-substantive and is intended for ease of reference only. In addition, the existing text in Rule 6.13(b)(v)(A) provides that the ''acceptable price range'' or ''APR'' for the national best

Rule, and shall maintain those records in accordance with Rule 17a-1 under the Exchange Act. The Exchange notes that conditions when the Standing Intraday Relief will be instituted and the particular form of relief have been announced via Regulatory Circular. *See* note 8, *supra.* The announcement of the pre-established conditions and relief is intended to serve the circular notification requirement and, as such, a separate circular would not be issued if this relief is instituted over multiple days. However, if the Exchange would determine to modify the conditions for Standing Intraday Relief, then the Exchange would announce those changes by issuing another Regulatory Circular.

The Exchange also notes that the OMT messaging is now used in place of former printer messaging. Therefore, for consistency, the Exchange is proposing to update a reference in Rule 6.13 from ''printer message'' to ''OMT message.'' The Exchange also notes that the verbal messages to the trading crowds are announced over a speaker system which can be heard in the particular trading crowd as well as the trading floor. Therefore, for consistency, the Exchange is proposing to update a reference in Rule 6.13 from ''trading crowd'' to ''trading floor.''

[17] The limit order price parameter will take precedence over another routing parameter to the extent that both are applicable to an incoming limit order.

[18] Similar to simple orders, this parameter for limit priced complex orders received prior to the opening is not applicable to limit orders of Exchange Market-Makers and away Market-Makers. *See, e.g.,* note 13, *supra.*

[19] Stock-options orders are excluded from the calculation because the individual component stock leg is not traded on the Exchange and, as a result, calculation of a derived net market by the Exchange's automated system would be a more complicated function. If in the future the Exchange would decide to enhance the limit order price parameter functionality to address stock-option orders, the Exchange would file a rule change to address stock-option orders.

[20] *See also* notes 8 and 16, *supra.* In addition, the limit order price parameter takes precedence over other complex order routing parameters to the extent that others are applicable to an incoming limit order. Once routed to an OMT, an order can be manually addressed (*e.g.,* an individual might determine to resubmit the order to the Hybrid System for automatic execution or book entry (and the limit order price parameter would not be applied to such routing), route the order from a booth to a PAR workstation, represent the order in open outcry, cancel the order, etc.)

[21] *See* note 9, *supra.*

[22] *See* pages 30–32, *supra,* and surrounding discussion.

bid and national best offer width price check parameter (for market orders and/or marketable limit orders) shall be determined by the Exchange on a class by class basis, and also indicates elsewhere in the existing rule text that the parameters for each class are applied on a series by series basis. The Exchange is proposing to replace this class by class reference in Rule 6.13(b)(v)(A) with series by series for consistency. The existing rule text also provides that, as soon as reasonably practicable, the senior official in the Help Desk or two Floor Officials may grant intra-day relief by widening the APR and ATD parameter settings for one or more option series and that notification of intraday relief will be announced via verbal message to the trading crowd, printer message to TPH organizations on the trading floor, and electronic message to TPHs that request to receive such messages. The Exchange is proposing to amend this provision to replace references from ''trading crowd'' to ''trading floor'' and from ''printer message'' to ''OMT message.'' [23] The Exchange is also proposing to make clear that the relief can be granted intra-day by widening or inactivating the applicable APR and/or ATD setting in the interest of a fair and orderly market. The Exchange believes including the reference to inactivating the applicable settings is not substantive because an applicable APR or ATD parameter could be widened to such a level that it would be in effect inactive. Similar to proposed Rule 6.12.01, the Exchange is also proposing to provide within the text of Rule 6.13(b)(v) that the intra-day relief granted in the interest of a fair and orderly market by the senior official in the Help Desk or two Floor Officials will not extend beyond the trade day on which it is granted, unless a determination to extend such relief is announced to TPHs via Regulatory Circular. The Exchange is also proposing to provide within the rule text that the Exchange will make and keep records to document all determinations to grant intra-day relief under Rule 6.13(b)(v), and shall maintain those records in accordance with Rule 17a–1 under the Act.[24] The rule text will also provide that the Exchange will periodically review determinations to grant intra-day relief for consistency with the interest of a fair and orderly market. The Exchange is also proposing to make clear that, for purposes of the drill through price parameters, if an order has already been subject to the HAL process or if the order is not eligible for HAL, then the remaining quantity of the order will route via the OHS pursuant to proposed Rule 6.12.

Finally, the Exchange is proposing a miscellaneous change to Rule 6.53C.08 (pertaining to complex order price check parameters) to specifically identify the price check parameters that are not applicable to stock-option orders in the introductory text to this provision. The particular parameters to which stock-option orders may be subjected are already identified within the rule text. This proposed change is simply to include a list of those parameters which are not applicable to stock-option orders in the introductory paragraph for ease of reference.[25]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [26] in general and furthers the objectives of Section 6(b)(5) of the Act [27] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange views these routing parameters as important tools that assist order entry firms in their ability to efficiently manage, process and execute orders in a ''hybrid'' trading environment. In addition, the Exchange believes these routing parameters assist with the maintenance of fair and orderly markets and help to mitigate potential risks associated with orders executing at potentially erroneous prices or inconsistent with a particular investment strategy by routing certain orders to PAR or an OMT for manual handling based on parameters determined by the Exchange under Rule 6.2B, 6.13 or 6.53C, by routing certain orders directly from an order entry firm to an order management terminal based on parameters prescribed by the Exchange (and announced via regulatory circular) or to an order management terminal or PAR workstation or for electronic processing based on parameters prescribed by the order entry firm itself, and by routing certain orders to an OMT in the event of certain Exchange system disruptions or malfunctions. The OHS also permits orders to be routed from a PAR to an OMT (and vice versa) and from either PAR or an OMT to the Hybrid System for automatic execution or book entry. In addition, the Exchange believes that the routing parameters generally are not unfairly discriminatory because they are made available to all order entry firms on an equal basis. Further, as discussed above, they are intended to assist order entry firms in their ability to efficiently manage, process and execute orders in a ''hybrid'' trading environment, which promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors.

Furthermore, the Exchange believes the proposed rule change furthers the objective of Section 6(b)(5) of the Act in that it permits the Exchange to address the entry of simple and complex limit orders that are priced significantly away from the market that may likely have resulted from human or operational error. By being able to quickly and efficiently address orders that likely resulted from such error, the proposed use of the limit order price parameter checks would promote a fair and orderly market. Additionally, by having the flexibility to determine the series or classes where the limit order price parameter checks would be applied (or not applied) and the levels at which the ATD settings would be applied, and to grant relief on an intra-day basis, the Exchange is able to effectively structure and efficiently react to particular option characteristics and market conditions—including (without limitation) price, volatility, and significant price movements—which contributes to its ability to maintain a fair and orderly market. Accordingly, the Exchange believes that this proposal is designed to promote just and equity principles of trade, remove impediments to, and perfect the mechanism of, a free and open market.[28]

[23] *See* note 16, *supra*.

[24] 17 CFR 240.17a–1. The Exchange notes that determinations to grant intra-day relief under Rule 6.13(b)(v) will be made in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(5) of the Act, 15 U.S.C. 78f(b), that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[25] Specifically, paragraphs (b) (credit-to-debit parameters), (c) (same expiration strategy parameters), and (e) (percentage distance parameters) of Rule 6.53C.08 are not applicable to stock-option orders.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The Exchange notes that limit order price parameters are in effect in all classes except options on Apple Inc. (AAPL). There is no limit order price parameter currently activated for option class AAPL. *See* CBOE Regulatory Circular RG13–145, which is available at *http://www.cboe.com/publish/RegCir/RG13-145.pdf*. According to the Exchange, volume for options class AAPL is higher and trading is more volatile, while the price of the

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will promote competition in that the routing parameters assist with the maintenance of a fair and orderly market and help to mitigate potential risks associated with orders executing at potentially erroneous prices or inconsistent with a particular investment strategy by routing certain orders based on various parameters prescribed by the Exchange or the order entry firm itself. The Exchange also views these routing parameters as important tools to assist order entry firms in their ability to efficiently manage, process and execute orders in a ''hybrid'' trading environment. The Exchange believes this, again, promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and Rule 19b–4(f)(6) [30] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–021 and should be submitted on or before March 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04067 Filed 2–26–15; 8:45 am]

BILLING CODE 8011–01–P

underlying stock is higher (*e.g.,* Apple Inc. closed at $128.715 on February 18, 2015). The Exchange believes that application of the limit order price parameters in these circumstances may serve as more of a hindrance to the orderly processing orders (*e.g.,* application of the parameters may result in an inordinate number of orders being excepted from automated process and instead routing for manual handling) and, as a result, has determined to not apply the parameter to option class AAPL for the time being. The Exchange believes that because of these factors different treatment of the AAPL class is warranted. However, the Exchange may evaluate whether to apply the parameters to the option class and any determination to do so would be announced via Regulatory Circular.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Energiz Renewable, Inc., Iron Eagle Group, Inc., and MedClean Technologies, Inc.; Order of Suspension of Trading

February 25, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Energiz Renewable, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Iron Eagle Group, Inc. because it has not filed any periodic reports since the period ended June 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MedClean Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 25, 2015, through 11:59 p.m. EDT on March 10, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04226 Filed 2–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of China Yili Petroleum Company; Order of Suspension of Trading

February 25, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Yili Petroleum Company because it has not filed any periodic reports since the period ended June 30, 2012.

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 February 25, 2015, through 11:59 p.m. EDT on March 10, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04229 Filed 2–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Defense Industries International, Inc., EvCarCo, Inc., and Island Breeze International, Inc., Order of Suspension of Trading

February 25, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Defense Industries International, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EvCarCo, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Island Breeze International, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 25, 2015, through 11:59 p.m. EDT on March 10, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04224 Filed 2–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Dittybase Technologies, Inc.; Order of Suspension of Trading

February 25, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dittybase Technologies, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

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 February 25, 2015, through 11:59 p.m. EDT on March 10, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–04225 Filed 2–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before March 30, 2015.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: SBA uses this information collection for proper oversight within the scope of the Small Business Act to assess NMVC Program participants. Only the six NMVC Companies in the NMVC program will be required to submit the forms in this information collection. Although no new NMVCCs are anticipated, the information collected in the application forms in part of the contractual obligation of each NMVCC, and therefore must be used for any legal or other structural changes.

Solicitation of Public Comments: Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: NMVC Program Application, Funding and Reporting.

Description of Respondents: NMVC participants.

Form Numbers: SBA Forms 2210, 2211, 2216, 2185, 2219, 2217.

Estimated Annual Respondents: 378.

Estimated Annual Responses: 378.

Estimated Annual Hour Burden: 1,818.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–04071 Filed 2–26–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs: Federal Register Meeting Notice

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The full committee meeting will focus on business opportunities for veterans and service disabled veterans. Several topics include government procurement and business development. The meeting is open to the public.

DATES: Wednesday, March 11, 2015 from 9 a.m. to 4 p.m.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Eisenhower Conference Room C, located on the Concourse Level Floor.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration. Advance notice of attendance or desire to make a presentation to the Advisory Committee is requested. Comments for the Record should be emailed to point of contact listed below prior to the meeting for inclusion in the public record. Verbal presentations will be limited to five minutes in order to meet the agenda objectives. Requests for attendance/briefing must be emailed or sent via post by March 4, 2015 to: Ms. Barbara Carson, Acting Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; phone: (202) 205–6773; email: *barbara.carson@sba.gov.* Public comments, requests for additional information and/or special accommodations should be directed to same contact above. For more information, please visit our Web site at *www.sba.gov/vets.*

Dated: February 6, 2015.

Diana Doukas,

SBA Committee Management Officer.

[FR Doc. 2015–03520 Filed 2–26–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 9049]

Culturally Significant Objects Imported for Exhibition: Determinations: ''From Bauhaus to Buenos Aires: Grete Stern and Horacio Coppola''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On August 4, 2014, notice was published on pages 45228 of the **Federal Register** (volume 79, number 149) of determinations made by the Department of State pertaining to the exhibition ''From Bauhaus to Buenos Aires: Grete Stern and Horacio Coppola.'' The referenced notice is corrected here to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the additional objects to be included in the exhibition ''From Bauhaus to Buenos Aires: Grete Stern and Horacio Coppola,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional objects at The Museum of Modern Art, New York, NY, from on or about May 17, 2015, until on or about October 4, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 19, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–04132 Filed 2–26–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9047]

Notice of Receipt of NuStar Logistics, L.P., for a Presidential Permit To Construct, Connect, Operate, and Maintain Pipeline Facilities on the Border of the United States and Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received an application from NuStar Logistics, L.P. (''NuStar'') for a Presidential Permit authorizing the construction, connection, operation, and maintenance of pipeline facilities for the export and import of petroleum products, including liquefied petroleum gas (''LPG'') and natural gas liquids (''NGLs''). If the application is approved, the proposed facilities will transport petroleum products across the border between the NuStar terminal near Edinburg, Texas and the Petroleos Mexicanos (''PEMEX'') Burgos Gas Plant near Reynosa, Tamaulipas, Mexico, crossing under the Rio Grande River.

NuStar is a subsidiary of NuStar Energy L.P., a publicly traded master limited partnership based in San Antonio, Texas, and is one of the largest independent liquids terminal and pipeline operators in the United States. NuStar currently has 8,643 miles of pipeline and 82 terminal and storage facilities in five countries that store and distribute crude oil, refined products and specialty liquids. Its system has approximately 91 million barrels of storage capacity.

Under E.O. 13337, the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State has the responsibility to determine whether

issuance of a new Presidential Permit for construction, connection, operation, and maintenance of a new pipeline at the Burgos facility would serve the U.S. national interest.

The Department anticipates conducting an environmental review consistent with the National Environmental Policy Act of 1969. The Department will provide more information on the review process in a future **Federal Register** notice.

NuStar's application is available at: *http://www.state.gov/e/enr/applicant/applicants/index.htm.*

FOR FURTHER INFORMATION CONTACT: Acting Director, Energy Resources Bureau, Energy Diplomacy (ENR/EDP/EWA), United States Department of State, 2201 C St. NW., Suite 4843, Washington, DC 20520.

Dated: February 20, 2015.

Chris Davy,

Acting Director, Energy Resources Bureau, Energy Diplomacy (ENR/EDP/EWA), Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2015–04135 Filed 2–26–15; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice 9048]

Notice of Receipt of NuStar Logistics, L.P., Application To Amend a Presidential Permit for an Existing Pipeline on the Border of the United States and Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State (''Department'') has received an application from NuStar Logistics, L.P. (''NuStar'') to amend a Presidential Permit published on February 17, 2006 (''2006 Presidential Permit'') to construct, connect, operate, and maintain pipeline facilities (the ''Burgos Pipeline'') at the United States-Mexico border. Specifically, NuStar requests that the Department amend the 2006 Presidential Permit to: (1) Reflect NuStar's name change from Valero Logistics Operations, L.P. to NuStar Logistics, L.P., as the owner and operator of the Burgos Pipeline; and (2) to permit the import and export of a broader range of petroleum products, including liquefied petroleum gas (''LPG''), and natural gas liquids (''NGLs''). The 2006 Presidential Permit only authorized the transportation of naphtha.

NuStar is a subsidiary of NuStar Energy L.P., which is a publicly traded master limited partnership based in San Antonio, Texas and is one of the largest independent liquids terminal and pipeline operators in the United States. NuStar currently has 8,643 miles of pipeline and 82 terminal and storage facilities that store and distribute crude oil, refined products and specialty liquids. Its system has approximately 91 million barrels of storage capacity.

Under E.O. 13337, the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State has the responsibility to determine whether issuance of an amended Presidential Permit for operation and maintenance of a pipeline at the Burgos facility would serve the U.S. national interest.

The Department anticipates conducting an environmental review consistent with the National Environmental Policy Act of 1969. The Department will provide more information on the review process in a future **Federal Register** notice.

NuStar's application is available at *http://www.state.gov/e/enr/applicant/applicants/index.htm.*

FOR FURTHER INFORMATION CONTACT: Acting Director, Energy Resources Bureau, Energy Diplomacy (ENR/EDP/EWA), United States Department of State, 2201 C St. NW., Suite 4843, Washington, DC 20520.

Dated: February 20, 2015.

Chris Davy,

Acting Director, Energy Resources Bureau, Energy Diplomacy (ENR/EDP/EWA), Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2015–04134 Filed 2–26–15; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

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 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before April 28, 2015 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 form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

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.

Estimated Number of Respondents: 67.

*Estimated Time per Respond*ent: 5 hours, 11 minutes.

Estimated Total Annual Burden Hours: 348.

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 10, 2015.

Christie Preston,

IRS, Reports Clearance Officer.

[FR Doc. 2015–04108 Filed 2–26–15; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 80 Friday,
No. 39 February 27, 2015

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 2016; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 147, 153, 154, 155, 156 and 158

[CMS–9944–F]

RIN 0938–AS19

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth payment parameters and 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 finalizes additional standards for the individual market annual open enrollment period for the 2016 benefit year, essential health benefits, qualified health plans, network adequacy, quality improvement strategies, the Small Business Health Options Program, guaranteed availability, guaranteed renewability, minimum essential coverage, the rate review program, the medical loss ratio program, and other related topics.

DATES: These regulations are effective on April 28, 2015 except the amendments to §§ 156.235, 156.285(d)(1)(ii), and 158.162 are effective on January 1, 2016.

FOR FURTHER INFORMATION CONTACT:

For general information: Jeff Wu, (301) 492–4305.

For matters related to guaranteed availability, guaranteed renewability, rate review, or the applicability of Title I of the Affordable Care Act in the U.S. Territories: Jacob Ackerman, (301) 492–4179.

For matters related to risk adjustment or the methodology for determining the reinsurance contribution rate and payment parameters: Kelly Horney, (410) 786–0558.

For matters related to reinsurance generally, distributed data collection good faith compliance policy, or administrative appeals: Adrianne Glasgow, (410) 786–0686.

For matters related to the definition of common ownership for purposes of reinsurance contributions: Adam Shaw, (410) 786–1019.

For matters related to risk corridors: Jaya Ghildiyal, (301) 492–5149.

For matters related to essential health benefits, network adequacy, essential community providers, or other standards for QHP issuers: Leigha Basini, (301) 492–4380.

For matters related to the qualified health plan good faith compliance policy: Cindy Yen, (301) 492–5142.

For matters related to the Small Business Health Options Program: Christelle Jang, (410) 786–8438.

For matters related to the Federally-facilitated Exchange user fee or minimum value: Krutika Amin, (301) 492–5153.

For matters related to cost-sharing reductions or the premium adjustment percentage: Pat Meisol, (410) 786–1917.

For matters related to re-enrollment, open enrollment periods, or exemptions from the individual shared responsibility payment: Christine Hammer, (301) 492–4431.

For matters related to special enrollment periods: Rachel Arguello, (301) 492–4263.

For matters related to minimum essential coverage: Cam Moultrie Clemmons, (206) 615–2338.

For matters related to quality improvement strategies: Marsha Smith, (410) 786–6614.

For matters related to the medical loss ratio program: Julie McCune, (301) 492–4196.

For matters related to meaningful access to QHP information, consumer assistance tools and programs of an Exchange, or cost-sharing reduction notices: Tricia Beckmann, (301) 492–4328.

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), as amended
AHFS American hospital formulary system
AV Actuarial value
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
COBRA Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) (29 U.S.C. 1161, *et seq.*)
ECP Essential community provider
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
FQHC Federally qualified health center
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
LEP Limited English proficient/proficiency
MLR Medical loss ratio
MV Minimum value
NAIC National Association of Insurance Commissioners
OMB Office of Management and Budget
OPM United States Office of Personnel Management
PHS Act Public Health Service Act
PRA Paperwork Reduction Act of 1995
P&T committee Pharmacy and therapeutics committee
QHP Qualified health plan
QIS Quality improvement strategy
SADP Stand-alone Dental Plan
SEP Special enrollment period
SHOP Small Business Health Options Program
The Code Internal Revenue Code of 1986
TPA Third-party administrator
URL Uniform resource locator
USP United States Pharmacopeia

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''). Individuals who enroll in qualified health plans (QHPs) through individual market Exchanges may be eligible to receive a premium tax credit to make health insurance more affordable and for cost-sharing reductions to reduce out-of-pocket expenses for health care services. Additionally, 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. These programs, together with other reforms of the Affordable Care Act, are making high-quality health insurance affordable and accessible to millions of Americans.

We have 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 and modifications related to the implementation of the premium stabilization programs, as well as key payment parameters for the 2016 benefit year.

The HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 15410) (2014 Payment Notice) finalized the risk adjustment methodology that HHS will use when it operates the risk adjustment program on behalf of a State. Risk adjustment factors reflect enrollee health risk and the costs of a given disease relative to average spending. This final rule recalibrates the HHS risk adjustment models for the 2016 benefit year by using 2011, 2012, and 2013 claims data from the Truven Health Analytics 2010 MarketScan® Commercial Claims and Encounters database (MarketScan) to develop updated risk factors.

Using the same methodology as set forth in the 2014 Payment Notice and the HHS Notice of Benefit and Payment Parameters for 2015 (79 FR 13744) (2015 Payment Notice), we finalize a 2016 uniform reinsurance contribution rate of $27 annually per enrollee, and the 2016 uniform reinsurance payment parameters—a $90,000 attachment point, a $250,000 reinsurance cap, and a 50 percent coinsurance rate. We are decreasing the attachment point for the 2015 benefit year from $70,000 to $45,000, while retaining the $250,000 reinsurance cap and a 50 percent coinsurance rate. In this rule, we also finalize the definition of ''common ownership'' for purposes of determining whether a contributing entity uses a third-party administrator for core administrative functions. In addition, this final rule discusses the reinsurance contribution payment schedule and accompanying notifications. We also extend the good faith safe harbor for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements through the 2015 calendar year.

We are finalizing a clarification and a modification to the risk corridors program. We clarify that the risk corridors transitional adjustment policy established in the 2015 Payment Notice, which makes an adjustment to a QHP issuer's risk corridors calculation based on Statewide enrollment in transitional plans, does not include in that calculation enrollment in so-called ''early renewal plans'' (plans that renewed before January 1, 2014 and before the end of their 12-month terms) unless and until the plans renew in 2014 and become transitional plans. Additionally, for the 2016 benefit year, we are finalizing an approach for the treatment of risk corridors collections under the policy set forth in our April 11, 2014, FAQ on Risk Corridors and Budget Neutrality,[1] in the event that risk corridors collections available in 2016 exceed risk corridors payment requests from QHP issuers.

We also finalize several provisions related to cost sharing. First, we establish the premium adjustment percentage for 2016, 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 for 2016. We establish the maximum annual limitations on cost sharing for the 2016 benefit year for cost-sharing reduction plan variations. For reconciliation of 2014 cost-sharing reductions, we are finalizing and expanding our proposal to permit issuers whose plan variations meet certain criteria to estimate the portion of claims attributable to non-essential health benefits to calculate cost-sharing reductions provided.

For 2016, we finalize a Federally-facilitated Exchange (FFE) user fee rate of 3.5 percent of premium, the same rate as for 2015. This rule also finalizes provisions to enhance the transparency and effectiveness of the rate review program and standards related to minimum essential coverage, the individual market annual open enrollment period for the 2016 benefit year, and amendments to a number of Small Business Health Options Program (SHOP) provisions, including minimum participation rates. This final rule amends the medical loss ratio (MLR) provisions relating to the treatment of cost-sharing reductions and certain taxes in MLR and rebate calculations, as well as the distribution of rebates by group health plans not subject to the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) (ERISA). This final rule provides more specificity about the meaningful access requirements applicable to Exchanges, to QHP issuers, and to agents and brokers subject to § 155.220(c)(3)(i), related to access for individuals with limited English proficiency (LEP). This final rule requires issuers to provide a summary of benefits and coverage (SBC) for each plan variation of the standard QHP and to provide adequate notice to enrollees of changes in cost-sharing reduction eligibility. This final rule also includes additional quality improvement strategy reporting provisions for QHP issuers, specifies the circumstances that may lead an Exchange to suppress a QHP from being offered to new enrollees through an Exchange, and extends the good faith compliance policy for QHP issuers in the FFEs through the 2015 calendar year.

In this final rule, we are finalizing a number of standards relating to essential health benefits (EHBs), including a definition of habilitative services, coverage of pediatric services, and coverage of prescription drugs. This final rule also provides examples of discriminatory plan designs and amends requirements for essential community providers (ECPs).

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 final rule, we refer to the two statutes collectively as the ''Affordable Care Act.''

Subtitles A and C of title I of the Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 2701 of the PHS Act, as added by the Affordable Care Act, restricts the variation in premium rates that may be charged by a health insurance issuer for non-grandfathered health insurance coverage in the individual or small group market to certain specified factors. The factors are: Family size, rating area, age, and tobacco use (within specified limits).

Section 2701 of the PHS Act operates in coordination with section 1312(c) of the Affordable Care Act. Section 1312(c) of the Affordable Care Act generally requires a health insurance issuer to consider all enrollees in all health plans (except for grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual market and small group market risk pools under section 1312(c)(3) of the Affordable Care Act.

Section 2702 of the PHS Act, as added by the Affordable Care Act, requires health insurance issuers that offer health insurance coverage in the group or individual market in a State to offer coverage to and accept every employer

[1] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf.*

and individual in the State that applies for such coverage unless an exception applies.

Section 2703 of the PHS Act, as added by the Affordable Care Act, requires health insurance issuers that offer health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual unless an exception applies.

Section 2718 of the PHS Act, as added by the Affordable Care Act, generally requires health insurance issuers to submit an annual MLR report to HHS and provide rebates to enrollees if they do not achieve specified MLR thresholds.

Section 2794 of the PHS Act, as added by the Affordable Care Act, directs the Secretary of HHS (the Secretary), in conjunction with the States, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' [2] The law also requires health insurance issuers to submit justifications to the Secretary and the applicable State entities for unreasonable premium increases prior to the implementation of the increases. Section 2794(b)(2) of the PHS Act further specifies that, beginning in 2014, the Secretary, in conjunction with the States, will monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

Section 1302 of the Affordable Care Act provides for the establishment of an essential health benefits (EHB) package that includes coverage of EHB (as defined by the Secretary) and cost-sharing limits, and meets statutorily defined actuarial value (AV) requirements. The law directs that EHBs be equal in scope to the benefits covered by a typical employer plan and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

Sections 1302(b)(4)(A) through (D) establish that the Secretary must define EHB in a manner that: (1) Reflects appropriate balance among the 10 categories; (2) is not designed in such a way as to discriminate based on age, disability, or expected length of life; (3) takes into account the health care needs of diverse segments of the population; and (4) does not allow denials of EHBs based on age, life expectancy, disability, degree of medical dependency, or quality of life.

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 the SHOP to assist qualified small employers in facilitating the enrollment of their employees in QHPs offered in the small group market. Sections 1312(f)(1) and (2) of the Affordable Care Act define qualified individuals and qualified employers. 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)(1)(B) of the Affordable Care Act requires the Secretary to establish minimum criteria for provider network adequacy that a health plan must meet to be certified as a QHP. Section 1311(c)(1)(E) of the Affordable Care Act specifies that, to be certified as a QHP participating in Exchanges, each health plan must implement a quality improvement strategy (QIS), which is described in section 1311(g)(1) of the Affordable Care Act.

Section 1311(c)(5) of the Affordable Care Act requires the Secretary to continue to operate, maintain, and update the Internet portal developed under section 1103 of the Affordable Care Act to provide information to consumers and small businesses on affordable health insurance coverage options.

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 1301(a)(1)(B) of the Affordable Care Act directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the Affordable Care Act, including the services described in section 1302(b) of the Affordable Care Act, to adhere to the cost-sharing limits described in section 1302(c) of the Affordable Care Act, and to meet the AV levels established in section 1302(d) of the Affordable Care Act. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the coverage of the EHB package to non-grandfathered individual and small group coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost sharing under the plan does not exceed the limitations described in sections 1302(c)(1) and (2) of the Affordable Care Act.

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 of the Affordable Care Act provides for State flexibility in the operation and enforcement of Exchanges and related requirements.

Section 1321(a) of the Affordable Care Act provides the Secretary with broad authority to establish standards and regulations to implement statutory requirements related to Exchanges, QHPs, and other components of title I of the Affordable Care Act. Under the authority established in section 1321(a)(1) of the Affordable Care Act, the Secretary promulgated the regulations at § 155.205(d) and (e). Section 155.205 authorizes Exchanges to perform certain consumer service functions. Section 155.205(d) provides that each Exchange must conduct consumer assistance activities, including the Navigator program described in § 155.210, and § 155.205(e) provides that each Exchange must conduct outreach and education activities to inform consumers about the Exchange and insurance affordability programs to encourage participation. Sections 155.205(d) and (e) also allow for the establishment of a non-Navigator consumer assistance program. Section 155.215 establishes standards for Navigators and non-Navigator assistance personnel in FFEs and for non-Navigator assistance personnel that are

[2] The implementing regulations in part 154 limit the scope of the requirements under section 2794 of the PHS Act to health insurance issuers offering health insurance coverage in the individual market or small group market. *See* Rate Increase Disclosure and Review; Final Rule, 76 FR 29964, 29966 (May 23, 2011).

[3] If a State elects to offer QHPs in the large group market through the SHOP, 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) under section 2701(a)(5) of the PHS Act.

funded with Exchange establishment grant funds under section 1311(a) 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 No. 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 1321(c)(2) of the Affordable Care Act authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the PHS Act. Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Part A of title XXVII of the PHS Act when a State fails to substantially enforce these provisions.

Section 1321(d) of the Affordable Care Act provides that nothing in title I of the Affordable Care Act should be construed to preempt any State law that does not prevent the application of title I of the Affordable Care Act. Section 1311(k) of the Affordable Care Act specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1341 of the Affordable Care Act provides for the establishment of a transitional reinsurance program in each State to help pay the cost of treating high-cost enrollees in the individual market in the 2014 through 2016 benefit years. Section 1342 of the Affordable Care Act directs the Secretary to establish a temporary risk corridors program that protects against inaccurate rate setting in the 2014 through 2016 benefit years. 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, funded by payments from those that attract lower-risk populations, thereby reducing incentives for issuers to avoid higher-risk enrollees.

Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing for EHBs for qualified low- and moderate-income enrollees in silver level health plans offered through the individual market Exchanges. These sections also provide for reductions in cost sharing for Indians enrolled in Exchange plans at any metal level.

Section 5000A of the Internal Revenue Code (the Code), as added by section 1501(b) of the Affordable Care Act, requires an individual to have minimum essential coverage for each month, qualify for an exemption, or make a shared responsibility payment with his or her Federal income tax return. Section 5000A(f) of the Code defines minimum essential coverage as any of the following: (1) Coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; or (4) coverage under a grandfathered health plan. Section 5000A(f)(1)(E) of the Code authorizes the Secretary, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage.

1. Premium Stabilization Programs

In the July 15, 2011 **Federal Register** (76 FR 41930), we published a proposed rule outlining the framework for 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), 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 establish payment parameters for those programs (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15410).

In the December 2, 2013 **Federal Register** (78 FR 72322), we published a proposed rule outlining the benefit and payment parameters for the 2015 benefit year to expand upon the provisions related to the premium stabilization programs, setting forth certain oversight provisions, and establishing the 2015 payment parameters for those programs (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13744).

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 Program Integrity Rule'' published in the August 30, 2013 **Federal Register** (78 FR 54070) and the ''second Program Integrity Rule'' published in the October 30, 2013 **Federal Register** (78 FR 65046).

3. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to States on Exchanges on November 18, 2010. We proposed a rule in the July 15, 2011 **Federal Register** (76 FR 41866) to implement components of the Exchange, and a rule in the August 17, 2011 **Federal Register** (76 FR 51202) regarding Exchange functions in the individual market, eligibility determinations, and Exchange standards for employers. 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).

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 Program Integrity Rule. We also set forth standards related to Exchange user fees in the 2014 Payment Notice. We also established an adjustment to the FFE user fee in 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).

In a final rule published in the July 17, 2013 **Federal Register** (78 FR 42859), we established standards for Navigators and non-Navigator assistance personnel in FFEs and for non-Navigator assistance personnel funded through an Exchange establishment grant.

4. Essential Health Benefits and Actuarial Value

We initially established requirements relating to EHBs and AVs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was

published in the February 25, 2013 **Federal Register** (78 FR 12834) (EHB Rule). We established standards for updating the AV Calculator for future plan years in the 2015 Payment Notice and established an expedited prescription drug exception process based on exigent circumstances for plans providing EHB in the Exchange and Insurance Market Standards for 2015 and Beyond Final Rule (2015 Market Standards Rule) that was published in the May 27, 2014 **Federal Register** (79 FR 30240).

5. Market Rules

A proposed rule relating to the Health Insurance Market Rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the Health Insurance Market Rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and Beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). The 2015 Market Standards Rule was published in the May 27, 2014 **Federal Register** (79 FR 30240).

6. Rate Review

We published a proposed rule to establish the rate review program in the December 23, 2010 **Federal Register** (75 FR 81004). We implemented the rate review program in a final rule published in the May 23, 2011 **Federal Register** (76 FR 26694). We subsequently amended the rate review provisions in a final rule published in the September 6, 2011 **Federal Register** (76 FR 54969) and in the 2014 Market Rules.

7. Medical Loss Ratio (MLR)

We published a request for comment on section 2718 of the PHS Act 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 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). An interim final rule with a 60-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76596). A final rule was published in the **Federal Register** on May 16, 2012 (77 FR 28790).

B. Stakeholder Consultation and Input

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 (NAIC), 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.

III. Provisions of the Final Regulations and Analysis and Responses to Public Comments

In the November 26, 2014 **Federal Register** (79 FR 70674), we published the ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016'' proposed rule. We received 313 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 of 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.

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.

Comment: We received a number of comments requesting that the comment period be extended to 60 days. Several commenters asked that HHS develop a standard timeline for issuance of the proposed and final Payment Notices, one commenter asked that the final Payment Notice be published by mid-January each year, and another asked that it be published by February 1st each year.

Response: The timeline for publication of this final rule accommodates issuer filing deadlines for the 2016 benefit year. We appreciate the deadlines that States, Exchanges, issuers, and other entities face in implementing these rules.

Comment: We received one comment disapproving of the wide array of topics covered in the rule.

Response: Many of the programs covered by this final rule are closely linked. To simplify the regulatory process, facilitate public comment, and provide the information needed to meet statutory deadlines, we elected to propose and finalize these regulatory provisions in one rule.

Comment: One commenter asked that HHS allow States to continue their oversight of their insurance markets and defer to the NAIC for the development of important industry-wide, State-based standards.

Response: Title XXVII of the PHS Act contemplates that States will exercise primary enforcement authority over health insurance issuers in the group and individual markets to ensure compliance with the Federal market reforms. HHS has the responsibility to enforce these provisions in the event that a State notifies HHS that it does not have the statutory authority to enforce or that it is not otherwise enforcing, or if HHS determines that a State is not substantially enforcing, these requirements. This enforcement framework, in place since 1996, ensures that all consumers in all States have the protections of the Affordable Care Act and other parts of the PHS Act. We aim to establish Federal oversight standards that complement State standards while meeting Federal obligations, and intend to continue to coordinate with State authorities to address compliance issues and to reduce the burden on stakeholders.

Comment: One commenter urged HHS to ensure that all regulatory information related to the premium stabilization programs be presented in a transparent and timely fashion.

Response: We strive to publicize and present all information related to the premium stabilization programs in a transparent and timely fashion.

A. Part 144—Requirements Relating to Health Insurance Coverage

1. Definitions (§ 144.103)

Section 144.103 sets forth definitions of terms that are used throughout parts 146 through 150. In the proposed rule, we proposed to amend the definitions of ''plan'' and ''State.''

a. Plan

We proposed to make the definition of ''plan'' more specific by clarifying that the term means the pairing of the health insurance coverage benefits under a ''product'' with a particular cost-sharing structure, provider network, and service

area.[4] The same definition would be used for purposes of part 154, rate review, and part 156, health insurance issuer standards.

We noted that issuers can modify the health insurance coverage for a product upon coverage renewal and sought comment on standards for determining when a plan that has been modified should be considered to be the ''same plan'' for purposes of rate review, plan identification in the Health Insurance Oversight System (HIOS), and other programs. In particular, we sought comment on whether these standards should be similar to those applicable at the product level under the uniform modification provision at § 147.106(e).

We are finalizing the amendments to the definition of ''plan'' as proposed. We are also specifying standards for determining when a plan that has been modified will be considered to be the ''same plan.''

Comment: Many commenters were supportive of the proposed definition of ''plan'' stating it more closely aligns with issuer operations and consumer expectations. However, some commenters believed that parts of the definition were too vague, such as the references to ''cost-sharing structure'' and ''provider network.'' For example, one commenter stated that the reference to a ''particular'' cost-sharing structure could mean that each cost-sharing reduction plan variation of the standard QHP would constitute a separate ''plan.'' One commenter recommended adding the prescription drug formulary as a distinct plan characteristic. Other commenters cautioned HHS to be mindful of the operational impacts of changing the definition of ''plan.''

Response: We believe the proposed definition accurately reflects the key features of a plan: a package of benefits paired with a cost-sharing structure and provider network that operates within a service area. By ''provider network,'' we mean the defined set of providers under contract with the issuer for the delivery of medical care (including items and services paid for as medical care), if applicable. We recognize that the prescription drug formulary is an important element of plan coverage, but do not specifically include it in the definition, because each aspect of the formulary—the covered drugs and the tiering design—are represented by the plan's benefits and cost-sharing structure. Further, we clarify that each plan variation of a standard QHP would not constitute a ''particular cost-sharing structure'' for purposes of the definition and thus would not constitute a separate plan.

The final rule adopts the definition of ''plan'' as proposed. We believe many issuers already distinguish their plans according to these characteristics, and we do not anticipate significant downstream issues as a result of these clarifications. Nevertheless, we will work with States and issuers to make any necessary adjustments to plan identifiers in Federal systems.

Comment: We received some comments addressing when a plan should be considered to be the ''same plan'' following modifications at the plan level. Several commenters agreed with the option we presented in the preamble to the proposed rule of using standards similar to those for uniform modification of a product for identifying modifications to a plan that would result in the plan remaining the ''same plan.'' Commenters stated that we should permit changes to cost sharing designed to maintain the same metal level and modifications attributable to Federal or State legal requirements to constitute the same plan. Two commenters recommended standards regarding provider network and service area.

Response: In this final rule, we specify when a plan that has been modified will be considered to be the ''same plan.'' Based on the comments received, the final rule generally adopts the standards for uniform modification at the product level for changes made at the plan level. These standards reflect characteristics relevant to the definition of ''plan,'' including provider network, an additional characteristic not reflected in the uniform modification provision. We specifically omit those standards at § 147.106(e)(3) related to issuer, product network type, and covered benefits, which are relevant only at the product level. We note that modifications to these characteristics in a manner that exceeds the standards for uniform modification would result in a new product and, consequently, new plans within the product.

The final rule provides that a plan that has been modified at the time of coverage renewal in accordance with § 147.106 will be considered to be the same plan if it meets the following conditions:

- Has the same cost-sharing structure as before the modification, or any variation in cost sharing is solely related to changes in cost or utilization of medical care (that is, medical inflation or demand for services based on inflationary increases in the cost of medical care), or is to maintain the same metal tier level described in sections 1302(d) and (e) of the Affordable Care Act (that is, bronze, silver, gold, platinum, or catastrophic).
- Continues to cover a majority of the same service area.
- Continues to cover a majority of the same provider network (as applicable).

We recognize that a plan's provider network may change throughout the plan year. Therefore, for purposes of determining whether a plan maintains a majority of the same provider network, the plan's provider network on the first day of the plan year is compared with the plan's provider network on the first day of the preceding plan year. If at least 50 percent of the contracted providers at the beginning of the plan year are still contracted providers at the beginning of the next plan year, the plan will be considered to have maintained a majority of the same provider network.

Furthermore, similar to the standard for uniform modification of a product, a plan also will not fail to be treated as the same plan to the extent the changes are made uniformly and solely pursuant to applicable Federal or State requirements, provided that the changes are made within a reasonable time period after the imposition or modification of the Federal or State requirement and are directly related to the imposition or modification of the Federal or State requirement.

The cost-sharing provision under this final rule is identical to the cost-sharing provision under the uniform modification standard. In the 2015 Market Standards Rule (79 FR 30251), which established criteria for uniform modification, we stated that the cost-sharing provision is intended to establish basic parameters around cost-sharing modifications to protect consumers from extreme changes in deductibles, copayments, and coinsurance, while preserving issuer flexibility to make reasonable and customary adjustments from year to year.

Finally, as with the uniform modification provision, States have flexibility to broaden the definition of ''same plan.'' States may, at their option, permit greater changes to cost-sharing structure, or designate a lower threshold than the ''majority'' standard in this final rule for changes in provider network and service area, to constitute the same plan. We intend to monitor issues around compliance with the

[4] Under § 144.103, the term ''product'' means a discrete package of health insurance coverage benefits that a health insurance issuer offers using a particular product network type within a service area. Examples of product network types include health maintenance organization (HMO), preferred provider organization (PPO), exclusive provider organization (EPO), point of service (POS), and indemnity.

categorization of ''plans'' and may provide future guidance as necessary.

b. State

We proposed to amend the definition of ''State'' to exclude application of the Affordable Care Act market reforms under part 147 to issuers in the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The change codifies HHS's interpretation, outlined in letters to the Territories on July 16, 2014, that the new provisions of the PHS Act enacted in title I of the Affordable Care Act are appropriately governed by the definition of ''State'' set forth in that title, and therefore do not apply to group or individual health insurance issuers in the Territories.[5]

As explained in the July 16, 2014 letters and reiterated in the preamble to the proposed rule (79 FR 70681), this interpretation applies only to health insurance that is governed by the PHS Act. It does not affect the PHS Act requirements that were enacted in the Affordable Care Act and incorporated into ERISA and the Code and apply to group health plans (whether insured or self-insured), because such applicability does not rely upon the term ''State'' as it is defined in either the PHS Act or Affordable Care Act. It also does not affect the PHS Act requirements that were enacted in the Affordable Care Act and apply to non-Federal governmental plans. As a practical matter, therefore, PHS Act, ERISA, and Code requirements applicable to group health plans continue to apply to such coverage, and issuers selling policies to both private sector and public sector employers in the Territories should ensure their products comply with the relevant Affordable Care Act amendments to the PHS Act applicable to group health plans since their customers—the group health plans—are subject to those provisions. These include the prohibition on lifetime and annual limits (section 2711 of the PHS Act), the prohibition on rescissions (section 2712 of the PHS Act), coverage of preventive health services (section 2713 of the PHS Act), and the revised internal and external appeals process (section 2719 of the PHS Act).

We are finalizing these amendments as proposed.

Comment: Several commenters supported the proposed amendments to the term ''State'' to avoid undermining the stability of the Territories' health insurance markets. One commenter encouraged HHS to work with the Territories to improve access to coverage for their residents.

Response: We are committed to partnering with the Territories to ensure their markets are robust and competitive, so that consumers have access to quality, affordable health insurance.

B. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Guaranteed Availability of Coverage (§ 147.104)

We proposed several modifications to the guaranteed availability requirements under § 147.104. First, we proposed to remove regulation text in § 147.104(b)(2) establishing a special enrollment period (also referred to as a ''limited open enrollment period'') for individuals enrolled in non-calendar year individual market plans, because the requirement is incorporated through cross-reference in the same paragraph to the Exchange rules at § 155.420(d)(1)(ii).

Second, we proposed to add new paragraph § 147.104(f), which would move and recodify, with minor modifications for clarity, the requirement under existing § 147.104(b)(2) for non-grandfathered individual and merged market plans to be offered on a calendar year basis.

Third, we proposed to amend § 147.104(b)(4) by adding a cross-reference to the advance availability of special enrollment periods under § 155.420(c)(2). This would align with the Exchange regulations and allow individuals to make a plan selection 60 days before and after certain triggering events when enrolling inside or outside the individual market Exchanges.

Finally, we proposed amending § 147.104(b)(1)(i)(C) to update the citation to the SHOP regulations to conform with changes made in this rulemaking. The cross-reference is changed from § 155.725(a)(2) to § 155.725.

We are finalizing these amendments as proposed.

Comment: Most commenters supported extending the 60-day advance availability provisions to ensure market-wide consistency in special enrollment periods. One commenter recommended a 30-day special enrollment period. Other commenters recommended maintaining the 60-day special enrollment period.

Response: We agree with commenters who urged consistency in access to special enrollment periods inside and outside the individual market Exchanges. We believe these provisions will help consumers avoid gaps in coverage when they experience certain significant life changes without resulting in adverse selection.

2. Guaranteed Renewability of Coverage (§ 147.106)

Consistent with previous guidance, we proposed that an issuer will not satisfy the requirements for product discontinuation under the guaranteed renewability regulations at § 146.152(c)(2), § 147.106(c)(2), or § 148.122(d)(2) if the issuer automatically enrolls a plan sponsor or individual (as applicable) into a product of another licensed health insurance issuer.[6] However, this would not prevent an issuer that decides to withdraw from the market in a State from mapping enrollees to a product of another licensed issuer, to the extent permitted by applicable State law, and provided the issuer otherwise satisfies the requirements for market withdrawal.

We stated that allowing an issuer to transfer blocks of business to another issuer could create opportunities for risk segmentation, but also recognized that regulating these matters could have implications for certain corporate reorganization practices. We sought comment on how to interpret the guaranteed renewability provisions in the context of various corporate transactions involving a change of ownership, such as acquisitions, mergers, or other corporate transactions; how common such transactions are and how they are typically structured; whether auto-enrollment should be allowed into a product of the post-transaction issuer; how the market reforms such as the single risk pool provision should be applied; and what protections should be provided to consumers when their product is transferred.

Because ownership transfers have implications for the operational processes of HHS-administered programs, such as advance payments of the premium tax credit, cost-sharing reduction payments, FFE user fees, and the premium stabilization programs, we proposed a notification requirement on

[5] *See* for example, Letter to Virgin Islands on the Definition of State (July 16, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Francis.pdf.*

[6] *See* Insurance Standards Bulletin, Form and Manner of Notices When Discontinuing or Renewing a Product in the Group or Individual Market, section IV (September 2, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Renewal-Notices-9-3-14-FINAL.PDF. See also* Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges, 79 FR at 53000 (September 5, 2014).

issuers of a QHP, a plan otherwise subject to risk corridors, or a reinsurance-eligible plan or a risk adjustment covered plan, in cases of changes of ownership. We proposed that the post-transaction issuer notify HHS of the transaction by the date the transaction is entered into or the 30th day prior to the effective date of the transaction, whichever is later. We sought comments on all aspects of the notification, including what further notification requirements should apply to ownership transfers, and whether the notification requirement should apply to all plans subject to the guaranteed renewability requirements, including grandfathered health plans.

We are finalizing the notification requirement in cases of changes of ownership as recognized by the State in which the issuer offers coverage. In light of the comments discussed below, we are not codifying the provision prohibiting an issuer from automatically enrolling plan sponsors or individuals (as applicable) into a product of another licensed health insurance issuer. We intend to consult with the NAIC and other stakeholders before releasing further guidance on this issue.

Comment: Many commenters encouraged HHS to defer to State determinations on matters regarding change of ownership, including when it is appropriate for an issuer to renew coverage through another licensed issuer. One commenter requested that HHS expressly recognize an offer of coverage by an affiliated issuer as an exception to the prohibition on auto-enrollment. Several commenters emphasized the need for continuity of care and recommended that, in cases of mid-year changes of ownership, the acquiring issuer retain some or all of the characteristics of the original plan, such as the same benefits, cost sharing, formulary, and network. Conversely, another commenter noted that the same coverage features rarely remain in place after an ownership transfer. Some commenters recommended HHS work with States and issuers before releasing guidance on how corporate transactions should be handled.

Response: After careful review of the comments submitted on this issue and the relevant statutory language, we are not codifying the prohibition on auto-enrollment into a product of another licensed issuer at this time. We intend to consult with the NAIC and other stakeholders to develop guidance on how to handle corporate transactions involving a change of ownership. We will generally look to the applicable State authority on matters regarding changes of ownership until further guidance is issued. In the interim, we will continue to apply our interpretation of the guaranteed renewability requirements, set forth in previous guidance,[7] to prohibit auto-enrollment into a product of another issuer in cases where the auto-enrollment does not occur in connection with a change of ownership.

Comment: Some commenters recommended that HHS provide flexibility to issuers to determine liability of each party in a transaction for advance payments of the premium tax credit, cost-sharing reductions payments, and the premium stabilization programs.

Response: We intend to take these comments into consideration as we consider whether guidance on liability is necessary as it relates to the HHS-administered programs described above.

Comment: In response to the proposed notification requirement for issuers experiencing a change of ownership, some commenters recommended that HHS defer to State definitions of change of ownership. One commenter suggested notice is unnecessary, as QHP issuers in the FFEs must already provide HHS with notice of change of ownership under § 156.330. One commenter recommended issuers be required to provide notice only after a transaction is completed, and sought clarification that HHS will collect only the minimum information necessary to facilitate operational processes and has no intention of collecting the information for purposes other than for continuity of operations.

Response: We are finalizing the proposal to require notification when an issuer experiences a change of ownership, as recognized by the State in which the issuer offers coverage. The definition of change of ownership for the purpose of notification is intended simply to capture situations in which such a change may have operational implications for the above mentioned programs. We recognize that States have existing regulatory processes for reviewing changes of ownership.

We also recognize that FFE issuers are subject to a notification requirement under § 156.330; however, changes of ownership may have operational implications for HHS-administered programs beyond the FFEs. The HHS-administered programs described above affect QHP issuers in both the FFEs and State-based Exchanges, as well as issuers offering plans outside of Exchanges. To work closely with issuers to anticipate and resolve potential issues arising from such transactions, we are finalizing the notice requirement for an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan, as proposed. We intend to limit the information collected to those elements necessary for HHS and issuers to determine how the change of ownership affects operations of HHS-administered programs. These elements include the legal name, HIOS plan identifier, tax identification number of the original and post-transaction issuers, the effective date of the change of ownership, and the summary description of transaction. Depending on the nature of the transaction, additional information may be necessary to ensure smooth operations of affected programs. We anticipate addressing the need for additional information on a case-by-case basis, through discussion with affected issuers, with the participation of affected issuers.

Finally, we are sensitive to the fluid nature of change of ownership transactions, but believe that our proposed dates for notification accommodate most transactional timelines. In addition, the information we intend to require from issuers is limited in scope and should not substantially burden either issuers or HHS, even if the transaction is not ultimately consummated. To ensure continuity of operations, particularly for administration of monthly payments and charges for advance payments of the premium tax credit and cost-sharing reductions, it is in the interest of both issuers and HHS to coordinate prior to the effective date of the transaction.

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 (§ 153.100)

In § 153.100(c), we established a deadline of March 1 of the calendar year prior to the applicable benefit year for a State to publish a State notice of benefit and payment parameters if the State is required to do so under § 153.100(a) or (b)—that is, if the State is operating a risk adjustment program, or if the State is establishing a reinsurance program and wishes to modify the data requirements for issuers to receive reinsurance payments from those specified in the HHS notice of benefit and payment parameters for the benefit year, wishes to collect additional reinsurance contributions or use

[7] *Id.*

additional funds for reinsurance payments, or elects to use more than one applicable reinsurance entity. As of the date of publication of this final rule, Connecticut is the only State that has elected to establish a transitional reinsurance program and Massachusetts is the only State that has elected to operate a risk adjustment program. We proposed to modify § 153.100(c) so that the publication deadline for the State notice of benefit and payment parameters would be the later of March 1 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 that benefit year.

We are finalizing this modification as proposed.

Comment: One commenter disagreed with our proposal, stating that delaying the publication of the State notices would not give issuers enough time to develop product and rate filings.

Response: Although HHS intends to issue the final HHS notice of benefit and payment parameters in a timely fashion, it is difficult for States to publish such a notice by the required deadline if the final HHS notice of benefit and payment parameters for the applicable benefit year has not yet been published.

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, to balance risk and maintain market stability. In subparts D and G of the Premium Stabilization Rule, we established standards for the administration of the risk adjustment program. 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.

a. Risk Adjustment User Fee

If a State is not approved to operate or chooses to forgo operating its own risk adjustment program, HHS will operate risk adjustment 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 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 issuers of risk adjustment covered plans because it will mitigate the financial instability associated with potential adverse risk selection. 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.

In the 2015 Payment Notice, we estimated Federal administrative expenses of operating the risk adjustment program to be $0.96 per-enrollee-per-year, based on our estimated contract costs for risk adjustment operations. For the 2016 benefit year, we proposed to use the same methodology to estimate our administrative expenses to operate the program. These contracts cover development of the risk adjustment 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. To calculate the user fee, we divided 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 2016 will be approximately $50 million, and that the risk adjustment user fee would be $1.75 per enrollee per year. The increased risk adjustment user fee for 2016 is the result of the increased contract costs to support the risk adjustment data validation process when HHS operates risk adjustment, which HHS will administer for the first time in 2016. We are finalizing the proposed methodology for benefit year 2016 and are finalizing a per capita risk adjustment user fee of $1.75 per enrollee per year, which we will apply as a per-enrollee-per-month risk adjustment user fee of $0.15.

Comment: One commenter did not support the higher risk adjustment user fee for 2016, noting that issuers are already bearing significant costs for risk adjustment data validation audits, and requested that CMS identify efficiencies that could be leveraged in risk adjustment data validation operations that will keep costs down. Another commenter supported the higher risk adjustment user fee for 2016 to support risk adjustment data validation audits, reiterating the importance of these audits to ensure that the risk adjustment program is as accurate and effective as possible over time. One commenter requested clarification that the risk adjustment user fee is assessed on issuers, not States.

Response: As we stated in the 2014 Payment Notice, we believe that a reliable funding source is necessary to ensure a robust Federal risk adjustment program. We also agree with the commenter that risk adjustment data validation audits are critical to ensure that risk adjustment is as accurate, fair, and effective as possible over time. The risk adjustment user fee was established for the sole purpose of funding HHS's costs for operating the Federal risk adjustment program, and we intend to keep the user fee amount as low as possible. The risk adjustment user fee must be remitted by issuers of risk adjustment covered plans, rather than States.

b. Overview of the HHS Risk Adjustment Model

The HHS risk adjustment model predicts plan liability for an enrollee based on that person's age, sex, and diagnoses (risk factors), producing a risk score. The HHS risk adjustment methodology utilizes separate models for adults, children, and infants to account for cost differences in each of these age groups. In each of the adult and child models, the relative costs assigned to an individual's age, sex, and diagnoses are added together to produce a risk score. Infant risk scores are determined by inclusion in one of 25 mutually exclusive groups based on the infant's maturity and the severity of his or her diagnoses. If applicable, the risk score is multiplied by a cost-sharing reduction adjustment.

The enrollment-weighted average risk score of all enrollees in a particular risk adjustment-covered plan, or the plan liability risk score, within a geographic rating area is one input into the

payment transfer formula, which determines an issuer's transfer (payment or charge) for that plan. Thus, the HHS risk adjustment model predicts individual-level risk scores, but is designed to predict average group costs to account for risk across plans, which, as we stated in the 2014 Payment Notice, accords with the Actuarial Standards Board's Actuarial Standards of Practice for risk classification. We received several general comments about the HHS risk adjustment model.

Comment: Several commenters requested additional guidance about the ICD–10 transition and how the risk adjustment model will implement these changes.

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, which we have updated annually.[8] Because ICD–10 codes will be accepted for risk adjustment beginning October 1, 2015, we intend to publish these documents shortly.

Comment: One commenter requested an additional 60 days for review of the risk adjustment recalibration, stating that the 30-day comment period was insufficient to review the model and provide sufficient comments. Another commenter stressed that issuers need 60 to 90 days prior to filing dates to account for final risk adjustment model changes.

Response: We are sympathetic to these concerns; however, we received numerous detailed, substantive comments on the proposed risk adjustment recalibration. Additionally, the timeline for publication of this final rule accommodates many commenters' requests that the final rule be published prior to filing deadlines for the 2016 benefit year.

Comment: One commenter requested that the § 153.420(b) data submission deadline of April 30 of the year following the benefit year be moved to July 31 for the initial year of risk adjustment.

Response: We have been working with issuers to ensure that issuers' data submissions for 2014 benefit year risk adjustment and reinsurance will be complete and accurate by April 30, 2015. We do not intend to delay the final data submission deadline for 2014 risk adjustment (and reinsurance).

[8] The HHS-Developed Risk Adjustment Model Algorithm Software and Instructions are available at: *http://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/index.html* under ''Regulations & Guidance'' (posted under ''Guidance'' on June 2, 2014).

c. Proposed Updates to Risk Adjustment Models

We proposed to continue to use the same risk adjustment methodology finalized in the 2014 Payment Notice, with changes to reflect more current data, as described below. As we stated above, in the adult and child models, enrollee health risks are estimated using the HHS risk adjustment methodology, which assigns a set of additive factors that reflect the relative costs of demographics and diagnoses. Risk adjustment factors are developed using claims data and reflect the costs of a given disease relative to average spending. The longer the lag in data used to develop the risk factors, the greater the potential that the costs of treating one disease versus another have changed in a manner not fully reflected in the risk factors.

To provide risk adjustment factors that best reflect more recent treatment patterns and costs, we proposed to recalibrate the HHS risk adjustment models for 2016 by using more recent claims data to develop updated risk factors. The risk factors published in the 2014 Payment Notice for use in 2014 and 2015 were developed using the Truven Health Analytics 2010 MarketScan® Commercial Claims and Encounters database (MarketScan); we proposed to update the risk factors in the HHS risk adjustment models using 2010, 2011, and 2012 MarketScan data. We also proposed that if 2013 MarketScan data becomes available after the publication of the proposed rule, we would update the risk factors in the HHS risk adjustment model using the 3 most recent years of data available—MarketScan 2011, 2012, and 2013 data. These updated risk factors would be published and finalized in this final rule.

We proposed to implement the recalibrated risk adjustment factors in 2016 to provide sufficient time for issuers to account for risk adjustment model changes. However, we also sought comment on making the recalibrated HHS risk adjustment models effective beginning for the 2015 benefit year instead of the 2016 benefit year. We sought comment on this approach, including whether we should update risk factors based on 2013 MarketScan data when it becomes available after publication of the proposed rule, and whether the updated risk factors should be implemented for 2015 or 2016. We are finalizing the HHS risk adjustment recalibration using 2011, 2012, and 2013 MarketScan data to develop final risk adjustment factors to be implemented in the 2016 benefit year. We are making no changes for the 2015 benefit year.

Comment: Commenters supported recalibrating the risk adjustment model based on the most recent data available, noting that the underlying data is dated and that updating the factors will boost issuers' confidence in the model's predictive power, which could reduce risk selection behaviors and help stabilize premiums. One commenter suggested that we provide simulated results between the proposed 3-year recalibration approach and the 2014 risk adjustment factors for the 2015 benefit year. Another commenter requested that CMS provide a report that includes a detailed analysis of the impact that recalibration may have, including details sufficient for issuers to make adjustments to premium rates as appropriate. Most commenters supported recalibrating for the 2016 benefit year, since 2015 rates have already been set, with some commenters supporting implementation of recalibration in the 2015 benefit year. Commenters supported using 2013 data as long as the data would be available prior to publication of the final 2016 Payment Notice and would be available prior to 2016 rate filings. Other commenters did not support using 2013 MarketScan data, instead suggesting that 2010, 2011, and 2012 data are sufficient.

Response: We agree on the importance of using recent data to calibrate our models. However, we also agree that timely notice of risk adjustment model changes is necessary for orderly rate development. Therefore, we will implement the recalibrated risk adjustment models in the 2016 benefit year. Additionally, because we received and were able to prepare the 2013 MarketScan dataset prior to the publication of this final rule, we have developed the 2016 risk adjustment factors using 2011, 2012, and 2013 MarketScan data. We believe this incorporation allows for the use of the most recent data available to HHS, while giving issuers the notice required for rate setting for the 2016 benefit year. We will continue to assess how we may ameliorate the data lag in future recalibrations. We believe that the transfer equation provided in the 2014 Payment Notice and the updated risk adjustment factors provided in this final Payment Notice are sufficient for issuers to evaluate the impact of risk adjustment on their rate development for 2016.

We believe that using multiple years of data will promote market stability and minimize volatility in coefficients for certain rare diagnoses. In using multiple years of data to recalibrate the

risk adjustment model, we considered either pooling data from 3 sample years or averaging coefficients from three separately estimated calibrations, based on the 2010, 2011, and 2012 data, and sought comment on the two approaches. We examined the effects of pooling data and averaging separate calibrations, and did not find a quantitatively important difference between the resulting coefficients. However, we believe that averaging coefficients offers the advantage of transparency and ease in future recalibrations. Averaging coefficients using the 3 most recent years of separately estimated calibrations allows for most recent data to be incorporated into the model, while ensuring that coefficients remain relatively stable, and are therefore finalizing our approach to average the coefficients from 3 separately estimated sample years. Below we publish the R-squared statistics of the 3 separately estimated sample years' estimates, and the blended coefficient for each risk adjustment factor.

Comment: Commenters supported the transparency and ease of averaging coefficients from three separately estimated calibrations, with one commenter recommending that we consider statistical best practices in the decision as to whether to average coefficients or pool data. Another commenter requested that we average coefficients, validate the results using pooled data, and publish a report detailing the results of the two methods.

Response: We carefully considered the two approaches, noting the benefits of each approach—transparency with averaging, and a single R-squared statistic and larger sample sizes for each model with pooling. However, when we compared the coefficients from both approaches, we did not find quantitatively important differences across the coefficients. We will continue to evaluate the coefficient averaging approach and consider any refinements in future recalibrations.

We made minor refinements to the underlying MarketScan recalibration samples from which the risk adjustment factors are derived. In particular, we changed our treatment of Age 0 infants without birth hierarchical condition categories (HCCs). There may be cases in which there is no separate infant birth claim from which to gather diagnoses. For example, mother and infant claims may be bundled such that infant diagnoses appear on the mother's record. Where newborn diagnoses appear on the mother's claims, HHS has issued operational guidance on how best to associate those codes with the appropriate infant.[9]

However, we proposed a change in how we categorize age 0 infants who do not have birth codes. We previously stated in the operational guidance referenced above that infants without birth codes would be assigned an ''Age 0, Term'' factor in risk adjustment operations. We did so under the assumption that issuers paid the birth costs, yet the birth HCCs were missing (perhaps because claims were bundled with the mother's, whose claims were excluded). Upon further analysis of age 0 and age 1 claims, we found that age 0 infants without birth HCCs had costs more similar to age 1 infants by severity level. We believe that these infants should be assigned to age 1 in situations where the issuer did not pay the birth costs during the plan year. For many age 0 infants without birth HCCs, the birth could have occurred in the prior year or was paid for by a different issuer. We proposed that age 0 infants without birth HCCs be assigned to ''Age 1'' by severity level. We have made this change in the recalibration samples that we are using to calculate risk factors for proposed implementation in the 2016 benefit year. We also proposed to make this change in the operation of the risk adjustment methodology for the year in which we would implement the recalibrated risk adjustment factors. We are finalizing our approach as proposed, for implementation in the 2016 benefit year with the recalibrated risk adjustment models.

Comment: Some commenters supported our reassignment of age 0 infants without birth codes from ''Age 0, Term'' to ''Age 1, severity level,'' noting the reduction in the factor that occurs from these infants' reassignment. Other commenters disagreed with our reassignment of age 0 infants without birth codes to ''Age 1, severity level.'' Commenters suggested that bundling claims is standard industry practice and infants on bundled claims without birth codes should be assigned to ''Age 0, Term,'' while another commenter suggested that this reassignment would result in incorrect payments for infant claims with discharge dates that overlap benefit years.

Response: In previous guidance, we have stated that issuers should unbundle claims to receive credit for all diagnoses. We believe that many age 0 infants without birth codes more closely resemble the risk profiles of age 1 infants. In many cases, the birth codes have been appropriately excluded due to a birth in the previous year or a change in insurance status. We will continue to treat infants with discharge dates that overlap benefit years as age 0, unless they do not have birth codes, in which case we would assign them to ''age 1, severity level,'' as with age 0 infants without birth codes whose discharge dates do not overlap benefit years.

d. List of Factors To Be Employed in the Model

The HHS risk adjustment models predict annualized plan liability expenditures using age and sex categories and the HHS HCCs included in the HHS risk adjustment model. Dollar coefficients were estimated for these factors using weighted least squares regression, where the weight was the fraction of the year enrolled.

We are including the same HCCs that were included in the original risk adjustment calibration in the 2014 Payment Notice. For each model, the factors are the statistical regression dollar values for each HCC in the model divided by a weighted average plan liability for the full modeling sample. The factors represent the predicted relative incremental expenditures for each HCC. The proposed factors resulting from the averaged factors from the 2011, 2012, and 2013 separately solved models are shown in the tables below. For a given enrollee, the sums of the factors for the enrollee's HCCs are the total relative predicted expenditures for that enrollee. Table 1 contains the factors for each adult model, including the interactions. Table 3 contains the factors for each child model. Table 4 contains the factors for each infant model.

Comment: One commenter requested that HHS provide the rationale for the modification of the child model transplant factors.

Response: We constrained the six transplant status HCC coefficients (other than kidney) in the child model. The sample sizes of transplants are smaller in the child than the adult model. The levels and changes in the child transplant relative coefficients appeared to be dominated by random instability and therefore, we believe the accuracy of the model will be improved by constraining these coefficients. We intend to monitor the child transplant relative coefficients, and adjust them if needed in future recalibrations.

Comment: Several commenters suggested that the model is not equipped to accurately account for the introduction of new treatments, and

[9] HHS-Developed Risk Adjustment Model Algorithm Software Instructions. June 2, 2014. *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/DIY-instructions-5-20-14.pdf*

recommended that HHS add drug utilization or selected classes of prescription medicines to the list of risk adjustment model factors. Commenters suggested that plans placing medications to treat serious chronic diseases on formulary tiers with the highest cost sharing is evidence that current plan designs discourage enrollment by higher-risk enrollees, which suggests that the current risk adjustment model is not effectively reducing plans' incentives to design benefits that discourage enrollment by higher risk and higher cost patients. One commenter recommended that HHS evaluate additional medical conditions or characteristics for new enrollees which may indicate future expenditures. Another commenter suggested that HHS analyze the difference between Truven and Medicaid claim variables for age 0–1 and that HHS assess the impact of habilitative and Medicaid-like benefits on costs which are generally not present in commercial claims. Lastly, a commenter suggested that the risk adjustment factors may be more appropriately calculated and applied regionally.

Response: As stated above, we wish to use the same risk adjustment models finalized in the 2014 Payment Notice, with changes to reflect more current data. We did not intend to change the models' structure, for example by including pharmacy utilization. However, we will continue to consider including prescription drug data in future model recalibrations. Similarly, we intend to evaluate additional medical conditions and characteristics for new enrollees which may indicate future expenditures, including through Medicaid claims comparisons. The risk adjustment methodology takes into account Statewide average premium and geographic rating area in the transfer formula.

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 21–24, Male	0.250	0.202	0.139	0.076	0.070
Age 25–29, Male	0.260	0.208	0.141	0.074	0.067
Age 30–34, Male	0.311	0.248	0.168	0.083	0.075
Age 35–39, Male	0.375	0.302	0.209	0.109	0.099
Age 40–44, Male	0.459	0.374	0.269	0.149	0.138
Age 45–49, Male	0.548	0.451	0.334	0.198	0.184
Age 50–54, Male	0.701	0.584	0.445	0.273	0.255
Age 55–59, Male	0.814	0.681	0.529	0.339	0.319
Age 60–64, Male	0.982	0.824	0.650	0.428	0.404
Age 21–24, Female	0.408	0.326	0.208	0.089	0.078
Age 25–29, Female	0.505	0.406	0.271	0.130	0.116
Age 30–34, Female	0.634	0.520	0.376	0.222	0.207
Age 35–39, Female	0.735	0.612	0.466	0.308	0.292
Age 40–44, Female	0.824	0.689	0.532	0.358	0.340
Age 45–49, Female	0.849	0.709	0.548	0.361	0.343
Age 50–54, Female	0.962	0.809	0.636	0.420	0.397
Age 55–59, Female	0.989	0.830	0.652	0.427	0.403
Age 60–64, Female	1.088	0.911	0.720	0.473	0.447
Diagnosis Factors					
HIV/AIDS	6.157	5.598	5.302	5.310	5.315
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	12.643	12.435	12.334	12.417	12.429
Central Nervous System Infections, Except Viral Meningitis	7.550	7.419	7.353	7.389	7.394
Viral or Unspecified Meningitis	5.290	5.002	4.868	4.805	4.803
Opportunistic Infections	10.151	10.027	9.969	9.964	9.963
Metastatic Cancer	26.334	25.786	25.486	25.597	25.610
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	12.032	11.615	11.394	11.418	11.421
Non-Hodgkin's Lymphomas and Other Cancers and Tumors	6.543	6.254	6.097	6.045	6.039
Colorectal, Breast (Age <50), Kidney, and Other Cancers	5.929	5.641	5.482	5.426	5.420
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	3.447	3.235	3.117	3.051	3.043
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.651	1.476	1.368	1.239	1.224
Pancreas Transplant Status/Complications	6.947	6.726	6.616	6.645	6.650
Diabetes with Acute Complications	1.344	1.193	1.100	0.959	0.942
Diabetes with Chronic Complications	1.344	1.193	1.100	0.959	0.942
Diabetes without Complication	1.344	1.193	1.100	0.959	0.942
Protein-Calorie Malnutrition	15.443	15.449	15.444	15.532	15.541
Mucopolysaccharidosis	2.379	2.239	2.160	2.088	2.080
Lipidoses and Glycogenosis	2.379	2.239	2.160	2.088	2.080
Amyloidosis, Porphyria, and Other Metabolic Disorders	2.379	2.239	2.160	2.088	2.080
Adrenal, Pituitary, and Other Significant Endocrine Disorders	2.379	2.239	2.160	2.088	2.080
Liver Transplant Status/Complications	16.879	16.651	16.547	16.575	16.581
End-Stage Liver Disease	6.272	5.972	5.825	5.852	5.857
Cirrhosis of Liver	2.548	2.348	2.252	2.213	2.210

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Chronic Hepatitis	2.339	2.170	2.077	1.994	1.987
Acute Liver Failure/Disease, Including Neonatal Hepatitis	4.521	4.324	4.225	4.215	4.216
Intestine Transplant Status/Complications	41.078	41.016	40.976	41.009	41.010
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	13.554	13.224	13.049	13.108	13.115
Intestinal Obstruction	7.453	7.114	6.952	6.996	7.004
Chronic Pancreatitis	6.273	5.985	5.849	5.891	5.898
Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption	3.183	2.950	2.834	2.778	2.772
Inflammatory Bowel Disease	3.283	2.988	2.831	2.693	2.677
Necrotizing Fasciitis	7.506	7.254	7.120	7.153	7.157
Bone/Joint/Muscle Infections/Necrosis	7.506	7.254	7.120	7.153	7.157
Rheumatoid Arthritis and Specified Autoimmune Disorders	3.834	3.534	3.373	3.349	3.348
Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.306	1.154	1.066	0.949	0.936
Osteogenesis Imperfecta and Other Osteodystrophies	3.633	3.399	3.262	3.188	3.179
Congenital/Developmental Skeletal and Connective Tissue Disorders	3.633	3.399	3.262	3.188	3.179
Cleft Lip/Cleft Palate	1.639	1.453	1.348	1.246	1.236
Hemophilia	46.716	46.362	46.145	46.164	46.167
Myelodysplastic Syndromes and Myelofibrosis	13.937	13.773	13.686	13.711	13.714
Aplastic Anemia	13.937	13.773	13.686	13.711	13.714
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	10.383	10.181	10.065	10.058	10.057
Sickle Cell Anemia (Hb-SS)	10.383	10.181	10.065	10.058	10.057
Thalassemia Major	10.383	10.181	10.065	10.058	10.057
Combined and Other Severe Immunodeficiencies	5.543	5.353	5.257	5.270	5.272
Disorders of the Immune Mechanism	5.543	5.353	5.257	5.270	5.272
Coagulation Defects and Other Specified Hematological Disorders	3.203	3.085	3.015	2.982	2.978
Drug Psychosis	3.915	3.627	3.471	3.346	3.332
Drug Dependence	3.915	3.627	3.471	3.346	3.332
Schizophrenia	3.294	3.004	2.852	2.750	2.741
Major Depressive and Bipolar Disorders	1.889	1.703	1.590	1.449	1.433
Reactive and Unspecified Psychosis, Delusional Disorders	1.889	1.703	1.590	1.449	1.433
Personality Disorders	1.234	1.097	0.994	0.840	0.822
Anorexia/Bulimia Nervosa	2.860	2.670	2.560	2.473	2.462
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	2.958	2.806	2.723	2.663	2.655
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.262	1.152	1.073	0.972	0.960
Autistic Disorder	1.234	1.097	0.994	0.840	0.822
Pervasive Developmental Disorders, Except Autistic Disorder	1.234	1.097	0.994	0.840	0.822
Traumatic Complete Lesion Cervical Spinal Cord	14.620	14.420	14.307	14.313	14.313
Quadriplegia	14.620	14.420	14.307	14.313	14.313
Traumatic Complete Lesion Dorsal Spinal Cord	10.397	10.195	10.085	10.079	10.078
Paraplegia	10.397	10.195	10.085	10.079	10.078
Spinal Cord Disorders/Injuries	6.455	6.200	6.068	6.041	6.039
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	3.907	3.620	3.478	3.430	3.427
Quadriplegic Cerebral Palsy	1.158	0.914	0.795	0.709	0.701
Cerebral Palsy, Except Quadriplegic	0.126	0.080	0.050	0.020	0.017
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	0.090	0.021	0.000	0.000	0.000
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	5.561	5.383	5.290	5.262	5.259
Muscular Dystrophy	2.284	2.088	1.993	1.902	1.893
Multiple Sclerosis	9.513	9.024	8.764	8.834	8.842
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	2.284	2.088	1.993	1.902	1.893
Seizure Disorders and Convulsions	1.588	1.408	1.305	1.202	1.192
Hydrocephalus	8.049	7.897	7.806	7.777	7.773
Non-Traumatic Coma, and Brain Compression/Anoxic Damage	10.501	10.329	10.227	10.228	10.227
Respirator Dependence/Tracheostomy Status	40.044	40.031	40.014	40.103	40.113
Respiratory Arrest	12.390	12.191	12.082	12.179	12.191
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	12.390	12.191	12.082	12.179	12.191
Heart Assistive Device/Artificial Heart	37.771	37.451	37.284	37.380	37.392
Heart Transplant	37.771	37.451	37.284	37.380	37.392
Congestive Heart Failure	3.598	3.462	3.391	3.390	3.391

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Acute Myocardial Infarction	11.768	11.329	11.100	11.278	11.300
Unstable Angina and Other Acute Ischemic Heart Disease	6.075	5.719	5.555	5.592	5.600
Heart Infection/Inflammation, Except Rheumatic	7.146	6.980	6.891	6.869	6.867
Specified Heart Arrhythmias	3.350	3.170	3.073	3.007	3.000
Intracranial Hemorrhage	11.056	10.700	10.519	10.548	10.554
Ischemic or Unspecified Stroke	4.012	3.770	3.665	3.685	3.690
Cerebral Aneurysm and Arteriovenous Malformation	4.709	4.455	4.331	4.287	4.284
Hemiplegia/Hemiparesis	6.343	6.218	6.155	6.223	6.231
Monoplegia, Other Paralytic Syndromes	3.968	3.805	3.724	3.700	3.699
Atherosclerosis of the Extremities with Ulceration or Gangrene	12.395	12.261	12.194	12.299	12.311
Vascular Disease with Complications	8.583	8.349	8.230	8.246	8.249
Pulmonary Embolism and Deep Vein Thrombosis	4.542	4.335	4.229	4.206	4.204
Lung Transplant Status/Complications	37.791	37.528	37.388	37.504	37.517
Cystic Fibrosis	12.367	11.975	11.747	11.763	11.764
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	1.090	0.958	0.871	0.762	0.750
Asthma	1.090	0.958	0.871	0.762	0.750
Fibrosis of Lung and Other Lung Disorders	2.365	2.217	2.143	2.098	2.093
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	8.585	8.482	8.429	8.454	8.457
Kidney Transplant Status	11.146	10.803	10.642	10.645	10.649
End Stage Renal Disease	42.543	42.217	42.036	42.222	42.243
Chronic Kidney Disease, Stage 5	2.440	2.308	2.248	2.244	2.245
Chronic Kidney Disease, Severe (Stage 4)	2.440	2.308	2.248	2.244	2.245
Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism	1.455	1.260	1.139	0.891	0.856
Miscarriage with Complications	1.455	1.260	1.139	0.891	0.856
Miscarriage with No or Minor Complications	1.455	1.260	1.139	0.891	0.856
Completed Pregnancy With Major Complications	4.050	3.489	3.288	3.066	3.065
Completed Pregnancy With Complications	4.050	3.489	3.288	3.066	3.065
Completed Pregnancy with No or Minor Complications	4.050	3.489	3.288	3.066	3.065
Chronic Ulcer of Skin, Except Pressure	2.575	2.425	2.354	2.337	2.337
Hip Fractures and Pathological Vertebral or Humerus Fractures	10.290	10.016	9.873	9.943	9.951
Pathological Fractures, Except of Vertebrae, Hip, or Humerus	2.010	1.868	1.782	1.681	1.669
Stem Cell, Including Bone Marrow, Transplant Status/ Complications	34.090	34.078	34.067	34.095	34.098
Artificial Openings for Feeding or Elimination	11.500	11.373	11.306	11.372	11.379
Amputation Status, Lower Limb/Amputation Complications	5.978	5.779	5.679	5.721	5.728
Severe illness x Opportunistic Infections	12.043	12.306	12.433	12.560	12.572
Severe illness x Metastatic Cancer	12.043	12.306	12.433	12.560	12.572
Severe illness x Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	12.043	12.306	12.433	12.560	12.572
Severe illness x Non-Hodgkin's Lymphomas and Other Cancers and Tumors	12.043	12.306	12.433	12.560	12.572
Severe illness x Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	12.043	12.306	12.433	12.560	12.572
Severe illness x Heart Infection/Inflammation, Except Rheumatic	12.043	12.306	12.433	12.560	12.572
Severe illness x Intracranial Hemorrhage	12.043	12.306	12.433	12.560	12.572
Severe illness x HCC group G06 (G06 is HCC Group 6 which includes the following HCCs in the blood disease category: 67, 68)	12.043	12.306	12.433	12.560	12.572
Severe illness x HCC group G08 (G08 is HCC Group 8 which includes the following HCCs in the blood disease category: 73, 74)	12.043	12.306	12.433	12.560	12.572
Severe illness x End-Stage Liver Disease	2.634	2.785	2.855	2.974	2.984
Severe illness x Acute Liver Failure/Disease, Including Neonatal Hepatitis	2.634	2.785	2.855	2.974	2.984
Severe illness x Atherosclerosis of the Extremities with Ulceration or Gangrene	2.634	2.785	2.855	2.974	2.984
Severe illness x Vascular Disease with Complications	2.634	2.785	2.855	2.974	2.984
Severe illness x Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	2.634	2.785	2.855	2.974	2.984
Severe illness x Artificial Openings for Feeding or Elimination	2.634	2.785	2.855	2.974	2.984

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Severe illness x HCC group G03 (G03 is HCC Group 3 which includes the following HCCs in the musculoskeletal disease category: 54, 55)	2.634	2.785	2.855	2.974	2.984

TABLE 2—HHS HCCS IN THE SEVERITY ILLNESS INDICATOR VARIABLE

Description
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.
Seizure Disorders and Convulsions.
Non-Traumatic Coma, Brain Compression/Anoxic Damage.
Respirator Dependence/Tracheostomy Status.
Respiratory Arrest.
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.
Pulmonary Embolism and Deep Vein Thrombosis.

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 2–4, Male	0.262	0.191	0.097	0.016	0.009
Age 5–9, Male	0.179	0.128	0.058	0.000	0.000
Age 10–14, Male	0.229	0.176	0.099	0.034	0.028
Age 15–20, Male	0.302	0.241	0.161	0.084	0.077
Age 2–4, Female	0.212	0.150	0.066	0.004	0.002
Age 5–9, Female	0.141	0.095	0.036	0.000	0.000
Age 10–14, Female	0.213	0.162	0.093	0.037	0.033
Age 15–20, Female	0.358	0.283	0.180	0.079	0.070
Diagnosis Factors					
HIV/AIDS	3.905	3.443	3.195	3.035	3.022
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	19.194	19.011	18.921	18.952	18.957
Central Nervous System Infections, Except Viral Meningitis	12.691	12.467	12.344	12.356	12.357
Viral or Unspecified Meningitis	3.766	3.517	3.386	3.226	3.210
Opportunistic Infections	25.545	25.461	25.417	25.403	25.402
Metastatic Cancer	40.241	39.934	39.739	39.739	39.738
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	13.408	13.064	12.852	12.768	12.758
Non-Hodgkin's Lymphomas and Other Cancers and Tumors	10.279	9.971	9.778	9.654	9.639
Colorectal, Breast (Age < 50), Kidney, and Other Cancers	4.078	3.830	3.661	3.498	3.479
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	3.274	3.044	2.901	2.749	2.731
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.832	1.650	1.520	1.360	1.342
Pancreas Transplant Status/Complications	35.005	34.817	34.724	34.753	34.755
Diabetes with Acute Complications	2.695	2.350	2.169	1.832	1.794
Diabetes with Chronic Complications	2.695	2.350	2.169	1.832	1.794
Diabetes without Complication	2.695	2.350	2.169	1.832	1.794
Protein-Calorie Malnutrition	15.577	15.458	15.387	15.437	15.442
Mucopolysaccharidosis	6.759	6.440	6.245	6.182	6.176
Lipidoses and Glycogenosis	6.759	6.440	6.245	6.182	6.176
Congenital Metabolic Disorders, Not Elsewhere Classified	6.759	6.440	6.245	6.182	6.176
Amyloidosis, Porphyria, and Other Metabolic Disorders	6.759	6.440	6.245	6.182	6.176
Adrenal, Pituitary, and Other Significant Endocrine Disorders	6.759	6.440	6.245	6.182	6.176
Liver Transplant Status/Complications	35.005	34.817	34.724	34.753	34.755
End-Stage Liver Disease	15.326	15.150	15.059	15.061	15.063
Cirrhosis of Liver	10.171	9.978	9.868	9.837	9.836
Chronic Hepatitis	1.316	1.149	1.025	0.917	0.908
Acute Liver Failure/Disease, Including Neonatal Hepatitis	10.916	10.745	10.640	10.615	10.614
Intestine Transplant Status/Complications	35.005	34.817	34.724	34.753	34.755
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	17.618	17.189	16.947	16.982	16.986

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Intestinal Obstruction	6.347	6.064	5.897	5.782	5.768
Chronic Pancreatitis	11.190	10.860	10.691	10.687	10.687
Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption	3.182	3.026	2.921	2.791	2.774
Inflammatory Bowel Disease	6.004	5.576	5.331	5.179	5.161
Necrotizing Fasciitis	5.256	4.965	4.789	4.706	4.699
Bone/Joint/Muscle Infections/Necrosis	5.256	4.965	4.789	4.706	4.699
Rheumatoid Arthritis and Specified Autoimmune Disorders	3.436	3.177	3.005	2.858	2.843
Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.257	1.086	0.962	0.795	0.775
Osteogenesis Imperfecta and Other Osteodystrophies	1.796	1.655	1.544	1.435	1.421
Congenital/Developmental Skeletal and Connective Tissue Disorders	1.796	1.655	1.544	1.435	1.421
Cleft Lip/Cleft Palate	1.859	1.618	1.468	1.300	1.281
Hemophilia	59.085	58.511	58.167	58.146	58.143
Myelodysplastic Syndromes and Myelofibrosis	21.395	21.190	21.067	21.051	21.050
Aplastic Anemia	21.395	21.190	21.067	21.051	21.050
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	8.368	8.039	7.846	7.752	7.742
Sickle Cell Anemia (Hb-SS)	8.368	8.039	7.846	7.752	7.742
Thalassemia Major	8.368	8.039	7.846	7.752	7.742
Combined and Other Severe Immunodeficiencies	7.081	6.862	6.737	6.659	6.649
Disorders of the Immune Mechanism	7.081	6.862	6.737	6.659	6.649
Coagulation Defects and Other Specified Hematological Disorders	5.332	5.169	5.053	4.945	4.932
Drug Psychosis	5.134	4.831	4.672	4.584	4.576
Drug Dependence	5.134	4.831	4.672	4.584	4.576
Schizophrenia	5.630	5.184	4.940	4.795	4.784
Major Depressive and Bipolar Disorders	2.003	1.776	1.618	1.392	1.366
Reactive and Unspecified Psychosis, Delusional Disorders	1.974	1.745	1.588	1.360	1.334
Personality Disorders	0.857	0.726	0.603	0.390	0.363
Anorexia/Bulimia Nervosa	2.863	2.630	2.484	2.385	2.374
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	3.910	3.649	3.524	3.486	3.481
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.795	1.582	1.460	1.334	1.320
Autistic Disorder	1.899	1.691	1.543	1.329	1.304
Pervasive Developmental Disorders, Except Autistic Disorder	0.958	0.819	0.685	0.447	0.417
Traumatic Complete Lesion Cervical Spinal Cord	14.568	14.494	14.454	14.554	14.565
Quadriplegia	14.568	14.494	14.454	14.554	14.565
Traumatic Complete Lesion Dorsal Spinal Cord	12.632	12.373	12.237	12.245	12.248
Paraplegia	12.632	12.373	12.237	12.245	12.248
Spinal Cord Disorders/Injuries	5.814	5.533	5.376	5.274	5.263
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	10.349	10.046	9.870	9.821	9.813
Quadriplegic Cerebral Palsy	4.321	3.997	3.842	3.871	3.876
Cerebral Palsy, Except Quadriplegic	1.066	0.840	0.715	0.595	0.582
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	1.352	1.182	1.075	0.973	0.961
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	10.325	10.110	9.984	9.926	9.919
Muscular Dystrophy	3.561	3.323	3.187	3.077	3.064
Multiple Sclerosis	6.515	6.125	5.899	5.854	5.850
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	3.561	3.323	3.187	3.077	3.064
Seizure Disorders and Convulsions	2.308	2.110	1.968	1.774	1.751
Hydrocephalus	6.416	6.260	6.175	6.167	6.166
Non-Traumatic Coma, and Brain Compression/Anoxic Damage	9.357	9.165	9.058	9.011	9.005
Respirator Dependence/Tracheostomy Status	43.573	43.432	43.370	43.553	43.572
Respiratory Arrest	14.726	14.485	14.364	14.374	14.375
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	14.726	14.485	14.364	14.374	14.375
Heart Assistive Device/Artificial Heart	35.005	34.817	34.724	34.753	34.755
Heart Transplant	35.005	34.817	34.724	34.753	34.755
Congestive Heart Failure	7.529	7.399	7.313	7.259	7.252
Acute Myocardial Infarction	8.526	8.355	8.262	8.268	8.270
Unstable Angina and Other Acute Ischemic Heart Disease	4.832	4.731	4.675	4.688	4.692
Heart Infection/Inflammation, Except Rheumatic	18.137	17.976	17.883	17.866	17.865
Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders	7.760	7.525	7.350	7.178	7.156

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Major Congenital Heart/Circulatory Disorders	2.184	2.053	1.918	1.752	1.734
Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders	1.355	1.243	1.121	0.985	0.970
Specified Heart Arrhythmias	5.208	4.988	4.842	4.750	4.739
Intracranial Hemorrhage	19.273	18.970	18.808	18.815	18.816
Ischemic or Unspecified Stroke	8.661	8.495	8.414	8.461	8.466
Cerebral Aneurysm and Arteriovenous Malformation	4.442	4.184	4.044	3.962	3.950
Hemiplegia/Hemiparesis	6.306	6.169	6.101	6.077	6.074
Monoplegia, Other Paralytic Syndromes	4.394	4.195	4.095	4.052	4.049
Atherosclerosis of the Extremities with Ulceration or Gangrene	15.443	15.201	15.064	14.935	14.918
Vascular Disease with Complications	17.744	17.530	17.416	17.432	17.433
Pulmonary Embolism and Deep Vein Thrombosis	16.259	16.035	15.925	15.959	15.964
Lung Transplant Status/Complications	35.005	34.817	34.724	34.753	34.755
Cystic Fibrosis	14.929	14.393	14.082	14.107	14.110
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.519	0.439	0.332	0.187	0.170
Asthma	0.519	0.439	0.332	0.187	0.170
Fibrosis of Lung and Other Lung Disorders	4.441	4.279	4.165	4.066	4.055
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	9.634	9.540	9.477	9.494	9.494
Kidney Transplant Status	16.696	16.265	16.038	16.049	16.054
End Stage Renal Disease	38.999	38.735	38.594	38.720	38.733
Chronic Kidney Disease, Stage 5	8.885	8.683	8.557	8.433	8.417
Chronic Kidney Disease, Severe (Stage 4)	8.885	8.683	8.557	8.433	8.417
Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism	1.245	1.056	0.919	0.640	0.606
Miscarriage with Complications	1.245	1.056	0.919	0.640	0.606
Miscarriage with No or Minor Complications	1.245	1.056	0.919	0.640	0.606
Completed Pregnancy With Major Complications	3.528	3.009	2.801	2.513	2.500
Completed Pregnancy With Complications	3.528	3.009	2.801	2.513	2.500
Completed Pregnancy with No or Minor Complications	3.528	3.009	2.801	2.513	2.500
Chronic Ulcer of Skin, Except Pressure	1.703	1.596	1.500	1.407	1.397
Hip Fractures and Pathological Vertebral or Humerus Fractures	6.420	6.099	5.893	5.758	5.744
Pathological Fractures, Except of Vertebrae, Hip, or Humerus	1.784	1.641	1.509	1.327	1.308
Stem Cell, Including Bone Marrow, Transplant Status/ Complications	35.005	34.817	34.724	34.753	34.755
Artificial Openings for Feeding or Elimination	16.599	16.457	16.401	16.574	16.594
Amputation Status, Lower Limb/Amputation Complications	9.440	9.135	8.972	8.856	8.841

TABLE 4—INFANT RISK ADJUSTMENT MODELS FACTORS

Group	Platinum	Gold	Silver	Bronze	Catastrophic
Extremely Immature *, Severity Level 5 (Highest)	434.244	432.604	431.540	431.548	431.554
Extremely Immature *, Severity Level 4	218.568	216.965	215.930	215.892	215.892
Extremely Immature *, Severity Level 3	63.306	62.118	61.302	60.931	60.895
Extremely Immature *, Severity Level 2	63.306	62.118	61.302	60.931	60.895
Extremely Immature *, Severity Level 1 (Lowest)	63.306	62.118	61.302	60.931	60.895
Immature *, Severity Level 5 (Highest)	218.648	217.060	216.033	216.039	216.046
Immature *, Severity Level 4	97.820	96.171	95.105	95.087	95.091
Immature *, Severity Level 3	56.283	54.855	53.924	53.770	53.758
Immature *, Severity Level 2	33.845	32.464	31.571	31.302	31.279
Immature *, Severity Level 1 (Lowest)	33.845	32.464	31.571	31.302	31.279
Premature/Multiples *, Severity Level 5 (Highest)	177.856	176.320	175.329	175.253	175.251
Premature/Multiples *, Severity Level 4	36.022	34.500	33.543	33.349	33.338
Premature/Multiples *, Severity Level 3	19.582	18.378	17.607	17.163	17.121
Premature/Multiples *, Severity Level 2	10.730	9.739	9.072	8.420	8.342
Premature/Multiples *, Severity Level 1 (Lowest)	7.152	6.431	5.831	5.073	4.987
Term *, Severity Level 5 (Highest)	155.054	153.597	152.653	152.503	152.492
Term *, Severity Level 4	19.318	18.169	17.434	16.891	16.841
Term *, Severity Level 3	7.022	6.305	5.738	4.947	4.851
Term *, Severity Level 2	4.219	3.676	3.163	2.300	2.193
Term *, Severity Level 1 (Lowest)	1.785	1.511	1.033	0.268	0.196
Age 1 *, Severity Level 5 (Highest)	42.616	41.994	41.549	41.337	41.318
Age 1 *, Severity Level 4	7.142	6.731	6.402	6.146	6.123
Age 1 *, Severity Level 3	2.678	2.410	2.191	1.927	1.899
Age 1 *, Severity Level 2	1.625	1.426	1.231	0.958	0.931

TABLE 4—INFANT RISK ADJUSTMENT MODELS FACTORS—Continued

Group	Platinum	Gold	Silver	Bronze	Catastrophic
Age 1 *, Severity Level 1 (Lowest)	0.636	0.527	0.321	0.138	0.124
Age 0 Male	0.728	0.673	0.659	0.607	0.594
Age 1 Male	0.158	0.137	0.128	0.094	0.090

TABLE 5—HHS HCCS INCLUDED IN INFANT MODEL MATURITY CATEGORIES

Maturity category	HCC/Description
Extremely Immature	Extremely Immature Newborns, Birthweight <500 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birthweight 500–749 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birthweight 750–999 Grams.
Immature	Premature Newborns, Including Birthweight 1000–1499 Grams.
Immature	Premature Newborns, Including Birthweight 1500–1999 Grams.
Premature/Multiples	Premature Newborns, Including Birthweight 2000–2499 Grams.
Premature/Multiples	Other Premature, Low Birthweight, Malnourished, or Multiple Birth Newborns.
Term	Term or Post-Term Singleton Newborn, Normal or High Birthweight.
Age 1	All age 1 infants.

TABLE 6—HHS HCCS INCLUDED IN INFANT MODEL SEVERITY CATEGORIES

Severity category	HCC
Severity Level 5 (Highest)	Metastatic Cancer.
Severity Level 5	Pancreas Transplant Status/Complications.
Severity Level 5	Liver Transplant Status/Complications.
Severity Level 5	End-Stage Liver Disease.
Severity Level 5	Intestine Transplant Status/Complications.
Severity Level 5	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.
Severity Level 5	Respirator Dependence/Tracheostomy Status.
Severity Level 5	Heart Assistive Device/Artificial Heart.
Severity Level 5	Heart Transplant.
Severity Level 5	Congestive Heart Failure.
Severity Level 5	Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders.
Severity Level 5	Lung Transplant Status/Complications.
Severity Level 5	Kidney Transplant Status.
Severity Level 5	End Stage Renal Disease.
Severity Level 5	Stem Cell, Including Bone Marrow, Transplant Status/Complications.
Severity Level 4	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.
Severity Level 4	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.
Severity Level 4	Mucopolysaccharidosis.
Severity Level 4	Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age <2.
Severity Level 4	Myelodysplastic Syndromes and Myelofibrosis.
Severity Level 4	Aplastic Anemia.
Severity Level 4	Combined and Other Severe Immunodeficiencies.
Severity Level 4	Traumatic Complete Lesion Cervical Spinal Cord.
Severity Level 4	Quadriplegia.
Severity Level 4	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease.
Severity Level 4	Quadriplegic Cerebral Palsy.
Severity Level 4	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.
Severity Level 4	Non-Traumatic Coma, Brain Compression/Anoxic Damage.
Severity Level 4	Respiratory Arrest.
Severity Level 4	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.
Severity Level 4	Acute Myocardial Infarction.
Severity Level 4	Heart Infection/Inflammation, Except Rheumatic.
Severity Level 4	Major Congenital Heart/Circulatory Disorders.
Severity Level 4	Intracranial Hemorrhage.
Severity Level 4	Ischemic or Unspecified Stroke.
Severity Level 4	Vascular Disease with Complications.
Severity Level 4	Pulmonary Embolism and Deep Vein Thrombosis.
Severity Level 4	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.
Severity Level 4	Chronic Kidney Disease, Stage 5.
Severity Level 4	Hip Fractures and Pathological Vertebral or Humerus Fractures.
Severity Level 4	Artificial Openings for Feeding or Elimination.
Severity Level 3	HIV/AIDS.
Severity Level 3	Central Nervous System Infections, Except Viral Meningitis.
Severity Level 3	Opportunistic Infections.
Severity Level 3	Non-Hodgkin's Lymphomas and Other Cancers and Tumors.
Severity Level 3	Colorectal, Breast (Age <50), Kidney and Other Cancers.
Severity Level 3	Breast (Age 50+), Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.
Severity Level 3	Lipidoses and Glycogenosis.

TABLE 6—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

Severity category	HCC
Severity Level 3	Adrenal, Pituitary, and Other Significant Endocrine Disorders.
Severity Level 3	Acute Liver Failure/Disease, Including Neonatal Hepatitis.
Severity Level 3	Intestinal Obstruction.
Severity Level 3	Necrotizing Fasciitis.
Severity Level 3	Bone/Joint/Muscle Infections/Necrosis.
Severity Level 3	Osteogenesis Imperfecta and Other Osteodystrophies.
Severity Level 3	Cleft Lip/Cleft Palate.
Severity Level 3	Hemophilia.
Severity Level 3	Disorders of the Immune Mechanism.
Severity Level 3	Coagulation Defects and Other Specified Hematological Disorders.
Severity Level 3	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes.
Severity Level 3	Traumatic Complete Lesion Dorsal Spinal Cord.
Severity Level 3	Paraplegia.
Severity Level 3	Spinal Cord Disorders/Injuries.
Severity Level 3	Cerebral Palsy, Except Quadriplegic.
Severity Level 3	Muscular Dystrophy.
Severity Level 3	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.
Severity Level 3	Hydrocephalus.
Severity Level 3	Unstable Angina and Other Acute Ischemic Heart Disease.
Severity Level 3	Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders.
Severity Level 3	Specified Heart Arrhythmias.
Severity Level 3	Cerebral Aneurysm and Arteriovenous Malformation.
Severity Level 3	Hemiplegia/Hemiparesis.
Severity Level 3	Cystic Fibrosis.
Severity Level 3	Fibrosis of Lung and Other Lung Disorders.
Severity Level 3	Pathological Fractures, Except of Vertebrae, Hip, or Humerus.
Severity Level 2	Viral or Unspecified Meningitis.
Severity Level 2	Thyroid, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.
Severity Level 2	Diabetes with Acute Complications.
Severity Level 2	Diabetes with Chronic Complications.
Severity Level 2	Diabetes without Complication.
Severity Level 2	Protein-Calorie Malnutrition.
Severity Level 2	Congenital Metabolic Disorders, Not Elsewhere Classified.
Severity Level 2	Amyloidosis, Porphyria, and Other Metabolic Disorders.
Severity Level 2	Cirrhosis of Liver.
Severity Level 2	Chronic Pancreatitis.
Severity Level 2	Inflammatory Bowel Disease.
Severity Level 2	Rheumatoid Arthritis and Specified Autoimmune Disorders.
Severity Level 2	Systemic Lupus Erythematosus and Other Autoimmune Disorders.
Severity Level 2	Congenital/Developmental Skeletal and Connective Tissue Disorders.
Severity Level 2	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn.
Severity Level 2	Sickle Cell Anemia (Hb-SS).
Severity Level 2	Drug Psychosis.
Severity Level 2	Drug Dependence.
Severity Level 2	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.
Severity Level 2	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.
Severity Level 2	Seizure Disorders and Convulsions.
Severity Level 2	Monoplegia, Other Paralytic Syndromes.
Severity Level 2	Atherosclerosis of the Extremities with Ulceration or Gangrene.
Severity Level 2	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis.
Severity Level 2	Chronic Ulcer of Skin, Except Pressure.
Severity Level 1 (Lowest)	Chronic Hepatitis.
Severity Level 1	Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption.
Severity Level 1	Thalassemia Major.
Severity Level 1	Autistic Disorder.
Severity Level 1	Pervasive Developmental Disorders, Except Autistic Disorder.
Severity Level 1	Multiple Sclerosis.
Severity Level 1	Asthma.
Severity Level 1	Chronic Kidney Disease, Severe (Stage 4).
Severity Level 1	Amputation Status, Lower Limb/Amputation Complications.
Severity Level 1	No Severity HCCs.

e. Cost-Sharing Reductions Adjustments

We proposed to continue to include an adjustment for the receipt of cost-sharing reductions in the model, and proposed to continue not to adjust for receipt of reinsurance payments in the model. We have updated the adjustments to the HHS risk adjustment models for individuals who receive cost-sharing reductions to be consistent with the cost-sharing reductions advance payment formula finalized in the 2015 Payment Notice, for implementation in 2015 benefit year risk adjustment. The silver plan variation and zero cost sharing factors are unchanged from those finalized in the 2014 Payment Notice. The

adjustment factors are set forth in Table 7. These adjustments are multiplied against the sum of the demographic, diagnosis, and interaction factors. We will continue to evaluate this adjustment as more data becomes available. We received no comments on this approach, and are finalizing it as proposed.

TABLE 7—COST-SHARING REDUCTION ADJUSTMENT

Household income	Plan AV	Induced utilization factor
Silver Plan Variation Recipients		
100–150% of FPL	Plan Variation 94%	1.12
150–200% of FPL	Plan Variation 87%	1.12
200–250% of FPL	Plan Variation 73%	1.00
>250% of FPL	Standard Plan 70%	1.00
Zero Cost Sharing Recipients		
<300% of FPL	Platinum (90%)	1.00
<300% of FPL	Gold (80%)	1.07
<300% of FPL	Silver (70%)	1.12
<300% of FPL	Bronze (60%)	1.15
Limited Cost Sharing Recipients		
>300% of FPL	Platinum (90%)	1.00
>300% of FPL	Gold (80%)	1.07
>300% of FPL	Silver (70%)	1.12
>300% of FPL	Bronze (60%)	1.15

f. Model Performance Statistics

To evaluate model performance, we examined R-squared statistics and predictive ratios. The R-squared statistic, which calculates the percentage of individual variation explained by a model, measures the predictive accuracy of the model overall. The predictive ratios measure the predictive accuracy of a model for different validation groups or subpopulations. The predictive ratio for each of the HHS risk adjustment models is the ratio of the weighted mean predicted plan liability for the model sample population to the weighted mean actual plan liability for the model sample population. The predictive ratio represents how well the model does on average at predicting plan liability for that subpopulation. A subpopulation that is predicted perfectly would have a predictive ratio of 1.0. For each of the HHS risk adjustment models, the R-squared statistic and the predictive ratio are in the range of published estimates for concurrent risk adjustment models.[10] Because we are averaging the coefficients from separately solved models based on MarketScan 2011, 2012 and 2013 data, we are publishing the R-squared statistic for each model and year separately to verify their statistical validity. The R-squared statistic for each model is shown in Table 8.

TABLE 8—R-SQUARED STATISTIC FOR HHS RISK ADJUSTMENT MODELS

Risk adjustment model	R-squared statistic		
	2011	2012	2013
Platinum Adult	0.368	0.394	0.382
Platinum Child	0.283	0.286	0.277
Platinum Infant	0.337	0.284	0.322
Gold Adult	0.363	0.389	0.377
Gold Child	0.278	0.280	0.272
Gold Infant	0.335	0.282	0.319
Silver Adult	0.360	0.387	0.374
Silver Child	0.275	0.277	0.268
Silver Infant	0.334	0.281	0.318
Bronze Adult	0.358	0.384	0.372
Bronze Child	0.272	0.273	0.265
Bronze Infant	0.334	0.281	0.318
Catastrophic Adult	0.358	0.384	0.371
Catastrophic Child	0.271	0.273	0.265
Catastrophic Infant	0.334	0.281	0.318

[10] Winkleman, Ross and Syed Mehmud. ''A Comparative Analysis of Claims-Based Tools for Health Risk Assessment.'' Society of Actuaries. April 2007.

g. Overview of the Payment Transfer Formula

We do not propose to alter our payment transfer methodology. Plan average risk scores would be calculated as the member month-weighted average of individual enrollee risk scores. We defined the calculation of plan average actuarial risk and the calculation of payments and charges in the Premium Stabilization Rule. In the 2014 Payment Notice, we combined those concepts into a risk adjustment payment transfer formula. Risk adjustment transfers (payments and charges) will be calculated following the completion of issuer risk adjustment data reporting. The payment transfer formula includes a set of cost adjustment terms that require transfers to be calculated at the geographic rating area level for each plan (that is, HHS will calculate two separate transfer amounts for a plan that operates in two rating areas).

The payment transfer formula is designed to provide a per member per month (PMPM) transfer amount. The PMPM transfer amount derived from the payment transfer formula will be multiplied by each plan's total member months for the benefit year to determine the total payment due or charge owed by the issuer for that plan in a rating area.

(1) Overview of the Payment Transfer Formula

Though we did not propose to change the payment transfer formula from what was finalized in the 2014 Payment Notice (78 FR 15430–15434), we believe it useful to republish the formula in its entirety, since we are finalizing recalibrated HHS risk adjustment models. Transfers (payments and charges) will be calculated as the difference between the plan premium estimate reflecting risk selection and the plan premium estimate not reflecting risk selection. As finalized in the 2014 Payment Notice, the HHS risk adjustment payment transfer formula is:

$$T_i = \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)} - \frac{AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i)}\right] \bar{P}_s$$

Where:

$\bar{P}_S$ = State average premium;
$PLRS_i$ = plan *i*'s plan liability risk score;
AV_i = plan *i*'s metal level AV;
ARF_i = allowable rating factor;
IDF_i = plan *i*'s induced demand factor;
GCF_i = plan *i*'s geographic cost factor;
s_i = plan *i*'s share of State enrollment;

and the denominator is summed across all plans in the risk pool in the market in the State.

The difference between the two premium estimates in the payment transfer formula determines whether a plan pays a risk transfer charge or receives a risk transfer payment. Note that the value of the plan average risk score by itself does not determine whether a plan would be assessed a charge or receive a payment—even if the risk score is greater than 1.0, it is possible that the plan would be assessed a charge if the premium compensation that the plan may receive through its rating practices (as measured through the allowable rating factor) exceeds the plan's predicted liability associated with risk selection. Risk adjustment transfers are calculated at the risk pool level and catastrophic plans are treated as a separate risk pool for purposes of risk adjustment.

h. 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 the second Program Integrity Rule (78 FR 65046), we clarified the modification to the transfer formula to accommodate community rated States that utilize family tiering rating factors. We further clarified this formula in the proposed rule to ensure that the allowable rating factor (ARF) is appropriately applied in the transfer formula in community rated States for 2014 risk adjustment. In the second Program Integrity Rule, we stated that the ARF formula should be modified so that the numerator is a summation over all subscribers of the product of the family tiering factor and the subscriber member months, and the denominator the sum of billable member months. However, we do not believe the revised formula accurately reflects that description, as it does not distinguish between subscriber months (months attributed to the sole subscriber) and billable member months (months attributed to all allowable members of the family factored into the community rating). The calculation of ARF for family tiering States that was published in the second Program Integrity Rule that would be calculated at the level of the subscriber, was as follows:

$$ARF_i = \frac{\sum_s (ARF_s \cdot M_s)}{\sum_s (M_s)}$$

Where:

ARF_s is the rating factor for the subscriber(s) (based on family size/composition), and
M_s is the number of billed person-months that are counted in determining the premium(s) for the subscriber(s).

While the preamble description in the second Program Integrity Rule is correct, as we noted, the formula itself is incorrect in that it does not distinguish between billable member months and subscriber months by using the same variable for both. Therefore, we proposed a technical change to the ARF calculation for family tiering States, as follows:

$$ARF_i = \frac{\sum_s (ARF_s \cdot MS_s)}{\sum_s (MB_s)}$$

Where:

ARF_i is the allowable rating factor for plan *i*,
ARF_s is the allowable rating factor—also known as the family rating tier—for subscriber (family) *s* in plan *i*,
MS_s is the number of subscriber months for subscriber *s*, and
MB_s is the number of billable member months for subscriber (family) *s*.

The numerator is summed over the product of the allowable rating factor and the number of subscriber months (that is, months of family subscription), and the denominator is the sum over all billable members. Each family unit covered under a single contract is considered a single ''subscriber.'' Therefore, a family of four that purchases coverage for a period from January through December will accumulate 12 subscriber months (MS_s), although coverage is being provided for 48 member months (both billable and non-billable). Billable members are individuals who are counted for purposes of placing the subscriber in a family tier. For example, in a community rated State that rates based on two adults and one or more children with one full year of enrollment, the family of four would have 36 billable member months (MB_s), (12 billable member months for the subscriber, 12 billable member months for the second adult, and 12 billable months for the first child). We received no comments on this correction and are finalizing it as proposed.

i. State-Submitted Alternate Risk Adjustment Methodology

For 2016, we are recertifying the alternate risk adjustment methodology submitted by Massachusetts and certified in the 2014 Payment Notice (78 FR 15439–15452).

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 the standards set forth in subparts C and E of the Premium Stabilization Rule and established the reinsurance payment parameters and uniform reinsurance contribution rate for the 2014 benefit year. In the 2015 Payment Notice, we established the reinsurance payment parameters and uniform reinsurance contribution rate for the 2015 benefit year and certain oversight provisions related to the operation of the reinsurance program.

a. Common Ownership Clarification

The definition of a ''contributing entity'' at § 153.20 provides that for the 2015 and 2016 benefit years, a contributing entity is (i) a health insurance issuer or (ii) 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. Solely for purposes of the reinsurance program, a self-insured group health plan will not be deemed to use a TPA if it uses an unrelated third party: (a) To obtain a provider network and related claims repricing services; or (b) for up to 5 percent of claims processing or adjudication or plan enrollment, based on either the number of transactions processed by the third party, or the value of the claims processing and adjudication and plan enrollment services provided by the third party.

The definition of a ''contributing entity'' does not include qualifying self-administered, self-insured group health plans for the purpose of the requirement to make reinsurance contributions for the 2015 and 2016 benefit years. In the preamble to the 2015 Payment Notice, we indicated that we 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 plan sponsor that provides the specified core administrative services (79 FR 13773).

We received a number of inquiries seeking clarification on how to determine common ownership or control for purposes of the definition of a ''contributing entity'' in § 153.20. In response, in the proposed rule, we proposed to clarify that principles similar to the controlled group rules of section 414(b) and (c) of the Code be used to determine whether the TPA is under common ownership or control with the self-insured group health plan or the plan sponsor, because these rules are familiar to many stakeholders. We also noted that similar ownership or control rules apply for other purposes under the Affordable Care Act, such as the shared responsibility payment for applicable large employers that do not offer full-time employees and dependents the opportunity to enroll in minimum essential coverage, and the annual fee on health insurance issuers under section 9010 of the Affordable Care Act.

We sought comment on this proposal and on alternative definitions that would be familiar to stakeholders for determining whether a TPA is under common ownership or control with the self-insured group health plan or its sponsor for purposes of the definition of ''contributing entity'' at § 153.20.

We finalize this proposal with one clarification—we are limiting the incorporation of the section 414 rules to sections 414(b) and (c).

Comment: One commenter stated that the common ownership or control test should mirror, ''not use similar principles to,'' the section 414 controlled group rules, so that one consistent test of determining common ownership applies for all employer compliance purposes under the Affordable Care Act.

Response: The section 414 controlled group rules address a variety of structures for related corporations and businesses, some of which are not relevant to defining a ''contributing entity,'' such as sections 414(m), (n), and (o). The intent of the proposed language was to limit the incorporation of the section 414 rules to sections 414(b) and (c), the provisions most applicable to defining a contributing entity. Therefore, we are finalizing the proposal with that clarification.

b. Reinsurance Contributing Entities and Minimum Value

Section 1341(b)(3)(B) of the Affordable Care Act and the implementing regulations at § 153.400(a)(1) require contributing entities to make reinsurance contributions for major medical coverage that is considered to be part of a commercial book of business. We define major medical coverage at § 153.20 as coverage meeting minimum value (MV) or that is subject to the actuarial value (AV) requirements. In light of this definition, stakeholders have asked whether plans that do not offer inpatient hospital coverage, but that are considered to offer MV for purposes of the employer shared responsibility payment because they were in place before HHS and IRS guidance [11] on MV was issued November 4, 2014, must make reinsurance contributions for the 2015 benefit year. As detailed in the November 4, 2014 guidance, we clarify that plans that entered into a binding agreement or began enrolling employees prior to November 4, 2014, with plan years beginning by March 1, 2015, are considered to meet MV requirements until the end of the current plan year for purposes of the employer shared responsibility penalties. We clarify that these plans will therefore also be deemed to satisfy the definition of ''major medical coverage'' in § 153.20 for purposes of reinsurance contributions, since these plans meet the previous definition of MV until plan renewal.

c. Self-Insured Expatriate Plans (§ 153.400(a)(1)(iii))

Section 1341(b)(3)(B) of the Affordable Care Act and the implementing regulations at § 153.400(a)(1) require contributing entities to make reinsurance contributions for major medical coverage that is considered to be part of a commercial book of business. In the 2014 Payment Notice (78 FR 15457), we stated that we interpret this language to exclude expatriate health coverage, as defined by the Secretary, and we codified this approach in regulatory text at § 153.400(a)(1)(iii). In the March 8, 2013, FAQs about the Affordable Care Act Implementation Part XIII,[12] an expatriate health plan is defined as an *insured* group health plan for which

[11] Group Health Plans that Fail to Cover In-Patient Hospitalization Services, Notice 2014–69, available at: *http://www.irs.gov/pub/irs-drop/n-14-69.pdf.*

[12] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs13.html.*

enrollment is limited to primary insured who reside outside of their home country for at least 6 months of the plan year and any covered dependents, and its associated group health insurance coverage. Therefore, under our current regulation, *self-insured* expatriate plans that would otherwise meet the conditions outlined in the March 8, 2013 FAQ are required to make reinsurance contributions if these plans provide major medical coverage, unless another exemption in § 153.400(a) applies, because the definition in the FAQ applies only to *insured* expatriate plans.

We proposed to amend § 153.400(a)(1)(iii), which currently exempts expatriate health coverage, as defined by the Secretary, from reinsurance contributions, so that it also exempts, for the 2015 and 2016 benefit years only, any self-insured group health plan for which enrollment is limited to participants, and any covered dependents, who reside outside of their home country for at least 6 months of the plan year. This definition would be applicable solely to the transitional reinsurance program.

We received one comment in support of this proposal, which also stated that the expatriate plan requirements should be revised to reflect the effect of the recently enacted Expatriate Health Coverage Clarification Act of 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83 (2014 Expatriate Health Coverage Act). Since the expatriate plan requirements (and accompanying definitions) enacted in the 2014 Expatriate Health Coverage Act only apply to expatriate plans issued or renewed on or after July 1, 2015, we are finalizing the amendment as proposed, and we intend to undertake future rulemaking in conjunction with the Departments of the Treasury and Labor governing the application of the Affordable Care Act to expatriate plans to harmonize our regulations (as may be necessary) with the 2014 Expatriate Health Coverage Act. We do not anticipate that this future rulemaking will affect the availability of the exemption for the expatriate plans described in this final rule.

d. Determination of Debt (§ 153.400(c))

Consistent with the determination of debt provision set forth in § 156.1215(c), we proposed to clarify in § 153.400(c) that any amount owed to the Federal government by 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), including reinsurance contributions that are not remitted in full in a timely manner, would be a determination of a debt.

We received no comments on this proposal and are finalizing this provision as proposed.

e. Reinsurance Contribution Submission Process

On May 22, 2014, we released an FAQ about the reinsurance contribution submission process.[13] As detailed in this FAQ, we implemented a streamlined process for the collection of reinsurance contributions. A contributing entity, or a TPA or administrative services-only (ASO) contractor on behalf of the contributing entity, must complete all required steps for the reinsurance contribution submission process on *www.pay.gov* (Pay.gov). The ''ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form'' available on Pay.gov must be completed and submitted by a contributing entity or a TPA or ASO contractor on its behalf no later than November 15 of the benefit year under § 153.405(b).

We proposed to amend § 153.405(b), which requires a contributing entity to submit its annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS no later than November 15 of benefit year 2014, 2015, or 2016. When November 15 does not fall on a business day, we proposed that a contributing entity submit its annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS no later than November 15, 2014, 2015, or 2016, or, if such date is not a business day, the next business day. Similarly, because November 15, 2015 and January 15, 2017 do not fall on a business day, we proposed to amend § 153.405(c)(2) so that a contributing entity must remit reinsurance contributions to HHS no later than January 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next applicable business day, if making a combined contribution or the first payment of the bifurcated contribution; and no later than November 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next applicable business day, if making the second payment of the bifurcated contribution.[14]

Although we stated in the 2015 Payment Notice (79 FR 13776) that, for operational reasons, HHS would not permit contributing entities to elect to make the entire benefit year's reinsurance contribution by January 15, 2015, 2016, or 2017, as applicable, we have resolved those operational barriers, and now offer contributing entities the option to pay: (1) The entire 2014, 2015 or 2016 benefit year contribution in one payment no later than January 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day), reflecting the entire uniform contribution rate applicable to each benefit year (that is, $63 per covered life for 2014, $44 per covered life for 2015, and $27 per covered life for 2016); or (2) in two separate payments for the 2014, 2015, or 2016 benefit years, with the first remittance due by January 15, 2015, 2016, and 2017, as applicable (or, if such date is not a business day, the next applicable business day) reflecting the first payment of the bifurcated contribution (that is, $52.50 per covered life for 2014, $33.00 per covered life for 2015, and $21.60 per covered life for 2016); and the second remittance due by November 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) reflecting the second payment of the bifurcated contribution (that is, $10.50 reinsurance fee per covered life for 2014, $11.00 per covered life for 2015, and $5.40 per covered life for 2016).

Under § 153.405(c)(1), HHS must notify the contributing entity of the reinsurance contribution amount allocated to reinsurance payments and administrative expenses to be paid for the applicable benefit year following submission of the annual enrollment count. We clarified that this notification will occur when the contributing entity enters the gross annual enrollment count into the Pay.gov form and the form auto-calculates the contribution amount owed. No separate notification or invoice will be sent to a contributing entity, unless a discrepancy in data or payment has been identified by the entity or HHS after the form is submitted. In addition, we proposed to delete § 153.405(c)(2), to be consistent with HHS permitting flexibility for a contributing entity (or the TPA or ASO contractor on its behalf) to remit the

[13] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Reinsurance-contributions-process-FAQ-5-22-14.pdf.*

[14] To be comprehensive, we included all reinsurance contribution submission dates throughout the entirety of the program, understanding that some dates noted here have passed.

entire contribution in one payment, rather than requiring a bifurcated payment. Notification of the reinsurance contribution amount related to the allocation for reinsurance payments, administrative expenses, and payments to the U.S. Treasury for the applicable benefit year will also be made through the automatic calculation of this amount when a contributing entity (or the TPA or ASO contractor on its behalf) completes the reinsurance contribution submission process and submits the form through Pay.gov.

We also proposed to amend and redesignate § 153.405(c)(3) to (c)(2) to clarify that a contributing entity must schedule its contribution payment for the applicable benefit year to occur no later than January 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) if making a combined payment or the first payment of the bifurcated payment, and no later than November 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) if making the second payment of the bifurcated payment. However, we noted that the form must be completed and the reinsurance contribution payment(s) must be *scheduled* no later than November 15, 2014, 2015, or 2016, as applicable, to successfully comply with the deadline set forth in § 153.405(b) and complete the reinsurance contribution submission process through Pay.gov.[15] The reinsurance contribution payments must be scheduled by this deadline regardless of whether the contributing entity (or the TPA or ASO contractor on its behalf) is remitting a combined payment or two payments under the bifurcated schedule.

We noted that if a contributing entity elects to follow the bifurcated schedule, then the contributing entity is required to submit two separate forms through Pay.gov. However, the annual enrollment count reported on both forms must be the same. This is consistent with § 153.405(b) and previous guidance, which provide that no later than November 15 of benefit year 2014, 2015, or 2016, as applicable, a contributing entity must submit an annual enrollment count of the number of covered lives of reinsurance contribution enrollees one time for the applicable benefit year to HHS.

Finally, we proposed to amend § 153.405(g)(4)(1)(i) and (ii), which require a plan sponsor who maintains multiple group health plans to report to HHS the average number of covered lives calculated, the counting method used, and the names of the multiple plans being treated as a single group health plan as determined by the plan sponsor. A plan sponsor would continue to be required to determine this information, but would only need to report to HHS the average number of covered lives calculated and the other data elements required through the Pay.gov reinsurance contribution submission process. Under § 153.405(h), plan sponsors should retain this additional information (that is, the counting method used and the names of the multiple plans being treated as a single group health plan), as this information may be requested to assess the plan sponsor's compliance with the reinsurance contribution requirements.

We are finalizing these provisions as proposed.

Comment: Several commenters asked that HHS publicize the amount of reinsurance contributions collected by December 31st of the benefit year for issuers to assess the possible proration of reinsurance payments.

Response: We intend to issue a report of the estimated total contributions collected in the spring of the year following the applicable benefit year. This estimate would include the amount of contributions already paid and scheduled to be paid for the entire benefit year.

f. Consistency in Counting Methods for Health Insurance Issuers (§ 153.405(d))

As noted in the 2014 Payment Notice (78 FR 15462), the counting methods for the transitional reinsurance program are designed to align with the methods permitted for purposes of the fee to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF). The PCORTF Final Rule (77 FR 72729) requires consistency in the use of counting methods for calculating covered lives for the duration of the year. We proposed for the 2015 and 2016 benefit years [16] to amend § 153.405(d) to similarly require a contributing entity that is a health insurance issuer to use the same counting method to calculate its annual enrollment count of covered lives of reinsurance contribution enrollees in a State (including both the individual and group markets) for a benefit year even if the fully insured major medical plans for which reinsurance contributions are required enroll different covered lives. If a health insurance issuer has multiple major medical plans covering different lives in different States, the issuer may use different counting methods for all major medical plans in each State (including both the individual and group markets). We noted that this amendment would not prevent an issuer from using different counting methods for different benefit years. We did not propose a similar requirement for self-insured group health plans and sought comments on whether a similar uniformity requirement should extend to self-insured group health plans that are contributing entities.

We are finalizing this provision as proposed.

Comment: One commenter stated that it is difficult for self-insured plans to use consistent counting methods for multiple plans.

Response: In many instances, a plan sponsor's multiple group health plans may be administered by different entities, making implementation of a uniformity of counting method requirement potentially more difficult. Therefore, we are finalizing this policy.

g. Snapshot Count and Snapshot Factor Counting Methods (§§ 153.405(d)(2) and (e)(2))

Under § 153.400(a)(1), reinsurance contributions are generally required for major medical coverage that is considered to be part of a commercial book of business, but contributions are not required to be paid more than once for the same covered life. Reinsurance contributions are generally calculated based on the number of covered lives covered by a plan or coverage that provides major medical coverage. The reinsurance contribution required from a contributing entity is calculated by multiplying the number of covered lives (determined under a permitted counting method set forth in § 153.405(d) through § 153.405(g)) during the applicable calendar year for all applicable plans and coverage of the contributing entity by the applicable contribution rate for the respective benefit year.

We proposed to clarify how the counting methods set forth in §§ 153.405(d)(2) and (e)(2) are to be used in those situations when a plan terminates or is established in the middle of a quarter to effectuate the principle that contributions are required to be paid once for the same covered life. Under the snapshot count method, described at § 153.405(d)(2), to determine the number of covered lives for the purposes of reinsurance contributions, the issuer or self-insured group health plan must add the total number of lives covered on any date (or

[15] We note that for the 2014 benefit year, we extended the filing deadline to December 5, 2014.

[16] As noted in an FAQ issued on October 21, 2014, we also encouraged this approach for the 2014 benefit year. Available at: *https://www.regtap.info/*, FAQ# 6037.

more dates, if an equal number of dates are used for each quarter) during the same corresponding month in each of the first 3 quarters of the benefit year, and divide that total by the number of dates on which a count was made. Under the snapshot factor method, described at § 153.405(e)(2), to determine the number of covered lives for the purposes of reinsurance contributions, the self-insured group health plan must add the total number of lives covered on any date (or more dates, if an equal number of dates are used for each quarter) during the same corresponding month in each of the first 3 quarters of the benefit year, and divide that total by the number of dates on which a count was made, except that the number of lives covered on a date is calculated by adding the number of participants with self-only coverage on the date to the product of the number of participants with coverage other than self-only coverage on the date and a factor of 2.35. For each of these counting methods, the same months must be used for each quarter (for example, January, April, July), and the date used for the second and third quarter must fall within the same week of the quarter as the corresponding date used for the first quarter.

We understand that a health insurance plan or coverage may be established, terminated, or change funding mechanisms (that is, from fully insured to self-insured or self-insured to fully insured), in the middle of a quarter. In these circumstances, it is possible that the new plan or coverage would not have covered lives enrolled in the plan or coverage for the entire quarter. If this occurs, a contributing entity could, due to its selection of dates, be required to pay an amount significantly greater or lesser than the amount that would be due based on its average count of covered lives over the course of the 9-month counting period. To avoid this result, we proposed to clarify that, if the plan or coverage in question had enrollees on any day during a quarter and if the contributing entity elects to (and is permitted to) use either the snapshot count or snapshot factor method, it must choose a set of counting dates for the 9-month counting period such that the plan or coverage has enrollees on each of the dates, if possible. However, the enrollment count for a date during a quarter in which the plan or coverage was in existence for only part of the quarter could be reduced by a factor reflecting the amount of time during the quarter for which the plan or coverage was not in existence. This approach is intended to accurately capture the amount of time during the quarter for which major medical coverage that is part of a commercial book of business and subject to reinsurance contributions was provided to enrollees, while not requiring contributions to be paid more than once for the same covered life. For example, a contributing entity that has a plan that terminates on August 31st (that is, 62 days into the third quarter) would not be permitted to use September 1st as the date for the third quarter under the snapshot count or snapshot factor methods because this would not properly reflect the number of covered lives of reinsurance contribution enrollees under the plan in the third quarter of the benefit year. However, it would be entitled to reduce its count of covered lives during that quarter by 30/92, the proportion of the quarter during which the plan had no enrollment. This reduction factor would only be applicable for the snapshot count and snapshot factor methods set forth in §§ 153.405(d)(2) and (e)(2), respectively, as all of the other permitted counting methods automatically account for partial year enrollment.

Comment: One commenter asked that the 2.35 factor in the snapshot factor counting method set forth in § 153.405(e)(2) be optional, rather than required, since some plans may only cover one employee and a spouse or only one employee and one dependent.

Response: We decline to make this change, but note that a number of different counting methods are available and contributing entities have flexibility to choose the one that best meets their needs and circumstances.

h. Uniform Reinsurance Contribution Rate for 2016

Section 153.220(c) provides that HHS is 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 for the 2014 benefit year (the reinsurance payment pool), $6 billion for the 2015 benefit year, and $4 billion for the 2016 benefit year. Additionally, sections 1341(b)(3)(B)(iv) and 1341(b)(4) of the Affordable Care Act direct that $2 billion in funds are to be collected for contribution to the U.S. Treasury for the 2014 benefit year, $2 billion for the 2015 benefit year, and $1 billion for the 2016 benefit year. Finally, section 1341(b)(3)(B)(ii) of the Affordable Care Act authorizes 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 2014, 2015, and 2016 benefit years under the uniform reinsurance contribution rate.

As discussed in the 2014 and 2015 Payment Notices, 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:

$$Uniform\ Reinsurance\ Contribution\ Rate = \frac{Reinsurance\ payment\ pool + Treasury\ contribution + Administrative\ costs}{Estimate\ of\ enrollees\ in\ plans\ required\ to\ make\ reinsurance\ contributions}$$

As discussed in greater detail below, we proposed collecting $32 million for administrative expenses for the 2016 benefit year. Therefore, the total amount to be collected for the 2016 benefit year would be approximately $5.032 billion. Our estimate of the number of enrollees in plans that must make reinsurance contributions yields an annual per capita contribution rate of $27 for the 2016 benefit year.

(1) Allocation of Uniform Reinsurance Contribution Rate

Section 153.220(c) provides that HHS is to establish 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 and 2015 Payment Notices, we stated that reinsurance contributions collected for the 2014 and 2015 benefit years would be allocated pro rata to the reinsurance payment pool, administrative expenses, and the U.S. Treasury, up to $12.02 billion for 2014 and up to $8.025 billion for 2015. However, we amended this approach in the 2015 Market Standards Rule,[17] such that, if reinsurance collections fall short of our estimates for a particular benefit year, we will allocate reinsurance contributions collected first to the reinsurance payment pool, with any remaining amounts being then allocated to the U.S. Treasury and administrative expenses, on a pro rata basis. We proposed following a similar approach for the 2016 benefit year, such that if reinsurance contributions fall short of our estimates, contributions collected will first be allocated to the reinsurance payment pool, with any remaining amounts being then allocated to the U.S. Treasury and administrative expenses, on a pro rata basis. In the proposed rule, we also proposed to use any excess contributions for reinsurance payments for the current benefit year by increasing the coinsurance rate for the 2016 benefit year up to 100 percent before rolling over any remaining funds to the next year and sought comment on whether to expend all of the contributions in 2016 or roll over any excess funds to the 2017 benefit year.

(2) Administrative Expenses

In the 2015 Payment Notice, we estimated that the Federal administrative expenses of operating the reinsurance program would be $25.4 million, based on our estimated contract and operational costs. We used the same methodology to estimate the administrative expenses for the 2016 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. To calculate our reinsurance administrative expenses for 2016, 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 2016.

We estimated this amount to be approximately $32 million for the 2016 benefit year. This estimate increased for the 2016 benefit year due to increased audit and data validation contract costs. We believe that this amount 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 2016, we proposed a uniform reinsurance contribution rate of $0.17 annually per capita for HHS administrative expenses. We provide details below on the methodology we used to develop the 2016 enrollment estimates.

Similar to the allocation for 2015, for the 2016 benefit year, administrative expenses are allocated equally between contribution and payment-related activities. Because we anticipate that our additional activities in the 2016 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 9, we will apportion the annual per capita amount of $0.17 of administrative expenses as follows: (a) $0.085 of the total amount collected per capita for administrative expenses for the collection of contributions from contributing entities; and (b) $0.085 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 9—BREAKDOWN OF ADMINISTRATIVE EXPENSES

[Annual, per capita]

Activities	Estimated expenses
Collecting reinsurance contributions from health insurance issuers and certain self-insured group health plans	$0.085
Calculation and disbursement of reinsurance payments	0.085
Total annual per capita administrative expenses for HHS to perform all reinsurance functions	0.17

If HHS operates the reinsurance program on behalf of a State, HHS would retain the annual per capita fee to fund HHS's performance of all reinsurance functions, which would be $0.17. If a State establishes its own reinsurance program, HHS would transfer $0.085 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.085 to offset HHS's 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 are finalizing the 2016 contribution rate as proposed and finalizing our policy to increase the 2016 coinsurance rate to 100 percent prior to rolling over any excess funds to 2017.

Comment: Several commenters supported our proposal to increase the 2016 coinsurance rate to 100 percent if collections exceed the requests for reinsurance payments. Some commenters further supported rolling over any excess collections to 2017 if excess funds remain after increasing the coinsurance rate to 100 percent, while other commenters disagreed with our proposal to roll over the excess funds to 2017 asking that HHS instead increase the reinsurance cap in 2016 to expend all contributions collected in 2016.

Response: We will continue with our policy to increase the coinsurance rate to 100 percent for the 2016 benefit year

[17] 79 FR 30259.

in the event collections exceed the requests for reinsurance payments. If additional funds remain after the increase in the coinsurance rate to 100 percent, we will roll over the excess funds to 2017 to extend the premium stabilization effects of the program.

i. Uniform Reinsurance Payment Parameters for 2016

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, 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, meant to reimburse a proportion of claims while giving issuers an incentive to contain costs) 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 2016 benefit year, we proposed that the uniform reinsurance payment parameters for the 2016 benefit year be established at an attachment point of $90,000, a reinsurance cap of $250,000, and a coinsurance rate of 50 percent. We estimated that these uniform reinsurance payment parameters will result in total requests for reinsurance payments of approximately $4 billion for the 2016 benefit year. We believe setting the coinsurance rate at 50 percent and increasing the attachment point allows for the reinsurance program to help pay for nearly the same group of high-cost enrollees as was the case for the 2014 and 2015 benefit years, while still encouraging issuers to contain costs.

As discussed in the 2014 and 2015 Payment Notices, 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 generates a range of national and State-level outputs for 2016, using updated assumptions reflecting more recent data, but using the same methodology described in the 2014 and 2015 Payment Notices.[18]

Specifically, the ACAHIM uses the Health Intelligence Company, LLC (HIC) database from calendar year 2010, with the claims data trended to 2016 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 2016 payment parameters as proposed.

Comment: Several commenters supported the proposed 2016 uniform reinsurance payment parameters. One commenter asked that HHS consider when setting the parameters that some issuers are unable to obtain commercial reinsurance and therefore are left unprotected from large losses.

Response: We are finalizing the 2016 uniform reinsurance payment parameters as proposed, and as we explained above and in the 2014 and 2015 Payment Notices, these parameters are set in an effort not to interfere with commercial reinsurance, although we understand not all issuers can obtain commercial reinsurance. Additionally, we believe that maintaining the reinsurance cap for the 2016 benefit year while ensuring that the coinsurance rate sufficiently compensates issuers for high-risk individuals will make it easier for issuers to estimate the effects of reinsurance.

Comment: Several commenters asked that HHS not change the uniform reinsurance payment parameters for 2016 finalized in this rule in subsequent rulemaking.

Response: We are finalizing the 2016 uniform payment parameters as proposed, and do not intend to make any future adjustments to these parameters.

j. Uniform Reinsurance Payment Parameters for 2015

In the proposed rule, we proposed lowering the 2015 attachment point from $70,000 to $45,000 as this would allow the reinsurance program to make more payments for high-cost enrollees in individual market reinsurance-eligible plans without increasing the contribution rate. We did not propose to adjust the 2015 coinsurance rate of 50 percent or reinsurance cap of $250,000.

We are finalizing the reduction of the 2015 attachment point to $45,000 as proposed.

Comment: Some commenters supported our proposal to lower the 2015 attachment point to $45,000. Other commenters disagreed with our proposal to lower the 2015 attachment point, noting that this change would affect premium rates already submitted. One commenter noted that lowering the attachment point would result in lower MLRs, requiring issuers to rebate excess funds. Additionally, some noted that changing the 2015 payment parameters at this point could interfere with any State supplemental reinsurance program that depends on the national reinsurance payment parameters.

Response: In the 2015 Market Standards Rule,[19] we signaled our intention to propose to lower the 2015 attachment point from $70,000 to $45,000 for the 2015 benefit year in an effort to notify issuers of this change in advance of rate settings for 2015 coverage. Additionally, we believe that lowering the attachment point to $45,000 will further the premium stabilization effects of the program in 2015 as more individuals enroll in non-grandfathered, individual market plans that are compliant with §§ 147.102, 147.104 (subject to § 147.145), 147.106 (subject to § 147.145), 156.80, and subpart B of part 156 than in 2014.

k. Deducting Cost-Sharing Reduction Amounts From Reinsurance Payments

We proposed to modify the methodology finalized in the 2015 Payment Notice (79 FR 13780) regarding the deduction of cost-sharing reduction amounts from reinsurance payments. 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 who have effectuated coverage in cost-sharing plan variations. To avoid double payment by the Federal government, we indicated in the 2014 Payment Notice

[18] See the proposed 2014 Payment Notice (77 FR 73160) and the proposed 2015 Payment Notice (78 FR 72344) for more information on the ACAHIM methodology.

[19] 79 FR 30259.

(78 FR 15499) that the enrollee-level claims data submitted by an issuer of a reinsurance-eligible plan should be net of cost-sharing reductions provided through a cost-sharing plan variation (which are reimbursed by the Federal government).

In the 2015 Payment Notice (79 FR 13780), we explained the methodology HHS will 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. For each enrollee enrolled in a QHP plan variation,[20] we will 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. For policies with multiple enrollees, such as family policies, we stated we would 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.

We also stated that for an enrollee who is assigned to different plan variations during the benefit year, we would calculate 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, because cost sharing accumulates over the benefit year across plan variations of the same standard plan. We proposed a modification to this particular policy.

Specifically, if an enrollee is assigned to different plan variations during the benefit year, we proposed to calculate the adjustment for cost-sharing reductions based on the difference between the annual limitation on cost sharing for the standard plan and the average annual limitation on cost sharing in the plan variations (including any standard plan), weighted by the number of months the enrollee is enrolled in each plan variation during the benefit year.[21]

We are finalizing this proposal as proposed.

Comment: Several commenters stated that our proposed modification was too complex, and would increase the burden on issuers to make additional calculations and data system enhancements.

Response: We believe that our modified approach will permit HHS to more accurately allocate the difference in annual limitations in a family policy to individual family members when a member exits or enters the policy mid-year, or if there are other changes in circumstances that impact the cost-sharing reductions provided to enrollees covered by the family policy. We will continue to work with issuers and provide technical support to help with the updates to the calculations and data system enhancements that may be necessary.

4. Provisions for the Temporary Risk Corridors Program

a. Application of the Transitional Policy Adjustment in Early Renewal States

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.[22] [23] In the 2015 Payment Notice, HHS implemented an adjustment to the administrative cost ceiling and profit floor of the risk corridors formula for the 2014 benefit year to help further offset losses that might occur under the transitional policy as a result of increased claims costs not accounted for when setting 2014 premiums. Because we believe that the Statewide effect on the risk pool in States that adopted the Federal transitional policy would increase with an increase in the percentage enrollment in transitional plans in the State, we stated that we would vary the State-specific percentage adjustment to the risk corridors formula with the percentage of member-months enrollment in these transitional plans in the State.[24]

In response to stakeholder questions, we proposed to clarify in the 2016 Payment Notice that the transitional adjustment applies only for plans under the transitional policy—that is, plans that renew after January 1, 2014 for which HHS and the applicable State are not enforcing market rules. We proposed to further clarify that member-months of enrollees in early renewal plans would not be counted towards the risk corridors transitional policy adjustment (that is, unless and until the plan becomes a transitional plan in a transitional State upon renewal in 2014).[25] We are finalizing this clarification as proposed, and are maintaining the policy previously finalized in the 2015 Payment Notice under § 153.500 and § 153.530 without modification.

Comment: Several commenters recommended that HHS modify our policy to include the experience of early renewal plans. One commenter suggested that HHS include early renewals in the adjustment because our announcement did not occur until November 11, 2013, which was too late to be reflected in the rates that were finalized in July 2013. Another commenter requested that HHS modify its policy to accommodate issuers in States that decided to allow early renewals after the announcement of the transitional policy.

Response: We believe that issuers were aware of State policy for early renewals when they set their 2014 rates; moreover, the transitional policy adjustment was intended to address the Federal transitional policy, not State early renewal policies. Under our current policy, HHS counts months occurring after an early renewal plan becomes a transitional plan when we calculate the transitional adjustment for each State. We believe that this approach for counting member months towards the risk corridors transitional adjustment is consistent with the intent of the transitional policy adjustment set forth in the 2015 Payment Notice.

Comment: One commenter suggested that the transitional adjustment be applied to the risk corridors calculation for the entire market for 2014, not just in markets where the transitional policy is in effect. Another commenter requested that HHS implement the transitional adjustment in a manner that does not disadvantage States that did not adopt the Federal transitional policy for 2014.

[20] Except for limited cost-sharing plan variations, for which we stated we would not reduce the QHP issuer's plan paid amounts.

[21] We did not propose any changes to the approach finalized in the 2015 Payment Notice with respect to the QHP issuer's plan paid amounts for purposes of calculating reinsurance payments for an Indian in a limited cost-sharing plan variation.

[22] 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*.

[23] HHS extended the transitional policy on March 5, 2014, permitting issuers to renew transitional policies through policy years beginning on or before October 1, 2016.

[24] As stated in the 2015 Payment Notice, HHS will calculate the amount of the adjustment that applies to each State based on the State's member-month enrollment count for transitional plans and non-transitional plans in the individual and small group markets.

[25] § 153.530 sets forth the data requirements for this information collection. HHS published 60-day and 30-day notices in the **Federal Register**, providing the public with an opportunity to submit written comments on the information collection. The data collection is approved under OMB Control Number 0938–1267.

Response: We are maintaining the policy finalized in the 2015 Payment Notice under § 153.500 and § 153.530, which provides, for 2014, that the effect of the transitional adjustment will vary according to the member-month enrollment in a State, such that the 3 percent profit floor and 20 percent allowable administrative cost ceiling will apply in States that did not adopt the Federal transitional policy (QHP issuers in these States will receive a risk corridors transitional adjustment equal to zero). We believe that issuers in States that did not adopt the Federal transitional policy will not require the transitional adjustment to help mitigate mispricing that may have occurred due to unexpected changes in the risk pool resulting from the Federal transitional policy. We note that the adjustment will account for the effect of the Federal transitional policy in the entire market within a State that adopted the transitional policy, such that a QHP issuer in a transitional State will be eligible to receive an adjustment to its risk corridors calculation even if the issuer has not issued transitional policies.

b. Risk Corridors Payments for 2016

On April 11, 2014, we issued a bulletin titled ''Risk Corridors and Budget Neutrality,'' which described how we intend to administer risk corridors over the 3-year life of the program.[26] Specifically, we stated that if any risk corridors funds remain after prior and current year payment obligations have been met, they will be held to offset potential insufficiencies in risk corridors collections in the next year. We also stated that we would establish in future guidance how we would calculate risk corridors payments in the event that cumulative risk corridors collections do not equal cumulative risk corridors payment requests.

In the proposed 2016 Payment Notice, we proposed that if, for the 2016 benefit year, cumulative risk corridors collections exceed cumulative risk corridors payment requests, we would make an adjustment to our administrative expense definitions (that is, the profit margin floor and the ceiling for allowable administrative costs) to account for the excess funds. That is, if, when the risk corridors program concludes, cumulative risk corridors collections exceed both 2016 payment requests under the risk corridors formula and any unpaid risk corridors amounts from previous years, we would increase the administrative cost ceiling and the profit floor in the risk corridors formula by a percentage calculated to pay out all collections to QHP issuers. The administrative cost ceiling and the profit floor would be adjusted by the same percentage.

We proposed to determine the percentage adjustment to the administrative cost ceiling and profit margin floor by evaluating the amount of excess risk corridors collections (if any) available after risk corridors payments for benefit year 2016 have been calculated. As stated in our bulletin on risk corridors and budget neutrality, after receiving charges from issuers for the 2016 benefit year, we would first prioritize payments to any unpaid risk corridors payments remaining from the 2015 benefit year. We would then calculate benefit year 2016 risk corridors payments for eligible issuers based on the 3 percent profit floor and 20 percent allowable administrative cost ceiling, as required by regulation. If, after making 2015 payments and calculating (but not paying) risk corridors payments for benefit year 2016, we determine that the aggregate amount of collections (including any amounts collected for 2016 and any amounts remaining from benefit years 2014 and 2015) exceed what is needed to make 2016 risk corridors payments, we would implement an adjustment to the profit floor and administrative cost ceiling to increase risk corridors payments for eligible issuers for benefit year 2016. We would examine data that issuers have submitted for calculation of their 2016 risk corridors ratios (that is, allowable costs and target amount) and determine, based on the amount of collections available, what percentage increase to the administrative cost ceiling and profit floor could be implemented for eligible issuers while maintaining budget neutrality for the program overall. Although all eligible issuers would receive the same percentage adjustment, we proposed that the amount of additional payment made to each issuer would vary based on the issuer's allowable costs and target amount. We proposed that, once HHS calculated the adjustment and applied it to eligible issuers' risk corridors formulas, it would make a single risk corridors payment for benefit year 2016 that would include any additional, adjusted payment amount.

Because risk corridors collections are a user fee to be used to fund premium stabilization under risk corridors and no other programs, we proposed to limit this adjustment to excess amounts collected. We also proposed to apply this adjustment to allowable administrative costs and profits for the 2016 benefit year 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.[27] For plans whose ratio of allowable costs to after-tax premium is below 80 percent, we proposed that the 3 percent risk corridors profit margin and 20 percent allowable administrative cost ceiling would continue to apply. Furthermore, we proposed that, to the extent that applying the proposed adjustment to a plan could increase its risk corridors payment and affect its MLR calculation, the MLR calculation would ignore these adjustments.

As previously stated, we anticipate that risk corridors collections will be sufficient to pay for all risk corridors payments. HHS recognizes that the Affordable Care Act requires the Secretary to make full payments to issuers. In the unlikely event that risk corridors collections, including any potential carryover from the prior years, are insufficient to make risk corridors payments for the 2016 program year, HHS will use other sources of funding for the risk corridors payments, subject to the availability of appropriations.

We are finalizing this policy as proposed.

Comment: We received one comment on the proposed approach for allocating excess risk corridors collections at the end of the program. The commenter supported our approach. Another commenter supported language in the proposed Payment Notice that reaffirmed HHS's commitment to make full risk corridors payments if collections are insufficient to fund payments.

Response: We are finalizing the policy regarding allocation of excess risk corridors collections for 2016 as proposed.

[26] The Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight. ''Risk Corridors and Budget Neutrality,'' April 11, 2014. Available at: *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf.*

[27] Because of some differences in the MLR numerator and the definition of allowable costs that applies with respect to the risk corridors formula, in a small number of cases, an issuer with allowable costs that are at least 80 percent of after-tax premium, may be required to pay MLR rebates to consumers.

5. Distributed Data Collection for the HHS-Operated Risk Adjustment and Reinsurance Programs

a. Good Faith Safe Harbor (§ 153.740(a))

In the second Program Integrity Rule,[28] HHS finalized a good faith safe harbor policy which provided that civil money penalties (CMPs) will not be imposed for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements during 2014, if the issuer has made good faith efforts to comply with these requirements.[29] That safe harbor parallels a similar safe harbor for QHP issuers in FFEs under § 156.800.

We proposed to amend § 153.740(a) to extend the safe harbor for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements during the 2015 calendar year if the issuer has made good faith efforts to comply with these requirements. This proposal acknowledged that the distributed data collection requirements have been the subject of modifications through the 2014 calendar year, including the introduction of cloud-based virtual options for the distributed data environment. We note that good faith efforts could include notifying, communicating with, and cooperating with HHS for issues that arise with the establishment and provisioning of the issuers' dedicated distributed data environment.

The extension of this good faith safe harbor would not affect HHS's ability to assess issuers of risk adjustment covered plans a default risk adjustment charge under § 153.740(b).[30] Additionally, we noted that the good faith safe harbor would not apply to non-compliance with dedicated distributed data environment standards applicable during 2016, even if the non-compliance in the 2016 calendar year relates to data for the 2015 benefit year. For example, the data loading schedule applicable to the 2015 benefit year for risk adjustment and reinsurance data extends into the 2016 calendar year (the final loading deadline is April 30, 2016). Therefore, the good faith safe harbor would not apply to non-compliance with the dedicated distributed data environment standards applicable during 2016.

Comment: Several commenters supported our proposal to extend the good faith safe harbor to the 2015 benefit year. The commenters asked that we clarify that the safe harbor extension would apply to conduct that occurred in a covered year (2014 or 2015) regardless of when an enforcement action is initiated. These commenters also asked that the good faith safe harbor apply for any risk adjustment or reinsurance data requirements that apply to the 2015 benefit year, even if the data is reported in 2016.

Response: As we clarified in the 2015 Payment Notice (79 FR 13791), HHS will not impose CMPs for noncompliance for dedicated distributed data environment standards for the 2014 benefit year, if the issuer attempted in good faith to comply, simply by waiting until 2015 to initiate the enforcement action. We will follow the same approach with respect to the extension of the good faith safe harbor through the 2015 calendar year. However, the good faith safe harbor will not apply to non-compliance with dedicated distributed data environment standards applicable during the 2016 calendar year, even if the non-compliance in 2016 relates to data for the 2015 benefit year.

Comment: One commenter asked that we extend the good faith safe harbor to 2016.

Response: We are not extending the good faith compliance safe harbor to 2016.

b. Default Risk Adjustment Charge (§ 153.740(b))

In the second Program Integrity Rule and the 2015 Payment Notice, HHS indicated that a default risk adjustment charge will be assessed if an issuer does not establish a dedicated distributed data environment or submits inadequate risk adjustment data. However, we did not establish how the money collected from the default charge will be allocated among risk adjustment covered plans.

We proposed to allocate collected per member per month default charge funds proportional to each plan's relative revenue requirement, the product of *PLRS*IDF*GCF* (Plan Liability Risk Score * Induced Demand Factor * Geographic Cost Factor) relative to the market average of these products, across all risk adjustment covered plans in the market in the State. This approach would allocate funds proportionally to a plan's enrollment, adjusted for factors such as health risk, actuarial value, and geographic cost differences. This approach would also allocate the default charge funds in accordance with plans' expected revenue requirements as calculated in the transfer formula. By contrast, an approach that allocates risk adjustment default charge funds in accordance with enrollment or premiums, for example, would favor plans with lower metal levels, low risk selection, or lower geographic costs.

This allocation would occur only in risk adjustment markets with at least one noncompliant plan, and these steps would be used to calculate each compliant plan's allocation of the default charges collected from the noncompliant plan(s). We would calculate risk transfers among the compliant plans only and exclude all data from noncompliant plans. Using the same inputs of the compliant plans as used in the transfer formula, we would calculate the distribution of default charges paid by noncompliant plans among the compliant plans using the following formula:

$$DC_i = \text{total default charges collected} \times s_i \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum(s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)}\right]$$

Where:

DC_i is the total amount of default charges allocated to plan i;

''Total default charges collected'' is the sum, in dollars, collected from all noncompliant plans (aggregate dollars, that is, *not* on a per member per month basis);

Other terms are as defined in the usual risk transfer calculations, and restricted to

[28] 78 FR 65046.

[29] We note that HHS also clarified in a March 28, 2014 FAQ that CMPs would not be imposed on an issuer for non-compliance during the 2014 calendar year, if the issuer made good efforts to comply with these requirements. *See,* FAQ 1212, published March 28, 2014. Available at: *https://www.regtap.info/faq_viewu.php?id=1212.*

[30] According to § 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 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 for the risk adjustment covered plan in a timely fashion, HHS will assess a default risk adjustment charge.

compliant plans only (s_i = plan *i*'s share of State enrollment; $PLRS_i$ = plan *i*'s plan liability risk score, IDF_i = plan *i*'s induced demand factor, GCF_i = plan *i*'s geographic cost factor);
and *i* indexes compliant plans, and the summation in the denominator is over compliant plans only.

Comment: One commenter agreed with the proposed allocation of default risk adjustment charges to risk adjustment compliant plans, noting that it provides an equitable distribution of default risk adjustment charges.

Response: We are finalizing the allocation of default risk adjustment charges as proposed.

c. Information Sharing (§ 153.740(c))

In § 153.740, we established the enforcement remedies available to HHS for an issuer of a risk adjustment covered plan or a reinsurance-eligible plan's failure to comply with HHS-operated risk adjustment and reinsurance data requirements. Consistent with the policy set forth at § 156.800(d), as finalized in the 2015 Market Standards Rule,[31] we proposed adding paragraph (c) to clarify that HHS may consult with and share information about issuers of a risk adjustment covered plan or a reinsurance-eligible plan with other Federal and State regulatory and enforcement entities to the extent that the consultation or information is necessary for HHS to determine whether an enforcement remedy against the issuer of the risk adjustment covered plan or reinsurance-eligible plan under § 153.740 is appropriate. For example, HHS may consult other Federal and State regulatory and enforcement entities to identify issuers within a State that have failed to establish a dedicated distributed data environment. No personally identifiable information would be transferred as part of such a consultation.

We received no comments on this proposal. We are finalizing this provision as proposed.

D. Part 154—Health Insurance Issuer Rate Increases: Disclosure and Review Requirements

1. General Provisions

In the proposed rule, we proposed several modifications to enhance the transparency and effectiveness of the rate review program under part 154. These provisions were proposed to apply generally beginning with rates filed in 2015 for coverage effective on or after January 1, 2016. We requested comment on whether the proposal provides States and issuers sufficient time to transition to the new rate review requirements.

Comment: While some commenters believed the proposed timeframe was adequate, others suggested that issuers would not have sufficient time to implement the requirements to meet deadlines for the 2015 filing year. Some commenters noted it would take time for HHS to modify the Unified Rate Review Template (URRT) to accommodate the new plan-level trigger under proposed § 154.200(c). Commenters recommended the plan-level requirements not apply until the 2016 filings for plan years beginning in 2017.

Response: In response to comments, to provide adequate time to make necessary adjustments to the URRT, the revised definition of ''rate increase'' and plan-level trigger under §§ 154.102 and 154.200(c) of this final rule will apply beginning with rates filed in 2016 for coverage effective on or after January 1, 2017. The uniform rate review and disclosure timelines under §§ 154.220 and 154.301 of this final rule will apply beginning with rates filed in 2015 for coverage effective on or after January 1, 2016. As discussed below, the individual market annual open enrollment period for the 2016 benefit year will not begin until November 1, 2015, which provides additional time to meet the filing deadlines for 2016 rates.

a. Definitions (§ 154.102)

Under § 154.102, we set forth definitions of terms that are used throughout part 154. We proposed adding a new definition of ''plan'' and revising the definitions of ''individual market,'' ''small group market,'' and ''State.'' For the most part, these terms would have the meaning given such terms in § 144.103. For a discussion of the terms ''plan'' and ''State,'' please see the preamble for § 144.103 in this final rule.

We also proposed to modify the definition of ''rate increase.'' The revisions would conform with our proposal in § 154.200 to consider rate increases at the plan-level when determining whether a rate increase is subject to review.

We did not receive comments on the definitions of ''individual market,'' ''small group market,'' and ''rate increase.'' We are finalizing these revisions as proposed, except that the revised definition of ''rate increase'' has been modified to clarify that the changes made to conform with the proposal in § 154.200 will apply for rates filed for coverage effective on or after January 1, 2017. The other definitions will apply for rates filed for coverage effective on or after January 1, 2016.

Comment: Several commenters did not agree with our proposal to apply the definition of ''plan'' in the context of the rate review program. The commenters expressed concern that this would add complexity and create delays to the product filing and review process.

Response: Because this final rule establishes a trigger for review of rate increases at the plan level, we are adopting the definition of ''plan'' at § 144.103 of this final rule for purposes of the rate review requirements under part 154. While changing to a plan-level trigger may increase the number of rate filings subject to review, we believe doing so will more accurately reflect consumer expectations for the rate review program. We note that nothing in this final rule changes the scope of issuer rate filings, which will continue to be submitted at the product level.

2. Disclosure and Review Provisions

a. Rate Increases Subject to Review (§ 154.200)

In § 154.200, we proposed modifications to the standards for rate increases that are subject to review. In paragraphs (a)(1) and (2), we proposed technical corrections to clarify that rate increases are applicable to a 12-month period that begins on January 1 rather than September 1 of each year.

In paragraph (c), we proposed that rate increases would be calculated at the plan level (as opposed to the product level) when determining whether an increase is subject to review. Under this approach, if any plan within a product in the individual or small group market experiences an increase in the plan-adjusted index rate (as described in § 156.80) that meets or exceeds the applicable threshold (either 10 percent or a State-specific threshold), the entire product would be subject to review to determine whether the rate increase is unreasonable. This proposal was intended to ensure that a plan that experiences a significant rate increase could not avoid review simply because the average increase for the product did not meet or exceed the applicable threshold.

We sought comment on all aspects of these proposals, including the benefits and costs to States of carrying out the plan-level trigger for review.

Comment: We received comments that suggested some confusion as to whether rate increases would be reviewed at the product level or the plan level when determining whether an increase is an unreasonable rate increase.

[31] 79 FR 30240.

Response: We clarify that the plan-level threshold under this final rule is simply a trigger for review. The review will continue to occur, as it does today, at the product level, taking into account the combined experience of the plans within the product.

Comment: Many commenters supported the proposal to apply the trigger for review at the plan level, suggesting it better reflected the intent of Congress to protect consumers against unreasonable rate increases. Other commenters opposed the proposal and urged HHS to retain the current product-level trigger for review. Many of these commenters were concerned that the proposed rule would significantly increase the number of rate filings subject to review, placing greater burden on State regulators and increasing administrative cost to issuers. Several commenters additionally stated the plan-level trigger is inappropriate because plan-level rates vary naturally due to common market factors, such as provider contracting and deductible leveraging. Multiple other commenters urged us to lower the threshold for review—for example, tying it to growth in national health expenditures. One commenter suggested maintaining a 10 percent threshold at the product level and applying a 20 percent threshold at the plan level.

Response: Because consumers are affected by rate increases at the plan level, we believe that increases for the plan, not the product, should be the trigger for determining whether an increase is subject to review. We acknowledge the concerns about burden, but believe the consumer protection benefits of this policy outweigh the costs and further the intent of section 2794 of the PHS Act to protect consumers against unreasonable rate increases. Therefore, we are finalizing the trigger for determining whether an increase is subject to review based on rate increases at the plan level. However, as noted above, we are modifying the final rule to apply this change effective for rates filed for coverage beginning on or after January 1, 2017. We have updated the regulation text at § 154.200(a) to maintain the current trigger for determining whether the increase is subject to review for rates filed for coverage effective before January 1, 2017. HHS will continue to collect and review available data on trends in rate and medical increases in assessing whether to modify the 10 percent threshold for review.

Comment: One commenter recommended considering not only increases in the plan-adjusted index rate, but also changes in premium rating factors including those for geography and tobacco use.

Response: We interpret section 2794 of the PHS Act as requiring the Secretary to establish a process for the annual review of unreasonable increases in the underlying rates that are used to develop the premiums, as opposed to the actual premiums themselves (75 FR 81009). Therefore, the final rule considers only increases in the plan-adjusted index rate described in § 156.80 rather than the premium rating factors described in § 147.102. We note that nothing in this regulation prevents a State from reviewing other aspects of an insurance rate filing, including premium rating factors.

b. Submission of Rate Filing Justification (§ 154.215)

In § 154.215(a), we proposed a technical correction to clarify that issuers must submit a rate filing justification for all products in the issuer's single risk pool when ''any plan within a product'' in the individual or small group market is subject to a rate increase. This is true regardless of whether the rate increase meets or exceeds the subject to review threshold. We proposed this clarification take effect with the effective date of the final rule. We are finalizing this clarification as proposed.

Comment: Some commenters encouraged HHS to clarify throughout § 154.215 that issuers must justify rate increases at the plan level, in addition to justifying them at the product level.

Response: The final rule does not adopt this suggestion. Because rate increases that are subject to review are reviewed at the product level, issuers will likewise submit the rate filing justification at the product level rather than the plan level.

c. Timing of Providing the Rate Filing Justification (§ 154.220)

To provide consistency and transparency in the rate submission process, ensure a more meaningful opportunity for public review and comment, and reduce the opportunity for anti-competitive behavior, we proposed to modify § 154.220 to establish a uniform timeline by which health insurance issuers must submit to CMS or the applicable State a completed rate filing justification for proposed rate increases—for both QHPs and non-QHPs—in the individual and small group markets. Under the proposed rule, the issuer would be required to submit the justification by the earlier of the following: (1) The date by which the State requires a proposed rate increase to be filed with the State; or (2) the date specified by the Secretary in guidance. We suggested that we were considering specifying a deadline to coincide with the end of the QHP application window for the FFE. States would have flexibility to impose earlier rate filing deadlines to meet their specific State needs. We sought comment on this proposal.

We are finalizing these provisions as proposed. We intend to specify the submission deadline for the 2015 filing year in forthcoming guidance.

Comment: We received many comments regarding the proposal to establish a uniform rate filing timeline. Commenters who supported the proposal generally agreed it would increase transparency and encourage public participation in the rate review process. Commenters also viewed the common submission deadline for both QHP and non-QHP rate filings as a positive step to protect against shadow pricing among competing issuers and create a level playing field inside and outside the Exchange.

Commenters who opposed the proposal were concerned that the HHS deadline would not provide issuers sufficient time to collect claims data and appropriately develop rates for the upcoming benefit year. Commenters also expressed concern that requiring rates for QHPs and non-QHPs to be submitted at the same time would impose an increased workload on State regulators, making it difficult to conduct thorough reviews and potentially creating delays in the review and approval process. Many commenters objected to a nationally uniform rate review timeline and urged State flexibility to set their own filing deadlines, particularly in States with effective rate review programs and States that operate their own Exchanges. Some commenters believed it would be sufficient for HHS to simply establish a deadline for States to complete their reviews.

Several commenters remarked on the specific deadline for rate filing submissions. One commenter recommended HHS establish a rate filing deadline of no sooner than May 15, while another commenter recommended a mid-summer deadline. Another commenter recommended that issuers have 90 days after the end of the FFE QHP application window to prepare the rate filing justification. Some commenters asserted that the filing deadline must accommodate a sufficient public comment period.

One commenter suggested that grandfathered and transitional plans should not be subject to the same filing deadlines as single risk pool compliant

plans. Finally, some commenters recommended the NAIC convene a workgroup to make recommendations to HHS regarding the rate review timeline.

Response: We believe the rate review process should be both predictable and transparent. To achieve this objective, we believe it is necessary to establish a uniform submission deadline for issuers to submit proposed rate increases for single risk pool coverage in the individual and small group markets. Therefore, we are finalizing proposed § 154.220 authorizing the Secretary to establish in guidance the deadline for issuers to submit the rate filing justification for proposed rate increases for both QHPs and non-QHPs in the individual and small group markets. We will carefully consider commenters' suggestions and consult with the NAIC and other interested parties when developing such guidance which we expect to issue soon. We anticipate the deadline will provide issuers adequate time to develop rates and afford States and the public the necessary time for review.

We note that States retain significant flexibility to stage the timing of their reviews consistent with this final rule. This could include establishing filing deadlines prior to the HHS deadline, staggering the submission of forms and rates, or establishing varying deadlines for the individual and small group markets.

Finally, we clarify that, while transitional plans are generally subject to the rate review requirements, the uniform submission timeline applies only to non-grandfathered individual and small group market coverage that is subject to the single risk pool requirement. Grandfathered health plans are not subject to the Federal rate review program.

d. CMS's Determinations of Effective Rate Review Programs (§ 154.301)

We proposed to amend § 154.301(b) to specify the timeframe for a State with an effective rate review program to provide public access to information about proposed and final rate increases.

Under the proposed rule, for proposed rate increases subject to review, the State would be required to provide public access from its Web site to the information contained in Parts I, II, and III of the rate filing justification that CMS makes available on its Web site (or provide CMS's web address for such information). The proposed rule would require that the State take this action no later than the date specified by the Secretary in guidance. We suggested the 10th business day following receipt of all rate filings in the relevant State market as the potential timeframe we may specify for this purpose. The proposed rule would also continue to require that the State have a mechanism for receiving public comments on those proposed rate increases.

For all final rate increases (including those not subject to review), the proposed rule would similarly require that the State provide public access from its Web site to the information contained in Parts I, II, and III of the rate filing justification that CMS makes available on its Web site (or provide CMS's web address for such information). The State would be required to take this action no later than the first day of the individual market annual open enrollment period.

Nothing in this proposal would prevent States from making additional information available to the public, or prevent States from establishing earlier timeframes for public disclosure. States that elect to establish earlier posting timeframes would be required under the proposed rule to notify CMS in writing at least 30 days prior to the date the information will be made public. States would also be required to ensure that rate information released to the public is made available at a uniform time for all proposed and final rate increases (as applicable) in the relevant market segment and without regard to whether coverage is offered through an Exchange or outside of an Exchange.

We sought comment on these proposals, including how the timeframes may interact with current State practice and workload. We also sought comment on whether States with effective rate review programs should be required to post rate information on the State's Web site, rather than being permitted to provide a link to CMS's Web site for such information.

We are finalizing these provisions as proposed. We are also maintaining the option for States to continue to provide public access from their Web site via link to rate information made available on the CMS Web site.

Comment: Some commenters suggested that CMS should not require the release of rate information before rates are finalized. Another commenter requested that all proposed rates be made available to the public, not only those subject to review.

Response: Section 2794 of the PHS Act requires the Secretary to ensure the public disclosure of information, including the justification for an unreasonable rate increase. We believe that Congress intended the rate review process to be transparent, and that this objective is served by giving consumers timely access to basic information regarding the proposed increase that is under review by CMS or States and prior to the implementation of the increase. The proposed rule and this final rule do not change the existing requirements regarding the scope of the information that must be disclosed under the current regulations.

Comment: Several commenters expressed opposition to our proposal to specify the timeframe for posting information about proposed rate increases that are subject to review. Commenters generally asserted that States have existing processes for rate disclosure and requested State flexibility to manage publication timeframes in the way most appropriate to their market and regulatory structure. One commenter suggested CMS establish a timeframe of 5 business days for States to post information about proposed rate increases subject to review. Another commenter requested clarification about the information CMS intends to post on its Web site and how the suggested timeframe of 10 business days from the filing deadline would provide sufficient time to redact issuers' confidential and proprietary information protected by the Freedom of Information Act.

Response: We are finalizing the proposal for the Secretary to specify the timeframe for States with effective rate review programs to provide public access to information about proposed rate increases that are subject to review. This timeframe will be specified in guidance. We anticipate specifying a deadline of the 10th business day after receipt of all rate filings in the relevant State market. We note this provision applies only to products with proposed rate increases that are subject to review and only includes the information in Parts I, II, and III of the rate filing justification that CMS makes available on its Web site. Under § 154.215(h), CMS makes available on its Web site only the information that is not considered a trade secret or confidential commercial or financial information as defined in Freedom of Information Act regulations, 45 CFR 5.65. We note that States may choose to make additional information available as permitted by applicable State law and regulations.

Comment: Many commenters emphasized the need for sufficient opportunity for public review and comment before rates are finalized, with suggested timeframes ranging from 30 to 90 days of public comment.

Response: Under current regulations, a State with an effective rate review program must have a mechanism for receiving public comments on proposed rate increases that are subject to review.

We believe this standard is sufficient to encourage public participation in the rate review process, while affording States flexibility to manage the public comment process in the way most appropriate for the State.

Comment: Some commenters stated that information about final rate increases should be released prior to the start of the annual open enrollment period to allow consumers, assisters, and other interested stakeholders greater opportunity to familiarize themselves with issuer rates. These commenters offered various suggestions, most commonly recommending that final rates be posted 15 days in advance of the annual open enrollment period. Other commenters were concerned about the workload and burden on States of completing reviews for both Exchange and non-Exchange plans at the same time.

Response: The final rule retains the proposal that information about final rate increases must be posted by the first day of the annual open enrollment period. We believe this timeframe strikes the appropriate balance between providing State and Federal regulators sufficient time to complete their reviews, while providing consumers the information needed to make informed purchasing decisions. We note that States may establish earlier posting timeframes with appropriate notice to CMS.

Comment: One commenter recommended clarifying in § 154.301(b)(1)(ii) that the term ''annual open enrollment period'' refers to the open enrollment period in the individual market.

Response: The final rule adopts the suggestion to reference the ''individual market'' annual open enrollment period under § 154.301(b)(1)(ii).

Comment: One commenter stated that CMS should also establish posting deadlines for States in which CMS is conducting the reviews.

Response: While the rate review timeline under this final rule establishes minimum standards for submission and posting of rate information in States with effective rate review programs, we will also apply these timelines in States without effective rate review programs where CMS conducts the reviews.

Comment: Some commenters recommended that States be required to post rate information directly on their Web sites instead of relying on the CMS Web site. Other commenters stated it would be costly and unnecessary to impose this requirement on States, since CMS already provides consumers with information about rate increases on its Web site. These commenters recommended that States continue to be permitted to link to the CMS Web site.

Response: We agree that specifying that States must separately post rate information is not necessary at this time. Through CMS's Web site (*www.ratereview.healthcare.gov*), consumers and other stakeholders can easily review rate increases requested by issuers in every State.[32] We therefore retain the option for States to continue to provide public access from their Web site via link to rate information made available on the CMS Web site.

Comment: Some commenters believed that States should be required to provide public access to the entire rate filing justification, rather than only the information contained in Parts I, II and III that CMS makes available on its Web site. Other commenters indicated that States have policies and procedures governing rate increase disclosure and contended that States should have discretion to determine what information to release.

Response: The proposed rule and this final rule do not change the scope of information disclosure under the current regulations. The existing rules establish the minimum level of information that States with effective rate review programs must make available to the public, either directly on their Web sites or via link to the CMS Web site. We note that States have discretion to make additional information available to the public, as permitted by applicable State law and regulation.

Comment: Some commenters opposed the requirement that States must notify CMS in writing 30 days prior to making rate information public. The commenters were concerned the 30-day notice requirement was impractical and unnecessary, and may interfere with State and issuer rate negotiations and timelines. One commenter recommended that States simply make a good-faith effort to provide advance notice to CMS.

Response: We maintain in the final rule the requirement that States must provide at least 30-day notice of their intent to release proposed or final rate information when the State publication timeline is earlier than that specified by CMS. As we stated in the preamble to the proposed rule (79 FR 70703), this information will enable CMS to better coordinate the availability of rate information, increasing transparency nationally into the rate-setting process.

[32] Rate filing information can also be accessed at *http://www.cms.gov/CCIIO/Resources/Data-Resources/ratereview.html.*

E. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. General Provisions

a. Definitions (§ 155.20)

In § 155.20, we proposed to amend the definitions of ''applicant,'' ''enrollee,'' and ''qualified employee.'' First, we proposed to specify that a qualified employer could elect to offer coverage through a SHOP to its former employees that may include retirees, as well as former employees to whom an employer might be obligated to provide continuation coverage under applicable State or Federal law. Second, we proposed to specify that a qualified employer could also elect to offer coverage through the SHOP to dependents of employees or former employees. Third, we proposed to specify that business owners may enroll in SHOP coverage provided that at least one employee enrolls. We proposed to amend these definitions to make it clear that SHOPs may allow small group enrollment practices that were in place before the Affordable Care Act to continue, to preserve continuity for issuers and employers, and to reduce the administrative complexity involved with transitioning to SHOP coverage for qualified employers.

We are finalizing the amendments to the definitions of applicant and qualified employee as proposed, and are modifying the amendments to the definition of enrollee in light of comments we received.

The preamble to the proposed rule also sought comment on whether other provisions of the Exchange rules in parts 155 and 156 would need to be amended to implement the changes proposed to these definitions. HHS interprets § 155.220(i) to give SHOPs the flexibility to permit web-brokers to enroll not just ''qualified employees,'' but all enrollees, consistent with the expansion of the definition of ''enrollee'' that is being finalized in this rule. Therefore, we are also modifying § 155.220(i) to refer to facilitating enrollment in coverage through the SHOP for enrollees instead of qualified employees.

Comment: One commenter commented that the proposed definition of an ''applicant'' does not capture all situations in which a person could become eligible for continuation coverage, such as divorce or loss of dependent child status.

Response: Not every person eligible to enroll in coverage purchased through the SHOP is considered a SHOP applicant. In the case of individuals

eligible to enroll in coverage through the SHOP due to a continuation coverage qualifying event, such as a divorce or a loss of dependent status, such an individual qualifies for such coverage by virtue of his or her coverage through the SHOP that existed on the day prior to the qualifying event. Such an individual need not file an application with the SHOP to continue to receive coverage after a qualifying event. Instead, consistent with current business practices, the qualified beneficiary should notify the employer or plan administrator of his or her desire to participate in continuation coverage. The employer or plan administrator must then notify the SHOP.[33] Where appropriate, such notification will allow the SHOP to individually bill the continuation coverage enrollee.

Comment: One commenter asked for clarification on whether at least one employee has to be eligible for or enrolled in SHOP coverage, and requested that HHS clarify whether a business owner may enroll in a QHP through the SHOP if at least one employee is *eligible* for coverage through SHOP but has not enrolled.

Response: We clarify that where a business's only enrollee(s) in coverage through the SHOP would be the owner(s) of the business, the owner is not eligible to enroll in coverage sold through the SHOP.[34]

Comment: Some commenters requested clarification on whether an employee may enroll dependents without enrolling him or herself in the plan. Another commenter opposed the exclusion of child-only plans in the SHOP and stated that all children should have access to coverage even if they do not qualify as a ''qualified employee.''

Response: We note that under common market practice, dependents of an employee offered employer-sponsored coverage generally may enroll in such coverage only as a dependent, if the employee enrolls in the coverage.[35] Except for continuation coverage, coverage offered through the SHOP does not depart from this general practice. Except as may be provided under otherwise applicable law, dependents of a qualified employee may enroll in a QHP through the SHOP through the qualified employee only if the qualified employee also enrolls in the same QHP through the SHOP. We note that this does not relieve issuers from the obligation to offer child-only coverage under the group health plan where the child is the primary subscriber, such as where the employee is 18 years old. Consistent with our policy for individual market QHPs at section 1302(f) of the Affordable Care Act, QHP issuers could satisfy this standard by offering employee-only coverage under the group health plan to qualified applicants seeking child-only coverage, as long as the QHP includes rating for child-only coverage in accordance with applicable premium rating rules.[36]

In light of this comment, we note that the proposed amendments to the definition of ''enrollee'' did not account for a situation in which a person is enrolled in coverage because she is eligible for continuation coverage, but is no longer a dependent of the qualified employee or other primary subscriber. To account for this situation, we are modifying the proposed definition of ''enrollee'' to include any other person who is enrolled in a QHP through the SHOP consistent with applicable law and the terms of the group health plan.

Comment: Some commenters stated that the inclusion of ''former employees'' in the definition of qualified employee is not appropriate except in the case of continuation coverage.

Response: The inclusion of ''former employee'' in the Exchange rules' definitions of ''applicant'' and ''qualified employee'' does not provide eligibility for individuals to enroll in coverage if they are not otherwise eligible to enroll in small group coverage under HIPAA, COBRA, and other applicable Federal or State law. If individuals qualify for coverage under the terms of the plan and under existing statute and regulations governing eligibility to enroll in group health coverage, they may enroll in group health coverage through the SHOP.[37] The SHOP regulations do not impose any additional obligation upon employers to offer former employees coverage sold through the SHOP, and employers may do so where permitted under the terms of the plan. In light of this comment, and to clarify that the persons listed in the definition of ''enrollee'' are generally meant to include all those who have enrolled in coverage through the SHOP consistent with applicable law and the terms of the group health plan, we are modifying the definition of ''enrollee'' to include, in addition to the listed individuals, any other person who is enrolled in a QHP through the SHOP consistent with applicable law and the terms of the group health plan.

Comment: One commenter asked how expanding the definition of ''enrollee'' to include a business owner will impact eligibility thresholds for the Small Business Health Care Tax Credit.

Response: The inclusion of owners in the definition of ''enrollee'' does not modify qualification requirements for the Small Business Health Care Tax Credit, as determinations for the credit do not rely on the SHOP's definition of ''enrollee.''

2. General Functions of an Exchange

a. Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

In the proposed rule, we proposed to amend § 155.205(c) to specify the oral interpretation services that are required for certain entities subject to § 155.205(c). Specifically, for each Exchange, QHP issuer, and agent or broker subject to § 155.220(c)(3)(i) (referred to in this section as a ''web-broker''), we proposed that the requirement to provide oral interpretation services under § 155.205(c)(2)(i) would include making available telephonic interpreters in at least 150 languages. We also proposed amendments to § 156.250 that are discussed below, and that would require QHP issuers to provide all information that is critical for obtaining health insurance coverage or access to health care services through the QHP, including applications, forms, and notices, to qualified individuals, applicants, qualified employers, qualified employees, and enrollees in

[33] 26 CFR 54.4980B–6 A–1(b) defines an election to enroll in continuation coverage as the date the notification is sent to the plan administrator, and § 157.205(f) requires qualified employers participating in the SHOP to provide the SHOP with information regarding changes in dependent or employee eligibility status for coverage.

[34] Persons may enroll in coverage available through the SHOP only if the plan constitutes a group health plan maintained by a small employer. A group health plan is an ''employee welfare benefit plan'' as defined by the Employee Retirement Income Security Act of 1974 (ERISA), and is a form of employee benefit plan, see ERISA § 3(3), 29 U.S.C. 1002(3). An ''employee benefit plan'' does not exist if there are no ''employees'' participating in the plan, 29 CFR 2510.3–3(b), and for the purpose of identifying an employee benefit plan an ''employee'' does not include the sole owner of a business or a spouse of the business owner, *Id.* §§ 2510.3–3(c), 2590.732(d).

[35] See, for example, 29 U.S.C. 1002(7) & (8), defining a beneficiary of an employee welfare benefit plan in relationship to a participant in such a plan.

[36] Exchange Establishment Rule, 77 FR 18310 at 18415.

[37] See, for example, § 146.145(a)(1) defining a ''group health plan'' as, among other things, a plan that provides medical care to current and former employees, and § 146.150(b) defining an individual eligible to enroll in coverage sold in the small group market as an individual eligible to enroll in group health insurance coverage offered to a group health plan in accordance with the terms of the group health plan.

accordance with the standards described in § 155.205(c), including the provision of telephonic interpreter services in at least 150 languages.

We proposed to limit the applicability of the proposed 150 languages standard for telephonic interpreter services to Exchanges, web-brokers, and QHP issuers. We did not propose to apply this standard to Navigators and non-Navigator assistance personnel because, as we stated in the proposed rule, the smaller non-profit organizations that frequently make up the bulk of these consumer assistance entities have limited resources.

In the proposed rule, we also solicited comment on whether we should consider more or different language accessibility standards in § 155.205(c). We provided certain examples in the preamble. With respect to written translations, we gave an example of requiring written translations in the languages spoken by the top 10 limited English proficiency (LEP) groups in the State or spoken by 10,000 persons or greater, whichever yields the greater number of languages. With respect to taglines (short statements informing individuals of the availability of language access services), we gave an example of requiring taglines in the top 30 non-English languages spoken nationwide on documents required by State or Federal law or containing information that is critical to obtaining health insurance coverage or access to health care services through a QHP. We also provided an example that would establish a uniform, national standard that written translations, taglines on notices and Web site content, and oral interpretation services be provided in the top 15 languages spoken by LEP individuals in the United States. Finally, we provided an example specific to Web site content that would have required the content to be translated in each non-English language spoken by an LEP population that reaches 10 percent of the State population.

Based on comments received, as discussed below, we are finalizing the proposal with the following modifications:

To give new web-brokers more time for implementation, we are revising § 155.205(c)(2)(i) to specify that for an agent or broker subject to § 155.220(c)(3)(i), the standard to provide telephonic interpreter services in at least 150 languages applies no later than November 1, 2015, the first day of the individual market open enrollment period for the 2016 benefit year, or 1 year after such entity has been registered with the Exchange, whichever is later.

We are revising § 155.205(c)(2)(iii) to specify that, beginning at the start of the individual market open enrollment period for the 2017 benefit year, for Exchanges, QHP issuers, and agents or brokers subject to § 155.220(c)(3)(i), the general standard to provide taglines in non-English languages indicating the availability of language services includes taglines on Web site content and documents that are critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees indicating the availability of language services in at least the top 15 languages spoken by the LEP population of the relevant State, as determined in HHS guidance. Documents are considered to be ''critical'' if the entity is required by State or Federal law or regulation to provide them to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. We added that for an agent or broker subject to § 155.220(c)(3)(i), this standard will apply beginning no later than at the start of the individual market open enrollment period for the 2017 benefit year, or when the entity has been registered with the Exchange for at least 1 year, whichever date is later. HHS plans to provide sample taglines in all languages triggered by this threshold. For purposes of § 155.205(c)(2), the meaning of the terms ''qualified individual,'' ''applicant,'' ''qualified employer,'' ''qualified employee,'' and ''enrollee'' is intended to be consistent with the definitions for these terms under § 155.20.

We also modified the language following § 155.205(c)(2)(i) and § 155.205(c)(2)(iii) to make clear that the general standards with respect to oral interpretation and taglines continue to apply to all entities subject to § 155.205(c).

We added § 155.205(c)(2)(iv) to create a new standard related to translations of Web site content for Exchanges, QHP issuers, and agents or brokers subject to § 155.220(c)(3)(i). The new standard specifies that beginning at the start of the individual market open enrollment period for the 2017 benefit year, the content of a Web site maintained by an Exchange or QHP issuer must be translated into any non-English language that is spoken by an LEP population that reaches 10 percent or more of the population of the relevant State, as determined in HHS guidance. For an agent or broker subject to § 155.220(c)(3)(i), this standard will apply beginning at the start of the individual market open enrollment period for the 2017 benefit year or when the entity has been registered with the Exchange for at least 1 year, whichever date is later. We clarify that for Exchanges and web-brokers, this requirement applies to all content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees that is maintained by the entity on the Web site and is not limited to information that is critical for obtaining health insurance coverage or access to health care services through a QHP. We note that QHP issuers are not required to translate all Web site content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees; rather, the type of Web site content that must be translated aligns with the definition of ''critical'' information to which QHP issuers must provide meaningful access under § 156.250 as finalized in this rule. In addition, an entity that is required to translate Web site content consistent with this provision must also still include taglines, in accordance with § 155.205(c)(2)(iii), on its English version Web pages. This entity would not, however, be required to include taglines on its non-English version Web pages, but it could do so voluntarily.

Comment: The majority of comments received regarding the proposed standard for telephonic interpreter services in 150 languages were supportive. A few commenters stated that telephonic interpretation is a cost-effective means of providing language access relative to written translations, which, according to the commenters, are demanded with much less frequency than oral interpretation. Many commenters stated that the proposal would help ensure that LEP individuals obtain language access, helping them enroll in health insurance coverage. These commenters suggested requiring bilingual customer service representatives in addition to language lines. Several commenters stated that specifying telephonic interpreter services in 150 languages was arbitrary, overly prescriptive, and potentially burdensome for smaller entities. Some commenters suggested that telephonic interpreter services be available in any language requested, as they are under certain State laws, like California's, or in as many languages as are necessary to serve the oral interpretation needs of applicants and enrollees within the applicable service area.

Response: We appreciate the comments regarding this proposal. We believe that providing telephonic

interpreter services in 150 languages is a useful and cost-effective tool to ensure that most LEP consumers in the service area are able to receive oral interpretation services that are required by existing Federal regulations at § 155.205(c)(2)(i). HHS expects to monitor the extent that the industry standard for telephonic interpreter services might diverge substantially from the 150-language threshold. We also clarify that this standard should not be construed to mean that other ways of providing oral interpretation, such as in-person interpreters or bilingual customer service representatives, are prohibited or should be displaced by telephonic interpreter services. We recognize that these alternative services can provide a superior experience for the consumer which, in turn, can ultimately benefit the entity.

Comment: Commenters generally supported our proposal that web-brokers provide telephonic interpreter services. In particular, one supporter reasoned that because web-brokers are ''standing in'' for an issuer or Exchange, they should be subject to the same requirement as issuers and Exchanges. Another commenter, while supporting the goal of increasing language accessibility and extending health coverage to diverse populations, opposed the requirement and suggested that we give new participant web-brokers to the Exchange more time to comply.

Response: We believe that, in regard to language access, a web-broker should be expected to provide the same minimum level of service to a consumer as would be expected from an Exchange or QHP issuer. In response to the concerns that newer web-brokers may be smaller companies less able to incur the costs of this requirement, we are providing web-brokers until November 1, 2015, the first day of the open enrollment period for the 2016 benefit year, or 1 year from the date the web-broker registers with the Exchange, whichever date is later, to comply. As a reminder, we note that a web-broker, like every other entity subject to § 155.205(c), is required to provide accessible information to individuals who are LEP according to the more general standards under § 155.205(c)(2), even before the web-broker would be subject to the more specific standards finalized in this rule. Moreover, under § 155.205(c)(3), a web-broker is required to inform individuals who are LEP of the availability of the full range of language access services described in § 155.205(c)(2), and how to access such services. If a web-broker is not yet providing telephonic interpreter services in at least 150 languages directly, it must provide oral interpretation services and inform individuals of the availability of this service from other sources, such as the Exchange's Call Center.

Comment: With respect to our proposal to not require Navigators and non-Navigator assistance personnel to provide telephonic interpreter services in at least 150 languages, comments were mixed. Some commenters believed that our approach of exempting Navigators ran counter to a Navigator's statutory duty to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.[38] Others who opposed the proposal stated that while these entities should strive to hire bi- or multi-lingual staff for the most prevalent non-English languages spoken by LEP individuals in their community, for less frequently encountered languages, or for smaller entities for whom hiring staff with special language skills is not possible, requiring access to telephonic interpreter services is a cost-effective strategy for providing language access services. Among those who agreed with our proposal, commenters stated that specifically requiring each entity to provide telephonic interpreter services in 150 languages could be cost prohibitive and potentially force organizations to opt out of serving as assisters. At the same time, these commenters also stated that Navigators and non-Navigator assistance personnel should be responsive to and accommodate, to the extent possible, any LEP consumer's language access needs. These commenters suggested a number of options, such as requiring referrals to the Exchange's Call Center if an entity cannot meet a specific need; partnering with other organizations to provide telephonic interpreter services; hiring bi- and multi-lingual staff to meet the ''most significant'' language needs of the community; or having HHS contract with a language line that these entities could use so that the entity would not bear additional costs.

Response: We are not extending the requirement to provide telephonic interpreter services in 150 languages to Navigators and non-Navigator assistance personnel at this time. We recognize that ensuring that the language needs of a consumer are met is an important component of providing high-quality application and enrollment assistance. We will continue to consider options for making language access services more robust for Navigators and non-Navigator assistance personnel.

There are a number of existing language access standards under current regulations applicable to Navigators that are consistent with the requirement under section 1311(i)(3)(E) of the Affordable Care Act that Navigators provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges. For example, under § 155.210(e)(5), Navigators in all Exchanges must provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with LEP. Further, the general requirements at § 155.205(c) to provide oral interpretation, written translations, and taglines in non-English languages indicating the availability of language services, continue to apply to all entities carrying out activities under § 155.205(d) and (e), including Navigators and non-Navigator assistance personnel, even though the more specific standards finalized here do not apply to those entities. As noted above, included in this general requirement is the requirement under § 155.205(c)(3) to inform individuals who are LEP about the availability of the full range of language access services described in § 155.205(c)(2) and how to access such services. As such, if they lack the immediate capacity to help an LEP individual, all Navigators and non-Navigator assistance personnel in every Exchange should inform that individual about the availability of language access services through other sources, such as the Exchange Call Center. In addition, Navigators and non-Navigator assistance personnel in FFEs and State Partnership Exchanges, and non-Navigator assistance personnel funded through an Exchange Establishment grant, must comply with the standards set forth in § 155.215(c)(3), which require them to provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Exempting Navigators and non-Navigator assistance personnel from the specific requirements finalized here does not exempt them from complying with other applicable laws and regulations that govern the language accessibility of their work.

Comment: We received comments regarding whether we should consider

[38] Section 1311(i)(3)(E) of Affordable Care Act.

additional, specific standards pertaining to written translations, taglines, and Web site content, as well as suggestions for standards other than those that we had specifically mentioned in the preamble of the proposed rule, as described above. Some commenters agreed in principle that improved language access services will help consumers. While some commenters broadly agreed that language access services should account for the demographics in a particular service area, comments were mixed with respect to the specific thresholds that should trigger written translations. Some commenters opposed requiring more specific standards beyond the proposed telephonic interpreter services standard. Still other commenters added that written translations should be required only upon request, rather than automatically, reasoning that limiting the standard to requests would help reduce the burden on entities as well as on State insurance departments, which often require issuers to file translated versions of previously filed forms for State review. One commenter asserted that additional standards for stand-alone dental plan issuers were not warranted.

Response: We are not finalizing any specific standards with respect to written translations at this time. We will continue to consider solutions that balance the language access needs of consumers who apply for and enroll in coverage through Exchanges with the burdens on entities in providing quality written translations in a timely fashion. It is important to note that even though we are not finalizing specific written translations standards, the general standard under § 155.205(c)(2)(ii) continues to apply to all entities subject to § 155.205(c), as do the general standards with respect to oral interpretation and taglines in non-English languages indicating the availability of language services. We have modified the language following § 155.205(c)(2)(i) and § 155.205(c)(2)(iii) to make clear that the general standards with respect to oral interpretation and taglines continue to apply to all entities subject to § 155.205(c).

Comment: Some commenters who commented on our proposal on language accessibility standards for taglines suggested that notices and Web site content provided by HHS should be available in the top 30 languages spoken nationwide by LEP populations. Some commenters suggested that for all other entities besides the FFEs, a State-specific approach should be adopted, specifically recommending that notices and Web site content provided by a State Exchange, QHP issuer, or web-broker include taglines in the top 15 languages spoken in the relevant State(s) by LEP populations. One commenter did not suggest a specific numeric threshold, but stressed that a uniform standard should be adopted across entities.

Response: We agree with many commenters' views that the demographics of a State's LEP population, rather than nationwide demographics, should be taken into account when taglines are used. This approach identifies languages tailored to the needs of each State and thus is more attuned to the anticipated language access needs of individuals serviced by entities. We also believe we should avoid creating a situation in which 30 taglines take up significant space on written content, potentially adding to printing costs.

In light of these considerations, we are finalizing a standard whereby an Exchange, QHP issuer, or web-broker would be required to include taglines on Web site content and any document that is critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees in at least the top 15 languages spoken by the LEP population in the relevant State. If an entity's service area covers multiple States, the top 15 languages spoken by LEP individuals may be determined by aggregating the top 15 languages spoken by all LEP individuals among the total population of the relevant States. A document is deemed to be critical for obtaining health insurance coverage or access to health care services through a QHP if it is required to be provided by State or Federal law or regulation to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. Taglines must be included if a document is considered ''critical'' information to which QHP issuers must provide meaningful access under § 156.250 as finalized in this rule, so that most LEP consumers might receive notice of language access services regardless of whether such ''critical'' information is being provided to them by an Exchange, a QHP issuer, or a web-broker. This requirement with respect to taglines adds to the standard set forth in § 156.250 because it applies to all Web site content that is provided to qualified individuals, applicants, qualified employers, qualified employees, and enrollees by an Exchange, QHP issuer, or web-broker, regardless of whether such content must be translated in accordance with § 155.205(c)(2)(iv) as finalized in this rule. We included this requirement because all consumers, regardless of their English proficiency, are encouraged to apply for and enroll in coverage through an Exchange online, and we believe that consumers with LEP should be able to immediately identify taglines informing them of their ability to obtain language access services on the Web sites of entities subject to this standard.

It is also important that LEP consumers, whether they are being served by an Exchange, QHP issuer, or web-broker, are able to obtain the same minimum number of taglines on such documents, and therefore are applying this standard equally across these entities. However, in recognition of the fact that newer web-brokers are often smaller entities that may not as easily meet this standard as an Exchange or QHP issuer, we are providing them additional lead time to comply, specifically, until the first day of the individual market open enrollment period for the 2017 benefit year or when such entity has been registered with the Exchange for at least 1 year, whichever is later. To facilitate compliance with this standard, beginning in early 2016, we plan to issue guidance which identifies the applicable non-English languages in each State.[39] We also expect to provide sample taglines in all languages triggered by this threshold beginning in early 2016.

Comment: We received comments supporting a possible additional standard discussed in the preamble to the proposed rule, under which Web site content should be translated into each non-English language spoken by an LEP population that reaches 10 percent of the State population, though one commenter suggested that we consider requiring translation into the top three languages spoken by the LEP population in a given State. A few commenters expressed concerns about costs. Another commenter opposed applying the standard to web-brokers, and suggested that we give new participant web-brokers to the Exchange more time to comply.

Response: We recognize that Web site content is an important source of information for qualified individuals, applicants, qualified employers, qualified employees, and enrollees, particularly in light of the fact that applying for and enrolling into a QHP or insurance affordability programs online is a generally more efficient process than other means. In addition,

[39] We anticipate releasing this guidance on an annual basis beginning in early 2016, soon after the most recently published American Community Survey data is expected to become available.

the Web site content of an Exchange or web-broker often contains consumer tools and education materials that, while not always ''critical'' for obtaining health care coverage or access to health care services through a QHP within the meaning of § 156.250, nonetheless can help consumers understand their eligibility for coverage, how much financial assistance they might qualify for, and other important information that help consumers make an informed decision. We believe it is appropriate to require Exchanges, QHP issuers, and web-brokers to translate Web site content into each non-English language spoken by an LEP population that reaches 10 percent or more of a State's population beginning at the start of the individual market open enrollment period for the 2017 benefit year. We note that the FFE is already meeting this standard. We clarify that for Exchanges and web-brokers, this requirement applies to all information intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees that is maintained by the entity on the Web site and is not limited to information that is critical for obtaining health insurance coverage or access to health care services through a QHP. We note that for QHP issuers, the type of Web site content for which translation is required aligns with the definition set forth in § 156.250, as finalized in this rule, of ''critical'' information to which QHP issuers must provide meaningful access. If certain Web site content that is maintained by an Exchange, QHP issuer, or web-broker contains information that specifically applies to non-QHPs only and does not contain information that is either (for Exchanges and web-brokers) intended for a qualified individual, applicant, qualified employer, qualified employee, or enrollee or (for QHP issuers) ''critical'' within the meaning of § 156.250, then the entity is not required to translate it into an applicable non-English language.

Given the substantial effort and resources involved in translating Web site content, we believe that the suggestion to translate Web site content in the top three languages spoken by the LEP population in the State is too burdensome. In addition, partly because of concerns raised about burden as well as our guiding principle of focusing on the demographics and anticipated language needs of the community being served using stable and reliable data, we are also not finalizing the standard discussed in the preamble to the proposed rule that would have required a uniform standard for written translations, taglines, and Web site content translations in the top 15 languages spoken nationwide among the LEP population.

We also believe it is important that LEP consumers in a given State are able to obtain the same minimum level of language access services from the Exchange, QHP issuers operating in the Exchange, and web-brokers operating in the State and therefore are applying a Web site content translation standard across these entities. However, we are providing web-brokers additional time to comply. Specifically, web-brokers will have until the first day of the individual market open enrollment period for the 2017 benefit year, or when such entity has been registered with the Exchange for at least 1 year, whichever is later.

As noted above, regardless of whether an entity is required to translate Web site content into an applicable non-English language under this provision, the entity's English Web site content will always be required to display taglines in at least the top 15 non-English languages spoken among the LEP population of the relevant State, consistent with § 155.205(c)(2)(iii) of this rule, so that a wider range of LEP individuals whose language does not meet the 10 percent threshold in § 155.205(c)(2)(iv) may still obtain language access services through oral interpretation or written translations, as applicable. For example, if an entity is required to translate Web site content into Spanish because the Spanish-speaking LEP population in the applicable State reaches 10 percent of the State's population, the entity's English version Web site must still display taglines in the top 15 non-English languages spoken by the LEP population of the relevant State. To facilitate compliance with this standard, beginning in early 2016, we plan to issue guidance that identifies the applicable languages and States meeting this threshold.

We note that for an entity whose service area covers multiple States, if at least one language in one of the States it serves meets the 10 percent threshold in § 155.205(c)(2)(iv), then the applicable information on the entity's Web site must be translated into that language.

Comment: In regards to our solicitation for comment regarding the proposed implementation date for the 150-language standard and other possible specific language access standards, a few commenters indicated that they were already meeting or exceeding the 150-language standard for their language line. Many commenters stated that to the extent additional requirements beyond telephonic interpreter services are required, additional time would be necessary.

Response: With respect to the requirement to provide telephonic interpreter services in at least 150 languages, Exchanges and QHP issuers will be required to comply with this requirement when this rule takes effect. Web-brokers will have until the later of November 1, 2015, the first day of the individual market open enrollment period for the 2016 benefit year, or 1 year from the date the web-broker registers with the Exchange to comply with the requirement to provide telephonic interpreter services in at least 150 languages. For the requirements finalized for taglines and translation of Web site content, as stated in the regulation text, such standards will apply for Exchanges and QHP issuers no later than the first day of the open enrollment period in the individual market for the 2017 benefit year. To give web-brokers participating on an Exchange additional time, the specific requirements to provide taglines and translated Web site content will apply on the first day of the individual market open enrollment period for the 2017 benefit year, or when the web-broker has been registered with the Exchange for at least 1 year, whichever date is later.

Comment: Several commenters requested that we emphasize that the provisions set forth in § 155.205(c) do not limit or abrogate requirements under Title VI of the Civil Rights Act of 1964 and section 1557 of the Affordable Care Act.

Response: As we stated in the preamble of the proposed rule, we remind relevant covered entities of the obligations they may have under other Federal laws to meet existing effective communication requirements for individuals with disabilities and limited English proficiency. Such obligations are independent of the responsibilities these entities may have under §§ 155.205(c), 155.230(b), 156.200(e), and 156.250.

b. Standards Applicable to Navigators and Non-Navigator Assistance Personnel Carrying Out Consumer Assistance Functions Under §§ 155.205(d) and (e) and 155.210 in a Federally-Facilitated Exchange and to Non-Navigator Assistance Personnel Funded Through an Exchange Establishment Grant (§ 155.215)

To clarify that only a non-Navigator entity must maintain a physical presence in the Exchange service area, rather than each individual non-

Navigator associated with a non-Navigator entity, we proposed to amend § 155.215(h) to limit the physical presence requirement specified under that section to non-Navigator entities. In the proposed rule, we explained that we believe that the amendment would strike an appropriate balance in allowing individuals providing non-Navigator assistance subject to § 155.215 to provide assistance via the telephone, Internet, or through other remote means, particularly in circumstances in which remote assistance would be more effective or practical than face-to-face assistance, while also ensuring that the organization with which they are affiliated is in a position to understand and meet the specific needs of the communities they serve and to facilitate consumer protection efforts, as applicable, in their State. We added that if an individual non-Navigator is not affiliated with a larger entity, we would consider the individual to be the entity specified in the amended language under proposed § 155.215(h). We also proposed to add the title ''Physical presence'' to paragraph (h) for improved clarity.

We are finalizing this clarification as proposed.

Comment: The vast majority of commenters expressed support for this proposal, indicating that the proposed change would benefit consumers seeking remote assistance from individual non-Navigators who may not be physically present in the area served by the Exchange but who can nonetheless provide effective assistance to an individual through the use of technology tools. One commenter suggested that we require non-Navigator entities to ensure that at least half of their personnel serving a particular State conduct in-person assistance in the State. Another opposed the proposal on the grounds that it was too prescriptive because it would bar an otherwise well-suited organization from serving consumers in the State if the organization maintained no physical presence.

Response: We agree with commenters that remote assistance is valuable, especially when a consumer is unable to meet in person with an individual non-Navigator. We believe that the requirement on the organization to maintain a physical presence in the State is a reasonable measure to facilitate a State's consumer protection efforts and enhance the organization's ability to provide culturally competent assistance [40] which, at the same time, does not preclude an organization's ability to provide remote assistance to consumers.[41] We also note that an organization that is well-suited to performing application and enrollment assistance but does not maintain a physical presence in the Exchange service area may be able to participate in the certified application counselor program because the Federal requirements governing this program do not include the requirement to maintain a physical presence.

c. Ability of States To Permit Agents and Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

In § 155.20, we are amending the definition of enrollee in the SHOP to include individuals other than qualified employees. To conform to this amendment, we are finalizing a modification to § 155.220(i). For a discussion of this amendment, please see the preamble for § 155.20.

d. Standards for HHS-Approved Vendors of Federally-Facilitated Exchange Training and Information Verification for Agents and Brokers (§ 155.222)

In § 155.222, we proposed a process for HHS to approve vendors to offer training and information verification services as an additional avenue to the available HHS training, by which State licensed agents and brokers could complete the training requirements necessary to assist consumers seeking coverage through the FFEs. In § 155.222(a), we proposed an application and approval process for vendors seeking recognition as HHS-approved vendors of FFE training and information verification for agents and brokers. As part of an approved training and information verification program, we proposed that the vendor must require agents and brokers to successfully complete identity proofing, provide identifying information, and successfully complete the required curriculum. Further, we proposed that no training program would be recognized unless it included an information verification component under which the vendor confirms the identity and applicable State licensure of the person who is credited with successful completion of the training program. We proposed that only HHS-approved vendors that meet the designated standards would have their programs recognized by HHS. We proposed that vendors be approved for one-year terms, and that vendors seeking to continue their recognition as HHS-approved vendors for FFE agent and broker training and information verification the following year be re-approved through a process to be determined by HHS.

In paragraph (b), we proposed the standards that a vendor must meet to be approved by HHS to offer FFE training and information verification to agents and brokers. In paragraph (b)(1), we proposed that the vendor submit a complete and accurate application by the deadline established by HHS, which demonstrates prior experience with successfully conducting online training and identity proofing, as well as providing technical support to a large customer base. We proposed in paragraph (b)(2) that the vendor be required to adhere to HHS specifications for content, format, and delivery of training and information verification. HHS would require vendors to have their training approved for continuing education units accepted by State regulatory entities. In paragraph (b)(3) we proposed that vendors be required to collect, store, and share with HHS all data from agent and broker users of the vendor's training and information verification in a manner specified by HHS, and protect the data in accordance with applicable privacy and security laws and regulations. In paragraph (b)(4), we proposed that the vendor be required to execute an agreement with HHS, in a form and manner to be determined by HHS, which requires the vendor to comply with HHS guidelines for interfacing with HHS data systems, the implementation of the training and information verification processes, and the use of all data collected. We also proposed to require vendors to adopt a fee structure that is consistent with the fee structure for comparable trainings offered by the vendor to comparable audiences. In paragraph (b)(5), we proposed that the vendor be required to permit any individual who holds a valid State license or equivalent State authority to sell health insurance products to access the vendor's training and information verification process.

In paragraph (c), we proposed that once HHS has completed the approval process for vendors for a given year, HHS would publish a list of approved entities on an HHS Web site. In paragraph (d), we proposed that HHS may monitor and audit approved vendors and their records related to the

[40] See § 155.215(c) for a list of standards regarding the provision of culturally and linguistically appropriate standards which apply in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and to non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act.

[41] 79 FR 30287 (May 27, 2014).

FFE training and information verification functions to ensure the approved vendors' ongoing compliance with the standards outlined in paragraph (b). We proposed that if HHS determines that the approved vendor is no longer in compliance with standards under paragraph (b), HHS may remove the vendor from the list described in paragraph (c), and may direct the vendor to cease performing the training and information verification functions described in this section.

In paragraph (e), we proposed that such a vendor may appeal HHS's decision by notifying HHS in writing within 15 days of receipt of the notification by HHS of not being approved or having its approval revoked, and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) and (if applicable) the terms of their agreement with HHS. HHS will review the submitted documentation and make a final determination within 30 days from receipt of the submission of the additional documentation.

We are finalizing these provisions as proposed, with the modifications detailed below.

Comment: Most commenters generally supported the proposal to permit approved vendors to provide training and information verification to agents and brokers assisting consumers in the FFEs, so that agents and brokers would have more choice and greater opportunity to complete the required FFE training. Several commenters expressed concern that external vendors would not be able to provide training that is comprehensive, accurate, and without bias. These commenters urged HHS to provide standards for quality control and oversight.

Response: We agree that expanding the available avenues for agents and brokers to fulfill the FFE training requirements will allow the FFEs to leverage the experience, contacts, and networks of approved vendors. To ensure that the training and information verification programs adhere to uniform standards for content, format, and delivery, under § 155.222(b)(2), HHS-approved vendors will be required to adhere to HHS specifications for content, format, and delivery of training and information verification. Vendors may choose to charge agents and brokers for their training; HHS will consider current training costs for State-licensed agents and brokers for comparable trainings to comparable audiences when reviewing vendor applications with proposed fee structures.

After HHS launches 2016 plan year training, planned for the summer of the 2015 calendar year, HHS intends to monitor vendor training programs and work with vendors to make sure that the FFE training content and delivery continues to meet HHS standards. HHS may audit approved vendors throughout the plan year in accordance with § 155.222(d). HHS intends to issue future guidance regarding § 155.222(b)(2) that will outline the training specifications for content and coverage . If a vendor's training program fails to meet HHS standards after public release, HHS may revoke the vendor's approval to offer FFE training, and would work with affected agents and brokers to ensure they have the required training.

Comment: Several commenters had recommendations and requests for further clarification of requirements relating to the application and the agreement between HHS and vendors. One commenter requested clarification on what constitutes an enforcement action for purposes of the application and the agreement. One commenter asked about demonstrating experience with identity proofing, since most vendors offering training and continuing education programs do not conduct identity proofing in the same manner as HHS.

Response: HHS intends to release the application form to become an HHS approved vendor of FFE training and information verification for the 2016 plan year in the first quarter of 2015. HHS further intends to release guidance related to the application process in the first quarter of 2015 to help interested vendors better understand the application process. The vendor must submit the application by the deadline specified by HHS. We intend to issue guidance that will provide details on the timeline for the application process. We expect that vendors will be approved for one-year terms.

In the preamble to paragraph (b)(1) (79 FR 70706), we explained that HHS would only approve vendors if no current or past regulatory, enforcement, or legal action has been taken by a State or Federal regulator against the entity in the 3 years prior to the application or renewal application deadline under this section. After careful consideration of the various events at the State and Federal level that may constitute an ''enforcement'' action, we note that HHS will take into consideration justifications, corrective actions taken, or other mitigating or aggravating circumstances (for example, the financial impact of the violation, or the number of individuals affected by the violation) in evaluating whether a past or current violation would exclude a potential vendor from participation. Vendors whose applications are denied will have the opportunity to appeal HHS's decision under § 155.222(e), and may submit additional documentation for HHS to consider about potential mitigating circumstances.

To more accurately describe the information verification functionality that vendors must provide to agents and brokers, we are adding ''proof of valid State licensure'' in paragraph (a)(2). Because HHS expects vendors to demonstrate prior experience with verifying State licensure on the application, we are adding ''verification of valid State license'' in paragraph (b)(1)(i). In response to a comment that explained that organizations that currently conduct agent and broker training may not have experience with identity proofing, we are amending the requirement in paragraph (b)(1)(ii) so that vendors must demonstrate the ability to conduct identity proofing, but do not have to provide proof of prior experience. The goal of the information verification process is to confirm the State licensure and identity of agents and brokers who successfully complete FFE training before they are permitted by HHS to assist consumers with FFE eligibility determinations and QHP selections as an agent or broker. Therefore, vendors must demonstrate a current capability of verifying both the identity of the person completing the training, as well as his or her State licenses or equivalent State authorizations to sell health insurance products.

Comment: Several commenters made suggestions for training content, and the format and frequency for exchanging training and information verification data with HHS.

Response: All of the recommended training topics are currently part of the existing HHS FFE training for agents and brokers (for example, advance payments of the premium tax credit and cost-sharing reductions, and Medicaid and CHIP eligibility). Vendors approved to offer training in the future will be required to include those topics in the curriculum for their respective FFE training programs for agents and brokers. Based on the comments we received, we are adding language at paragraph (b)(3) to indicate that vendors must be able to share training and information verification data with HHS in a manner, format, and frequency specified by HHS. Specifically, we are adding ''format, and frequency'' to paragraph (b)(3) with respect to the collection, storage, and sharing of data

to further protect the personally identifiable information of agents and brokers, and aid HHS in the monitoring of vendors' training and information verification programs. We anticipate issuing future technical guidance that will detail the manner, format, and frequency for the exchange of data under § 155.222(b)(3).

Comment: In response to the solicitation of comments on what additional components a training program should include in order to qualify for HHS approval, some commenters requested that the training be applicable across States and that vendors be required to offer continuing education units (CEUs) in multiple States. Other commenters suggested that States should incorporate Federal materials in existing training and licensing programs to promote cost-effectiveness and efficiency, and that HHS should eliminate the requirement that agents and brokers receive approval by an Exchange. One commenter suggested that States be able to become vendors.

Response: HHS will require vendors to offer training that is applicable in all FFE States, consistent with the current HHS training. As noted in the preamble to the proposed rule (79 FR 70706), the establishment of standards for HHS-approved vendors of alternative training and information verification processes, we seek to make the FFE training and registration process easier for agents and brokers while also attracting greater agent and broker participation in the FFEs through the development of partnerships with vendors. After careful consideration of these comments, we have amended paragraph (b)(2) to require vendors to offer CEU credit for their training programs in at least five States in which an FFE is operating, effective for plan year 2016 training. Many businesses, trade associations, and States currently offer training that qualifies for CEUs, so we do not believe this requirement will be a significant burden for vendors. We believe five is a reasonable number of States in this initial year of the vendor-hosted FFE training and information verification alternative avenue, and we intend to monitor and evaluate whether this number should be modified in future years. States may apply to be recognized as HHS-approved vendors to offer FFE training and information verification to agents and brokers, and must comply with the same standards as other vendor applicants. HHS will continue to require the Exchanges, including FFEs, to enter into agreements with and register agents and brokers, as described in § 155.220(d) and § 155.260(b).

We are finalizing these provisions as proposed, with the following modifications. We are dividing proposed paragraph (a) into three paragraphs. To add description to the information verification functionality that vendors must provide to agents and brokers, we are adding ''proof of valid licensure'' in paragraph (a)(2), and also adding ''verification of valid State license'' to the new paragraph (b)(1)(i). We are adding paragraph (b)(1)(ii) to clarify that vendors must have the ability to host identity proofing, but do not need to demonstrate prior experience. In paragraph (b)(2), we are adding ''offering continuing education units (CEUs) for at least five States in which an FFE is operating.'' We are adding ''format, and frequency'' to paragraph (b)(3) with respect to the collection, storage, and sharing of data to further protect the personally identifiable information of agents and brokers, and aid HHS in the monitoring of vendors' training and information verification programs.

3. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

a. Annual Eligibility Redetermination (§ 155.335)

In § 155.335, we proposed permitting Exchanges to implement alternative re-enrollment hierarchies in future benefit years. We sought comment on a default re-enrollment hierarchy that consumers could opt into that would be triggered if the enrollee's current plan's premium increased from the prior year, or increased relative to the premium of other similar plans (such as plans of the same metal tier), by more than a threshold amount, such as 5 percent or 10 percent. We also sought comment on whether SBMs should have the flexibility to implement alternative re-enrollment hierarchies beginning with the 2016 open enrollment and whether to adopt any such alternatives in the FFE for 2017 open enrollment.

In light of the comments discussed below, we are not finalizing our proposal to explore alternative re-enrollment hierarchies for the FFE at this time. However our current rules permit Exchanges to implement alternative re-enrollment hierarchies under § 155.335(a)(2)(iii) based on a showing by the Exchange that the alternative procedures would facilitate continued enrollment in coverage for which the enrollee remains eligible, provide clear information about the process to the qualified individual or enrollee (including regarding any action by the qualified individual or enrollee necessary to obtain the most accurate redetermination of eligibility), and provide adequate program integrity protections, and we welcome efforts by SBEs to develop alternative hierarchies consistent with these standards that meet the needs of their consumers.

Comment: We received many comments regarding the proposed alternative re-enrollment hierarchies. Commenters who opposed permitting alternative enrollment hierarchies, particularly those that prioritize low-premium plans, noted that, in most cases, the plan a consumer chooses during open enrollment is one that the consumer has shopped for and has determined best meets his or her needs. Additionally, commenters highlighted that low-cost premiums do not necessarily lead to lower overall cost of coverage because deductibles, copayments, coinsurance, and out-of-pocket limits may be higher.

In contrast, some commenters supported the proposal's emphasis on low-cost premiums. One commenter believed that multiple re-enrollment hierarchies should be available to consumers, but cautioned that these options should be limited to two, and be easy to understand.

Commenters had concerns that consumers may not realize that opting into a default enrollment hierarchy based on low-cost premiums may result in other significant changes to their coverage, as noted above. Commenters also requested that, if alternative hierarchies are implemented, consumers be made aware of the consequences of selecting this default re-enrollment option both at the time of initial enrollment when a person could opt into this and also prior to re-enrollment.

Some commenters noted that the proposal may not keep consumers actively engaged in the process of re-enrollment and making coverage choices. Commenters emphasized that, if alternative hierarchies are implemented, Exchanges must educate consumers at the time of enrollment about their choice and what it may mean for their future health coverage and costs. Commenters stressed that consumer notices should emphasize the benefit of returning to the Exchange during the open enrollment period to examine plan options and encouraged focus testing to determine messaging that best communicates the implications of opting into a re-enrollment hierarchy.

We received a few alternative ideas for re-enrollment hierarchies, including basing re-enrollment on factors consumers identify as most important to them. One commenter recommended

permitting consumers to choose between a default re-enrollment hierarchy that prioritizes the consumer's choice of plan, as the current policy does, versus prioritizing the consumer's original choice of premium. The commenter believed that presenting these two hierarchy choices to consumers would greatly increase consumer understanding of the significance and consequences of selecting one hierarchy over the other. Another commenter suggested limiting the low-cost premium hierarchy option to only those consumers who are currently enrolled in the lowest-cost or second-lowest cost silver plan to target consumers who are most likely to notice a change in premium and make it administratively easier to implement.

Finally, several commenters emphasized the need to continue to focus on the development of the current redetermination and re-enrollment process. Commenters noted improvements should be made to the technical ability to support automatic eligibility redeterminations, particularly those including determinations for advance payments of the premium tax credit and cost-sharing reductions. We received several comments recommending that HHS wait to implement any alternative hierarchies until the current enrollment hierarchies have operated for a few years and more information and lessons can be gleaned from the experience. In contrast, a few commenters, who supported the proposal, encouraged early adoption of the policy, and one commenter suggested that consumers would not want to wait to take advantage of this low-cost option.

Response: We appreciate the many comments received regarding alternative re-enrollment hierarchies and are sensitive to the concerns raised by commenters. Consumers consider many factors when selecting health coverage in addition to the premium, including the provider network, cost-sharing, deductibles, and other factors which affect overall costs, continuity of care, and the consumer experience. At the same time, we continue to believe that default re-enrollment of consumers in the same plan (or a similar plan) may not best serve consumers' interests in cases where the premium for their plan relative to available alternatives has changes substantially. Due to concerns expressed by commenters, we are not finalizing changes to the re-enrollment hierarchies. Instead, the existing re-enrollment hierarchies will remain in place. In accordance with commenters' suggestions, we may revisit alternative hierarchies as we learn more about consumer preferences and gain implementation experience. We will also work to continue to improve the current annual redetermination and renewal processes, including the concerns expressed by commenters for the need for greater consumer education and engagement efforts. As noted below, we encourage SBEs to consider alternative re-enrollment hierarchies.

Comment: Most commenters, including those representing SBEs, supported the proposed flexibility for SBEs to implement alternative re-enrollment hierarchies. Commenters saw this flexibility as a way to further test alternative hierarchies before they are implemented more widely, and also as a way to meet the unique characteristics of each Exchange. Additionally, one commenter expressed opposition to providing State flexibility by the 2016 benefit year out of concern that consumers would not have enough time to be properly educated about re-enrollment by operation of the alternative hierarchy and because no precedent exists for reassigning a consumer to an entirely new set of coverage benefits. Finally, one commenter, who supported permitting State flexibility in this regard, did not believe HHS should permit States to prioritize issuer continuity.

Response: SBEs play an important role in implementing policies and providing important feedback regarding their success and difficulties, particularly because each SBE has a unique consumer base and market. As noted above, under our current regulations, SBEs may gain approval from HHS to implement alternative default re-enrollment hierarchies. We encourage SBEs to consider alternative hierarchies and we will closely examine the results of any SBE actions in this area.

Comment: We received a few comments requesting more information regarding how this proposal would impact stand-alone dental plans (SADPs). Several commenters noted that the process for re-enrolling in a SADP should be separate and independent from re-enrollment in a QHP.

Response: Because we will not implement the proposed alternative re-enrollment hierarchies at this time, we are not addressing how this policy would affect SADPs. However, we appreciate the comments raising this issue and, if the proposal is revisited in the future, we will address concerns regarding SADPs then.

4. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

a. Enrollment of Qualified Individuals Into QHPs (§ 155.400)

We proposed to amend § 155.400(e) to explicitly provide for an Exchange to establish a standard policy for setting deadlines for payment of the first month's premium.

For the FFEs, we proposed several possible payment deadlines tied to the coverage effective date for regular effective dates (meaning coverage effective the first day of the following month for plan selections made between the first and fifteenth of the month, and coverage effective the first day of the second month following a plan selection made between the 16th and the end of the month). Some options we considered included providing consumers until the coverage effective date, or the day before the coverage effective date, to make their first month premium payment. Alternatively, we considered providing consumers additional time after the coverage effective date to make their premium payment (5 days, 10 days, or 30 days after the coverage effective date). We sought comment on the period of time following the coverage effective date an issuer could be required or permitted to accept a first month's premium payment for that coverage.

With respect to effective dates other than regular effective dates, meaning retroactive or accelerated coverage effective dates resulting from enrollment under certain special enrollment periods (including birth and marriage), resulting from the resolution of appeals, or resulting from amounts newly due for prior coverage based on issuer corrections of under-billing, we considered a premium payment deadline of 10–15 business days from when the issuer receives the enrollment transaction.

We sought comment on which proposed premium payment deadlines give issuers an acceptable amount of time to send an invoice and allow for timely payment by the consumer, and give consumers sufficient time to make the payment. We also sought comment on how such a policy would likely affect issuer operations and consumers' ability to obtain coverage.

We noted that because this rulemaking will likely not be finalized until after open enrollment for 2015, any such deadlines would not be applicable for that open enrollment period.

We are finalizing the provisions proposed in § 155.400 of the proposed

rule, with the inclusion of premium payment deadline policies for the FFEs, selected from among the options described in the proposed rule. Specifically, we revised paragraph § 155.400(e) to establish a standard policy for premium payment deadlines in the FFEs, while leaving other Exchanges the option of establishing such policies. We added § 155.400(e)(1) to establish a premium payment deadline policy for the first month's premium payment for a first-time enrollment on an FFE or for an active or passive reenrollment in a plan within a new product or with a new issuer.

In new § 155.400(e)(1)(i), we establish a policy for the FFEs that premium payment deadlines for the first month's premium for a new enrollment must be no earlier than the coverage effective date, but no later than 30 calendar days from the coverage effective date in cases where coverage becomes effective with regular coverage effective dates, as provided for in § 155.410(f) and § 155.420(b)(1).

We also added § 155.400(e)(1)(ii) whereby the premium payment deadlines for the first month's premium must be 30 calendar days from the date the issuer receives the enrollment transaction, in cases where coverage becomes effective under special effective dates, as provided for in § 155.420(b)(2).

Comment: We received several comments recommending that HHS give issuers flexibility surrounding payment deadlines, with the rationale that flexibility in the first year helped maximize enrollment by accommodating those who require additional time to make payment. Several commenters suggested giving consumers 30 days to make their first month's premium payment, while a large number of commenters supported establishing a standard policy requiring consumers to make their first month's premium payment prior to the effective date. Most concerns raised by commenters opposed allowing premium payments after the coverage effective date due to the uncertainty of payment for services provided after the coverage effective date if a premium is not paid and the enrollee is subsequently cancelled.

Response: We recognize that decisions regarding payment of the first month's premium have traditionally been business decisions made by issuers, subject to State rules. We believe that having some minimum standards could benefit issuers and consumers by ensuring a consistent operational procedure while still giving issuers flexibility. Within this context, we also sought to provide flexibility for SBEs to establish their own policies for premium payment deadlines. Accordingly, we are finalizing § 155.400(e) to indicate that an Exchange may establish a standard policy for setting premium payment deadlines, and are establishing a policy for the FFEs, as described above.

This policy gives issuers flexibility while allowing additional time for individuals who may have circumstances that would not otherwise provide standard timeframes for payment.

Comment: Several commenters were confused about the additional language to allow first month's premium payments after the coverage effective date, thinking that a person's coverage could be effectuated prior to the person making their payment. Many providers and some issuers were opposed to allowing more individuals to appear to have effective coverage and then have the coverage not be effectuated due to non-payment of premium by the payment deadline, resulting in having to reverse claims for payment for services rendered during the time between the intended coverage effective date and the payment deadline.

Response: Payment for first month's premium is still required prior to coverage being effectuated. For the FFE, in cases where a person, consistent with an issuer's payment policy, makes their premium payment after the coverage effective date, but before the premium payment deadline set by the issuer, the consumer would receive a retroactive effective date. Issuers may pend claims while waiting for the first month's premium payment and either deny or reverse those claims based on whether the individual makes their first month's payment by the premium payment deadline. We believe that it is better to allow payments, if the issuer chooses, after the coverage effective date.

Comment: Several commenters supported a uniform payment deadline, but wanted clarification that SBEs can establish their own policy for premium payments.

Response: While we believe that having uniform minimum standards for all issuers for payment of a first month's premium to effectuate enrollments could benefit issuers and consumers by ensuring a consistent operational procedure while still giving issuers flexibility, our intent in the proposed rule was to let each Exchange decide whether to develop its own payment deadline policy for the first month's premium. We are finalizing a revised § 155.400(e) indicating an Exchange may establish a standard policy for setting premium payment deadlines, and establishing the FFEs premium payment deadline policy for the first month's premium payment.

Comment: Some commenters suggested that the if HHS implements a uniform policy for the first month's premium payment deadlines, HHS should take into account consumers who have unusual circumstances (for example, when consumers are eligible for retroactive effective dates, an issuer fails to issue a bill in a timely manner, a consumer's payment is misdirected by mail, etc.).

We also received several comments suggesting that for irregular effective dates, the premium payment date should be 10–15 business days from when the consumer receives the invoice from the issuer, not when the issuer receives the enrollment transaction. Commenters suggested that this would create a level playing field for consumers since some issuers may take longer to process their enrollment transactions

Response: In this final rule, we are adding § 155.400(e)(1)(ii), which accommodates consumers who are given an accelerated or retroactive effective date based, for example, on a change in circumstance. We want to give consumers with irregular effective dates sufficient time to pay the first month's premium and we believe, based on comments received that suggested giving consumers with irregular effective dates more time to make their first month's premium payment, 30 calendar days is sufficient and reduces the complexity of accounting for weekends and holidays. We also recognize that issuers do not all have a mandated standard for timeliness of billing consumers, but we believe issuers want to collect the first month's premium payment and have no intention to delay billing on their end. Furthermore, depending on the issuers and how the consumer elects to make payment, not all enrollees will be sent an invoice (for instance, in cases where a consumer is redirected by the FFE to the issuer's Web site and pays the premium online), whereas the FFE will always send an enrollment transaction to the issuer when a consumer selects a plan. Therefore, we are finalizing this rule with a standard under which these individuals are given 30 calendar days from the date the issuer receives the enrollment transaction to make their first month's premium payment.

b. Annual Open Enrollment Period (§ 155.410)

In § 155.410, we proposed to amend paragraph (e), which provides the dates

for the annual open enrollment period in which qualified individuals and enrollees may apply for or change coverage in a QHP. We proposed to restructure paragraph (e) by placing the current provision regarding the 2015 benefit year in paragraph (e)(1) and the proposed requirement for all benefit years beginning on or after 2016 in paragraph (e)(2). Specifically, in paragraph (e)(2), we proposed that for benefit years beginning on or after January 1, 2016, the annual open enrollment period would begin on October 1 and extend through December 15 of the calendar year preceding the benefit year. We also proposed to redesignate the annual open enrollment coverage effective date provisions in paragraphs (f) and (f)(1) through (3) as (f)(1) and (f)(1)(i) through (iii), and to add a new (f)(2), which would specify that, for enrollments made under any annual open enrollment periods for benefit years beginning on or after January 1, 2016, coverage would be effective on January 1 of the year following the open enrollment period.

We are finalizing the provisions only with regard to the 2016 benefit year, with a modification. In response to comments, at § 155.410(e)(2), we are providing that for the benefit year beginning on January 1, 2016, the annual open enrollment period begins on November 1, 2015 and extends through January 31, 2016 (2 weeks earlier but the same length as the open enrollment period for the 2015 benefit year). Additionally, we have revised the proposed language at § 155.410(f)(2) and added three paragraphs to require that for the 2016 benefit year, the Exchange must ensure that coverage is effective January 1, 2016, for QHP selections received by the Exchange on or before December 15, 2015, February 1, 2016, for QHP selections received by the Exchange from December 16, 2015, through January 15, 2016, or March 1, 2016, for QHP selections received by the Exchange from January 16, 2016, through January 31, 2016.

Comment: We received a variety of comments regarding our proposal to set the annual open enrollment period for benefit year 2016 and beyond. A large portion of comments focused on the specific dates proposed for the annual open enrollment period. Several commenters noted their support for establishing a standard annual open enrollment period to promote consistency from year to year. Commenters also supported annual open enrollment dates that overlap with Medicare's annual open enrollment period as well as the annual open enrollment period for much employer-sponsored coverage, which commenters believed would ensure a smoother transition for consumers moving between the group and individual markets. One commenter supported the proposed timeframe and noted that starting the Exchange annual open enrollment period 2 weeks before Medicare's annual open enrollment period may reduce stress on resources, particularly customer service call centers, agents, brokers, and other consumer resources that are frequently relied on during open enrollment periods.

A few commenters supported establishing the annual open enrollment period during the last quarter of the calendar year, but recommended slight variations on the proposed timeframe. For example, one commenter recommended the annual open enrollment period run November 1 through December 15, suggesting that a longer enrollment period does not lead to better consumer decisions and that issuers may benefit from a later start to the annual open enrollment period. Another commenter indicated that ending the enrollment period on December 15 was too late to accommodate the operational steps necessary to ensure a universal January 1 coverage effective date, particularly given the complexity associated with managing active selections, automatic renewals, and other changes. The commenter suggested ending the enrollment period on November 30 to give more time to issuers and Exchanges to handle renewals. A few commenters recommended aligning with Medicare's annual open enrollment period, October 15 through December 7. In contrast, a few commenters requested that HHS extend the proposed annual open enrollment period to the end of January to capture additional consumers. Of particular concern for these commenters were consumers who are auto-renewed into a new plan and will not have an opportunity to use the plan before the end of the annual open enrollment period, following which they could be unable to shop for coverage, absent a special enrollment period (SEP).

Finally, a few commenters representing State-based Exchanges (SBEs) and health insurance issuers shared concerns that shifting the annual open enrollment period to October would significantly strain timelines for product development, rate setting, product filing, and review. These groups questioned whether notices, regulations, and templates would be completed by HHS in time for issuers and States to fulfill their obligations prior to annual open enrollment. Commenters noted that starting the annual open enrollment period earlier would increase administrative burden and constrain resources and requested giving States and issuers additional time to prepare.

Response: We agree that establishing a consistent timeframe for annual open enrollment will help reduce consumer confusion, and administrative complexity. However, we understand that beginning annual open enrollment more than a month earlier for 2016 than for 2015 requires significant advanced planning and preparation by Exchanges, State regulatory authorities, issuers, and assisters. We were persuaded by the concerns expressed by many commenters about the additional burden caused by shifting the annual open enrollment period, and therefore we are finalizing an annual open enrollment period for the 2016 benefit year that begins 1 month later than the one we had proposed, and that will run from November 1, 2015 through January 31, 2016. We anticipate that this timeframe will ease the burden on State regulatory authorities, Exchanges, and issuers while giving HHS the time to conduct a thorough certification process. Additionally, the finalized timeframe will permit additional time for consumers following the winter holidays to complete plan selection or to select a different plan if they do not like the plan into which they were auto-enrolled. Finally, the finalized timeframe will continue to partially overlap with Medicare annual open enrollment and most employer offerings, which will benefit consumers by creating smooth transitions between coverage and create process efficiencies for issuers handling enrollments and re-enrollments during the same period.

Comment: Many commenters focused on the length of the proposed annual open enrollment period. Several commenters supported establishing a shorter annual open enrollment period. However, a few commenters considered the proposed annual open enrollment period too short to provide consumers sufficient time to research coverage options and seek help from assisters. These commenters noted that consumers are still becoming familiar with Exchange-based coverage and that the length of the proposed open enrollment period will be a barrier to obtaining insurance. Similarly, many commenters requested that consumers have the opportunity to preview and compare plans starting on September 15 of each year, even if they are unable to enroll, to provide additional time for consumers to review and compare plans to make informed decisions. One commenter recommended that plans be

made available as soon as they are certified so that consumers, assisters, non-profit organizations, and researchers can review the plan options available.

Response: Recognizing that consumers, issuers, State regulatory authorities, and Exchanges may still be acclimating to the annual open enrollment process, we are finalizing the provisions with modification to set the annual open enrollment period for the 2016 benefit year to run from November 1, 2015 through January 31, 2016. We will take these recommendations under advisement as we consider options for the 2017 annual open enrollment period and beyond.

Comment: Several commenters recommended establishing the annual open enrollment period so that it either overlaps or aligns with tax filing season. In support of this idea, commenters noted that consumer financial liquidity is lowest during the months of November and December whereas many consumers receive tax refunds beginning in late January through April, which could encourage consumers to enroll in coverage. Commenters also noted that incurring a fee at tax filing for not being enrolled in coverage could create an opportune moment to encourage enrollment. One commenter maintained that aligning annual open enrollment with tax filing would alleviate private-sector administrative burdens because open enrollment periods for Medicare, employer plans, and the Exchange will then not all overlap, increasing the workload on issuers and agents and brokers. Finally, commenters noted that tax filing provides the best possible income information for consumers to increase accuracy of eligibility determinations, minimize repayments, and strengthen program integrity.

Response: We appreciate the concerns that commenters raised. As noted above, for the 2016 benefit year, we are finalizing the provisions with modification to set the annual open enrollment period for the 2016 benefit year to run from November 1, 2015 through January 31, 2016. We note that there are several SEPs that provide an opportunity to enroll in coverage mid-year if a qualifying event occurs. In addition, there are several exemptions available to consumers, including hardship-based exemptions, which will help prevent a consumer from being assessed a fee, and may be claimed on a consumer's Federal income tax return. Although commenters saw overlapping annual open enrollment with Medicare and employer offerings as burdensome, we maintain that this overlap maximizes process efficiencies for issuers and streamlines transitions between different forms of coverage for consumers.

Aligning more closely with the calendar year permits consumers to plan financially on a calendar year basis. We also note that consumers who qualify for financial assistance can immediately receive it with their premium upon enrollment, and consumers also may be given additional time in which to pay their initial premium, pursuant to the amendment to § 155.400(e) described in section III.E.4.a of this final rule, both of which should help alleviate low consumer financial liquidity.

Comment: A few commenters representing SBEs requested that SBEs be permitted to set their own annual open enrollment period and maintain their own QHP filing timing.

Response: Section 1311(c)(6)(B) of the Affordable Care Act specifically directs the Secretary to provide for annual open enrollment periods, as determined by the Secretary for calendar years after the initial open enrollment period. We have determined that permitting multiple annual open enrollment periods that differ by State will be confusing for consumers and create additional burdens on issuers to meet variable deadlines for QHP certification, re-certification, and rate-setting. Therefore, we are finalizing this rule with a uniform annual open enrollment period across all Exchanges for the 2016 benefit year.

Comment: One commenter requested that when the end of annual open enrollment falls on a weekend (Saturday or Sunday) or a Federal holiday, it should extend to the next business day.

Response: While we understand the concern raised by this comment, we believe the value of establishing set dates for the annual open enrollment period outweigh it. We anticipate that it will be easiest for all stakeholders, particularly consumers, to remember and implement annual open enrollment processes based on a standard set of dates from year to year.

Comment: One commenter requested that HHS commit to publishing more enrollment data and analyze it to maximize enrollment.

Response: HHS has published weekly enrollment reports for the 37 States using HealthCare.gov during the 2015 annual open enrollment period. We intend to continue to gather and analyze information to improve our processes over the course of future annual open enrollment periods.

c. Special Enrollment Periods (§ 155.420)

In § 155.420, we proposed certain provisions relating to special enrollment periods. We proposed to revise paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iv), and add paragraphs (b)(2)(v), (b)(2)(vi), and (b)(2)(vii), which pertain to effective dates for special enrollment periods; to amend paragraphs (c)(2)(i) and (c)(2)(ii), which pertain to availability and length of special enrollment periods, and to revise paragraphs (d)(1)(ii), (d)(1)(v), (d)(2), (d)(4), and remove paragraph (d)(10), which pertain to specific types of special enrollment periods. We also proposed to delete the option for consumers to choose a coverage effective date of the first of the month following the birth, adoption, placement for adoption or placement in foster care and to permit the Exchange to allow a qualified individual or enrollee to elect a regular coverage effective date in accordance with paragraph (b)(1) of this section.

We proposed to amend paragraph (b)(2)(iv) to allow persons who make a permanent move as described in paragraph (d)(7) to have a coverage effective date of the first day of the month following the move if plan selection is made before or on the day of the loss of coverage and, effective January 1, 2016, allow consumers advanced access to the special enrollment period where a qualified individual or enrollee, or his or her dependent, gains access to new QHPs due to a permanent move under paragraph (d)(7).

In addition, we proposed to add new paragraphs (b)(2)(v) and (b)(2)(vi), which pertain to effective dates for coverage that must be obtained under court orders, including child support orders, and the death of an enrollee or his or her dependent. In paragraph (b)(2)(v), we proposed to require an Exchange to make coverage effective the first day the court order is effective to minimize any gap in coverage the individual may experience and allow Exchanges to provide consumers with a choice for regular effective dates under paragraph (b)(1). In paragraph (b)(2)(vi), we proposed to require that an Exchange ensure coverage is effective the first day of the month following a death of the enrollee or his or her dependent, and at the option of the Exchange and the consumer, allow for regular effective dates under paragraph (b)(1) of this section.

We proposed to combine paragraphs (c)(2)(i) and (c)(2)(ii) to a new paragraph (c)(2) to simplify the regulatory text. In addition, we proposed to allow

consumers to report a permanent move 60 days in advance of the move for the purposes of receiving special enrollment period to reduce the likelihood of a gap in coverage. We proposed that this change would take effect on January 1, 2016.

We proposed to amend paragraph (d)(1)(ii) so that this special enrollment period is available for a qualified individual or his or her dependent who, in any year, has coverage under a group health plan or an individual plan with a plan or policy year that is not offered on a calendar year basis. We proposed to add paragraph (d)(2)(i) to include situations where a court order requires a qualified individual to cover a dependent or other person. We also proposed to add paragraph (d)(2)(ii) to allow enrollees who experience a loss of a dependent or lose dependent status through legal separation, divorce, or death to be determined eligible for a special enrollment period. We proposed to amend paragraph (d)(4), to include situations where a non-Exchange entity is providing enrollment assistance. Concurrently, we proposed to strike paragraph (d)(10) which provides a separate special enrollment period for non-Exchange entity misconduct.

We proposed to add paragraph (d)(6)(iv) to create a special enrollment period for a qualified individual in a non-Medicaid expansion State who was previously ineligible for advance payments of the premium tax credit solely because the qualified individual had a household income below 100 percent of the FPL, who was ineligible for Medicaid during that same timeframe, and experienced a change in household income that made the individual newly eligible for advance payments of the premium tax credit.

We also sought comments on other situations that may warrant a special enrollment period, particularly situations specific to the initial years in which consumers have an opportunity to purchase coverage through an Exchange.

We are finalizing paragraph (b)(2)(i) with a minor modification. Specifically, we are retaining the option of the Exchange to allow consumers to elect a coverage effective date of the first of the month following a birth, adoption, placement for adoption, or placement in foster care or on the date of the birth, adoption, placement for adoption, or placement in foster care. These options are in addition to the option for regular effective dates in paragraph (b)(1) of this section as proposed. We are amending paragraph (b)(2)(iv) to allow these persons to have a coverage effective date of the first day of the month following the move if plan selection is made before or on the day of the move. We are adding paragraph (b)(2)(v) to make coverage effective the first day of the court order and to allow Exchanges to provide consumers with a choice for a regular effective date, in accordance with paragraph (b)(1). We are adding paragraph (b)(2)(vi) to require Exchanges to ensure coverage is effective the first day of the month following the date of plan selection due to a death of the enrollee or his or her dependent and to allow Exchanges to provide consumer with a choice for a regular effective date, as specified in paragraph (b)(1). The proposed paragraph (b)(2)(vi) incorrectly referenced paragraph (d)(2)(iv), which was changed to correctly reference paragraph (d)(2)(ii) for loss of a dependent or dependent status. Additionally, we corrected paragraph (b)(2)(vi) to state that coverage will be effective following the date of plan selection, instead of following the date of death.

We are combining paragraphs (c)(2)(i) and (c)(2)(ii) to a new paragraph (c)(2), and, in paragraph (c)(2), we are also adding a reference in this paragraph to individuals who receive a special enrollment period under paragraph (d)(7) to allow these consumers to report a permanent move 60 days in advance of the move for the purposes of receiving a special enrollment period to reduce the likelihood of a gap in coverage. After consideration of comments received, persons who are eligible for a special enrollment period under paragraph (d)(7) will be able to exercise this flexibility effective January 1, 2017, or earlier at the option of the Exchange. In paragraph (c)(3), we are removing reference to paragraph (d)(10), which is now included in paragraph (d)(4).

As proposed, in paragraph (d)(1)(ii), we are deleting the expiration date of 2014 for non-calendar year health insurance policies. We are adding paragraph (d)(2)(i), which includes when a qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, or through a child support or other court order. At the option of the Exchange, we are adding paragraph (d)(2)(ii) for where an enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation, as defined by State law. Paragraph (d)(4) is amended to include situations where a non-Exchange entity is providing enrollment assistance. Concurrently, we proposed to strike paragraph (d)(10) which provides a separate special enrollment period for non-Exchange entity misconduct. We are adding paragraph (d)(6)(iv) to include qualified individuals in non-Medicaid expansion States who were previously ineligible for advance payments of premium tax credits solely because the individual had household income under 100 percent of the FPL, who was ineligible for Medicaid during that same timeframe, and experiences a change in household income to become eligible for advance payments of the premium tax credit.

Comment: Commenters were divided in their responses to the proposed changes to coverage effective dates for special enrollment periods resulting from birth, adoption, placement for adoption, and placement in foster care, as proposed in paragraph (b)(2)(i) of this section. Some commenters expressed concern about the potential gap in coverage if a parent were to elect a prospective coverage effective date for the child, while others expressed concern regarding our proposal to remove the option for coverage to be effective the first day of the month following the triggering event. We also received comments in support of our proposal to increase flexibility for electing a coverage effective date that best fits the family's needs.

Response: Current regulations require Exchanges to ensure coverage is effective retroactive to the date of birth, adoption, placement for adoption, or placement in foster care and allow Exchanges the option to provide prospective coverage effective dates to the first of the month following the triggering event. We agree with commenters emphasizing the importance of coverage effective dates that best fit the needs of a family. Accordingly, we are finalizing the addition of a new option for coverage to be effective following regular effective dates, as proposed, and are not removing the option for coverage to be effective the first of the month following a birth, adoption, placement for adoption, or placement in foster care. If the Exchange allows for prospective coverage effective dates, it would be at the option of the consumer to elect this date or to elect the retroactive coverage effective date back to the date of birth, adoption, placement for adoption, or placement in foster care.

Comment: Several commenters urged HHS to clarify the proposed changes to the special enrollment period for a permanent move, including specifying that consumers must submit proof of a change of address and providing clarification that changes to the special enrollment period for a permanent move

includes individuals who are being released from incarceration. There was also a request to amend the proposed implementation effective date for this special enrollment period, which was set for January 1, 2016.

Response: Exchanges must verify residency information as outlined in § 155.315(d) to make an eligibility determination, which includes a determination of eligibility for enrollment periods, per § 155.305(b). As noted in the preamble to Exchange Establishment Rule, 77 FR 18310 (March 27, 2012), qualified individuals newly released from incarceration are eligible for the special enrollment period afforded to individuals who gain access to a new qualified health plan as a result of a permanent move. Therefore, under the rule being finalized, incarcerated individuals would be able to report a permanent move up to 60 days in advance of their release from incarceration, once a formal release date has been set. Recognizing that Exchanges may need more time than previously afforded in the proposed rule to implement this special enrollment period, it will be effective January 1, 2017. Exchanges are encouraged to implement as soon as possible.

Comment: Several commenters requested HHS provide authority for additional triggering events for special enrollment periods. Some commenters requested that pregnancy trigger a special enrollment period, so that women who are either not enrolled or are enrolled in a catastrophic plan can select and enroll in or change qualified health plan coverage prior to the birth of a newborn. Other commenters requested that, when an individual reports that he or she is a victim of domestic abuse, it triggers a special enrollment period, so that he or she may select and enroll in a qualified health plan on a separate application from his or her abuser, along with any dependents.

Response: We are not finalizing additional triggering events based on life changes at this time. Specifically, flexibility afforded under § 155.420(d)(9) allows the Secretary to provide for additional special enrollment periods in the case of exceptional circumstances, as determined appropriate, and HHS will continue to exercise that authority through sub regulatory guidance. Furthermore, a State may establish additional special enrollment periods to supplement those described in this section as long as they are more consumer protective than those contained in this section and otherwise comply with applicable laws and regulations.

Comment: We received comments both in support of, and opposed to, changes to coverage effective dates for the newly proposed special enrollment period for court orders, including a child support order at § 155.420(b)(2)(v). Some commenters supported increased flexibility for consumers to elect a retroactive coverage effective date back to the day of the court order, while other commenters requested that changes always be made effective the first of the month following the court order.

Response: Based on comments received, we believe that it is most consistent to treat consumers who gain a dependent, regardless of the means, in an equitable manner. In addition, a court order may be effective in the middle of a month and requiring the individual to wait until the first of the following month to enroll in coverage may violate State law. Accordingly, we are finalizing the rule as proposed whereby the effective date for the special enrollment period for a court order will be effective in accordance with paragraph (b)(2)(i) of this section.

Comment: We received comments that requested changes to coverage effective dates for the newly proposed special enrollment period for losing a dependent as a result of death at § 155.420(b)(2)(vi). Some commenters requested coverage be effective retroactive to the date of death, others supported the proposed regulatory text to provide coverage effective the first day of the month following the death, while other commenters requested that HHS limit the number of situations which will allow for retroactivity. Some commenters also requested that all family members, regardless of whether they are part of the enrollment group or are enrolled in a qualified health plan through the Exchange, receive a special enrollment period. Another commenter requested that no special enrollment period be given for death as other special enrollment periods likely apply.

Response: In response to comments, we believe it makes sense to limit the number of situations that will allow for retroactivity, we have modified the proposed regulatory text to finalize the coverage effective date as the first day of the month following the date of plan selection, rather than the date of death. Providing a coverage effective date of the first of the month following the date of death would give the consumer retroactivity if they are reporting the death late in the special enrollment period window. We believe this balances the need to provide dependents of the deceased a special enrollment period, while addressing requests from commenters to limit the middle of the month and retroactive coverage effective dates. In addition, we encourage issuers to maintain qualified health plan coverage for remaining members of the enrollment group through the end of the month. The special enrollment period as a result of a death is intended for remaining enrollees on an application whose health insurance coverage is impacted due to the death; therefore, only the affected members will be provided a special enrollment period. As noted by commenters, non-enrollees may be determined eligible for other special enrollment periods including that for loss of coverage.

Comment: Commenters supported the proposed language which provided for a special enrollment period for individuals enrolled in non-calendar year group health plans or individual health insurance coverage. One commenter requested clarification that this would also apply to group health plans outside of the Exchange.

Response: We are finalizing this policy as proposed. We note that, as specified in the proposed rule, this policy provides a special enrollment period inside the Exchange for individuals whose coverage in group health plans and individual market plans offered outside of the Exchange is expiring, including grandfathered and transitional plans. Under § 147.104, this special enrollment period also applies to individuals who seek to enroll in individual market coverage off the Exchange.

Comment: Commenters requested that HHS provide additional clarification and flexibility for the special enrollment period for loss of a dependent or dependent status due to legal separation, divorce, or death. Comments included requests to extend this special enrollment period to individuals not currently enrolled in a qualified health plan, to include same sex couples who enter into a legally recognized relationship other than marriage, such as domestic partnerships and civil unions, and to provide Exchanges increased flexibility for implementation.

Response: We believe the text provides flexibility for consumers to be determined eligible for the special enrollment period if the separation or termination of a civil union or domestic partnership is in accordance with State law. In addition, we note that consumers not currently enrolled in a qualified health plan who experience one of the life events described in this provision may be determined eligible for a special enrollment period in

accordance with existing special enrollment period provisions, specifically loss of coverage. Recognizing that Exchanges may need more time to implement the necessary functional IT changes, we are making paragraph (d)(2)(ii) effective January 1, 2017. Exchanges are encouraged to implement the policy as soon as possible.

Comment: Several commenters requested that the special enrollment period provided in paragraph (d)(8) of this section be extended to include the dependents of Indians to allow them to change enrollment in a qualified health plan once per month.

Response: An Indian as provided under section 4(d) of the Indian Self-Determination and Education Assistance Act (ISDEAA) and section 4 of the Indian Health Care Improvement Act (IHCIA) is defined as an individual who is a member of an Indian tribe. Both ISDEAA and IHCIA have nearly identical language that refers to a number of Indian entities that are included in this definition on the basis that they are recognized as eligible for the special programs and services provide by the United States to Indians because of their status as Indians. As such, the statute specifically provides the special enrollment period defined in paragraph (d)(8) of this section as applying to the individual who is eligible for special programs and services because of their status as an Indian, and not their dependents.

Comment: We received many comments in response to our proposal to extend a special enrollment period to individuals below 100 percent of the FPL in non-Medicaid expansion States that later become eligible for advance payments of the premium tax credit at § 155.420(d)(6)(iv). A few commenters asked for HHS to clarify that an individual would be eligible for the special enrollment period if he or she experienced a change in household composition or size, in addition to a change in household income, and one commenter requested that change in household income required a change in percentage of the FPL.

Response: We are finalizing this policy as proposed. We note that for purposes of determining eligibility for this special enrollment period, an individual's percentage of the FPL is a function of household income, composition and size; therefore, individuals who gain eligibility because of a change in income or a change in household composition will be eligible for this special enrollment period.

Comment: Several commenters requested that HHS include additional special enrollment periods pertaining to provider networks, specifically when a consumer enrolls in a qualified health plan with an inaccurate provider directory, enrolls in a plan which changes their health plan's provider or pharmacy networks mid-year, or enrolls in a plan with no in-network providers within a 25 mile radius of the consumer.

Response: We acknowledge the need for consumers to have access to correct information about their QHPs and participating providers and pharmacies, and have promulgated provisions pertaining to the maintenance and dissemination of provider and pharmacy directories in this rule. However, provider and pharmacy network participation changes frequently. Therefore, determining who would be eligible for the type of special enrollment period suggested by commenters would require that issuers report to the Exchange whenever provider and pharmacy network participation changes and that the Exchange notify consumers potentially impacted by such changes. As such, we are not making changes in response to these comments, and note that consumers may be determined eligible for the special enrollment period provided in paragraph (d)(5) of this section if an issuer substantially violates their contract with the enrollee.

Comment: We received comments that requested the length of the special enrollment period for loss of coverage provided in paragraph (d)(1) of this section be shortened from 120 days to 30 or 60 days, to reduce the administrative burden on the Exchange and issuer to enroll the consumer in retroactive coverage.

Response: We note that the special enrollment period for loss of coverage, as provided in paragraph (c)(2) of this section, is 60 days. We clarify that, while an individual has 60 days before and after the loss of coverage to select a qualified health plan through the Marketplace, the coverage generally may not be effective until the first day of the month following the loss of coverage in accordance with paragraph (b)(2)(iv) of this section. Both the advanced availability of this special enrollment period and its duration are intended to minimize the likelihood that an individual will experience a significant gap in coverage.

Comment: We received comments requesting that Exchanges provide health insurance companies with the specific reason for a special enrollment period so that the health insurance company may determine during the benefit year if a change to a policy is a result of a special enrollment period or a modification to an existing policy.

Response: HHS has issued technical guidance, including the Standard Companion Guide Version 1.5 (issued March 22, 2013), which provides Exchanges with the information necessary to build the ability to send the reason for Special Enrollment Periods on the enrollment transaction. The FFEs also use a casework system to provide insurance companies with the type of special enrollment period being provided to a consumer.

Comment: A commenter requested that HHS reduce the number of special enrollment periods other than qualifying life events.

Response: We believe that the current special enrollment periods requirements appropriately account for changes in circumstances that necessitate when individuals would need to select a new or different qualified health plan and balance these needs with the administrative burdens of enrollment changes for issuers.

Comment: A commenter requested that all special enrollment periods be available both through the Exchange, and individual and small group market plans.

Response: We note that in accordance with § 147.104(b)(2) health insurance issuers in the individual market must provide a limited open enrollment period for the special enrollment periods provided in paragraph (d) of this section, with the exclusion of paragraphs (3), (8), and (9).

Comment: We received general support for the proposed changes to include non-Exchange entities in the special enrollment period where enrollment or non-enrollment in a qualified health plan through the Marketplace is a result of the error of the Exchange. Commenters noted concern regarding the subjectivity of defining an error of the Exchange and requested CMS outline the specific scenarios which would warrant such a special enrollment period.

Response: We believe the flexibility for Exchanges to determine when a special enrollment period is warranted due to an error of the Exchange protects consumers. HHS has issued guidance and will continue to issue guidance, as needed, related to how Exchanges define errors of the Exchange in accordance with paragraph (d)(4) of this section.

Comment: We received a comment that HHS provide clarification that the existing special enrollment period available for loss of minimum essential coverage (MEC) at paragraph (d)(1)(i) should not be triggered when a

consumer's policy ends at the end of the benefit year because guaranteed renewability prevents the consumer from losing their coverage.

Response: We do not think the recommended clarification is necessary. The existing language in the final rule specifies that the date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan is sufficient. We also note the availability of the special enrollment period in § 155.420(d)(1)(ii) for consumers in individual market plans with non-calendar year plan years.

d. Termination of Exchange Enrollment or Coverage (§ 155.430)

Under our current rules, § 155.430(b)(1) requires an Exchange to permit an enrollee to terminate his or her coverage in a qualified health plan (QHP) following appropriate notice to the Exchange or the QHP. We proposed to amend this paragraph by adding a sentence to clarify that, to the extent the enrollee has the right to cancel the coverage under applicable State laws, including ''free look'' cancellation laws—that is, laws permitting cancellation within a certain period of time, even following effectuation of the enrollment, the enrollee may do so, in accordance with the requirements of such laws. Furthermore, we proposed to amend § 155.430(d)(2) to add a new paragraph (d)(2)(v) allowing a retroactive termination effective date when an enrollee initiates the termination, if specified by applicable State laws, such as ''free look'' provisions.

Additionally, we proposed to amend § 155.430(b)(1) by removing the language requiring the appropriate notice to the Exchange or QHP since the notice requirement is addressed in § 155.430(d) and this would give greater flexibility for other enrollee initiated terminations where appropriate notice is not defined.

We also proposed to explicitly state that the requirement for Exchanges to ensure appropriate actions are taken in connection with retroactive terminations, currently set forth in paragraph (d)(6) regarding special enrollment periods, applies to all retroactive terminations, including valid cancellations of coverage under a ''free look'' law. To do so, we proposed to move the applicable language to a new paragraph (d)(8). We also proposed to add reconciliation of Exchange user fees to the list of items Exchanges would need to address. Under that requirement, the Exchange will ensure that appropriate actions are taken to make necessary adjustments to advance payments of the premium tax credit, cost-sharing reductions, Exchange user fees, premiums, and claims, while adhering to any State law. We noted that, under our proposal, the enrollee would not become eligible to receive a special enrollment period as a direct result of the ''free look'' cancellation.

We also proposed to add a new paragraph (b)(1)(iii) which would require Exchanges to establish processes for a third party to report the death of a consumer.

We noted that we interpret market-wide guaranteed availability and renewability requirements to mean that a QHP offered through the Exchange must generally be available and renewable outside the Exchange. We proposed to make changes to Exchange regulations that could be construed to limit coverage in a QHP to coverage through the Exchange. For example, we proposed to amend Exchange regulations referencing ''termination of coverage'' so that they appropriately refer to termination of enrollment through the Exchange and not necessarily termination of the coverage altogether.

We are finalizing the provisions proposed in § 155.430 of the proposed rule, with a minor modification. We are revising § 155.430(b)(1)(i) to specify that an enrollee has a right to terminate, and not just cancel coverage according to any applicable State law. Cancellation is a specific type of termination and, as further explained below, we want to accommodate State laws that provide for termination, not just cancellation. We also corrected a typographical error in § 155.430(b)(1)(iii). We also make conforming revisions to §§ 155.430, 155.735, 156.270, 156.285 and 156.290 of the Exchange and SHOP regulations to align them with our interpretation of the guaranteed availability and guaranteed renewability requirements, changing references to ''coverage'' to now also refer to ''enrollment through the Exchange,'' ''enrollment through the SHOP,'' or ''enrollment,'' as applicable.

Comment: Commenters, mainly issuers, opposed allowing termination of coverage after the coverage effective date, citing an increase in administrative costs and a potential to create a less healthy risk pool; many consumer advocates and the NAIC supported the free-look proposal. Other commenters stated that HHS should not establish specific requirements related to free look periods, but should explicitly state that issuers should continue to adhere to existing State laws for Exchange enrollees.

Response: Our intent in the proposed rule was to accommodate State laws that provided consumer protections such as ''free look'' provisions, to give consumers in States with such laws the right to terminate coverage in accordance with those laws. Therefore, the intent of the regulation is to ensure that issuers adhere to existing State laws for Exchange enrollees, not to create new Federal laws. Thus, this change should not increase the burden on issuers. To make sure that we do not unintentionally limit the applicability of these types of laws, we are finalizing § 155.430(b)(1)(i) to use the word ''terminate'' in place of ''cancel,'' specifying that the enrollee has the right to terminate their coverage under any applicable State laws.

Comment: Some commenters were concerned with the cost and burden of correcting financial information for retroactive terminations, and the uncertainty of payment for services as a result of retroactive terminations.

Response: We acknowledge that retroactive terminations may cause some administrative burden for correcting financial information. However, there are scenarios that currently exist in the Exchange that result in retroactive terminations. Furthermore, it remains necessary that the enrollment group pay the correct amounts for a given policy as already codified in § 155.430(d)(6). We note issuers and providers should continue to follow existing policies when dealing with retroactive terminations. Therefore, we are finalizing § 155.430(d)(8) to ensure that appropriate actions are taken to make necessary adjustments to advance payments of the premium tax credit, cost-sharing reductions, Exchange user fees, premiums, and claims, while to adhering to State law.

Comment: We received several comments urging that an SEP be given to consumers who exercise their free-look provision outside of open enrollment. These commenters suggested that the unavailability of an SEP significantly undercuts the value of the free-look provision.

Response: Granting an SEP for an individual exercising a retroactive termination under State law could result in multiple successive enrollments and terminations pursuant to a free look law, which we believe would create unwarranted burden on issuers and providers.

Comment: Several commenters asked us to clarify that the protection outlined in § 155.430 applies in States with ''free look laws.'' One commenter recommended that the protection apply more widely, including for States that have policies related to termination of coverage, like ''free look provisions,''

that may not be law but that are otherwise enforceable by the State. Another commenter expressed concern on deferring to State laws because of the resulting variance in applicable standards. The commenter recommended establishing Federal standards and allowing States the option to establish more protective standards.

Response: Our intent was to clarify that consumers in States with such laws have the right to terminate coverage in accordance with those laws. We do not intend to create Federal standards that give consumers additional reasons to terminate coverage. For States that have policies related to termination of coverage, like ''free look provisions,'' that may not be law but that are otherwise enforceable by the State, issuers must adhere to such policy as enforced by the State. Accordingly, we are finalizing § 155.430(b)(1)(i) to specify that the enrollee has the right to terminate their coverage under applicable State laws.

Comment: We received a comment recommending that HHS reflect retroactive termination dates on 834s and include termination reason codes.

Response: The 834s currently include the effective date of the termination as well as a high-level maintenance reason (INS04) and an additional maintenance reason indicating that the transaction is a termination or cancellation. We are working on future functionality to indicate more specific additional maintenance reasons for terminations and cancellations.

Comment: Commenters generally supported the proposed provisions that require Exchanges to establish a process for a third party to report the death of a qualified health plan enrollee. One commenter requested clarification regarding whether the report of death may be made to the issuer or the Exchange.

Response: We are finalizing this provision as proposed, and clarify that Exchanges have flexibility to establish a process for reporting the death of an enrollee. For instance, in the Federally-facilitated Exchange, the reporting of a death of an enrollee is initiated with the Exchange.

Comment: One commenter requested that an individual's agent or broker be able to report their client's death to the Exchange to initiate a termination of their coverage.

Response: An individual's agent or broker may report their client's death to the Exchange in accordance with the process established by the Exchange. Depending on the Exchange-specific procedures, the agent or broker may be required to submit documentation proving the death of the individual.

Comment: We received several comments on our proposal to conform the Exchange regulations with our interpretation of the guaranteed availability and renewability requirements. Many commenters supported the proposal. One commenter was concerned about Exchanges' ability to distinguish circumstances warranting termination of Exchange enrollment from circumstances warranting full termination of coverage. Another commenter was concerned about issuers' ability to seamlessly continue coverage of terminated Exchange enrollees outside the Exchange and recommended that HHS delay finalizing the proposal until its operational feasibility could be assessed.

Response: Loss of eligibility for enrollment in a QHP through the Exchange is not necessarily a basis for non-renewal or termination of an individual's or employer's coverage in the market outside the Exchange. Therefore, we make conforming amendments in this final rule to the following sections of the Exchange and SHOP rules: §§ 155.430, 155.735, 156.270, 156.285 and 156.290. These amendments are intended to more clearly distinguish termination of enrollment through the Exchange from termination of coverage with the issuer. Termination of coverage is governed by the guaranteed renewability provisions in section 2703 of the PHS Act and § 147.106. Therefore, § 156.270(a) is further amended to include to a cross-reference to § 147.106 to clarify when and how an issuer may terminate coverage under applicable law. We also made a conforming amendment in § 155.430(b)(2)(vi) clarifying that any of the exceptions to guaranteed renewability that would permit an issuer to terminate an enrollee's coverage also could be a basis for terminating enrollment through the Exchange.

We acknowledge the operational concerns of commenters, but note that these revisions are simply technical clarifications to eliminate potential conflict with the requirements that currently apply to issuers under sections 2702 and 2703 of the PHS Act. Furthermore, it is anticipated that, in most situations involving termination by the Exchange, such as decertification of the QHP or non-payment of premium, the issuer will know the reason for the termination. When the issuer knows the reason for Exchange termination and it is not a basis for non-renewal or termination of the enrollee's coverage, the issuer generally must continue the coverage outside the Exchange, at the option of the enrollee, in order to satisfy the issuer's responsibilities under the guaranteed renewability requirements, unless an exception applies. When the issuer does not know the reason for termination of an enrollee's Exchange enrollment, the issuer should continue the enrollee's coverage outside the Exchange if approached by the enrollee to do so, unless following investigation, the reason for the termination will permit the issuer to terminate the coverage.

5. Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

a. Eligibility Standards for Exemptions (§ 155.605)

In § 155.605, we proposed amendments to two hardship exemptions and a correction to a cross-reference. First, we proposed to amend § 155.605(g)(3) to permit an individual with gross income below the filing threshold and who is not a dependent of another taxpayer to qualify for a hardship exemption through the tax filing process and without having to obtain an exemption certificate number (ECN) from the Exchange. Second, we proposed amending § 155.605(g)(6)(i) to correct the citation to 42 CFR 447.50 by changing it to 42 CFR 447.51, which cross-references the Medicaid definition for Indian. Third, we proposed new paragraph § 155.605(g)(6)(iii) to align the exemption process for those individuals who are eligible for services through the Indian Health Service (IHS), a Tribal health facility, or an Urban Indian organization (collectively, ITU) with the process available to members of Federally-recognized Tribes. Specifically, the proposed amendment will provide individuals who are eligible for services through an ITU to claim an exemption on their Federal income tax return without obtaining an ECN.

We are finalizing the provisions as proposed.

Comment: Comments on this provision supported the proposed changes. We received a few comments noting that, despite this additional avenue to receive an exemption, some American Indians/Alaskan Natives (AI/ANs) who qualify for a recurring ECN may continue to prefer the Exchange exemption process rather than claiming an exemption annually through the Federal tax-filing process. For this reason, these commenters encouraged CMS to retain and improve the Exchange exemption application process.

Response: We remain committed to improving the Exchange exemptions process. We note that the Exchange exemptions process remains available to AI/ANs under § 155.605(f) and (g)(6)(i).

b. Required Contribution Percentage (§ 155.605)

Under section 5000A of the Code, an individual must have minimum essential coverage for each month, qualify for an exemption, or make a shared responsibility payment with his or her Federal income tax return. Section 5000A of the Code and section 1311(d)(4)(H) of the Affordable Care Act authorizes the Secretary to determine individuals' eligibility for exemptions, including the hardship exemption. Under section 5000A(e)(1) of the Code, an individual is exempt if the amount that he or she would be required to pay for minimum essential coverage (required contribution) exceeds a particular percentage (the required contribution percentage) of his or her actual household income for a taxable year. In addition, under § 155.605(g)(2) an individual is exempt if his or her required contribution exceeds the required contribution percentage of his or her projected household income for a year. Finally, under § 155.605(g)(5), certain employed individuals are exempt if, on an individual basis, the cost of self-only coverage is less than the required contribution percentage but the aggregate cost of self-only coverage through employers exceeds the required contribution percentage and no family coverage is available through an employer at a cost less than the required contribution percentage.

The required contribution percentage for 2014 is 8 percent under section 5000A(e)(1)(A) of the Code. Section 5000A(e)(1)(D) of the Code and 26 CFR 1.5000A–3(e)(2)(ii) provide that for plan years after 2014, the required contribution percentage is the percentage determined by the Secretary that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period. In the 2015 Market Standards Rule, we established a method for determining the excess of the rate of premium growth over the rate of income growth each year, and published the 2015 rate. We stated that future adjustments would be published annually in the HHS notice of benefit and payment parameters.

Under the method previously established, the rate of premium growth over the rate of income growth for 2016 is the quotient of (x), which is equal to one plus the rate of premium growth between the preceding year (in this case, 2015), and 2013, carried out to ten significant digits, divided by (y), which is equal to one plus the rate of income growth between the preceding year (2015), and 2013, carried out to ten significant digits.[42] The result of this calculation is carried out to ten significant digits and multiplied by the required contribution percentage specified in section 5000A(e)(1)(A) of the Code (8.00 percent). The result is then rounded to the nearest hundredth of a percent, to yield the required contribution percentage for 2016.

Under the methodology described above, the total rate of premium growth for the 2-year period from 2013–2015 is 1.0831604752, or 8.3 percent. We describe the methodology for obtaining this number below in § 156.130(e). In the 2015 Market Standards rule, we also established a methodology for calculating the rate of income growth for the purpose of calculating the annual adjustment to the required contribution percentage.

The measure of income growth is based on projections of per capita Gross Domestic Product (GDP) used for the National Health Expenditure Accounts (NHEA), which is calculated by the CMS Office of the Actuary. Accordingly, using the NHEA data, the rate of income growth for 2016 is the percentage (if any) by which the most recent projection of per capita GDP for the preceding calendar year ($56,660 for 2015) exceeds the per capita GDP for 2013, ($53,186), carried out to ten significant digits. The total rate of income growth for the 2-year period from 2013–2015 is estimated to be 1.0653179408 or 6.5 percent. We note that the 2013 per capita GDP used for this calculation has been updated to reflect the latest NHEA data.

Thus, the excess of the rate of premium growth over the rate of income growth for 2013–2015 is 1.0831604752/1.0653179408, or 1.0167485534, or 1.7 percent. This results in a required contribution percentage for 2016 of 8.00*1.0167485534, or 8.13 percent, when rounded to the nearest one-hundredth of one percent.

We received no comments on the calculation of the required contribution percentage and are therefore finalizing the percentage as proposed.

[42] We defined premium growth for this measure as the same annually adjusted measure of premium growth used below in this rule to establish the annual maximum and reduced maximum limitations on cost sharing for plan benefit designs. That is, the premium adjustment percentage.

6. Exchange Functions: Small Business Health Options Program (SHOP)

a. Standards for the Establishment of a SHOP (§ 155.700)

We proposed to amend § 155.700(b) such that the previous definition of ''group participation rule'' would conform with the terminology we proposed to use in § 155.705(b)(10). Specifically, we proposed to modify the term to refer to a ''group participation rate,'' which is a minimum percentage of all eligible individuals or employees of an employer that must be enrolled.

We received no comments on this proposal and we are finalizing this amendment as proposed.

b. Functions of a SHOP (§ 155.705)

In § 155.705, we proposed to redesignate paragraph (b)(4)(ii)(B) as new paragraph (b)(4)(ii)(C), redesignate paragraph (b)(4)(ii)(A) as new paragraph (b)(4)(ii)(B), add new paragraph (b)(4)(ii)(A), and amend paragraphs (b)(4)(i)(B), (b)(7), and (b)(10).

In the proposed amendment to paragraph (b)(4)(i)(B) and proposed new paragraph (b)(4)(ii)(A), we proposed to permit the SHOP to assist a qualified employer in the administration of continuation coverage in which former employees seek to enroll through the SHOP. We proposed that where a qualified employer is offering Federal or State continuation coverage,[43] and where a SHOP has entered into an agreement with a qualified employer to provide this service, the SHOP may assist the employer in administration of such coverage by billing for and collecting premiums for the continuation coverage directly from the covered employee or qualified beneficiary, rather than the employer, if the qualified employer elects to have the SHOP carry out this function. We sought comment on the interaction of the FF–SHOP's payment grace periods and termination policies at § 155.735 with the COBRA rules the IRS has codified at 26 CFR part 54. We are finalizing the proposed changes to § 155.705(b) with a modification to clarify that individuals other than former employees might be enrolled in continuation coverage through a SHOP, and we are also amending § 155.735 to better align the SHOP rules with the IRS's COBRA rules in light of the comments discussed below.

We considered whether the FF–SHOP should accept premium payment using a credit card. Currently, qualified employers participating in the FF–

[43] 29 U.S.C. 1161, *et seq.* (''COBRA'') or applicable State law.

SHOP may only pay premiums to the FF–SHOP using a check or bank draft. We sought comment on the extent to which employers would use this option. Some commenters stated that it may be more convenient for a small employer to pay by credit card than by check or bank draft. However, in light of the comments discussed below, HHS does not intend to take action on this policy at this time.

We also proposed to revise paragraph (b)(7) to align the SHOP regulations with the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93), which repealed requirements related to deductible maximums for employer-sponsored coverage at section 1302(c)(2) of the Affordable Care Act. This proposal would remove the only reference in the SHOP regulations to the requirements of Affordable Care Act section 1302(c)(2). We did not receive any comments on the proposed revisions to paragraph (b)(7) of this section and are finalizing this proposal as proposed.

In paragraph (b)(10), we proposed to modify the calculation of minimum participation rates in the SHOP. We proposed that a SHOP (either a State-based or an FF–SHOP) that elects to establish a minimum participation rate would be required to establish a single, uniform rate that applies to all groups and issuers in the SHOP, rather than establishing general rules about minimum participation rates or a threshold over which the minimum percentage may not be raised. We also proposed that if a SHOP authorizes a minimum participation rate, such a rate would have to be based on the rate of employee participation in the SHOP and in coverage through another group health plan, governmental coverage (such as Medicare, Medicaid or TRICARE), coverage sold through the individual market, or in other minimum essential coverage, and not on the rate of employee participation in any particular QHP or QHPs of any particular issuer. We proposed that State-based SHOPs would be expected to conform to the proposal by its effective date.

In paragraph (b)(10)(i), we proposed to amend existing language about employees accepting coverage under the employer's group health plan to instead refer to employees accepting coverage offered by a qualified employer to better account for employee choice.

We also proposed to amend paragraph (b)(10)(i) regarding how the minimum participation rate would be calculated in the FF–SHOP. We proposed to calculate the minimum participation rate in the FF–SHOP as the number of full-time employees accepting coverage offered by the qualified employer through the SHOP plus the number of full-time employees who are enrolled in coverage through another group health plan, in governmental coverage (such as Medicare, Medicaid or TRICARE), in coverage sold through the individual market, or in other minimum essential coverage, divided by the number of full-time employees offered coverage through the SHOP.

We sought comment on whether this definition of which employees would be included in the calculation should be extended beyond the SHOP to the entire small group market to create uniformity among issuer practices and prevent further gaming by issuers through their use of non-standard definitions for other acceptable coverage.

We are finalizing the proposed amendments to paragraph (b)(10) with modifications. We are modifying the proposed amendments to the language following (b)(10); adding the amendments we proposed at paragraph (b)(10)(i) at a new paragraph (b)(10)(ii); amending current paragraph (b)(10)(i) to reflect that it will remain in effect for plan years beginning prior to January 1, 2016; and redesignating paragraph (b)(10)(ii) as (b)(10)(iii) and making a minor conforming amendment to that paragraph to reflect the addition of new paragraph (b)(10)(ii). The modifications clarify that the amendments to the minimum participation rate calculation methodology requiring counting of employees accepting coverage offered by the qualified employer through the SHOP, and counting of employees enrolled in coverage through another group health plan, in governmental coverage (such as Medicare, Medicaid, or TRICARE), in coverage sold through the individual market, or in other minimum essential coverage, will apply only to the FF–SHOP, effective for plan years beginning on or after January 1, 2016. For plan years beginning prior to January 1, 2016, the FF–SHOP will apply the methodology at current (b)(10)(i). We are also modifying paragraph (b)(10)(i) to explain that former employees would be excluded from the calculation of minimum participation rates in the FF–SHOP under the methodology that will remain in effect for plan years beginning prior to January 1, 2016, to ensure that the same methodology currently being used will continue to be used after the modification to the definition of qualified employee in this rule takes effect. State-based SHOPs and small group markets outside of the Exchanges are not expected to conform to the amended calculation methodology.

Comment: Several commenters supported the proposal that would permit a SHOP to bill for and collect premiums for COBRA. One commenter disagreed with the policy. One commenter requested that HHS preserve the flexibility proposed for SHOPs to determine whether they wish to offer this service.

Many commenters requested that HHS align SHOP rules with applicable COBRA standards and work with the applicable agencies to ensure clarity. These commenters expressed concern that a lack of harmony between the SHOP rules, COBRA standards, and requirements from other Federal agencies would lead to confusion. One commenter requested HHS specify which IRS rules are applicable.

Response: As we indicated in the preamble to the proposed rule, the IRS has promulgated rules regarding the administration of COBRA continuation coverage at 26 CFR 54.4980B, *et seq.* Our SHOP regulations do not affect or narrow an individual's existing substantive and procedural rights under COBRA or other Federal agencies' rules interpreting COBRA. To harmonize existing SHOP rules regarding terminations of coverage with the IRS's COBRA rules at § 54.4980B–8, we are adding paragraphs (c)(2)(iv) and (c)(3) to § 155.735 in this final rule. Paragraph (c)(2)(iv) is necessary because, in cases other than COBRA continuation coverage, the FF–SHOP does not provide an additional grace period for payments less than the total premium amount due for a group's cost of coverage. Paragraph (c)(3) is necessary to specify that the section does not modify existing obligations under 26 CFR 54.4980B.

To further align with existing COBRA requirements, including COBRA eligibility for dependents and former dependents, we are modifying the language of paragraph (b)(4)(ii)(A) of § 155.705 to permit the collection of such premiums from any person enrolled in continuation coverage through the SHOP consistent with applicable law and the terms of the group health plan. For improved clarity, we are also replacing the reference in proposed § 155.705(b)(4)(ii)(A) to ''Federally mandated continuation coverage'' with a reference to continuation coverage required under 29 U.S.C. 1161, *et seq.*

Comment: One commenter stated that SHOPs should also administer required notices that relate to continuation of coverage.

Response: HHS continues to examine the feasibility of expanding SHOP's flexibility to support additional COBRA

administration functions, including COBRA notification requirements. Significant modifications may be necessary to existing SHOP rules to ensure conformity with existing IRS rules if a SHOP were to fully administer COBRA on behalf of an employer. Therefore, HHS does not intend to take action on this policy at this time.

Comment: Some commenters stated that both a State-based SHOP's and a FF–SHOP's implementation of continuation coverage administration should extend to State-mandated continuation coverage. Some commenters expressed concern that limiting FF–SHOP continuation coverage support to COBRA may cause confusion among small employers regarding responsibility for continuation coverage requirements. Another commenter requested relief from existing SHOP payment rules requiring the flow of funds through the SHOP where a SHOP fails to provide payment support for continuation coverage.

Response: The finalized language does not require SHOPs to limit this service to the collection of premiums related to Federal continuation coverage. Both State-based SHOPs and the FF–SHOP may elect to collect payments related to State-required continuation coverage sold through the SHOP on behalf of small employers.

We continue to examine applicable State law to determine the feasibility of the FF–SHOP providing this service for both State and Federal continuation coverage. Variation in State continuation coverage laws would add substantial complexity to the FF–SHOP's implementation of premium collection for State continuation coverage. Therefore, the FF–SHOP may more quickly provide relief to small employers by first supporting COBRA continuation coverage administration while HHS determines how it may best support State-mandated continuation coverage.

HHS continues to believe that the flow of funds through the SHOP best supports the administration of employee choice and therefore is not modifying existing requirements related to the flow of funds through the SHOP.

Comment: One commenter sought clarification on how continuation coverage would be operationalized, including whether 820 and 834 transactions will identify members covered under continuation coverage.

Response: HHS recognizes that QHP issuers will need substantially more detailed information to effectively integrate with a SHOP facilitating continuation coverage. If the FF–SHOP implements administration of premiums for continuation coverage, HHS intends to issue further guidance.

Comment: We received several comments about whether the FF–SHOP should accept premium payments made with a credit card. Several commenters were in favor of this idea. However, these commenters also noted that HHS should consider the benefits of this option against the costs that will be incurred with this additional functionality. Some commenters opposed accepting premium payments through a credit card and were particularly concerned about the fees associated with the use of a credit card. Some commenters recommended that the credit card fee should be included as part of the user fee that HHS is already collecting, while other commenters stated that the credit card fee should be borne by the FF–SHOP and not issuers. One commenter noted that the cost of the credit card fee will add to the cost of coverage for consumers and may impact the calculation of the Medical Loss Ratio if it is considered an administrative cost payable by an issuer. One commenter believed that the use of credit cards to make premium payments should not be limited to the initial payment, and instead should be used for recurring payments.

Response: HHS will continue to consider whether there is a cost-effective way to permit employers to pay premiums through the SHOP with a credit card. HHS does not intend to take action on this policy at this time.

Comment: We received one comment on our proposed amendments to the SHOP rules about the minimum participation rate in § 155.705(b)(10), asking whether issuers may maintain varying participation requirements based on group size if this policy is finalized to extend to the small group market outside the SHOP. We also received comments on the proposed calculation methodology for calculating the minimum participation rate. Some commenters supported our proposal and some believed that our proposed methodology will weaken the ability of the FF–SHOP to protect against adverse selection and is not considered common market practice. One commenter recommended not including individuals with coverage in the individual market Exchanges because it undercuts employer-based coverage. One commenter stated that minimum participation rates are a barrier to coverage for businesses.

While we received some comments supporting the extension of our proposed policy to the entire small group market, several commenters opposed such an extension, including State-based SHOPs. One commenter opposed our proposal because SHOP issuers are protected by programs that issuers not participating in the SHOP are not protected by, such as the risk corridors program. Several of these commenters stated that the off-Exchange market should use a methodology that works best for their market and State, and that it should be up to the State to establish how to calculate the minimum participation rate inside and outside of the Exchanges.

In addition to these comments, we received queries on how HHS would verify the coverage of individuals included in the calculation of the minimum participation rate. Several commenters also asked for details on the one-month exception period for minimum participation rates.

Response: We are finalizing a policy under which a SHOP (either a State-based SHOP or an FF–SHOP) that elects to establish a minimum participation rate would be required to establish a single, uniform rate that applies to all groups and issuers in the SHOP, rather than establishing general rules about minimum participation rates or a threshold over which the minimum percentage may not be raised. Under the methodology we have finalized for calculating a minimum participation rate, a SHOP cannot vary its minimum participation rate based on the employer group size. In the final rule, we are modifying the proposal to give State-based SHOPs the flexibility to establish a different minimum participation rate calculation methodology than the one being finalized for the FF–SHOP, but State-based SHOPs must continue to base the rate on employee participation in the SHOP or in the SHOP and other coverage (as in the FF–SHOP), and may not base the rate on employee participation in a particular QHP or QHPs of any particular issuer. We believe that providing State-based SHOPs with this flexibility will allow States to set a calculation methodology that aligns with their current market practice. We are also finalizing our proposal on the calculation of the minimum participation rate in the FF–SHOP and who is included in the methodology, but are modifying the proposal to specify that the new FF–SHOP calculation methodology will take effect only for plan years beginning on or after January 1, 2016. For plan years beginning before January 1, 2016, the calculation methodology currently in place for the FF–SHOP will remain in effect.

We note that consistent with current § 155.705(b)(10)(ii) (which is

redesignated at § 155.705(b)(10)(iii) in this rule), the FF–SHOP may establish a different minimum participation rate in a State if there is evidence that a State law sets a different minimum participation rate or that a higher or lower minimum participation rate is customarily used by the majority of QHP issuers in the State for products in the State's small group market outside the SHOP. HHS considered various minimum participation rate calculation methodologies, and believes that the calculation methodology we are finalizing for the FF–SHOP aligns with current practice in many States' small group markets. The difficulty of verifying other coverage exists today in the market and is not exacerbated by this rule. Additionally, HHS believes that using this approach to calculating minimum participation rates reduces unnecessary barriers for employer groups seeking to cover their employees because the calculation includes individuals with other forms of coverage, thus making it easier for employer groups to reach the required minimum participation rate. By including in the calculation individuals with individual market coverage, we believe this methodology does not undercut employer-based coverage, but rather treats employers fairly. Under the approach taken in the final rule to accommodate for State-specific policies, State-based SHOPs may use a calculation methodology that aligns with current market practice in their State, and that works best for their market and State, and are therefore not required to follow the same calculation methodology as will apply in the FF–SHOPs.

The final rule does not modify or eliminate the one-month period between November 15 and December 15 of each year, during which employer groups may enroll in coverage notwithstanding any employer contribution or group participation rules under § 147.104(b)(1)(i)(B). Thus, SHOPs may not apply the minimum participation rate to prevent initial enrollments and renewals that occur during this one-month period.

We do not believe the proposed modification to calculation of the FF–SHOP minimum participation rate will result in significant adverse selection. In some States in which the FF–SHOP currently operates, its minimum participation rate is more restrictive on enrollment than the rate currently generally applied by issuers in the market. The proposed modifications to the FF–SHOP's minimum participation rate will align the calculation of the rate with current practices in these States by including other sources of coverage in the calculation. We acknowledge that this change will make the FF–SHOP's minimum participation rate more inclusive than minimum participation rates in the market in some other States. However, under current law, no group may be excluded from the small group market altogether because it fails to meet a minimum participation rate. Any group may enroll during the annual month-long period under § 147.104(b)(1)(B) during which no minimum participation rate can be applied to deny coverage. Further, the new methodology for the participation rate calculation is only more permissive in that it lets in groups with additional sources of other coverage. There is no basis to suggest that such a group represents worse than average risk.

c. Eligibility Standards for SHOP (§ 155.710)

In § 155.710, we proposed to amend paragraph (e) to specify that where an employer has offered dependent coverage, a qualified employee would be eligible to enroll his or her dependents in coverage through the SHOP.

We received a comment supporting our proposal. We are finalizing our amendment as proposed.

d. Enrollment of Employees Into QHPs Under SHOP (§ 155.720 and § 156.285)

In § 155.720, we proposed to remove paragraph (b)(7),which requires all SHOPs to establish effective dates for employee coverage in the SHOP, and to make minor conforming changes to the list structure in paragraph (b). Current § 155.720(b)(7) is redundant in light of the proposed requirements to establish effective dates under § 155.725, which we are finalizing as proposed.

We received no comments on these proposed amendments. We are finalizing the amendments as proposed.

We proposed to amend paragraph (e), which provides that issuers must notify SHOP consumers regarding coverage effective dates so that the provision would refer to enrollees and not qualified employees, and proposed to remove a reference in this section to § 156.260(b), in keeping with the proposed amendments to § 155.725 regarding coverage effective dates. Under the proposal, issuers would be required to provide this notice to anyone who enrolled in coverage through the SHOP under the proposed amendments to the definitions of qualified employee and enrollee, including dependents (including a new dependent of the employee, when the dependent separately joins the plan), former employees of a qualified employer, and certain business owners. We noted that the notices required under this proposal could be incorporated into existing notifications that QHPs provide to their new customers, for example in a welcome document. We also proposed a conforming amendment to § 156.285(c) to ensure that QHP issuers participating in the SHOP would provide notice to a new enrollee of the enrollee's effective date of coverage.

We are finalizing the provisions with the modifications noted below.

Comment: We received several comments on our proposed amendments to effective date notices pursuant to § 155.720(e). Some commenters supported continuing to require issuers to send the required notices, while others stated that the notice requirement should be shifted to the SHOP. We also received comments on expanding the notice requirement to the amended definition of an enrollee, which includes dependents. Some commenters stated that notices regarding the coverage effective date should only be provided to qualified employees and adult dependents. Some commenters stated that these notices should be provided separately to dependents of qualified employees if the last known address for the dependent is different from the subscriber. We also received one comment requesting additional time and flexibility for issuers to implement the notice requirement for dependents under the new definition of an enrollee.

Response: We agree that generally, when a dependent lives with the qualified employee, separate notification to the dependent is duplicative. As such, we are modifying the proposal to specify that when a primary subscriber and his or her dependents live at the same address, a separate notice need not be sent to each dependent at that address, so long as the notice sent to each primary subscriber at that address contains all the required information about the coverage effective date for the primary subscriber and each of his or her dependents at that address. We note that when dependents live at a different address from the primary subscriber a separate notice must be sent to those dependents.

Amending the definition of an enrollee and amending § 155.720(e) to require notice to enrollees will create additional notice obligations for issuers. To permit issuers to update their systems and fulfill this requirement, we will provide issuers until plan years beginning on or after January 1, 2017 to fulfill the requirement of sending

effective date notices to enrollees other than qualified employees. Because issuers have already been providing these notices to qualified employees under the current rule, we do not believe the inclusion of former employees that is being finalized in this rulemaking presents similar system challenges. Thus, issuers will be required to send the notices to everyone who meets the new definition of qualified employee as soon as this rule takes effect. We are providing an additional year only for issuers to begin providing notice to enrollees other than qualified employees.

We are also making minor changes to the wording of the proposed requirement at 156.285(c)(3), so that the final rule refers to a requirement to ''notify'' new enrollees, rather than to ''provide'' them ''with notice.''

e. Enrollment Periods Under SHOP (§ 155.725 and § 156.285)

We proposed to amend paragraphs (a), (g), (h), and (j)(5) of § 155.725 and § 156.285(b)(1) and (b)(4) to provide clarity regarding the effective dates for coverage that all SHOP Exchanges must establish. First, we proposed to remove the reference at current § 155.725(a)(1) to the start of the initial open enrollment period for 2014 coverage, and the reference in current § 155.725(a)(2) to § 156.260. We proposed to remove the reference to effective dates under § 156.260 because we are proposing to specify effective dates in § 155.725 or to more directly cross-reference the appropriate effective date. Second, we proposed to amend § 155.725(h) so that SHOPs would need only establish effective dates for employees enrolling in coverage during the initial group enrollment and the employee annual open enrollment period, rather than for special enrollment periods. At proposed paragraph (h)(2), we also codified the effective dates for coverage in the FF–SHOP for enrollments during initial and annual open enrollment periods. Specifically, we proposed to include language in the SHOP regulations specifying the same effective dates that were previously adopted for the FF–SHOP under our interpretation of the cross reference in § 156.285(b)(4) to § 156.260, which in turn cross-references § 155.410(c). We noted that the dates set forth in § 155.725(h)(2) would apply only to the FF–SHOP and State-based SHOPs would be free to establish their own effective dates for initial and annual open enrollment.

Third, we proposed several amendments to paragraph § 155.725(g) regarding enrollment for newly qualified employees. A newly qualified employee is an employee who becomes eligible to participate in the employer's group health plan outside of a qualified employer's initial or annual enrollment period; for example, because he or she was hired outside of those periods. We proposed to move paragraph (g) to paragraph (g)(1), and proposed amendments to the existing language to make explicit our interpretation of current paragraph (g), which is that a newly qualified employee becomes eligible for an enrollment period that begins on the first day of becoming a newly qualified employee regardless of whether the employee is subject to a waiting period. Additionally, we proposed that the duration of a newly qualified employee's enrollment period be at least 30 days. Where the employee is subject to a waiting period in excess of 45 days, we proposed that the duration of the employee's enrollment period extend until 15 days before what would be the conclusion of the waiting period if the employee selected a plan on the first day of becoming eligible. We noted that if an employee waits to choose a plan until the end of such an extended enrollment period, this could have the effect of further delaying the effective date of coverage, consistent with § 147.116(a). We also proposed to add a new paragraph (g)(2) in § 155.725 to provide that the effective date for a newly hired employee would be determined using the same rule for initial and open enrollments that would be established by the SHOP under proposed § 155.725(h). Thus, in the FF–SHOP, coverage effective dates for newly qualified employees would be established according to § 155.725(h)(2): Plan selections made between the first and the fifteenth day of any month would be effective the first day of the following month, and plan selections made between the 16th and the last day of any month would be effective the first day of the second following month. A newly qualified employee may also be subject to a waiting period under § 147.116, however, and in such cases, the effective date may be on the first day of a month that is later than the month in which coverage would take effect under the usual rules established by the SHOP under § 155.725(h). However, in no case could the effective date fail to comply with the limitations on waiting period durations at § 147.116 of this subchapter.

Fourth, we proposed to amend paragraph § 155.725(j)(5) to make it clearer that the effective dates for special enrollment periods in the SHOP should be determined according to § 155.420(b).

Fifth, we proposed to harmonize § 156.285(b)(1) and (4) with the proposed amendments to effective dates described above, to specify that QHP issuers must abide by the effective dates established under § 155.725, and must enroll qualified employees in accordance with the qualified employer's initial and annual enrollment periods in § 155.725.

We also proposed to amend § 155.725(b) to harmonize rolling enrollment in the SHOP with the regulations applicable to guaranteed availability in States with merged individual and small group markets. Section 147.104(f), as moved from § 147.104(b)(2) by this rule, requires that all individual and small group health insurance coverage sold in a State with merged individual and small group risk pools be offered on a calendar year basis, meaning that it must end on December 31 of the year in which the policy was issued. Section 155.725(b), in contrast, requires that SHOPs permit qualified employers to purchase coverage for a small group at any point throughout the calendar year, and that SHOPs ensure that a participating group's plan year lasts for 12 months beginning with the first effective date of coverage. Section 155.725(b) was intended to ensure that qualified employers can offer health insurance through the SHOP at any point during the year while receiving a guaranteed rate 12 months following the purchase of coverage, consistent with the current practice in the small group market. We proposed to harmonize these two provisions in States with merged markets, by proposing that SHOP plan years in a State with merged risk pools would terminate on December 31st of the year in which they began, even if certain qualified employers' plan years would thus be shorter than 12 months. This proposal would not affect a small employer's ability to enroll in coverage at any point in the year. Instead, it would standardize the renewal date of such a plan in a State with merged risk pools at the beginning of each calendar year.

We also proposed to modify paragraph (i) to permit a SHOP to elect to renew a qualified employer's offer of coverage where the employer has taken no action during its annual election period to modify or withdraw the prior year's offer of coverage. The qualified employer's offer would not be automatically renewed under this proposal if the employer is no longer eligible to participate in the SHOP. Renewal of the coverage offer would

also not be automatic if the employer is offering a single QHP and that QHP will no longer be available through the SHOP. We proposed this modification at the request of State-based SHOPs that desire to conform to existing small group market practice regarding automatic annual renewal of coverage for an employer group. A SHOP would not be required to implement this rule.

Finally, we proposed to add paragraph (k) to make clear that SHOP coverage may not be effectuated if the policy may not be issued to the employer because the group fails to meet an applicable minimum participation rate calculated at the time of initial group enrollment or renewal, subject to § 147.104(b)(1)(i)(B).

We did not receive comments on the proposed amendments to § 156.285(b)(1) and (4), and are finalizing them as proposed. We are also finalizing the provisions under § 155.725 as proposed.

Comment: We received one comment on establishing effective dates for employees enrolling in coverage during the initial group enrollment and the annual open enrollment period. The commenter supported our proposed provision because it establishes flexibility for State-based SHOPs to establish their own effective dates during the initial and annual open enrollment periods, including mid-month effective dates. Commenters supported the proposed provision to keep effective dates for special enrollment periods standardized. Some commenters supported the proposed provision to ensure effective dates for special enrollment periods are consistent with § 155.420(b). One commenter opposed the effective dates for special enrollment periods under § 155.725(j) and recommended allowing States flexibility to prescribe their own effective dates for initial, annual, and special enrollment periods, because there may be other implications to the effectuation of coverage for employees and dependents with a special enrollment period.

Response: We are finalizing the provisions as proposed. We believe that the proposed amendments allow flexibility for State-based SHOPs to set and maintain effective dates for initial and annual open enrollment periods to accommodate coverage effective dates for a group as soon as possible under local market conditions. Coverage effective dates for initial and annual open enrollment periods for the FF–SHOP will be finalized as proposed to create a uniform enrollment timeline. We continue to believe that the effective dates for special enrollment periods should be standardized for all SHOPs to ensure a minimum standard for special enrollment periods. We note that pursuant to § 155.420, SHOPs have existing authority to set earlier effective dates for certain special enrollment periods.

Comment: We received several comments on the timeline for an employee to select a SHOP plan as it relates to employee waiting periods. Some commenters supported our proposed policy on employee enrollment periods and waiting period rules. One commenter noted that a scenario could arise where an employee would need to select a SHOP plan on a timeline that does not align with the waiting period.

Response: We are finalizing our provision as proposed. SHOPs should ensure that an employee waiting period does not exceed the duration permitted under § 147.116. State-based SHOPs may continue to set their own rules regarding enrollment timelines for newly qualified employees so long as such rules comply with § 147.116.

Comment: We received comments supporting the proposed enrollment process for newly qualified employees. These commenters stated the process provides sufficient time for employees to select a plan. One commenter stated that an employee election period of more than 30 days may cause confusion to consumers and may cause significant IT modifications for issuers.

Response: We are finalizing the provision as proposed. We note that while the rule sets a 30-day minimum for a newly qualified employee's enrollment period, it does not require a SHOP to provide an enrollment period in excess of 30 days to newly qualified employees. A longer enrollment period might, however, be mandated by State law or permitted under the terms of the plan. Because this rule provides only for a minimum length, which already constitutes common market practice, finalizing this rule is not expected to cause consumer confusion or necessitate IT modifications.

Comment: We received several comments on our proposed policies to harmonize our provision on rolling enrollment in a merged market. We received a comment supporting rolling enrollment in States with a merged market. Some commenters stated they believed our proposed policies would be disruptive to States with merged markets. One commenter asked HHS to develop a more targeted set of policy solutions to address the specific issues associated with enrollment timelines in States with merged markets. One commenter asked HHS to clarify whether States with markets that are merged only for purposes of State law, but not Federal law, are subject to these proposed rules.

Response: We are finalizing our provision as proposed. We continue to believe that rolling enrollment in States with merged markets provides employers an opportunity to offer health insurance through the SHOP at any point during the year, pursuant to our policies on guaranteed availability. We are not limiting small employer groups in States with a merged market to the individual market enrollment periods or otherwise prohibiting them from seeking coverage at any point during the year. However, to align with the requirements to offer plans in the merged market on a calendar year basis pursuant to § 147.104(f), as moved from § 147.104(b)(2) by this rule, SHOP coverage with a plan year starting at any time during the year would have the plan year end on December 31 and renew effective January 1 of the following year. Rolling enrollment in the SHOP, as it aligns with this policy, would allow for plan years shorter than 12 months. For coverage that has an effective date after January 1, a 12-month plan year would not align with the requirement for coverage to be offered on a calendar year basis, and is therefore not permitted in States with merged markets. We note that the additional language finalized in this rule at § 155.725(b) is only applicable in States that have merged their markets under section 1312(c)(3) of the Affordable Care Act. This language does not apply in States with markets that are not considered to be merged for purposes of Federal law.

Comment: Several commenters supported the proposal permitting automatic renewal of employers' offers of coverage. One commenter asked HHS to specify what it means to become ineligible for SHOP coverage and to specify whether an employer may be eligible for automatic renewal if the employer group falls below one non-owner full-time equivalent employee. We also received a comment asking HHS to specify if States may renew an employer's coverage if the employer's Employee Identification Number (EIN) changes provided that the employer retains the same legal identity. We also received a comment opposing automatic renewals and requests that HHS streamline processes to allow employer groups to quickly update only necessary information for a more simplified re-enrollment process. It was also recommended that agents and brokers be provided with an opt-in or opt-out choice for employees rather than an automatic renewal.

Response: We are finalizing our provision as proposed. We do not believe that a streamlined process to allow employer groups to update information about their group is necessary because qualified employers are already required to update this information to the SHOP throughout the plan year. *See* § 157.205(f). We believe our broad provision regarding SHOP coverage renewal will provide employer groups and their employees and enrollees an efficient way to renew and avoid any gaps in their coverage. Because not all groups work with an agent or broker, we believe that providing agents and brokers with an opt-in or opt-out choice for employees will not cover the universe of renewals that will occur.

An employer is considered eligible to participate in the SHOP if it is a ''small employer'' as defined in § 155.20 and if it meets the requirements set forth at § 155.710(b). To qualify, employers must have at least one employee who is not the owner or the spouse of the owner.[44] With one limited exception, if a group fails to meet any of these eligibility criteria, including if it no longer has at least one employee who is not the owner or the owner's spouse, it may not renew coverage through the SHOP. The limited exception applies, under § 155.710(d), to employers that cease to be small employers solely by reason of an increase in the number of employees, so long as they otherwise meet the eligibility criteria and continue to purchase coverage for qualified employees through the SHOP. For purposes of renewing coverage, if an employer's EIN changes, but it retains the same legal identity, then the group can renew their coverage as long as they continue being eligible for coverage, if permitted by applicable State law. HHS considers an employer to have the same legal identity if the group maintains all other identifiable information including the business ownership structure and State in which the business operates.

Comment: We received some comments related to the calculation of and enforcement of minimum participation rates, but we did not receive specific comments on the proposed policy at § 155.725(k).

Response: We are finalizing the provision as proposed, and note that applicable minimum participation rates are calculated and enforced at the time of initial group enrollment or renewal, subject to § 147.104(b)(1)(B).

[44] See Exchange Establishment Rule, 77 FR 18310 at 18399.

f. Termination of SHOP Enrollment or Coverage (§ 155.735 and § 156.285)

In § 155.735, we proposed to amend paragraph (c)(2)(ii) to specify that in the FF–SHOP, a termination of coverage due to non-payment of premiums would be effective on the last day of the month for which the FF–SHOP received full payment. Prior to this proposal, the effective date of such a termination was not specified in the rule. We are finalizing this policy as proposed.

In paragraph (c)(2)(iii), we proposed to specify that, in the FF–SHOP, a qualified employer whose coverage was terminated for non-payment of premiums could be reinstated in its prior coverage only once per calendar year. We are finalizing this provision as proposed.

Paragraphs (c)(2)(iv) and (c)(3) are added in light of comments related to COBRA continuation coverage, as discussed in the preamble discussion of § 155.705.

In paragraphs (d)(1)(iii) and (g) of § 155.735 and in § 156.285(d)(1)(ii), we proposed to amend certain existing notice requirements by transferring them from QHP issuers to the SHOP. Under current § 156.285(d)(1)(ii), a QHP issuer must notify an enrollee and a qualified employer if the enrollee or employer is terminated due to a loss of eligibility, due to a qualified employer's non-payment of premiums, due to a rescission of coverage for fraud or misrepresentation of material fact in accordance with § 147.128, or because the QHP issuer elects not to seek recertification with the Exchange for its QHP. We proposed to transfer two of these notice requirements to the SHOP. At § 155.735(g)(1), we proposed that the SHOP be required to provide notice to the enrollee if an enrollee is terminated due to non-payment of premium or a loss of eligibility for participation in the SHOP, including when an enrollee loses eligibility due to a qualified employer's loss of eligibility. We also proposed at § 155.735(g)(2) that the SHOP be required to provide notice to qualified employers for termination due to nonpayment of premiums or where applicable, due to loss of the employer's eligibility. Proposed § 155.735(g)(2) would apply to terminations for a reason other than the employer reporting information to the SHOP resulting in a loss of eligibility.

Through the proposed amendments to the definition of ''enrollee'' discussed above, we also proposed to expand the class of people who would receive notices under the proposed amendments to § 155.735 and § 156.285(d)(1)(ii). Additionally, we proposed that QHP issuers in the SHOP would continue to be required to provide notice to qualified employers and enrollees when an enrollee's coverage is terminated due to a rescission in accordance with § 147.128, and when an enrollee's coverage is terminated due to an election by a QHP issuer not to seek recertification with the Exchange for its QHP. We proposed to amend § 155.735(d)(1)(iii), which currently refers to terminations of SHOP coverage due to a QHP's termination or decertification, by adding a reference to terminations of SHOP coverage due to the non-renewal of a QHP's certification. By proposing to include a cross-reference to § 155.735(d)(1)(iii) in § 156.285(d)(1)(ii), we also proposed to expand the notice a QHP issuer must provide regarding the discontinuation of a product in which a qualified employee is enrolled to include circumstances where the QHP is terminated or is decertified as described in § 155.1080. We are finalizing the provisions with modifications noted below.

We also proposed that each notice required under § 155.735(g) and the proposed amendments to § 156.285(d)(1)(ii) would have to be provided by the SHOP or QHP issuer promptly and without undue delay. We explained that we would consider an electronic notice that was sent no more than 24 hours after the SHOP or QHP issuer determined coverage was to be terminated to have been provided ''promptly and without undue delay.'' In the case of paper notices, we would consider notices that were mailed no later than 48 hours after the SHOP determined coverage was to be terminated to have been provided ''promptly and without undue delay.'' We have revisited these deadlines in light of comments received, and are finalizing the proposal with a modification to allow 3 business days for electronic notices and 5 business days for mailed notices. New paragraph § 155.735(g) and the corresponding amendments related to issuer notice requirements at § 156.285(d)(1)(ii) are effective on January 1, 2016.

We are also finalizing amendments to § 155.735 and § 156.285 to conform with our interpretation of the guaranteed availability and guaranteed renewability requirements. For a discussion of these revisions, please see the preamble for § 155.430 in this final rule.

Comment: We received several comments in support of HHS codifying the termination effective date for non-payment of premiums as the last day of the month for which the FF–SHOP received a full payment.

Response: We are finalizing the provision as proposed regarding termination effective dates for the FF–SHOP due to non-payment of premiums.

Comment: We received a comment recommending HHS provide a more ''robust approach'' to reinstatements for a given employer. The commenter stated that costs resulting from those that fail to pay premiums on time are ultimately borne by other insurers. However, the commenter did not discuss any alternative approach. We also received a comment asking HHS to specify that this provision only applies to the FF–SHOP.

Response: We are finalizing our provision as proposed to discourage employers from repeatedly failing to make timely payments in the FF–SHOP. We note that to be reinstated, an employer must pay its premium in full and, generally, in order for new coverage to be effectuated, the FF–SHOP would require an employer to pay its first month's premium in full. Therefore, we do not believe that in this case, an employer's failure to make timely payments will impact another issuer. We note this policy, like all the policies set forth at § 155.735(c)(2), only applies in the FF–SHOP. HHS is not regulating the number of reinstatements that State-based SHOPs may choose to enforce.

Comment: We received several comments on the transfer of certain notice requirements from QHP issuers to the SHOP. Many commenters supported our proposed policies because the SHOP has better information regarding the timing of non-payment of premiums and why an enrollee or employer lost his or her eligibility. Some commenters stated that the notices should only be provided to qualified employees and adult dependents, while others stated that the notices should be provided to qualified employees and their dependents if the last known address for the dependent is different from the subscriber. Additionally, we also received a comment requesting HHS specify that the notice requirement also applies to SADP issuers. One commenter recommended employers that actively provide to the SHOP information which indicates a loss of eligibility also receive a notice. We received a comment stating issuers should not be required to send any notices of termination to individual employees as it is not common market practice.

Response: We have modified the final notice requirement to specify that when a primary subscriber and his or her dependents live at the same address, a separate notice need not be sent to each dependent at that address, so long as the notice sent to each primary subscriber at that address contains all the required information about the termination for that primary subscriber and each of his or her dependents at that address. We note that when dependents live at a different address from the primary subscriber, a separate notice must be sent to those dependents. We note the broad language of the notice requirement applies to both medical and dental coverage sold through the SHOP. We do not believe a notice to the employer is necessary when an employer reports to the SHOP that it no longer meets the SHOP eligibility criteria. The SHOP eligibility criteria are sufficiently simple that we believe that under such circumstances the loss of eligibility would be self-evident to the employer.

HHS believes that these notices of termination should be sent to all individual, qualified employees affected by the termination of coverage or enrollment. By communicating directly with qualified employees through a notice of termination, the SHOP or the issuer can provide more timely notice regarding termination of coverage or enrollment, allowing employers and enrollees to seek other coverage and reduce gaps in coverage.

Comment: A commenter recommended that in a State that operates its own SHOP, the SHOP should provide the notice unless State law requires that the notice be provided by the issuer. We also received a comment requesting that sending these notices should be at the discretion of issuers so that issuers can communicate and maintain relationships that they have with employer groups and their enrollees.

Response: We appreciate the commenters' concern regarding unnecessary duplication of notices. As such, we are finalizing the proposal with a modification that provides that if a State law requires such notices be provided by the issuer, then the SHOP is not required to also send these notices. In a State with no such law, if an issuer would like to send these notices to maintain its relationships with employer groups and enrollees, it may do so. But the fact that the issuer sent the notice would not exempt a SHOP from the notice requirement.

Comment: We received a comment asking HHS to provide specific information on the required termination notices about how employer groups can maintain coverage or obtain other coverage, reinstatement rights and processes, how to reapply for coverage, and information about other coverage options.

Response: When sending these notices in States with an FF–SHOP, HHS intends to provide additional information about how to avoid a gap in coverage and other coverage options. However, we do not believe that this content is necessary for the notice requirement to be met, and are therefore not requiring that it be included in the notices sent by all SHOPs and issuers.

Comment: Some commenters support a SHOP sending termination notices to enrollees and employer groups ''promptly and without undue delay.'' However, one commenter requested flexibility to issuers to ensure notices are provided consistent with existing State criteria. We also received comments requesting that the standard for timing be broader, and recommending delivery of termination notices occur at least 30 days prior to the termination effective date, rather than timing the notice as proposed. One commenter recommended that HHS specify that the timing of sending notices be expressed in business days.

Response: We recognize that the timeline described as a safe harbor in the preamble to the proposed rule might not give QHP issuers sufficient time to mail notices. We therefore are modifying the proposal to specify that SHOPs and issuers should send the required notices within 3 business days where notice is provided electronically and within 5 business days when hard copy notices are mailed.

We are also making minor changes to the wording of the proposed requirements at § 155.735(g) and at § 156.285(d)(1)(ii), so that the final rule refers to a requirement to ''notify'' new enrollees, rather than to ''provide'' them ''with a notice.'' We are also finalizing new § 155.735(g) and the amendments to § 156.285(d)(1)(ii) with an effective date of January 1, 2016.

7. Exchange Functions: Certification of Qualified Health Plans

a. Certification Standards for QHPs (§ 155.1000)

In § 155.1000, we proposed to add paragraph (d) to harmonize QHP certification with rolling enrollment in the SHOP. Under the proposal, where a SHOP certifies QHPs on a calendar year basis, a QHP's certification will be in effect for the duration of any employer's plan year that began in the calendar year for which the plan was certified.

We are finalizing as proposed with the modification noted below.

Comment: We received some comments supporting the proposed

policy for QHPs in SHOPs that certify QHPs on a calendar year basis to retain their certification for the duration of any employer's plan year that began in the calendar year for which the plan was certified. We also received one comment recommending that we specify that this proposed policy applies with the exception provided in § 155.1080.

Response: In light of comments received, we are amending the proposed language to specify that § 155.1000(d) does not apply when there is a decertification by the Exchange of QHPs, pursuant to § 155.1080.

b. Recertification of QHPs (§ 155.1075)

We are making a conforming amendment to align the date by which an Exchange must complete the QHP recertification process with the date finalized in this rule at § 155.410(e)(2) for the beginning of the open enrollment period for the benefit year beginning on January 1, 2016. In the Exchange Establishment Rule, we finalized § 155.1075(b) to state that the Exchange must complete the QHP recertification process on or before September 15 of the applicable calendar year. In that rule, we also finalized the open enrollment periods for years other than the 2014 benefit year as running from October 15 through December 7 of the preceding year (77 FR 18462). This gave Exchanges until 1 month before the beginning of the open enrollment period to complete the recertification process.

In the proposed rule, we proposed that the beginning of the open enrollment period for the benefit year beginning on or after January 1, 2016, would begin on October 1, 2015—approximately 2 weeks after the QHP recertification deadline. As discussed elsewhere in this final rule, we are finalizing an open enrollment period for coverage beginning in 2016 that would begin 1 month later, on November 1. To align the date by which an Exchange must complete recertification and the beginning of the open enrollment period in a manner that provides issuers, State regulators, and Exchanges additional time to complete the plan review and certification processes without placing any substantive burden on consumers, we are amending § 155.1075(b) to require Exchanges to complete recertification of QHPs no later than 2 weeks prior to the beginning of open enrollment.

F. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

1. General Provisions

a. Definitions (§ 156.20)

In § 156.20, we proposed that for purposes of part 156, the term ''plan'' have the meaning given the term in § 144.103, as proposed to be amended in this rulemaking. Please refer to section III.A.1 for a discussion of the term ''plan,'' which is being finalized as proposed.

b. FFE User Fee for the 2016 Benefit Year (§ 156.50(c))

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 2015, issuers seeking to participate in an FFE in benefit year 2016 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 2016 user fee rate for all participating issuers at 3.5 percent of the monthly premium charged by the issuer. This rate is the same as the 2015 user fee rate. We are finalizing the 2016 user fee rate as proposed. Circular No. A–25R allows for exceptions to this policy, with OMB approval. An exception was in place for establishing the 2015 user fee rate. To ensure that FFEs can support many of the goals of the Affordable Care Act, we received an exception to this policy again for 2016.

Comment: We received one comment on the underlying structure of the FFE user fee, recommending that HHS establish broad-based financing for FFEs, such as an assessment on all health care industry entities. If the existing fee structure is kept, the commenter stated that it should 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.

Response: We will continue to assess the FFE user fee as a percent of the monthly premium charged by issuers participating in an FFE. In accordance with Circular No. 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 recommended that HHS publish cost estimates for the FFEs, disclose how funds will be spent, and develop performance metrics for the FFEs. 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 publish periodic performance measures, such as HHS reports on Marketplace call center wait times, and Web site visits and rates of eligibility determinations through HealthCare.gov. We will also continue to set the user fee rate based on the expected costs to the Federal

government of providing the special benefits to issuers; however, for 2016 as noted above, we received an exception to this policy because we wish to ensure that the FFEs can support many of the goals of the Affordable Care Act. Because we set the user fee rate below that which is expected to cover full Federal costs (as in 2014 and 2015), we do not see the need at this time to address a situation in which user fee collections exceed costs.

2. Essential Health Benefits Package

a. State Selection of Benchmark (§ 156.100)

We proposed to amend paragraph (c) of § 156.100 to delete the language regarding the default base-benchmark plan in the U.S. Territories of Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands. The change reflects HHS's determination, described in more detail in section III.A.1.b of this final rule, that certain provisions of the PHS Act enacted in title I of the Affordable Care Act that apply to health insurance issuers are appropriately governed by the definition of ''State'' set forth in that title. Therefore, the rules regarding EHB (section 2707 of the PHS Act) do not apply to health insurance issuers in the U.S. Territories. We also proposed to make a technical change to this section by replacing ''defined in § 156.100 of this section'' with ''described in this section.'' We note that this has no effect on Medicaid and CHIP programs and that Alternative Benefit Plans will still have to comply with the essential health benefit requirements.

We did not receive any comments regarding this proposal. We are finalizing the provisions as proposed.

b. Provision of EHB (§ 156.115)

(1) Habilitative Services

One of the 10 categories of benefits that must, under section 1302(b)(1)(G) of the Act, be included under the Secretary's definition of EHB is rehabilitative and habilitative services and devices. If a benchmark plan does not include habilitative services, § 156.110(c)(6) of the current EHB regulations requires the issuer to cover habilitative services as specified by the State under § 156.110(f) or, if the State does not specify, then the issuer must cover habilitative services in the manner specified in § 156.115(a)(5). Section 156.115(a)(5) states that a health plan may provide habilitative coverage by covering habilitative services benefits that are similar in scope, amount, and duration to benefits covered for rehabilitative services or otherwise determine which services are covered and report the determination to HHS. In some instances, those options have not resulted in comprehensive coverage for habilitative services. Therefore, we proposed amending § 156.115(a)(5) to establish a uniform definition of habilitative services that may be used by States and issuers. In addition, we proposed to remove § 156.110(c)(6) because that provision gives issuers the option to determine the scope of habilitative services.

We believe that adopting a uniform definition of habilitative services would minimize the variability in benefits and lack of coverage for habilitative services versus rehabilitative services. Defining habilitative services clarifies the difference between habilitative and rehabilitative services. Habilitative services, including devices, are provided for a person to attain, maintain, or prevent deterioration of a skill or function never learned or acquired due to a disabling condition. Rehabilitative services, including devices, on the other hand, are provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition.

We proposed adopting the definition from the Glossary of Health Coverage and Medical Terms [45]: Health care services that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

We did not propose any changes to § 156.110(f), which allows States to determine services included in the habilitative services and devices category if the base-benchmark plan does not include coverage. Several States have made such a determination following benchmark selection for the 2014 plan year, and we wish to continue to defer to States on this matter as long as the State definition complies with EHB policies, including non-discrimination. If the State does not supplement missing habilitative services or does not supplement the services in an EHB-compliant manner, issuers should cover habilitative services and devices as defined in § 156.115(a)(5)(i).

We also proposed to revise current § 156.115(a)(5)(ii) to provide that plans required to provide EHB cannot impose limits on coverage of habilitative services that are less favorable than any such limits imposed on coverage of rehabilitative services. Since the statutory category includes both rehabilitative and habilitative services and devices, we interpret the statute to require coverage of each. Therefore, issuers that previously excluded habilitative services, but subsequently added them, would be required under our proposal to impose separate limits on each service rather than retaining the rehabilitative services visit limit and having habilitative services count toward the same visit limit. Because we proposed to establish a uniform definition of habilitative services in new § 156.115(a)(5)(i), we also proposed to delete § 156.110(c)(6), which would remove the option for issuers to determine the scope of the habilitative services. In § 156.110 we proposed to make a technical change to amend the list structure of paragraph (c) by replacing the ''and'' in (c)(5) with a period and adding an ''and'' at the end of (c)(4).

We are finalizing our policy as proposed, adopting the definition of habilitative services from the Uniform Glossary in its entirety, to be effective beginning with the 2016 plan year and requiring separate limits on habilitative and rehabilitative services beginning with the 2017 plan year. We are codifying this final policy in revised § 156.115(a)(5) and removing § 156.110(c)(6).

Comment: Several commenters requested more State flexibility, even in cases where the benchmark plan includes habilitative services; they sought assurance that a Federal definition will not supersede a State law, and that State-required benefits that could be considered habilitative services would be treated as EHB.

Response: States are required to supplement the benchmark plan if the base benchmark plan does not include coverage of habilitative services as defined in this final rule. We are codifying the definition of habilitative services as a minimum for States to use when determining whether plans cover habilitative services. State laws regarding habilitative services are not pre-empted so long as they do not prevent the application of the Federal definition. State laws enacted in order to comply with § 156.110(f) are not considered benefits in addition to the EHB; such laws ensure compliance with § 156.110(a) which requires coverage of all EHB categories. Therefore, there is

[45] *http://www.cms.gov/CCIIO/Resources/Files/Downloads/uniform-glossary-final.pdf.*

no obligation to defray the cost of such State-required benefits.

Comment: Several commenters objected to imposing separate limits on rehabilitative and habilitative services and devices, claiming issuers do not have operational capacity to differentiate between habilitative and rehabilitative services and devices based on enrollee diagnosis or whether the enrollee is seeking to maintain or achieve function.

Response: We are finalizing the requirement to ensure coverage of each with separate limits, but the requirement will not become effective until 2017. This delay is intended to provide issuers with the opportunity to resolve operational issues with their claims systems.

Comment: Several commenters asked that ''devices'' be included in the definition of habilitative services.

Response: We originally omitted devices because the term is already included in the statutory description of this category of EHB. In response to comments, however, we have added ''devices'' to our regulatory definition. We remind issuers that the statute requires coverage of devices for both rehabilitative and habilitative services.

Comment: Several commenters requested that we require issuers to have an exceptions process similar to the process required by OPM for multi-State plans, in case a patient needs treatment that exceeds the visit limits allowed by the plan.

Response: Enrollees wishing to appeal an adverse benefit determination, including denial of habilitative services, should follow the process established in § 147.136, which implements section 2719 of the PHS Act for internal claims and appeals and external review processes.

Comment: Commenters offered many suggestions for specific services and devices, such as orthotics and prosthetics, which they stated should be required to be covered as habilitative services and devices by all issuers.

Response: We are not codifying such a list at this time, as we continue to allow States to maintain their traditional role in defining the scope of insurance benefits, but we encourage issuers to cover additional services and devices beyond those covered by the benchmark plan.

(2) Pediatric Services

In the preamble of the EHB Rule, we stated that pediatric services should be provided until at least age 19 (78 FR 12843). States, issuers, and stakeholders requested clarification on this standard. To provide this clarification, we proposed amending § 156.115(a) to add paragraph (6), specifying that EHB coverage for pediatric services should continue until the end of the plan year in which the enrollee turns 19 years of age. This was proposed as a minimum requirement.

This age limit is consistent with section 1201 of the Affordable Care Act, [46] which phased in the prohibition on preexisting conditions exclusions by first prohibiting them for children under age 19, as well as the age limit for eligibility to enroll in CHIP. In addition, as noted in the EHB Rule, this proposed policy aligns with Medicaid rules (78 FR 12843), which require States to cover children up to age 19 with family incomes up to 100 percent of the FPL as a mandatory eligibility category.

Comment: Many commenters requested that pediatric services continue only until the end of the *month* in which the enrollee turns 19, stating that this is the industry standard.

Response: Although we proposed to require pediatric services until the end of the plan year in which the enrollee turns 19, we recognize these commenters' concerns. Accordingly, we are finalizing a policy in § 156.115(a)(6), under which issuers must provide coverage for pediatric services until at least the end of the month in which the enrollee turns 19. We encourage issuers to cover services under the pediatric services EHB category beyond the 19th birthday month if non-coverage of those services after that time would negatively affect care.

c. Collection of Data To Define Essential Health Benefits (§ 156.120)

In the Patient Protection and Affordable Care Act; Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans final rule (EHB Data Collection Rule),[47] we required issuers in each State to submit certain data regarding the three largest health insurance products by enrollment (as of March 31, 2012) to HHS by September 4, 2012. These data, gathered from 2012 plans, were used to determine, for each State, the benefits and limitations of the three largest small group products by enrollment, which were used to establish potential benchmark plans. The EHB Rule unintentionally deleted § 156.120, which included the data submission requirement.

We proposed to allow each State to select a new base-benchmark plan for the 2017 plan year, allowing States to choose a 2014 plan that meets the requirements of § 156.110 as the new EHB-benchmark plan, so that issuers can design substantially equal EHB-compliant products for the 2017 plan year. We believe that this would ultimately create efficiencies for issuers in designing plans. As stated in § 156.115(a), provision of EHB means that a health plan provides benefits that are substantially equal to the EHB-benchmark plan. Therefore, health plans offering EHB in the 2017 plan year will be required to provide benefits substantially equal to the benefit amounts, duration and scope of benefits covered by the 2014 EHB-benchmark plan (supplemented as necessary).

If a category of base-benchmark plans under § 156.100(a)(1)–(4) does not include a plan that meets the requirements of § 156.110, we considered permitting the State to select a base-benchmark plan that does not meet the requirements of § 156.110 in that category and supplement its base-benchmark plan as provided in § 156.110(b) to ensure that all 10 categories of benefits are covered in a benchmark plan.

We proposed re-codifying part of § 156.120, in a manner similar to that which appeared in our regulations prior to the effective date of the EHB Rule. We proposed to require a State that chooses a new benchmark plan in the State or, if a State does not choose a new benchmark plan, the issuer of the default benchmark plan, to provide benchmark plan data as of a date specified by HHS. We anticipate collection of new benchmark plan data for the 2017 plan year and the data discussed in § 156.120(b), including administrative data and descriptive information pertaining to all health benefits in the plan, treatment limitations, drug coverage, and exclusions. We believe that this information is already included in the issuer's form filing that the issuer submitted to the State regulator. The definitions previously adopted in § 156.120(a) for the terms health benefits, health plan, State, and treatment limitations are still applicable and would be codified as previously defined. However, we are not finalizing the definitions for ''health insurance market'' or ''small group market'' in

[46] Section 1201 of the Affordable Care Act added section 2704 of the PHS Act, which prohibited preexisting condition exclusions. Section 1255 of the Affordable Care Act states that the provisions of section 2704 of the PHS Act, as they apply to enrollees who are under 19 years of age, shall become effective for plan years beginning on after September 23, 2010.

[47] Patient Protection and Affordable Care Act; Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans, 77 FR 42658 (July 20, 2013) (codified at part 156).

§ 156.120(a), as they are not used in this section.

Comment: Some commenters requested use of a 2014 plan as the benchmark for 2016 rather than 2017. Several commenters suggested we use a 2015 plan as the benchmark for 2017, noting that the final regulations pertaining to the Mental Health Parity and Addiction Equity Act will not be effective until 2015.

Response: For the 2016 plan year, HHS expects to begin the certification process for QHPs in the FFEs in early spring of 2015. Because issuers are required to design QHP plans that provide EHB that are substantially equal to the EHB-benchmark plan, based on the base-benchmark plan chosen and supplemented as necessary by the State, it is not operationally possible for us to collect and publish new EHB-benchmark plans prior to the QHP certification process for the 2016 plan year if we allow States to choose a 2014 plan as their new base-benchmark plan and supplement if necessary. As codified in § 156.115(a)(3), an EHB-compliant plan must provide mental health and substance use disorder services, including behavioral health treatment services in compliance with MHPAEA and its corresponding regulations. While we agree that it would be easier for issuers to design plans if the base-benchmark plan chosen by the State were compliant with MHPAEA (that is, based on a 2015 plan), nothing in this rule negates the current requirement that EHB-compliant plans comply with MHPAEA and any associated regulatory requirements in effect at the time. Based on the timelines needed for issuers to design plans, if we permitted States to select 2015 plans as new base-benchmark plans, we do not believe that issuers would be able to design substantially equal EHB-compliant products until the 2018 plan year, based on those benchmarks, which we believe is not in consumers' best interest. Therefore, we are finalizing the re-codification of part of § 156.120 as proposed, as well as our proposal to allow issuers to design a plan that is substantially equal to the newly selected 2014 benchmark plan for the 2017 plan year.

Comment: Several States and other commenters requested more details on the process for selection and reassurance that they can supplement their benchmark plan.

Response: We did not propose to make changes to § 156.100(a) or (b); therefore, the options from which a base-benchmark plan may be selected remain the same. HHS issued a PRA package regarding collection of benchmark information on November 26, 2014.[48] As stated there, HHS proposes to obtain the certificate of coverage and other plan documents that describe covered services, exclusions, limitations, cost sharing, and all other terms and conditions of plan benefits that are provided to enrollees. States that select, or issuers in States that default to a benchmark due to lack of selection, would submit the documents securely via email. HHS intends to work collaboratively with States to identify responsive documents and to secure such documents during the second quarter of 2015. HHS then intends to publish selected and default benchmark plans and supporting documents. States retain the ability to supplement the base-benchmark plan, as codified in § 156.110(b)(1), and retain the ability to determine whether the base-benchmark plan covers the EHB category or whether supplementation is warranted. We also reiterate that supplementation is the addition of the entire category of such benefits to satisfy § 156.110(a), while substitution is the removal of one particular item or service for another actuarially-equivalent item or service within the same category. Supplementation ensures that all EHB categories are covered. Substitution, which is permitted within an EHB category at the issuer's discretion, allows for greater variety of plan designs.

Comment: Several States and other commenters requested further clarification regarding how new benchmark plan selection will affect our policy at § 155.170 pertaining to State-required benefits.

Response: We did not propose any changes to § 155.170. Therefore, only new State-required benefits enacted on or prior to December 31, 2011 are included as EHB, and States are expected to continue to defray the cost of State-required benefits enacted on or after January 1, 2012 unless those State-required benefits were required in order to comply with new Federal requirements. HHS intends to continue to publish a list of non-EHB State-required benefits on its Web site on an annual basis.

Comment: Some commenters expressed their desire for HHS to abandon the benchmark policy in the future, and specify a list of services that issuers must cover in each EHB category instead.

Response: To maintain State flexibility while ensuring comprehensive coverage, we believe that the benchmark policy continues to be the most appropriate at this time. Therefore, the benchmark policy will continue to establish EHBs through plan year 2017. Since the first EHB plan year just ended, we will examine how the policy affected enrollees and what changes, if any, should be made in the future. We believe that it is important to have a more complete sense of how EHB policy is working before proposing changes to the benchmark approach.

d. Prescription Drug Benefits (§ 156.122)

i. § 156.122(a)

Under our regulations at § 156.122(a), EHB plans are required to cover the greater of one drug per United States Pharmacopeia (USP) category and class or the same number of drugs in each USP category and class as the State's EHB-benchmark plan. In the proposed rule, we proposed several revisions to this policy. First, we proposed to retain § 156.122(a)(2), with one modification to change ''drug list'' to ''formulary drug list'' for uniformity purposes for this section, and to renumber this paragraph from § 156.122(a)(2) to § 156.122(a)(1). Due to some concerns detailed in the proposed rule about the drug count standard under current § 156.122(a)(1), we proposed an alternative to the drug count standard. Specifically, we proposed that plans have a pharmacy and therapeutics (P&T) committee and use that committee to ensure that the plan's formulary drug list covers a sufficient number and type of prescription drugs. We proposed that the P&T committee standards must be met for the prescription drug coverage to be considered EHB. We stated our belief that the use of a P&T committee in conjunction with other standards that we proposed would ensure that an issuer's formulary drug list covers a broad array of prescription drugs. We noted that standards defined by the Medicare Part D Prescription Drug Program (Medicare Part D), the NAIC,[49] and other stakeholders, and we solicited comments on these standards and whether we should adopt them in lieu of or in addition to the standards we are proposing.

In the proposed rule, we proposed to specify P&T committee standards on

[48] CMS–10448; *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-10448.html.*

[49] Medicare Part D plans are required to maintain P&T committees by the Social Security Act section 1860D–4(b)(3)(G) codified at 42 CFR 423.120(b), 42 CFR 423.272(b)(2). NAIC has a Model Act entitled Health Carriers Prescription Drug Benefit Management Model Act (July 2003) that includes P&T Committee provisions at: *http://www.naic.org/store/free/MDL-22.pdf.*

membership, meetings, and establishment and development of a formulary drug list. For P&T committee membership, we proposed requiring the P&T committee to include members from a sufficient number of clinical specialties to adequately represent the needs of enrollees. For instance, we would expect that the P&T committee members include experts in chronic diseases and in the care of individuals with disabilities. We proposed that the majority of members be practicing physicians, practicing pharmacists, and other practicing health care professionals. Additionally, we proposed to require that members of the P&T committee that have a conflict of interest with the issuer or a pharmaceutical manufacturer would be permitted to sit on the P&T committee but would be prohibited from voting on matters for which the conflict exists. We also proposed that at least 20 percent of the P&T committee's membership have no conflict of interest with respect to either the issuer or to any pharmaceutical manufacturer. Under these standards, a member who holds more than one health care license, for example as a nurse practitioner and a pharmacist, would only count as one person. We also solicited comments on the percentage of committee members that should have no conflict of interest, and the proposed requirement that the members of the P&T committee with conflicts of interest should be permitted to sit on the P&T committee but would be prohibited from voting on matters for which the conflict exists. We considered requiring a set number of participants to be independent and have no conflicts of interest, but we were concerned that absent a limitation on the total number of committee members, requiring a specific number of committee members to be independent and not have a conflict of interest would have a variable impact, depending on the size of the P&T committee. We also proposed that the P&T committee would be responsible for defining a reasonable definition of conflict of interest and for managing the conflicts of interest of its committee members. As part of this standard, the P&T committee would require its P&T committee members to sign a conflict of interest statement revealing economic or other relationships with entities, including the issuer and any pharmaceutical manufacturers, affected by drug coverage decisions that could influence committee decisions. We solicited comments on this proposed standard, including the implementation of this conflict of interest standard, whether there are additional conflict of interest standards that should apply and what would constitute a conflict of interest. In particular, we sought comments on what could be considered a permissible relationship with respect to the issuer or a pharmaceutical manufacturer. We stated that we would consider providing further guidance regarding conflicts of interest.

We also proposed that the P&T committee must meet at least quarterly, and maintain written documentation of all decisions regarding development and revision of formulary drug lists. For formulary drug list establishment and management, we proposed that the P&T committee must develop and document procedures to ensure appropriate drug review and inclusion on the formulary drug list, as well as make clinical decisions based on scientific evidence, such as peer-reviewed medical literature, and standards of practice, such as well-established clinical practice guidelines. The P&T committee would be required to consider the therapeutic advantages of prescription drugs in terms of safety and efficacy when selecting formulary drugs and making recommendations for their formulary tier. The P&T committee would be required to review both newly FDA-approved drugs and new uses for existing drugs. We also proposed that the P&T committee would be required to ensure that an issuer's formulary drug list covers a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all disease states and does not discourage enrollment by any group of enrollees.

Lastly, we proposed to require that issuers' formularies provide appropriate access to drugs that are included in broadly accepted treatment guidelines and which are indicative of and consistent with general best practice formularies in widespread use. Broadly accepted treatment guidelines and general best practices could be based on industry standards or other appropriate guidelines that are issued by expert organizations that are current at the time. For instance, broadly accepted treatment guidelines could include guidelines provided in the National Guideline Clearinghouse (NGC), which is a publicly available database of evidence-based clinical practice guidelines and related documents. As a result of this proposed policy, we would expect that a health plan's formulary drug list would ensure that appropriate access is being afforded to drugs in widely accepted national treatment guidelines and which are indicative of general best practices at the time. Given our proposal to use broadly accepted treatment guidelines and best practices, we would also expect that plans' formulary drug lists be similar to those formulary drug lists then currently in widespread use. We also noted that States have primary responsibility for enforcing EHB requirements and, if finalized, States would be responsible for the oversight and enforcement of the P&T committee standards. We sought comment on these proposed revisions to § 156.122(a), including on the oversight and enforcement of these standards, and whether other standards are needed for P&T committees.

As an alternative to, or in combination with, the above-proposed P&T committee requirements, we considered whether to replace the USP standard with a standard based on the American Hospital Formulary Service (AHFS). We sought comments on the proposed P&T committee standard, and whether we should consider adopting AHFS or another drug classification system, as well as on any other standards that may be appropriate for this purpose. For instance, for the AHFS system, we considered amending the minimum standard established in the EHB Final Rule that requires coverage of at least the greater of one drug in every USP category and class or the same number of drugs in each USP category and class as the State's EHB-benchmark plan to require at least the greater of one drug in each AHFS class and subclass or the same number of drugs in each AHFS class and subclass as the State's EHB-benchmark plan. We explained that if we were to finalize a P&T committee process in combination with a drug count standard based on either the AHFS system or the USP system, we would expect the health plan to establish and maintain its formulary drug list in compliance with the P&T committee standards, and in addition, the resulting health plan's formulary drug list would also need to comply with the drug count standard. We discussed continuing to use the existing USP drug count standard, and updating the USP drug count system to a more current version. We proposed to implement proposed § 156.122(a)(2) to start in the 2017 plan year, seeking comments on this proposed timing of implementation. Based on comments

received, as described in detail below, we are finalizing an approach that combines the use of a P&T committee (satisfying standards largely as proposed) with the current drug count standard that requires coverage of at least the greater of one drug per USP category and class or the same number of drugs in each USP category and class as the State's EHB benchmark plan.

Comment: Some commenters supported replacing the current drug standard with the P&T committee approach only, and some commenters recommended that we defer to a health plan's accreditation by the National Committee for Quality Assurance (NCQA) or URAC, or use Medicare Part D standards. Some commenters did not support the P&T committee approach because they were concerned it could result in plans with widely varying formularies, leading to consumer confusion. They also had concerns about oversight and enforcement. Several commenters supported combining the P&T committee with a drug count standard. Of those who commented on the drug count standard, some supported USP, some supported AHFS, and others supported the creation of a new standard. Some commenters recommended changes to the manner in which the drug count is calculated. For example, some commenters suggested that the drug count metric change to the greater of two drugs per category and class or the number of drugs in the benchmark. Other commenters sought clarification on the counting of chemically distinct drugs and the modes of delivery.

Response: We are finalizing an approach that combines the use of a P&T committee with the current drug count standard that requires coverage of at least the greater of one drug per USP category and class or the same number of drugs in each USP category and class as the State's EHB benchmark plan. We believe that a combination of a qualitative and quantitative approach will best ensure robust formulary design, because the two standards can complement each other. For instance, the requirement of the P&T committee to review new drugs addresses one of our concerns that the current drug count system does not incentivize coverage of new drugs. However, the drug count standard can provide a minimum standard for coverage.

For the P&T committee requirements, we considered deferring to other standards, such as those established by NCQA, URAC and Medicare Part D. However, § 156.122 establishes a market-wide standard, and not all plans are required to be accredited by those organizations. We also do not believe that some accreditation standards are as transparent as Medicare Part D standards—for example, some accreditation standards are proprietary and could be costly and burdensome for an issuer to implement. Further, stakeholders are already familiar with Medicare Part D's P&T committee standards and we believe that these standards will best ensure the P&T committee is able to ensure a robust formulary. For these reasons, we are finalizing P&T committee standards modeled on Medicare Part D's P&T committee standards that have been modified, as explained below, to better address the private health plan population and the needs of plans required to cover EHB. We also believe that adopting P&T committee standards that generally align with the existing Medicare Part D standards and guidance, where possible, will better ensure uniformity between standards to help reduce the burden on issuers. As explained below, we are finalizing the proposed conflict of interest standards. Although these standards are different than those adopted by Medicare Part D, we believe that these standards are similar to practices in the private insurance market.

We are retaining the USP drug count standard because stakeholders are now familiar with the USP system after using it for 2 years, and we were persuaded by the comments supporting the continued use of USP. Issuers have already developed 2 years of formularies based on it, States have already developed systems to review those formularies, and stakeholders are familiar with the system. Thus, while AHFS had the benefit of being updated more frequently and incorporating a broader set of classes and subclasses, commenters did not uniformly support its use because of several issues, including a lack of transparency, the need to supplement certain classes when compared with USP, and the complexity of the AHFS system. We also believe that retaining USP will reduce the administrative burden and costs on States and issuers in implementing a combined P&T committee process with a drug count standard. In implementing the revised § 156.122(a), we intend to use the most up-to-date version of the USP system available at the time that we build our formulary review tools for each plan year, starting with the 2017 plan year, and will refer to the version number in the methodology document that we update each year.[50]

To codify our final policy, we are retaining § 156.122(a)(1) (with one technical change to delete the ''and''), we are retaining current § 156.122(a)(2) (with one technical correction to replace ''drug list'' with ''formulary drug list'' and to add an ''and''), and we are adding a new § 156.122(a)(3). Under the new § 156.122(a)(3), a health plan must establish and maintain its formulary drug list in compliance with the P&T committee standards. These standards are in addition to the requirement that the health plan's formulary drug list comply with the drug count standard under § 156.122(a)(1) as the minimum standard of coverage, and the requirement that the health plan submit its formulary drug list to the Exchange, the State, or OPM. While issuers must have a P&T committee, nothing under § 156.122(a) precludes issuers from using the same P&T committee across multiple issuers. However, we recognize that using the same P&T committee across multiple issuers may be complex to administer. Because States are primarily responsible for enforcing EHB requirements, States will be responsible for the oversight and enforcement of the P&T committee standards and the drug count standard. We intend to work with States to implement these provisions and may consider developing additional tools and resources to assist States in reviewing formulary drug lists. New § 156.122(a)(3) will apply starting with the 2017 plan year to give States, issuers, and PBMs time to implement the new P&T committee standards.

Comment: Many commenters wanted the P&T committee membership to include certain types of representatives. Some commenters also wanted membership on the P&T committee to be limited to a certain number. Commenters supported limiting the P&T committee membership category for ''other practicing health professionals'' to ''other practicing health care professionals that can prescribe.'' Comments sought clarification that a practicing provider on the committee could be practicing part-time, and clarification on the P&T committee's documentation of its decisions. Some commenters supported the proposed conflict of interest standards, while other commenters were concerned it would be difficult to meet the standards. Others recommended other conflict of interest standards. Some commenters

[50] See the Essential Health Benefits (EHB) Rx Crosswalk Methodology at: *https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/ehb-rx-crosswalk.pdf.*

supported the conflict of interest percentage of 20 percent, and others recommended that it be 50 percent. Some commenters recommended implementing the Office of Inspector General's recommendations on conflicts of interest for Medicare Part D P&T committees,[51] and others sought transparency requirements for the operation and management of the P&T committee.

Response: We are finalizing the requirement that the P&T committee must be comprised of members that represent a sufficient number of clinical specialties to adequately meet the needs of enrollees. We would expect that the P&T committee membership include experts in chronic diseases and in the care of individuals with disabilities and that it would be composed of a diverse set of experts. We have established certain minimum standards for membership to ensure the integrity of the P&T committee and to allow flexibility to issuers in designing the P&T committee. However, we also expect the P&T committee would consult with experts in management of the relevant condition for each drug being considered. The P&T committee's membership is also required to include a majority of practicing physicians, practicing pharmacists, and other practicing health care professionals. The other practicing health care professionals on the P&T committee, excluding pharmacists, must be licensed to prescribe drugs. The practicing physicians, pharmacists, and other health care professionals on the P&T committee may be practicing part-time. However, under these standards, a member who holds more than one health care license, for example, as a nurse practitioner and a pharmacist, only counts as one member of the P&T committee.

We are finalizing the conflict of interest requirements as proposed. These conflict of interest standards are not the same as Medicare Part D's standards, but we believe that issuers are currently using similar practices in the private health insurance market. Members of the P&T committee that have a conflict of interest with respect to the issuer or a pharmaceutical manufacturer are permitted to sit on the P&T committee but are prohibited from voting on matters for which the conflict exists. We would expect that in implementing this standard, if a particular member of a P&T committee has to abstain from a majority of votes, that the P&T committee should consider removal of the member from the P&T committee. Additionally, at least 20 percent of the P&T committee's membership must have no conflicts of interest with respect to either the issuer or to any pharmaceutical manufacturer. We considered the comments we received on other P&T committee standards and on the requirements for the number and percentage of conflict free members. However, due to concerns about issuers' ability to meet a requirement with a higher threshold and concerns about setting a fixed number of members required to be conflict free when we did not also set the limit on the number of participants on the P&T committee, we believe that requiring 20 percent of the P&T committee's membership to be conflict free is a reasonable threshold in combination with § 156.122(a)(3)(i)(C). As part of this standard, the P&T committee members must sign a conflict of interest statement at least annually revealing economic or other relationships with entities affected by the committee's drug coverage decisions, including the issuer and any pharmaceutical manufacturers. The P&T committee is responsible for establishing a reasonable definition of conflict of interest and for managing the conflicts of interest of its committee members. We will consider providing further guidance regarding the P&T committee's management and oversight, including its operation and management of conflicts of interest, in the future.

Comment: Commenters generally supported the requirements regarding the establishment and management of the formulary drug list, and recommended specifying the timing of reviews for new drugs as well as other specified guidelines or best practices. Some commenters wanted the P&T committees' decisions to be binding on the plan, and others wanted the P&T committee's decisions to be advisory. Some commenters opposed the use of treatment guidelines or best practices, and some wanted clarification that the P&T committee can use pharmacoeconomic studies in formulary development. Commenters were concerned about the documentation requirements of P&T committees' decisions and others wanted additional standards, such as to require the P&T committee to have an appeals process for a consumer or provider to request a drug to be placed on the formulary.

Response: To ensure better uniformity of P&T committee practice, we are finalizing new § 156.122(a)(3)(iii), which generally aligns with the Medicare Part D standards and guidance on this subject. Under § 156.122(a)(3)(iii)(A), the P&T committee must develop and document procedures to ensure appropriate drug review and inclusion. This includes documentation of decisions regarding formulary development and revision and utilization management activities. P&T committee recommendations regarding which drugs are placed on the plan's formulary are binding on the plan. This clarification reflects practices by Medicare Part D. We also encourage P&T committees to be transparent about their operation and function, and while we are not requiring that P&T committees publicly post information on the P&T committee, we encourage issuers to consider providing this level of transparency to consumers. We are also finalizing a new § 156.122(a)(3)(iii)(B), which is consistent with Medicare Part D standards at 42 CFR 423.120(b)(1)(iv) and which requires the P&T committee to base clinical decisions on the strength of scientific evidence and standards of practice, and requires the P&T committee to assess peer-reviewed medical literature, pharmacoeconomic studies, outcomes research data, and other such information as it determines appropriate. Formulary management decisions must be based on scientific evidence, and may also be based on pharmacoeconomic considerations that achieve appropriate, safe, and cost-effective drug therapy. Under § 156.122(a)(3)(ii)(C), drugs' therapeutic advantages in terms of safety and efficacy must be considered when selecting formulary drugs. We are finalizing this provision, except we are not finalizing the requirement that drugs' therapeutic advantages be considered when placing the drugs on formulary tiers, to better align with 42 CFR 423.120(b)(1)(v).

We are also adding new § 156.122(a)(3)(iii)(D) through (F), which are consistent with Medicare Part D standards at 42 CFR 423.120(b)(1)(vi), (vii), and (ix), respectively. The new standard in § 156.122(a)(3)(iii)(D) will require the P&T committee to review policies that guide exceptions and other utilization management processes, including drug utilization review, quantity limits, and therapeutic interchange. The purpose of finalizing these reviews, which is a typical practice by P&T committees, is to ensure that formulary management techniques do not undermine access to covered drugs.

The new standard in § 156.122(a)(3)(iii)(E) requires the P&T committee to evaluate and analyze treatment protocols and procedures

[51] See the Department of Health and Human Services' Office of the Inspector General Report on Gaps in Overview of Conflicts of Interest in Medicare Prescription Drug Decisions at: *http://oig.hhs.gov/oei/reports/oei-05-10-00450.pdf.*

related to the plan's formulary at least annually, which is also a typical practice of P&T committees today. Furthermore, under § 156.122(a)(3)(iii)(F), the P&T committee must review and approve all clinical prior authorization criteria, step therapy protocols, and quantity limit restrictions applied to each drug. P&T committee recommendations, with respect to a P&T committee's clinical appropriateness review of the practices and policies for formulary management activities, such as prior authorizations, step therapies, quantity limitations, and other drug utilization activities that affect access, are advisory only and not binding on the issuer, a standard that we believe reflects current practice in both the private health insurance and Medicare Part D markets. However, issuers must take the recommendations into good faith consideration. Similar to the new standards in § 156.122(a)(3)(iii)(D), the purpose of finalizing these reviews is to better ensure that formulary management techniques do not undermine access to covered drugs.

Under § 156.122(a)(3)(iii)(G), which was proposed as § 156.122(a)(3)(iii)(D), the P&T committee must review all new FDA-approved drugs and new uses for existing drugs. To implement this requirement, the P&T committee must make a reasonable effort to review a new FDA approved drug product (or new FDA approved indication) within 90 days, and make a decision on each new FDA approved drug product (or new FDA approved indication) within 180 days of its release onto the market, or a clinical justification must be documented if this timeframe is not met.

A health plan's formulary drug list, under § 156.122(a)(3)(iii)(H), must cover a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all disease states and must not discourage enrollment by any group of enrollees. The formulary drug list must also ensure appropriate access to drugs in accordance with widely accepted national treatment guidelines and general best practices at the time. To comply with § 156.122(a)(3)(iii)(H), broadly accepted treatment guidelines and general best practices could be based on industry standards or other appropriate guidelines that are issued by expert organizations that are current at the time. For instance, broadly accepted treatment guidelines could include guidelines provided in the National Guideline Clearinghouse (NGC), which is a publicly available database of evidence-based clinical practice guidelines and related documents.

ii. Section 156.122(c)

Section 156.122(c) currently requires issuers of EHB plans to have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the plan. This requirement, commonly referred to as the ''exceptions process,'' applies to drugs that are not included on the plan's formulary drug list. As established in the EHB Final Rule (78 FR 12834) and the Market Standards Rule (79 FR 30240), such procedures must include a process that allows an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request an expedited review based on exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a serious health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function, or when an enrollee is undergoing a current course of treatment using a non-formulary drug. A health plan must make its coverage determination on an expedited review request based on exigent circumstances, and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours after it receives the request. A health plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

In the proposed rule, we proposed to build on the expedited exception process by proposing to also adopt similar requirements for the standard exception process. We also proposed to adopt standards for a secondary external review process if the first exception request is denied by the plan (regardless of whether the exception is requested using the standard process or the expedited process).

We proposed at § 156.122(c), that a health plan providing EHB must have certain exception processes in place that allow an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request and gain access to clinically appropriate drugs not covered by the health plan, and when an exception requested under one of these processes is granted, the plan must treat the excepted drug as EHB for all purposes, including accrual to the annual limitation on cost sharing. Proposed § 156.122(c)(1) sets forth the standard exception process. Under this process, we proposed that a health plan have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request a standard review of a coverage decision for a drug that is not covered by the plan. We proposed that the health plan must make its coverage determination on a standard exception request and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours after it receives the request. We proposed to require a health plan that grants an exception based on the standard review process to provide coverage of the non-formulary drug for the duration of the prescription, including refills, and we stated that in such a case the excepted drug would be considered EHB for all purposes, including for counting towards the annual limitation on cost sharing. As stated in the EHB Rule, plans are permitted to go beyond the number of drugs offered by the benchmark without exceeding EHB. Therefore, if the plan is covering drugs beyond the number of drugs covered by the benchmark, all of these drugs are EHB and must count towards the annual limitation on cost sharing.

We proposed moving the language regarding the expedited exceptions process from § 156.122(c)(1) to new § 156.122(c)(2) and to replace ''Such procedures must include'' with ''A health plan must have'' in current (c)(1) proposed as a new paragraph (c)(2)(i).

In § 156.122(c)(3), we proposed that if the health plan denies an exception request for a non-formulary drug, the issuer must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber, as appropriate) to request that an independent review organization review the exception request and the denial of that request by the plan. For this external exception review, we proposed to apply the same timing that applied to the initial review. Thus, if the enrollee requested the drug under the proposed standard process and the request was denied, then the independent review organization would have to make its determination and the health plan would have to notify the enrollee or enrollee's designee and the prescribing physician (or other prescriber, as appropriate) no later than 72 hours after the time it receives the external exception review request. Likewise, if the initial exception request is for an expedited review and that request is denied by the plan, then the independent review organization would

have to make its coverage determination and provide appropriate notification no later than 24 hours after the time it receives the external exception review request. We are finalizing the updated standards in § 156.122(c) as proposed, with an addition to clarify the duration of coverage of the excepted drug when accessed through the external review process.

Comment: Many commenters supported revising § 156.122(c), relating to the exceptions process. Some commenters wanted the same standards as Medicare Part D, and others wanted the same standards as the appeals process codified at § 147.136. Other commenters had concerns about conflict with State requirements, the definitions of expedited review and the current course of treatment, and the administrative cost of the exceptions process. Some commenters were concerned about time limits and wanted clarification on when the time limits begin, recommending that the time limits should be measured in business days instead of hours, or be different for the external review process. Others sought additional requirements related to the operation of the exception process such as requiring coverage of the non-formulary drug during the review process, requiring issuers to begin the external review if the original exception request is denied, and requiring issuers to submit or release information on its consideration of exception requests. Although some commenters recommended using a separate review organization for the external review, several commenters supported allowing issuers to use the same independent review organization for the external review as for the final external review decision under § 147.136. Commenters also supported requiring coverage of the excepted drug for the duration of the prescription, including refills, and others supported permitting the issuer to determine and notify the enrollees of the duration of the coverage for the excepted drug.

Response: The purpose of revising § 156.122(c) was to establish a more uniform exceptions process across plans and issuers providing EHB to help reduce consumer confusion in accessing, understanding, and using the exception process. We believe that uniform standards in this area will better ensure consumers' ability to understand and access this consumer protection. Because of the importance of this process in ensuring enrollee access to clinically appropriate medications, we are finalizing the 72-hour review period for the standard exception review, continuing the 24-hour review period for an expedited review, and applying the related timing standards to the external review periods. This exceptions process applies to drugs that are not included on the plan's formulary drug list, and § 147.136 applies if an enrollee receives an adverse benefit determination for a drug that is included on the plan's formulary drug list. Because these two processes serve different purposes, we believe they are not duplicative. Furthermore, while our exception process standards are not the same as those under Medicare Part D, they have similar elements. Since issuers that provide EHB are already required under our regulations to have formulary exceptions processes and procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the plan, we do not expect that these new requirements will significantly increase the administrative cost burden on issuers. Furthermore, to permit flexibility in implementing this policy for issuers, we have declined to establish additional requirements at this time, such as requiring issuers to begin the external review absent an enrollee request if the original exception request is denied, and requiring issuers' to submit or release information on its consideration of exception requests.

The 24-hour timing policy for the expedited review was adopted in the final rule on the Market Standards Rule (79 FR 30240), and we are finalizing the 72-hour standard review, as well as the timing for the external reviews, in this final rule. All of these timeframes begin when the issuer or its designee receives a request. An enrollee or the enrollee's prescribing physician (or other prescriber) should strive to submit a completed request; however, issuers should not fail to commence review if they have not yet received information that is not necessary to begin review. Therefore, we interpret new § 156.122(c) to mean that the review must begin following the receipt of information sufficient to begin review. Issuers should not request irrelevant or overly burdensome information. Issuers must be equipped to accept these requests in writing, electronically, and telephonically.

As part of the request for a standard review, the prescribing physician or other prescriber should support the request by including an oral or written statement that provides a justification supporting the need for the non-formulary drug to treat the enrollee's condition, including a statement that all covered formulary drugs on any tier will be or have been ineffective, would not be as effective as the non-formulary drug, or would have adverse effects.

Following a favorable decision on the standard or external review, the enrollee must be provided access to the prescribed drug without unreasonable delay. Therefore, issuers need to be prepared to communicate rapidly with pharmacies and pharmacy benefit managers, as applicable. At a minimum, we expect issuers to update certificates of coverage to reflect the availability of this process, and to be able to provide instruction to enrollees or their designees and providers or their designees on how to use the process.

For the external exception review, we are finalizing a standard under which the independent review organization that conducts the external review must be accredited by a nationally recognized private accrediting organization. As part of this process, the issuer should provide the independent review organization with all relevant information to conduct the review, including the initial denial of the exception request. The issuer may use the same independent review organization for the external review for the drug exception process under § 156.122(c)(3) that the plan contracts with for the final external review decision under § 147.136. As established in revised § 156.122(c), any drug covered through the exception process must be treated as an EHB, including by counting any cost sharing towards the plan's annual limitation on cost sharing and when calculating the plan's actuarial value. We believe that ensuring that an enrollee has the option to request an external review of a denied exception request and that a drug covered through the exception process count towards the plan's annual limitation on cost sharing are important consumer protections that help ensure enrollees' access to clinically appropriate medications.

We do not believe that enrollees should have to continue to make requests under § 156.122(c) to access a refill of the same clinically appropriate drugs that they initially obtained through the exceptions process. Therefore, we are finalizing a standard under which non-grandfathered health plans in the individual and small group markets that must provide coverage of the essential health benefit package under section 1302(a) of the Affordable Care Act must cover a drug accessed through the standard exception process for the duration of the prescription, including refills. To provide further clarification on the operation of the external review process, we are also finalizing a new standard under which,

if a health plan providing EHB grants an external exception review of a standard exception request, the health plan must provide coverage of the non-formulary drug for the duration of the prescription, including refills. Likewise, if a health plan grants an external exception review of an expedited exception request, the health plan must provide coverage of the non-formulary drug for the duration of the exigency. Nothing under this policy precludes a State from requiring stricter standards in this area. Issuers will be required to comply with the new standard exception process and external review process requirements starting with the 2016 plan year.

iii. Section 156.122(d)

Under § 156.122(d), we proposed adding a requirement to the EHB prescription drug benefit that a health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, OPM, and the general public. We also solicited comment on whether the formulary tiering information should include cost sharing information, such as the enrollee's applicable pharmacy deductible (for example, $100), copayment (for example, $20), or cost-sharing percentage for the enrollee (for example, 20 percent). We proposed that a formulary drug list be considered easily accessible when the general public is able to view the formulary drug list on the plan's public Web site through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number. The general public should be able to easily discern which formulary drug list applies to which plan if the issuer maintains multiple formularies, and the plan associated with each formulary drug list should be clearly identified on the plan's Web site. As a result of this proposed requirement, we would expect the issuers' formulary drug list to be up-to-date, meaning that the formulary drug list must accurately list all of the health plan's covered drugs at that time. We solicited comments on this timing. Also, the formulary drug list URL link under this section should be the same direct formulary drug list URL link for obtaining information on prescription drug coverage in the Summary of Benefits and Coverage, in accordance with § 147.200(a)(2)(i)(K). We proposed that this requirement would be effective beginning with the 2016 plan year. We solicited comments on these proposed requirements, including whether we should require that additional types of information be included in the formulary drug list.

As part of this proposed requirement that issuers' formulary drug list must be made available to the general public, we considered requiring issuers to make this information publicly available on their Web sites in a machine-readable file and format specified by HHS. The purpose of establishing machine-readable files with the formulary drug list data would be to provide the opportunity for third parties to create resources that aggregate information on different plans. As an alternative, we considered whether the formulary drug list information could be submitted to HHS though an HHS-designed standardized template, while recognizing that there could be challenges with keeping this type of template information updated. We solicited comments on these options. We are finalizing these requirements largely as proposed, with language to clarify that the requirement to publish an up-to-date, accurate and complete list of all covered drugs applies beginning with the 2016 plan year, and to require that QHPs in the FFEs make available this information to HHS in a format and at times determined by HHS beginning with the 2016 plan year.

Comment: Most commenters generally supported the proposed standards regarding the ease with which consumers should be able to view formulary drug lists on issuers' Web sites, and some recommended requirements on the format for the formulary drug list on the Web site. Many commenters wanted detailed cost-sharing information to be included on the formulary drug list, including deductible, copay, and specific coinsurance dollar amounts. Others opposed providing that level of detail on the formulary drug list because of difficulties in keeping the formulary drug list up to date and potential consumer confusion because every plan design, including each silver plan variant, would need a separate formulary drug list. Other commenters sought clarification on definitions, including all covered drugs and any restrictions on the manner in which the drug can be obtained. Others supported or opposed the proposed definition of ''up to date.''

Response: The purpose of § 156.122(d) is to improve the transparency of formulary drug lists for plans required to cover the essential health benefits by requiring accurate, complete and up-to-date information on the drugs that the plan covers to assist consumers. Thus, while we recognize the value in providing consumers with detailed cost-sharing information on the formulary drug list (such as the enrollee's applicable pharmacy deductible, copayment, or cost-sharing percentage for the enrollee), our goal with this provision is to ensure that the formulary drug list is accurate, complete, and up-to-date. Providing detailed cost-sharing information on the formulary drug list is not a typical practice in the private health insurance market. Therefore, we are finalizing § 156.122(d) as proposed at this time. Issuers' formulary drug lists must include any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, and while we are not requiring detailed cost-sharing information under § 156.122(d) at this time, we encourage issuers to provide this level of transparency on the formulary drug list where feasible to help consumers make more informed decisions about their health insurance coverage. In general, consumers should be able to use the formulary drug list in conjunction with the summary of benefits and coverage or other plan documents to determine their applicable cost sharing. For example, a formulary drug list would list which drugs are in Tier 1 (or similar category of prescription drug coverage), and the SBC would indicate that drugs in Tier 1, or similar category, have a $20.00 copayment. While the SBC must list any applicable coinsurance and major limitations or exceptions, an issuer's SBC would not list the specific dollar amounts an enrollee would pay for a drug that is subject to coinsurance, given that the SBC is only a summary of cost-sharing features. For the purpose of this section, references to the URL have been removed to clarify that our standards apply to the actual formulary drug list, not the Web address.

For the purpose of § 156.122(d), for a formulary drug list to be considered complete, the formulary drug list must list all drugs that are EHB and when the formulary drug list specifies all drug names that are currently covered by the plan at that time. This requirement means that issuers are prohibited from listing only the most commonly prescribed medications. The formulary drug list does not have to list every covered formulation for each covered drug, but the issuer should be prepared to provide information on the specific formulations upon request to the plan's enrollees, prospective enrollees, the State, the Exchange, HHS, OPM, and the

general public. Issuers must also include accurate information on any restrictions on the manner in which the drug can be obtained in the formulary drug list, including prior authorization, step therapy, quantity limits, and any access restrictions related to obtaining the drug from a brick and mortar retail pharmacy, such as only being accessible through a mail-order pharmacy because the drug requires special handling. The formulary drug list must be up-to-date, which means that the formulary drug list must accurately list all of the health plan's covered drugs at that time. To meet this requirement, we would expect that the issuer would make any coverage changes simultaneously with updating the formulary drug list and therefore, if an issuer makes a change to its formulary, it would not implement the change until the issuer has posted the change to the formulary drug list on its Web site. We understand that our standard for updating the formulary drug list is stricter than is the case for the typical private market plan, but we believe that the value of increased transparency to consumers is critically important to ensuring that consumers are making informed decisions about their health care. Issuers are prohibited from limiting the updates to their formulary drug list to only formulary changes that negatively impact enrollees, such as removal of drugs from the formulary drug list. Also, the URL that takes a consumer to the issuer's formulary drug list on its Web site must be the same direct formulary drug list URL link for obtaining information on prescription drug coverage in the SBC, in accordance with § 147.200(a)(2)(i)(K), and for QHPs on the Exchanges, this link must be the same link displayed to prospective enrollees on the applicable Exchange Web site. As discussed in the preamble to § 156.250, in addition to the requirements imposed by § 156.250, QHP issuers may also have duties to make this information accessible to individuals with disabilities and individuals with LEP under Federal civil rights laws that also might apply, including section 1557 of the Affordable Care Act, section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act. For the FFEs, this URL must be the one that issuers provide through the QHP application for display on HealthCare.gov. While these regulations do not prohibit issuers from providing their drug lists in a searchable or dynamic format on their Web sites, consumers should not have to create an account, be an enrollee in the plan, or navigate multiple Web pages to view the formulary drug list. Specifically, the link needs to be the direct link to the formulary drug list. Further, if an issuer has multiple formulary drug lists, consumers should be able to easily discern which formulary drug list applies to which plan. Also, the Web page should clearly list which plans the formulary drug list applies to using the marketing name for the plan, which for Marketplace plans would be the marketing name used on HealthCare.gov. The revised § 156.122(d) is effective beginning with the 2016 plan year, and we expect that most issuers already have a formulary drug list available via a URL link and will only need to make certain minor modifications to its link to be in compliance with the new § 156.122(d)(1).

Comment: Several commenters supported the proposal for issuers to make the formulary drug list information available in a machine-readable file or a format specified by HHS, stating that this would improve transparency and foster development of additional tools to help consumers make informed decisions about their coverage. Commenters recommended types of information that should be included and the development of tools similar to tools developed by the Medicare Part D program. Others supported allowing various options on how to search for covered drugs, such as by the drug name or listing alphabetically. Conversely, some commenters opposed the proposal, expressing concerns about data integrity, accuracy, confidentiality, and managing third parties' use of this data. Some commenters were concerned that the machine-readable data collection would be duplicative, and noted that implementing any standard would be time-consuming and requested the opportunity to provide additional stakeholder feedback. Some commenters suggested use of an application programming interface (API) to support making formulary drug list information more transparent.

Response: We believe a machine-readable file or a format specified by HHS will increase transparency by allowing software developers to access this information and create innovative and informative tools to help enrollees better understand plans' formulary drug lists. Based on the comments received asking us to make formulary drug list information more transparent and accessible to consumers, HHS is finalizing this rule by adding § 156.122(d)(2) to require QHPs in the FFEs to make available the information on the formulary drug list on its Web site in a HHS specified format and also submit this information to HHS, in a format and at times determined by HHS. We agree with commenters that creating a vehicle for consumers to easily determine which plans cover which drugs will help consumers select QHPs that best meet their needs. We recognize that this will require issuer resources, and will provide further details about the specific data elements, frequency of updates, file types, and other crucial information in future guidance.

iv. Section 156.122(e)

Under § 156.122(e), we proposed to require that enrollees be provided with the option to access their prescription drug benefit through retail (brick-and-mortar or non-mail order) pharmacies. This requirement would mean that a health plan that is required to cover the EHB package cannot have a mail-order only prescription drug benefit. This proposed requirement would still allow a health plan to charge a different cost-sharing amount when an enrollee obtains a drug at an in-network retail pharmacy than he or she would pay for obtaining the same covered drug at a mail-order pharmacy. However, as a part of these requirements, we proposed to clarify that this additional cost sharing for the covered drug would count towards the plan's annual limitation on cost sharing under § 156.130 and would need to be taken into account when calculating the actuarial value of the health plan under § 156.135. Additionally, under this proposed policy, issuers would still retain the flexibility to charge a lower cost-sharing amount when obtaining the drug at an in-network retail pharmacy. While this proposal requires coverage of a drug at an in-network retail pharmacy, for plans that do not have a network, the enrollee would be able to go to any pharmacy to access their prescription drug benefit and those plans would, therefore, be in compliance with this proposed standard.

As part of this proposed policy, we proposed that the health plan may restrict access to a particular drug when: (1) The FDA has restricted distribution of the drug to certain facilities or practitioners (including physicians); or (2) appropriate dispensing of the drug requires special handling, provider coordination, or patient education that cannot be met by a retail pharmacy. If the health plan finds it necessary to restrict access to a drug for either of the two reasons listed above, we proposed that it must indicate this restricted access on the formulary drug list under § 156.122(d). We are finalizing these policies as proposed with a technical edit to § 156.122(e)(2) to replace

''higher'' cost sharing with ''different'' cost sharing.

Comment: Several commenters supported proposed § 156.122(e) as helping to ensure that plans do not discourage enrollment by, and thus discriminate against, transient individuals and individuals who have conditions that they wish to keep confidential and discussed other cases in which obtaining a prescription from a mail-order pharmacy is difficult for an enrollee, such as cases where an enrollee with a serious health condition may be unable to wait for the prescription to be filled via a mail-order pharmacy. Other commenters opposed these requirements, stating that it would be costly, limit consumer choice of plans that use mail-order benefits, be contrary to specialty drug market practices, not account for the quality standards used by specialty pharmacies, be contrary to precedent from other Federal programs, and be duplicative. Some commenters were concerned that the issue is outside the scope of EHB, is not reflective of a typical employer plan, does not take into account existing privacy laws, and should require additional rulemaking that, for instance, takes into account the NAIC's pending model act on network adequacy. Other commenters wanted clarification that preventive services drugs must be covered at no cost sharing at retail pharmacies, and other commenters discussed similar and overlapping State requirements. Several commenters wanted additional exceptions, such as an exclusion related to specialty drugs and pharmacies, and some commenters supported implementing this provision in 2016 while others supported a 2017 implementation date.

Response: The intention of § 156.122(e) is to ensure all enrollees in plans required to cover EHB are able to use the prescription drug benefit if needed, and is intended to expand options for these enrollees. Thus, the purpose of this policy is not to limit the ability of issuers to use mail-order pharmacies—issuers can continue to influence consumer choice through cost sharing. The issuers need only provide enrollees with the option to access drugs that are not exempted under § 156.122(e)(1)(i) and (ii) at an in-network retail pharmacy. There are instances in which obtaining a drug through a mail-order pharmacy may not be a viable option, such as when an individual does not have a stable living environment and does not have a permanent address, or when a retail pharmacy option better ensures that consumers can access their EHB prescription drug benefit on short notice. In such cases, we do not believe that making drugs available only by mail order constitutes fulfilling the obligation under section 1302(b)(1)(F) of the Affordable Care Act to provide prescription drug coverage as part of EHB. We also believe that making drugs available only by mail order could discourage enrollment by, and thus discriminate against, transient individuals and individuals who have conditions that they wish to keep confidential. We also believe that this provision is important to ensure uniformity in benefit design and consumer choice. Therefore, we are finalizing § 156.122(e) as proposed and with a clarification that this policy will be effective beginning with the 2017 plan year.

Issuers retain the ability to charge different cost sharing for drugs obtained at a retail pharmacy, but for non-grandfathered health plans in the individual and small group markets that must provide coverage of the essential health benefit package under section 1302(a) of the Affordable Care Act, all cost sharing, including any difference between the cost sharing for mail order and the cost sharing for retail, must count towards the plan's annual limitation on cost sharing in accordance with § 156.130(a) and must be taken into account when calculating the actuarial value of the health plan in accordance with § 156.135. We are clarifying that these issuers can apply higher or lower cost sharing, that is, nothing requires an issuer to use higher cost sharing for drugs obtained from a retail pharmacy. As a result, some or all of the costs associated with this option may be passed on to the consumer who chooses to use it. However, nothing in this provision supersedes State law that may apply other cost sharing standards to mail-order pharmacies. For plans that do not have a network, enrollees should be able to go to any pharmacy to access their prescription drug benefit, and those plans would, therefore, be in compliance with this standard. In addition, this requirement is not intended to disrupt or supersede the rules regarding cost sharing for preventive service benefits when such coverage includes drugs.

In response to comments, we considered an exceptions process under which an enrollee could make a request to obtain the prescription at a brick and mortar retail pharmacy. However, we are concerned that if we allow an exception process, the issuer would retain the option to deny the request, and such a process could be seen as burdensome on the enrollee. In particular, an exception process could be burdensome for enrollees with complex health conditions if they had to seek an exception request for each of their prescription drugs that they take.

We understand that specialty pharmacies provide more integrated services, aimed at improving clinical outcomes while limiting costs relating to the delivery and management of the product, than a typical mail-order pharmacy or a brick and mortar retail pharmacy. We understand that drugs on the specialty tier of a formulary are not necessarily the same drugs that a specialty pharmacy would provide. Our intention with this policy was not to disrupt the specialty pharmacy market, and we understand that exceptions will be needed for many drugs that are only accessible via a specialty pharmacy. For these reasons, we are finalizing the exceptions that allow a health plan to restrict access to certain drugs in limited circumstances. As part of this requirement, a health plan may restrict access to mail order, which may include specialty pharmacies, for a particular drug when: (1) The FDA has restricted distribution of the drug to certain facilities or practitioners (including physicians); or (2) appropriate dispensing of the drug requires special handling, provider coordination, or patient education that cannot be met by a retail pharmacy. For instance, certain drugs have a Risk Evaluation and Mitigation Strategy (REMS) that includes Elements to Assure Safe Use that may require that pharmacies, practitioners, or health care settings that dispense the drug be specially certified and that may limit access to the drugs to certain health care settings.[52] If the health plan finds it necessary to restrict access to a drug for either of the reasons listed above, it must indicate this restricted access on the formulary drug list that plans must make publicly available under § 156.122(d). The provisions at § 156.122(e)(1)(i) and (ii) allow an issuer to restrict access to certain drugs at a retail pharmacy for the specific reasons noted in those paragraphs. Although issuers may subject these drugs to reasonable utilization management techniques, the fact that these drugs have restricted access should not in and of itself be a justification for applying these techniques to these drugs.

Issuers must implement the revised § 156.122(e) no later than for the start of

[52] FDA requires a Risk Evaluation and Mitigation Strategies (REMS) for certain drugs to ensure that the benefits of a drug or biological product outweigh its risks. The following is FDA's list of currently approved REMS at: *http://www.fda.gov/drugs/drugsafety/postmarketdrugsafetyinformationforpatientsandproviders/ucm111350.htm.*

the 2017 plan year, and we have added this clarification to the regulation.

v. Other Comments on the Preamble to § 156.122

In addition to the proposed provisions above, we urged issuers to temporarily cover non-formulary drugs (including drugs that are on an issuer's formulary but require prior authorization or step therapy) as if they were on formulary (or without imposing prior authorization or step therapy requirements) during the first 30 days of coverage. We encouraged plans to adopt this policy to accommodate the immediate needs of enrollees, while allowing the enrollee sufficient time to go through the prior authorization or drug exception processes.

Comment: Some commenters sought clarification about coverage of medical drugs and preventive service drugs. Others recommended requiring limits to formulary changes during the plan year. Several commenters recommended that we require issuers to temporarily cover non-formulary drugs during the first 30 days of coverage or longer and other commenters were against this policy, stating that it is not a typical requirement in the private market, and that it is costly and counterintuitive to formulary transparency. Other commenters supported transition policies, but acknowledged the importance of flexibility for issuers in developing these policies.

Response: Preventive services, including preventive service drugs, are required to be covered as part of EHB. Non-grandfathered group health plans and health insurance coverage must provide benefits for preventive health services, including preventive service drugs, without cost sharing, consistent with the requirements of section 2713. Similarly, the rules set forth under § 156.122 are specific to coverage of drugs under the prescription drug EHB category. Issuers could cover drugs administered as part of another service (such as during an inpatient hospitalization or a physician service) under the EHB category that covers that service, in addition to covering the drug under the prescription drug EHB category. We believe this clarification reflects the current practice of issuers.

We are also concerned about issuers making mid-year formulary changes, especially changes that negatively affect enrollees. We are monitoring this issue to consider whether further standards are needed. We also note that, under guaranteed renewability requirements and the definitions of ''product'' and ''plan,'' issuers generally may not make plan design changes, including changes to drug formularies, other than at the time of plan renewal. We recognize that certain mid-year changes to drug formularies related to the availability of drugs in the market may be necessary and appropriate.

We are not requiring coverage of a transitional fill at this time. As stated in the proposed rule, we will consider whether additional requirements may be needed in this area. We remain concerned that new enrollees may be unfamiliar with what is covered on their new plan's formulary drug list and the process and procedures under the plan. Further, some new enrollees whose drugs are covered by the plan's formulary may need to obtain prior authorization or go through step therapy to have coverage for their drugs, and others may need time to work with their provider to determine which formulary drug the individual should be transitioned to. For these reasons, we urge issuers to temporarily fill drugs that are not on the formulary (or are on an issuer's formulary but require prior authorization or step therapy) as if they were on formulary (or without imposing prior authorization or step therapy requirements) during the first 30 days of coverage. We encourage plans to adopt this policy to accommodate the immediate needs of enrollees, while allowing the enrollee sufficient time to go through the prior authorization or drug exception processes.

Comment: Some commenters recommended that we implement the prescription benefit requirements in 2017 or later. Others recommended that all of the prescription drug benefit changes be implemented in 2016. Some had separate recommendations for the timing or only commented on the timing for certain requirements.

Response: We recognize that certain prescription benefit changes under § 156.122 will be easier to implement than others. For that reason, we are finalizing our proposal effective dates for § 156.122(c) and new § 156.122(d), such that they are effective for plan years beginning or after January 1, 2016. These requirements are typical of the current market and would require updating and modifying of systems and procedures to align with the finalized policy. We are finalizing our proposed effective dates for the revisions to § 156.122(a) and new § 156.122(e) such that they are effective for plan years beginning on or after January 1, 2017 to better ensure a smooth transition in implementing these policies.

e. Prohibition on Discrimination (§ 156.125)

Section 1302(b)(4) of the Affordable Care Act directs the Secretary to address certain standards in defining EHB, including elements related to balance, discrimination, the needs of diverse sections of the population, and denial of benefits. We have interpreted this provision, in part, as a prohibition on discrimination by issuers providing EHB. Under § 156.125, which implements the prohibition on discrimination provisions, an issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.

As described in the proposed rule, since we finalized § 156.125, we have become aware of benefit designs that we believe would discourage enrollment by individuals based on age or based on health conditions, in effect making those plan designs discriminatory, thus violating this prohibition. Some issuers have maintained limits and exclusions that were included in the State EHB benchmark plan. As we have previously stated in guidance, EHB-benchmark plans may not reflect all requirements effective for plan years starting on or after January 1, 2014. Therefore, when designing plans that are substantially equal to the EHB-benchmark plan, issuers should design plan benefits, including coverage and limitations, to comply with requirements and limitations that apply to plans beginning in 2014.[53]

In the proposed rule, we discussed three examples of potentially discriminatory practices: (1) Attempts to circumvent coverage of medically necessary benefits by labeling the benefit as a ''pediatric service,'' thereby excluding adults; (2) refusal to cover a single-tablet drug regimen or extended-release product that is customarily prescribed and is just as effective as a multi-tablet regimen, absent an appropriate reason for such refusal; and (3) placing most or all drugs that treat a specific condition on the highest cost tiers.

In this final rule, CMS adopts the same approach as described in the proposed rule. As we indicated in the proposed rule and the 2014 Letter to Issuers, we will notify an issuer when we see an indication of a reduction in the generosity of a benefit in some

[53] Guide to Reviewing EHB Benchmark Plans—*http://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html#review* benchmarks.

manner for subsets of individuals that is not based on clinically indicated, reasonable medical management practices.[54] We conduct this examination whenever a plan subject to the EHB requirement reduces benefits for a particular group. Issuers are expected to impose limitations and exclusions based on clinical guidelines and medical evidence, and are expected to use reasonable medical management. Issuers may be asked to submit justification with supporting documentation to HHS or the State explaining how the plan design is not discriminatory.

We note that other nondiscrimination and civil rights laws may apply, including the Americans with Disabilities Act, section 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973 and State law. Compliance with § 156.125 is not determinative of compliance with any other applicable requirements, and § 156.125 does not apply to the Medicaid and CHIP programs, but a parallel provision applies to EHBs furnished by Medicaid Alternative Benefit Plans.

Comment: Many commenters requested that we clarify that the examples provided are only examples and not *per se* discriminatory. Other commenters requested that we codify the examples and suggested additional examples of discriminatory practices that should be codified as well.

Response: We are not prohibiting certain practices in regulatory text at this time. Several factors must be taken into consideration during benefit design, and a discrimination determination is often dependent on the specific facts and circumstances. However, the examples identified in the proposed rule contain indications that they are discriminatory, and therefore further investigation by the enforcing entity may be required. We strongly caution issuers that the examples cited appear discriminatory in their application when looking at the totality of the circumstances, and may therefore be prohibited.

Additionally, as described later in this preamble, section 1302(b) of the Affordable Care requires that the definition of EHB be based on the scope of benefits provided under a typical employer plan, subject to requirements under the joint interpretive jurisdiction of the Departments of HHS, Labor, and the Treasury.[55] Because the nondiscrimination provisions are related to many other such requirements, HHS will consult with relevant Federal agencies, such as the Departments of Labor and the Treasury, as necessary, in developing new guidance related to discriminatory benefit designs.

Comment: Some commenters asked whether discrimination would be identified during certification or approval and therefore a finding of discrimination would be prospective only.

Response: As provided under § 156.125(a), an issuer does not provide EHB if the implementation of a benefit design discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. Some discriminatory practices might not be discovered until an enrollee files a complaint with the appropriate body. Once a discriminatory practice is identified, the issuer may be asked to submit a justification with supporting documentation to HHS or the State explaining why the practice is not discriminatory.

Comment: Some commenters expressed concern regarding the example of placing most or all drugs for a certain condition on a high cost tier. They noted that drug tiering reflects current realities of the drug market and is based on costs. The commenters asked CMS to clarify that having a specialty tier is not discriminatory.

Response: The examples provided in the proposed rule are potentially discriminatory if there is no appropriate non-discriminatory reason for the noted practice. Having a specialty tier is not on its face discriminatory; however, placing most or all drugs for a certain condition on a high cost tier without regard to the actual cost the issuer pays for the drug may often be discriminatory in application when looking at the totality of the circumstances, and therefore prohibited. When CMS or the State requests a justification for such a practice, issuers should be able to identify an appropriate non-discriminatory reason that supports their benefit design, including their formulary design.

Comment: Several commenters requested more detailed information regarding how CMS and States monitor and enforce discrimination.

Response: Enforcement of the requirement to cover EHB is governed by section 2723 of the PHS Act, which looks first to States for enforcement, then to the Secretary where a State informs CMS that it is not enforcing the requirement, or CMS finds that the State has failed to substantially enforce. Therefore the State, or CMS in States that are not substantially enforcing market-wide standards, is responsible for enforcing EHB standards, including the non-discrimination standard. In an FFE, CMS notifies an FFE issuer when we see an indication of a reduction in the generosity of a benefit for a subset of individuals and it is not apparent that the reduction is based on a clinical indication or reasonable medical management practices.[56] We conduct this examination whenever a plan on an FFE reduces benefits for a particular group. Limitations and exclusions are expected to be based on clinical guidelines and medical evidence, and medical management standards are expected to be reasonable. Issuers may be asked to submit a justification with supporting documentation to CMS or the State explaining how the plan design is not discriminatory.

HHS's Office for Civil Rights (OCR) has independent authority to enforce section 1557 of the Affordable Care Act (42 U.S.C. 18116), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in any health program or activity, any part of which receives Federal financial assistance. OCR also enforces Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*) and their respective implementing regulations, which prohibit discrimination on the basis of race, color, national origin, disability, or age in health programs and activities that receive Federal financial assistance.

f. Cost-Sharing Requirements (§ 156.130)

We proposed to amend § 156.130 to clarify how the annual limitation on

[54] Letter to Issuers on Federally-facilitated and State Partnership Exchanges, April 5, 2013, page 15 and 2015 Letter to Issuers in the Federally facilitated Marketplaces, March 14, 2014, page 29.

[55] To inform the determination as to the scope of a typical employer plan, section 1302(b)(2)(A) of the Affordable Care act requires the Secretary of Labor to conduct a survey of employer-sponsored coverage to determine *the benefits typically covered by employers,* and to provide a report to the Secretary of HHS. These provisions suggest that, while detailed requirements for EHB in the individual and small group health insurance markets were deemed necessary, the benefits covered by typical employer plans providing primary coverage at the time the Affordable Care Act was enacted were seen as sufficient to satisfy the Act's objectives for the breadth of benefits needed for health plan coverage and, in fact, to serve as the basis for determining EHB.

[56] Letter to Issuers on Federally-facilitated and State Partnership Exchanges, April 5, 2013, page 15 and 2015 Letter to Issuers in the Federally-facilitated Marketplaces, March 14, 2014, page 29.

cost sharing applies to plans that operate on a non-calendar year, and to make a technical correction to the special rule for network plans. First, we proposed to add new § 156.130(b), which would provide that non-calendar year plans that are subject to the annual limitation on cost sharing in section 1302(c)(1) must adhere to the annual limitation that is specific to the calendar year in which the plan begins. That annual limitation amount would serve as the maximum for the entire plan year. The purpose of this proposal is to ensure that the enrollee would only be required to accumulate cost sharing that applies to one annual limit per year. We also stated that under section 1302(c)(3) of the Affordable Care Act, the term ''cost sharing'' includes deductibles, coinsurance, copayments, or similar charges, and any other expenditure required of an individual that is a qualified medical expense (within the meaning of section 223(d)(2) of the Code) for EHB covered under the plan. Expenditures that meet this definition of cost sharing must, under section 1302(c) of the Affordable Care Act, count toward the annual limitation on cost sharing incurred under a health plan that is required to cover EHB. Cost sharing does not include premiums, balance billing amounts for non-network providers, or spending for non-covered services. This definition was codified in § 155.20.

Additionally, we proposed to make a technical correction to the text at § 156.130(c) on the special rule for network plans to replace ''shall not'' with ''is not required to.'' This proposed amendment was intended to clarify that issuers have the option to count the cost sharing for out-of-network services towards the annual limitation on cost sharing, but are not required to do so. This out-of-network cost sharing would not count toward the calculation of actuarial value under § 156.135(b)(4) or meeting a given level of coverage under § 156.140.

Lastly, in the proposed rule, we proposed clarifying that the annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only. In both of these cases, an individual's cost sharing for EHB may never exceed the self-only annual limitation on cost sharing. For example, under the proposed 2016 annual limitation on cost sharing, if an other than self-only plan has an annual limitation on cost sharing of $10,000 and one individual in the family plan incurs $20,000 in expenses from a hospital stay, that particular individual would only be responsible for paying the cost sharing related to the costs of the hospital stay covered as EHB up to the annual limit on cost sharing for self-only coverage (assuming an annual limitation of $6,850 for 2016, the maximum for that year). We sought comments on these proposed requirements and clarifications as well as whether other requirements and clarifications were needed. We are finalizing our proposal that the annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only and the technical correction we proposed to make to the text at § 156.130(c).

Comment: Several commenters were supportive of the proposed § 156.130(b) as ensuring that cost sharing for non-calendar plans accrues for a 12-month period, and ensuring that an enrollee only has to accumulate cost sharing towards one annual limitation on cost sharing. Other commenters opposed the proposed § 156.130(b) because small employer plans typically operate on a non-calendar year basis, but accumulate towards a calendar year annual limitation on cost sharing. These commenters saw the proposed requirements as disruptive, confusing to consumers, and difficult to implement. Commenters asked for an exception from the new § 156.130(b) for large and self-funded group health plans and indicated that issuers would need time to implement the rules, and would require a clear transitional policy.

Response: The purpose of proposed § 156.130(b) was to ensure that issuers could not reset the annual limitation on cost sharing more frequently than once a year and was not intended to disrupt the employer group health insurance market. After careful consideration of comments received, we are not finalizing this policy at this time. At this time, we believe it is important to retain flexibility in the employer health insurance market on the timeframe under which the employer sets the annual limitation on cost sharing, but we do maintain that the annual limitation cost sharing is to apply on an annual basis regardless of whether it is a calendar year or a non-calendar year plan.

Comment: Some commenters were supportive of the proposed technical correction to § 156.130(c) to replace ''shall not'' with ''is not required to.'' Some commenters recommended that we expand this requirement to require the counting of out-of-network services toward the annual limit on cost sharing, including in cases where the issuer is failing to meet network adequacy standards or in cases of emergency services, or to expand the types of cost sharing that must count towards the annual limitation on cost sharing.

Response: The purpose of this correction was to better align this regulation with the Affordable Care Act Implementation FAQs (Set 18) that were prepared jointly by the Departments of Labor, HHS, and the Treasury.[57] In this final rule, we do not intend to expand this requirement to require counting of out-of-network services toward the annual limitation on cost sharing and believe that requiring coverage of out-of-network services for cases where an enrollee is unable to access an in-network provider for covered services is beyond the scope of the regulation related to cost sharing requirements, which applies in different ways in a broad range of markets, some of which may be subject to varying network adequacy requirements. However, revised § 156.130(c) ensures that an issuer has the option to count the cost sharing for these out-of-network services towards the annual limitation on cost sharing. In addition, issuers' obligations under § 156.130(g) and § 147.138(b)(3) regarding coverage of emergency services are applicable. Accordingly, we are finalizing these changes to § 156.130(c) as proposed.

Comment: Several commenters supported the clarification in the preamble that the self-only coverage limit for the annual limitation on cost sharing applies to all individuals regardless of whether the individual has other than self-only coverage, as a step toward greater consistency in consumer protections. Commenters who opposed this clarification were primarily concerned that this provision would limit the ability of issuers to offer high deductible health plans with a health savings account. Other commenters raised concerns about whether this clarification was within the Congressional intent of the statute, and whether this policy would be more generous than other Federal programs. Other commenters wanted additional clarification on how the annual limitation on cost sharing may be applied for other than self-only coverage.

Response: We believe that this clarification is an important consumer protection, as we are aware that some consumers have been confused by the applicability of the annual limitation on cost sharing in other than self-only

[57] *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs18.html.* (January 8, 2014).

plans. Therefore, we are finalizing this clarification. The annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only.

Section 156.130 is specific to the annual limitation on cost sharing. While cost sharing incurred towards the deductible must count towards the annual limitation on cost sharing for EHB, the deductible limit is not regulated in the same manner as the annual limitation on cost sharing. Therefore, family high deductible health plans that count the family's cost sharing to the deductible limit can continue to be offered under this policy. The only limit will be that the family high deductible health plan cannot require an individual in the family plan to exceed the annual limitation on cost sharing for self-only coverage. We also note that this policy, that the annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only, would also apply to catastrophic plans under § 156.155 and that plans are required to comply with reduced maximum annual limitation on cost sharing under § 156.420. We note that 2016 plans must comply with this policy.

g. Premium Adjustment Percentage (§ 156.130)

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 three parameters detailed in the Affordable Care Act: The maximum annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage by individuals for minimum essential health coverage the Secretary may use to determine eligibility for hardship exemptions under section 5000A of the Code, 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) 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 established a methodology for estimating average per capita premium for purposes of calculating the premium adjustment percentage in the 2015 Payment Notice. Under that methodology, the premium adjustment percentage is calculated based on the projections of average per enrollee employer-sponsored insurance (ESI) premiums from the NHEA, which is calculated by the CMS Office of the Actuary.

Accordingly, using the ESI data, the premium adjustment percentage for 2016 is the percentage (if any) by which the most recent NHEA projection of per enrollee ESI premiums for 2015 ($5,744) exceeds the most recent NHEA projection of per enrollee ESI premiums for 2013 ($5,303).[58] We are finalizing the proposed premium adjustment percentage for 2016 at 8.316047520 percent. We note that the 2013 premium used for this calculation has been updated to reflect the latest NHEA data. We are also finalizing the following cost-sharing parameters for calendar year 2016, based on our finalized premium adjustment percentage for 2016.

Maximum Annual Limitation on Cost Sharing for Calendar Year 2016. Under § 156.130(a)(2), for the 2016 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 2016, and for other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next lowest multiple of 50. Using the premium adjustment percentage of 8.316047520 for 2016 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,[59] we are finalizing the proposed 2016 maximum annual limitation on cost sharing at $6,850 for self-only coverage and $13,700 for other than self-only coverage.

Comment: Two commenters expressed concern with the increase in the maximum limitation on cost sharing, and asked HHS to consider alternative factors to those that make up the methodology or an alternate methodology to protect patients from increasing out-of-pocket costs. One commenter stated that the proposed increase of $500 for self-only and $1,000 for family policies over the 2014 maximums will deter enrollees from using drugs, and continual annual increases of this magnitude would nullify the protection afforded patients from limits on out-of-pocket expenses. Another commenter stated that the proposed percentage increase far exceeds any recent percentage increase in the maximum annual limit on deductibles proposed by the Internal Revenue Service for High Deductible Health Plans, the index used to establish maximum annual limits on cost sharing in the first year of the Affordable Care Act. The commenter stated that consumers do not commonly experience both annual premium increases and significant increases in the cost of benefits.

Response: We are finalizing the 2016 maximum annual limit on cost sharing as proposed. As discussed above, section 1302(c)(4) of the Affordable Care Act directs the Secretary to set the maximum limitation on cost sharing using an annual premium adjustment percentage. Other indices may use different factors. HHS recognizes that significant annual increases in out-of-pocket expenses would have a deleterious effect on consumers' ability to access health care. The methodology to establish the maximum annual limitation on cost sharing was finalized in the 2015 Payment Notice, and as stated there, we will consider adjusting the methodology in 2017 as additional data on health insurance premiums become available through the Exchanges and other sources.

h. Reduced Maximum Annual Limitation on Cost Sharing (§ 156.130)

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 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

[58] *See http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology2012.pdf* and Table 17 in *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2012.pdf* for additional information.

[59] *See http://www.irs.gov/pub/irs-drop/rp-13-25.pdf.*

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 Affordable Care Act 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 section 1402(c)(1)(B)(i) (that is, 73 percent, 87 percent or 94 percent, depending on the income of the enrollee(s)). Accordingly, we proposed to use a method we established in the 2014 Payment Notice for determining the appropriate reductions in the maximum annual limitation on cost sharing for cost-sharing plan variations. As finalized above, the 2016 maximum annual limitation on cost sharing is $6,850 for self-only coverage and $13,700 for other than self-only coverage. We analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute to determine whether to adjust the reductions so that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2016 benefit year and the results described in the proposed rule, which are being finalized as proposed.

Reduced Maximum Annual Limitation on Cost Sharing for Benefit Year 2016. Consistent with our analysis in the 2014 and 2015 Payment Notices, we developed three model silver level QHPs, and analyzed the impact on AV of the reductions described in the Affordable Care Act to the estimated 2016 maximum annual limitation on cost sharing for self-only coverage ($6,850). The model plan designs are based on data collected for 2015 plan year QHP certification to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through the Exchange. For 2016, the model silver level QHPs included a PPO with a typical cost-sharing structure ($6,850 annual limitation on cost sharing, $2,000 deductible, and 20 percent in-network coinsurance rate), a PPO with a lower annual limitation on cost sharing ($4,600 annual limitation on cost sharing, $2,550 deductible, and 20 percent in-network coinsurance rate), and an HMO ($6,850 annual limitation on cost sharing, $2,700 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 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 level health plans.

We then entered these model plans into the proposed 2016 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 a household income between 100 and 150 percent of the FPL (⅔ reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of the FPL (⅔ reduction), would 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 the FPL (½ reduction), would 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 2016 benefit year with a household income between 200 and 250 percent of the FPL be reduced by approximately ⅕, rather than ½. We are further finalizing as proposed a requirement that the maximum annual limitation on cost sharing for enrollees with a household income between 100 and 200 percent of the FPL be reduced by approximately ⅔, as specified in the statute, and as shown in Table 10. These reductions in the maximum annual limitation on cost sharing should adequately account for unique plan designs that may not be captured by our three model QHPs. We also note that 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, if the required reduction does not cause the AV of the QHP to meet the specified level.

We note that for 2016, as described in § 156.135(d), States are permitted to submit for approval by HHS State-specific data sets for use as the standard population to calculate AV. No State submitted a data set by the September 1 deadline.

TABLE 10—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2016

Eligibility category	Reduced maximum annual limitation on cost sharing for self-only coverage for 2016	Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2016
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)	5,450	10,900

Comment: We received one comment supporting the proposed reductions in the maximum annual limitation on cost sharing for 2016 for enrollees with a household income between 200 and 250 percent of the FPL, with the caveat that HHS design policies in future plan years to lower up-front cost sharing, such as through lower deductibles. Other commenters stated that HHS should consider reducing the cost-sharing limits for individuals with a household income between 200 and 400 percent of the FPL as the proposed cost-sharing limits may pose significant financial

challenge for enrollees with significant expenditures. One commenter urged HHS to systematically analyze the reduced annual limitation on cost sharing provided by cost-sharing reduction plans in each State or rating area for their impact on people with chronic illnesses.

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 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 2016 as proposed.

i. Minimum Value (§ 156.145)

Section 1401(a) of the Affordable Care Act added a new section 36B to the Code, providing a premium tax credit for certain individuals with household incomes between 100 percent and 400 percent of the FPL who enroll in, or who have one or more family members enrolled in an individual market QHP through an Exchange, who are not otherwise eligible for MEC. An employer-sponsored plan is MEC, but for purposes of the premium tax credit under section 36B(c)(2)(C)(ii) of the Code, an employee is generally treated as not eligible for MEC under an employer-sponsored plan unless the plan is affordable and provides minimum value (MV). An employer-sponsored plan provides MV if the plan's share of the total allowed costs of benefits provided under the plan is greater than or equal to 60 percent of the costs. An employee who is eligible for coverage under an employer-sponsored plan that is both affordable and provides MV to the employee may not receive a premium tax credit under section 36B of the Code for the employee's coverage in a QHP. If the employer coverage does not provide MV, the employee may be entitled to a premium tax credit even if the coverage is affordable.

Section 1513 of the Affordable Care Act added a new section 4980H to the Code providing for shared responsibility for employers regarding health coverage. An applicable large employer that does not offer coverage that is affordable and provides MV may be liable for an employer shared responsibility payment under section 4980H of the Code if one or more of its full-time employees receives a premium tax credit.

Under our regulations, the MV standard of 60 percent of the total allowed costs of benefits provided under the plan is based on an amount equivalent to the plan's share of total allowed costs required for a bronze level QHP offered on an Exchange. Section 1302(d)(2)(C) of the Affordable Care Act provides that regulations promulgated by the Secretary of HHS under section 1302(d)(2), addressing actuarial value, apply in determining under this title, the Public Health Service Act, and the Internal Revenue Code . . . the percentage of the total allowed costs of benefits provided under a group health plan or health insurance coverage that are provided by such plan or coverage. Accordingly, HHS regulations under section 1302(d) implementing actuarial value requirements, which an insurer offering essential health benefits (EHB) must meet for a non-grandfathered individual market or small group health insurance plan to be considered a bronze plan under section 1302(d)(1)(3) of the Affordable Care Act, also form the basis for determining the percentage of the total allowed costs of benefits provided for purposes of whether the value of coverage meets the MV standard under section 36B(c)(2)(C)(ii) of the Code.

HHS published final regulations implementing section 1302(d)(2) on February 25, 2013 (78 FR 12834). The regulations at § 156.20 define the percentage of the total allowed costs of benefits as (1) the anticipated covered medical spending for EHB coverage paid by a health plan for a standard population, (2) computed in accordance with the plan's cost sharing, and (3) divided by the total anticipated allowed charges for EHB coverage provided to the standard population. HHS regulations at § 156.145(b)(2) apply this definition in the context of MV by taking into account benefits a plan provides that are included in any one of the State EHB benchmarks.

The IRS and Treasury Department published proposed regulations on May 3, 2013 (78 FR 25909), applying the HHS regulations in defining MV for employer-sponsored plans. The proposed regulations provide that the MV percentage is determined by dividing a plan's anticipated medical spending (based on the plan's cost-sharing) for plan benefits that are EHB covered under a particular EHB benchmark plan for the MV standard population by the total allowed charges for EHB coverage for the standard population and converting the result to a percentage. Proposed 26 CFR 1.36B–6(c). Taxpayers may apply the proposed regulations for taxable years ending before January 1, 2015.

The final HHS regulations and proposed Treasury regulations allow plans to determine the MV percentage by using the MV Calculator published by HHS. It came to our attention that certain group health plan designs that provide no coverage of inpatient hospital services were being promoted, and that representations were being made, based on the MV Calculator, that these plan designs would cover 60 percent of the total allowed costs of benefits provided, and thus provide MV under the test in the current regulations. We understand that these designs have been promoted as a way of both minimizing the cost of the plan to the employer (a consequence not only of excluding inpatient hospitalization benefits but also of making an offer of coverage that a substantial percentage of employees will not accept) and avoiding potential liability for employer shared responsibility payments. By offering coverage that is affordable to the employee and that purports to provide MV, employers adopting these plan designs were seeking, to deny their employees the ability to obtain a premium tax credit that could result in the employer becoming subject to a section 4980H employer shared responsibility payment.

In Notice 2014–69 (2014–48 IRB, November 24, 2014), released on November 4, 2014, HHS and Treasury advised that regulations would be proposed providing that plans that fail to provide substantial coverage of inpatient hospital or physician services do not provide MV. Allowing these designs to be treated as providing MV not only would allow an employer to avoid the shared responsibility payment that the statute imposes when an employer does not offer its full-time employees adequate health coverage, but would adversely affect employees (particularly those with significant health risks) who understandably would find this coverage unacceptable, by denying them access to a premium tax credit for individual coverage purchased through an Exchange. Plans that omit critical benefits used disproportionately by individuals in poor health will enroll far fewer of these individuals, effectively driving down employer costs at the expense of those who, because of their individual health status are discouraged from enrolling.

That the MV standard may be interpreted to require that employer-sponsored plans cover critical benefits is evident in the structure of the Affordable Care Act, the context in which the grant of the authority to the Secretary to prescribe regulations under section 1302 was enacted, and the

policy underlying the legislation. Section 1302(b) authorizes the Secretary of HHS to define EHB to be offered by individual market and small group health insurance plans, provided that this definition include at least 10 specified categories of benefits, and that the benefits be equal to the scope of benefits provided under a typical employer plan. To inform this determination as to the scope of a typical employer plan, section 1302(b)(2)(A) provides that the Secretary of Labor shall conduct a survey of employer-sponsored coverage to determine the benefits typically covered by employers, including multiemployer plans, and provide a report on such survey to the Secretary [of HHS].[60] These provisions suggest that, while detailed requirements for EHB in the individual and small group health insurance markets were deemed necessary, the benefits covered by typical employer plans providing primary coverage at the time the Affordable Care Act was enacted were seen as sufficient to satisfy the Act's objectives for the breadth of benefits needed for health plan coverage and, in fact, to serve as the basis for determining EHB. They also suggest that any meaningful standard of minimum coverage may require providing certain critical benefits.

Employer-sponsored plans in the large group market and self-insured employers continue to have flexibility in designing their plans. They are not required to cover all EHB. Providing flexibility, however, does not mean that these plans can offer whatever benefits they choose and automatically meet MV requirements. A plan that excludes substantial coverage for inpatient hospital and physician services is not a health plan in any meaningful sense and is contrary to the purpose of the MV requirement to ensure that an employer-sponsored plan, while not required to cover all EHB, nonetheless must offer coverage with minimum value at least roughly comparable to that of a bronze plan offered on an Exchange.

For these reasons, the Secretary has concluded that the provisions of section 1302(d)(2) of the Affordable Care Act—requiring that the regulations for determining the percentage of the total allowed costs of benefits that apply to plans that must cover all EHB also be applied as a basis for determining minimum value—reflect a statutory design to provide basic minimum standards for health benefits coverage through the MV requirement, without requiring large group market plans and self-insured plans to meet all EHB standards. Given the scope of benefits covered by typical employer plans, the MV requirement is properly viewed as a means of ensuring that employer-sponsored plans satisfy basic minimum standards while also accommodating flexibility in the design of those plans.

Employers have been able to claim that plans without coverage of inpatient hospital services provide MV under the current quantitative MV test by designing a benefit package that, based on standardized actuarial assumptions used in the MV calculator, offsets the absence of actuarial value derived from spending on inpatient hospital coverage with increased spending on other benefits. Accordingly, some plan designs may pass the current quantitative test without offering a critical benefit universally understood to be included in any minimally acceptable employer health plan coverage, and which the Department of Labor study determined was included in *all* employer plans it surveyed.

As noted previously, we have concluded that the quantitative test for MV is not exclusive. Accordingly, we are finalizing our proposal to amend § 156.145 to require that, to provide MV, an employer-sponsored plan not only must meet the quantitative standard of the actuarial value of benefits, but also must provide a benefit package that meets a minimum standard of benefits. Specifically, we are finalizing as proposed the policy to revise § 156.145 to provide that, to satisfy MV, an employer plan must provide substantial coverage of both inpatient hospital services and physician services.

We are not requiring that large employer or self-insured employer group health plans provide all EHB as defined under section 1302 of the Affordable Care Act. Rather, we are only requiring that, to provide MV, employer-sponsored plans provide substantial coverage of the two types of benefits that we believe were envisioned for health plan coverage meeting the MV standard. We have concluded that plans that omit these types of coverage fail to meet universally accepted minimum standards of value expected from, and inherent in the nature of, any arrangement that can reasonably be called a health plan intended to provide the primary health coverage for employees.

Consistent with Notice 2014–69, we are finalizing our proposal that these changes to our regulations on MV will apply to employer-sponsored plans, including plans that are in the middle of a plan year, immediately on the effective date of the final regulations. However, because some employers adopted plans prior to publication of Notice 2014–69, we are finalizing our proposal that the final regulations not apply before the end of the plan year (as in effect under the terms of the plan on November 3, 2014) to plans that before November 4, 2014, entered into a binding written commitment to adopt, or began enrolling employees into, the plan, so long as that plan year begins no later than March 1, 2015. For these purposes, a binding written commitment exists when an employer is contractually required to pay for an arrangement, and a plan begins enrolling employees when it begins accepting employee elections to participate in the plan. The Department of the Treasury and the IRS are expected to publish proposed regulations making clear that this delayed applicability date applies solely for purposes section 4980H of the Code. At no time will any employee be required to treat a plan that fails to provide substantial coverage of inpatient hospital services or physician services as providing MV for purposes of eligibility for the premium tax credit under section 36B of the Code.

Comment: We received several comments supporting our proposal and urging HHS to broaden the MV requirement to include outpatient services, emergency services and prescription coverage. Several commenters recommended establishing a clear standard for ''substantial coverage'' to determine whether an employer has met the requirements: One commenter suggested conducting a survey of employer-sponsored plans to establish a benchmark, three commenters suggested using the Federal Employees Health Benefits (FEHB) plan as a benchmark, and one commenter suggested using 4 days of minimum hospital stays coverage as a threshold based on an analysis of hospital stays among individuals in employer-sponsored plans. Several commenters requested that HHS establish a good faith compliance standard for plans offering coverage with inpatient hospital and physician services for the 2015 plan year.

Response: We are finalizing the policy as proposed. As discussed in the proposed rule, because under the terms of the statute large employers are not required to offer EHB as defined by the Secretary, we are not requiring that large employer or self-insured employer group health plans provide all EHB as defined under section 1302 of the Affordable Care Act. Rather, we are only

[60] See Department of Labor. Special Report: Selected Medical Benefits: A Report from the Department of Labor to the Department of Health and Human Services. *http://www.bls.gov/ncs/ebs/sp/selmedbensreport.pdf.*

requiring that, to provide MV, employer-sponsored plans provide substantial coverage of the two types of benefits that we believe were envisioned as essential to health plan coverage meeting the MV standard. We have concluded that plans that omit these types of coverage fail to meet universally accepted minimum standards of value expected from, and inherent in, the nature of any arrangement that can reasonably be called a health plan intended to provide the primary health coverage for employees. We intend to provide further clarity on the requirement to provide ''substantial coverage,'' as circumstances warrant.

Comment: Several commenters raised concerns that the Affordable Care Act only requires coverage of 60 percent of costs of benefits and HHS is imposing other benefits requirements without statutory basis. One of the commenters recommended HHS create a safe harbor for plans establishing coverage designs based on good faith belief that the plan meets the 60 percent actuarial value threshold.

Response: As discussed above, we believe that section 1302(d)(2) of the Affordable Care Act—requiring that the regulations for determining the percentage of the total allowed costs of benefits that apply to plans that must cover all EHB also be applied as a basis for determining minimum value—reflect a statutory design to incorporate basic minimum standards for health benefits coverage similar in scope to EHB through the MV requirement, without requiring large group market plans and self-insured plans to meet all EHB standards. Given the scope of benefits covered by typical employer plans, the MV requirement is properly viewed as a means of ensuring that employer-sponsored plans that prevent employees from accessing the premium tax credit for comprehensive coverage in the Marketplace satisfy basic minimum standards while also accommodating flexibility in the design of those plans. We believe that our rules on effective dates adequately address transition issues. As described above, for purposes of section 4980H of the Code, the changes to our regulations on MV requirements will not apply before the end of the plan year for employers that adopted plans prior to November 4, 2014, so long as the plan begins no later than March 1, 2015. However, under no circumstances will an employee be denied the premium tax credit under section 36B of the Code for a plan that does not cover at least 60 percent of the total allowed costs of benefits, and/or fails to provide substantial coverage of inpatient hospital services or physician services.

Comment: Several commenters raised the concern that the MV requirements will increase the number of plans affected by the excise tax on high-cost employer-sponsored health coverage, and that many employers have limited benefits to avoid the tax or are considering passing off the excise tax costs to individuals.

Response: Our analysis shows plans likely to be affected by these clarifications of the MV requirements generally have annual costs far below the thresholds above which the excise tax will apply in 2018; $10,200 for self-only and $27,500 for other-than-self-only coverage. Pursuant to the statute, the thresholds may be increased for excess growth in health care costs through 2018 and based on inflation annually thereafter. We thus do not believe that this policy will affect the number of employer plans affected by the excise tax and are finalizing the policy as proposed.

3. Qualified Health Plan Minimum Certification Standards

a. QHP Issuer Participation Standards (§ 156.200)

We proposed to revise § 156.200(b)(7) to require that a QHP issuer comply with the standards under part 153 and not just the standards related to the risk adjustment program. This amendment clarifies that a QHP issuer must maintain responsibility for its compliance and, under § 156.340, the compliance of any of its delegated or downstream entities with the standards set forth in part 153, not just those specifically pertaining to risk adjustment. We received no comments on this proposal. We are finalizing this provision as proposed.

b. Transparency in Coverage (§ 156.220)

The transparency in coverage standards established under section 1311(e)(3) of the Affordable Care Act, as implemented at § 155.1040(a) and § 156.220, require health insurance issuers that offer a QHP in accordance with a certification from an Exchange to provide specified information to HHS, the Exchange, and the State insurance commissioner and to make this information available to the public in ''plain language.'' In a frequently asked question dated April 29, 2013,[61] HHS clarified that, to comply with section 1311(e)(3), issuers offering QHPs certified by an Exchange would be required to begin submitting this information only after QHPs have been certified for one benefit year.[62] We noted in the proposed rule (79 FR 70726) that because a full year of claims data will be available, we anticipate the collection and public display of the required information listed in § 156.220 from QHP issuers offering coverage through Exchanges beginning in 2016. We requested comments to inform future policies, regarding the data elements, format, and timeframe for the data submission, as well as the manner in which HHS, the Exchanges, and QHPs should publicly display the collected information. We also sought feedback on how to minimize duplication with information that issuers must already submit to HHS, States, or other entities (for example, accreditation organizations). Finally, we requested feedback on whether State Exchanges should display the same information and in the same format and manner as in the FFEs.

Comment: One commenter asked whether the transparency in coverage standards are applicable to stand-alone dental plans.

Response: The transparency in coverage reporting standards, established at § 156.220, are applicable to all QHPs offered on Exchanges, including stand-alone dental plans.

Comment: Several commenters recommended that HHS narrow any data elements it collects to reflect only information that would be useful to consumers as they select a QHP. Commenters were concerned with duplication of collections that are already required by States or HHS. Some commenters suggested that data collection should rely on what is already publicly available when possible. Some commenters expressed concerns regarding protection of proprietary information and suggested that HHS should not request or display data that could have unintended, anticompetitive consequences. A few

[61] Affordable Care Act Implementation Set 15, available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs15.html.*

[62] The FAQ also states that because section 2715A of the PHS Act simply extends the transparency provisions set forth in section 1311(e)(3) of the Affordable Care Act to group health plans and health insurance issuers offering group and individual health insurance coverage, the Departments clarified that the reporting requirements under section 2715A of the PHS Act will become applicable to group health plans and health insurance issuers offering group and individual health insurance coverage no sooner than when the reporting requirements under section 1311(e)(3) of the Affordable Care Act become applicable. Nothing in these proposed regulations would apply any transparency reporting requirements related to section 2715A of the PHS Act, incorporated into section 715(a)(1) of ERISA and section 9815(a)(1) of the Code.

commenters suggested examples of data elements, the frequency of collection, the format of display, and data sources that could be used to meet the requirements for specific elements.

Response: We intend to provide detail regarding the referenced data collection and display at a future date. We will take the commenters' suggestions into account when we do so. We intend to collect and display information in a standardized manner to minimize burden on issuers and maximize utility for consumers.

Comment: Some commenters recommended that transparency of coverage standards not be implemented for 1 year following issuance of the final guidance operationalizing them. These commenters were concerned about having sufficient time to put resources in place to submit and display data. Commenters also suggested that issuers be given an opportunity to comment on the specific elements that will be collected, the definition of those elements, and how the data will be used. One commenter suggested that HHS conduct beta testing before the requirements are fully implemented. In contrast, a few commenters were concerned with the 2016 implementation date for transparency requirements and recommended that HHS collect and display the required information as soon as possible.

Response: We believe a 2016 date will allow sufficient time for HHS to provide detailed guidance regarding the data collection, review, and public display of transparency elements and will allow HHS and Exchanges to collect a full set of data reflecting post-2014 experience. We intend to solicit additional comments on the specific approach before it is finalized.

c. Network Adequacy Standards (§ 156.230)

In § 156.230, we established the minimum network adequacy criteria that health and dental plans must meet to be certified as QHPs, under the Secretary's authority in section 1311(c)(1)(B) of the Affordable Care Act. In this rule, we proposed modifying § 156.230(a) to specify that this section only applies to QHPs that use a provider network and that a provider network includes only providers that are contracted as in-network. This means that the general availability of out-of-network providers will not be counted for purposes of meeting network adequacy requirements.

We believe that networks that provide sufficient access to benefits are a priority for issuers and consumers. HHS continues to take great interest in ensuring strong network access, particularly for QHPs that must meet the standards in § 156.230. As stated in the proposed rule, HHS is aware that the NAIC has formed a workgroup that is drafting a model act relative to network adequacy and will await the results of this workgroup before proposing significant changes to network adequacy policy. For 2016, HHS expects to continue the reasonable access standard adopted in the 2015 Letter to Issuers in the Federally-facilitated Marketplaces [63] and assess the provider networks information submitted as part of the QHP certification process. We urge State-based Exchanges to employ the same standard when examining network adequacy.

In addition to the changes above, we are also cognizant that new enrollees in QHPs may need a transition period to switch to a provider that is in-network in their new plan. We encourage QHP issuers that use a network of providers to offer new enrollees transitional care for an ongoing course of treatment. We suggest that this begin with the effective date of coverage of a new enrollee and last for at least 29 days thereafter (for a minimum of 30 days). These benefits would extend to health care services furnished by any provider to the new enrollee, regardless of whether the provider is in the plan's network, as long as the enrollee received health services from that provider under an ongoing course of treatment in the 90 days prior to the effective date of coverage. Because different plans may have different provider networks, when an individual enrolls in a new health plan, he or she may be undergoing a course of treatment with a provider that is not in the new issuer's provider network. In such a case, it may take time for the new enrollee to select a new in-network provider and to meet with the new provider to ensure that there is no disruption in treatment. We encourage issuers to adopt this policy to accommodate the immediate needs of enrollees, while allowing the enrollee sufficient time to go through the process of selecting an in-network provider in their new plan. As we stated in the proposed rule, we are considering whether requirements may be needed in this area in the future.

We are renumbering § 156.230(b), to (b)(1) and adding (b)(2) to strengthen the provider directory requirement effective for plan years beginning on or after January 1, 2016. Specifically, we proposed that a QHP issuer must publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, and OPM. As part of this requirement, we proposed that a QHP issuer must update the directory information at least once a month, and that a provider directory will be considered easily accessible when the general public is able to view all of the current providers for a plan on the plan's public Web site through a clearly identifiable link or tab without having to create or access an account or enter a policy number. The general public should be able to easily discern which providers participate in which plan(s) and provider network(s) if the health plan issuer maintains multiple provider networks, and the plan(s) and provider network(s) associated with each provider, including the tier in which the provider is included, should be clearly identified on the Web site and in the provider directory. We solicited comments on this proposal, including comments regarding how often updating should occur. We are finalizing this policy as proposed, retaining the monthly timeline.

We also finalize the requirement for issuers to make this information publicly available on their Web sites in a machine-readable file and format specified by HHS. The purpose of establishing machine-readable files with this data would be to provide the opportunity for third parties to create resources that aggregate information on different plans. We believe this will increase transparency by allowing software developers to access this information and create innovative and informative tools to help enrollees better understand the availability of providers in a specific plan. To facilitate this change, we proposed adding § 156.230(c) to require QHP issuers to make available and submit to HHS information about providers in its provider networks.

We specifically solicited comments on this requirement and other options, including the technical requirements for developing a machine-readable file and format for a provider directory, as well as other technical considerations, such as processes and considerations that should be taken into account. We have established these requirements to enhance transparency of QHP provider directories and to help consumers make

[63] 2015 Letter to Issuers in the Federally-facilitated Marketplaces, March 14, 2014, available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-final-issuer-letter-3-14-2014.pdf*.

more informed decisions about their health care coverage. We solicited comments on these proposed requirements, including how frequently provider data should be updated, and whether additional types of information should be required to be included in the provider directory. We understand the complexity of this undertaking, and recognize that this will require issuer resources. Therefore, HHS intends to provide additional details about the data submission requirements.

We also requested comments on the feasibility and merits of incorporating information on physical accessibility for individuals with disabilities, including accessibility information regarding facilities and equipment, or other information that would be important to enrollees and potential enrollees, as a part of network adequacy standards in the future.

Comment: A number of commenters supported stronger network adequacy standards. Commenters were divided between supporting our proposal to wait for NAIC recommendations before taking further action, and urging us to act immediately and implement stronger network adequacy standards. Commenters suggested a wide range of network adequacy criteria for HHS to adopt, including provider to patient ratios; time and distance metrics; geographic-based metrics; minimum numbers of specialty providers; specific criteria for areas of concern including pediatric, dialysis centers, and autoimmune and rare disorders; monitoring of plans; and secret shopping. One commenter requested increased transparency regarding evaluation of network adequacy. This commenter suggested that HHS should modify the provider data template for QHP issuers in the FFEs to allow greater flexibility, and should clarify how reasonable access will be determined in situations where a sufficient number of providers are not willing to contract with the issuer.

Response: We are finalizing the rule without making any additional changes to the network adequacy general requirements at this point as the NAIC finishes its work on the network adequacy model act. We expect that the final product of the NAIC work will reflect the viewpoints of the various stakeholders. This reflects our general position that network adequacy is an area subject to significant State regulation and oversight. We agree with commenters that QHP networks should provide access to a range of health care providers, and we continue to require all QHP issuers to provide reasonable access to all covered services in accordance with § 156.230(a) of this rule. We are also planning changes to the template used to collect network data to improve the collection process for QHP issuers in the FFE during the QHP certification process.

Comment: A number of commenters support the clarification that only in-network providers will be considered when determining if a plan's medical network meets reasonable access requirements, and urged CMS to clarify that issuers must be able to provide reasonable access with the providers available in their lowest cost tier. Other commenters also urged CMS to require issuers to have an internal exceptions or appeals process to obtain out-of-network services at in-network cost when adequate access is not available, while others stressed that out-of-network referrals should be rare. Similarly, several commenters voiced concerns about consumers being charged out-of-network charges while being treated in an in-network hospital because not all of the treating providers were in-network. In such circumstances, commenters urged that the consumer only be charged in-network costs, and that in-network hospitals should be required to have sufficient in-network providers to furnish all covered services. Some commenters raised concerns about the standard use of out-of-network providers for dental networks and the lack of availability of dentists who will contract with issuers.

Response: In light of the general support of the proposed change, we intend to finalize the regulation as proposed. We understand the concern about confusion created when a hospital is listed as in-network and has providers that are out-of-network for particular in-house services. We remind issuers that all covered services must be reasonably accessible, and in accordance with this regulatory change, must be available in-network. We urge issuers to evaluate their in-network hospitals to make certain that all required services are accessible without unreasonable delay from in-network providers. We appreciate the concerns voiced regarding coverage of dental providers and are contemplating whether further guidance is warranted.

Comment: A number of commenters strongly supported the transition policy allowing new enrollees to have access to providers from whom they received services before they joined their new plan. Some commenters urged HHS to require the transition policies, and some advocated for longer transition periods, such as 60 or 90 days or 6 months with reassessment, to determine if continued care is necessary at the end of the set time period. Some commenters suggested expanding transitional policies to include current enrollees whose in-network providers become out-of-network providers mid-year due to network changes. Conversely, some commenters expressed that clear and accurate provider directories make transitional policies unnecessary, and some believe the policy would negatively impact care management and that many States already have requirements for transitional care. Similarly, some suggested that transitional policies should have specific limits, including specific situations and types of care, to reduce the impact on premiums. Many commenters expressed concern about what payment rates would be if there is no contract with the out-of-network provider and suggested HHS should require plans to reimburse providers the reasonable and customary value for out-of-network services and prohibit balance billing of consumers for anything above what they would have been charged for the services in-network. Commenters also stated that this is an area that many States already regulate closely.

Response: There are strong opinions supporting and opposing a requirement for a transitional policy, as well as varying opinions about the amount of time transitional policies should cover. We continue to encourage issuers to adopt appropriate transitional polices and to pay close attention to issues around continuity of care for both new enrollees and enrollees whose current providers become unavailable. We expect to continue to analyze this area and may propose standards concerning this topic in the future.

Comment: Commenters generally supported the proposal to strengthen provider directory requirements and agreed that provider data should be updated at least monthly, especially for on-line directories. Some commenters urged more frequent updates and urged CMS to move towards requiring ''real time'' updates in the future. Concerns were raised about penalizing issuers if there were errors in the directories because providers may fail to notify the issuer of changes, and the administrative burden and costs associated with strengthened provider directory requirements. Conversely, other commenters urged that issuers be required to honor what is listed in the provider directory even if it erroneous, and that plans be required to monitor data for accuracy.

Response: We are finalizing the regulation as proposed. We are requiring that directories be updated at least

monthly and encourage more frequent updating when possible. We also understand and appreciate the concern about issuers being held accountable for errors in directories and encourage issuers to work with their providers to ensure that their directories are as current and accurate as possible. We understand that there may be some administrative burden associated with updating directories, but believe it is necessary for consumers to be fully informed about network access. Similarly, we appreciate commenters who stated that issuers should honor what is listed in their directories even if there are errors, and while we are not requiring that at this time, we strongly encourage that practice.

Comment: Some commenters supported the inclusion of the proposed data elements in provider directories, including indicating if the provider is accepting new patients. Conversely, some commenters were concerned about being required to list if the provider is accepting new patients, citing the administrative burden because that status can frequently change. There was also concern about consumer confusion that could be caused by the requirement to indicate whether specialists are ''accepting new patients.'' Some commenters noted that in the case of specialists for whom a referral is needed, indicating the specialist is ''accepting new patients'' could be misleading to consumers, who may understand that to mean that they can request an appointment directly with the specialist. To alleviate confusion about referrals, it was suggested that another column or notation be included that indicates if a referral is needed, and it was also suggested that issuers retain flexibility in what is included in their directories.

Response: We are finalizing all of these requirements as proposed, including the requirement that issuers must indicate if providers are accepting new patients. All of the required data, including information on whether providers are accepting new patients, are critical for consumers to make educated decisions about their health coverage.

Comment: Some commenters suggested that additional data should be required as part of provider directories to make it easier for consumers to compare plans. Some of the specific data elements suggested included: hours physician traditionally practices at referenced practices, board certification(s), sub-specialties practiced, language spoken by each provider, interpreter services or communication and language assistance services that are available at the provider's facilities and information about how enrollees can obtain such services, publication date of directory, and a field for providing advance notice that the provider will be leaving the network. Commenters also urged requiring plans to provide a dedicated email address to be used to notify the plan of inaccuracies in the plan directory, and holding the issuer accountable for making changes when notified. Similarly, it was suggested that plans should monitor provider directories to determine if they are accurate.

Response: We are finalizing our proposal requiring the issuer to publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, and OPM. We believe the new requirements will greatly strengthen provider directory requirements and provide consumers with valuable information to help them determine which QHP best meets their needs. We encourage issuers to continuously evaluate the data they include in their directories and aim to provide all of the information that will help consumers understand their network. We appreciate the suggestion that issuers have a dedicated email address for enrollees and providers to submit changes or inaccuracies, and while we are not requiring it at this time, we encourage the practice.

Comment: There was some concern raised that including items such as location, contact information, and specialty type on a real time basis could conflict with what is in National Plan and Provider Enumeration System (NPPES), which providers may fail to update, and would result in confusion. To alleviate possible NPPES confusion, it was suggested that issuers only include information from the previous month's information in the NPPES database.

Response: We appreciate this concern but are finalizing the regulation as proposed. The requirement for issuers to publish an up-to-date, accurate, and complete provider directory takes into account the issuers' obligation to develop a system to ensure that the information about providers that they publish in the provider directory is accurate and up-to-date, including ensuring it is consistent with what is listed in the NPPES database.

Comment: Some commenters supported the requirement that issuers provide access to provider directories through the issuer's public Web site without the need to create an account or enter policy information, and HHS was asked to clarify the term ''user-friendly'' when used to describe the location of provider directories on issuer Web sites.

Response: We are finalizing this policy as proposed. In response to requests for clarification about the term ''user friendly,'' we suggest issuers adopt common industry standards for publishing the provider directory in an area of their Web site where it will be easy for enrollees to find and that enrollees will be able to access without the need for an account or policy number as stated in this rule at § 156.230(b)(2)(i). To reiterate, consumers should not have to create a user ID, log on, enter a policy number, or be enrolled in a plan to view the network. The URL that issuers provide to HHS for publication on HealthCare.gov for QHPs in an FFE should link directly to the applicable provider directory. If it does not, it should link to a list of the issuer's provider directories, and it should be readily discernible to a consumer which directory applies to which QHP.

Comment: Some commenters supported the proposal for issuers to make available provider information in a machine-readable file and format specified by HHS, citing that this would improve transparency and support informed consumer decision-making without burdening issuers. Conversely, some commenters opposed the proposal and voiced concerns about data accuracy, including how HHS would hold third parties accountable for data errors, and cost. Some commenters stated that if data are not frequently updated, consumers could receive inaccurate information, upon which they might rely to select a QHP, while other commenters were concerned that frequent updating would be burdensome to issuers. Some commenters also noted that implementing any standard could be time-consuming and requested the opportunity to provide additional feedback. A number of commenters provided suggestions regarding the format, structure, file type, and content of the data they believe should be collected. Some commenters also suggested that any machine-readable databases should be accessible through an API.

Response: We believe a machine-readable file or a format specified by HHS will increase transparency by allowing software developers to access

this information and create innovative and informative tools to help enrollees better understand the plan's provider network. Based on the comments received asking us to make provider information more transparent and accessible to consumers, HHS is finalizing this rule by adding § 156.230(c), to require QHP issuers in the FFEs to make available the information on the provider list on its Web site in a HHS specified format and also submit this information to HHS, in a format and at times determined by HHS. We agree with commenters that creating a vehicle for consumers to easily determine which providers are in which networks will help consumers select QHPs that best meet their needs. We recognize that this will require issuer resources, and will provide further details about the specific data elements, frequency of updates, file types, and other crucial information in future guidance.

Comment: Commenters supported having issuers list detailed information in provider directories about physical accessibility for individuals with disabilities to help consumers choose plans and providers. Some sought information about exam table access, transfer assistance, and wheelchair access. One commenter urged caution in this area out of concern that including information on accessibility features for certain providers could be read to imply that other providers need not offer such features, even though they are legally obligated to do so pursuant to the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

Response: We appreciate the complexity of this topic, and do not intend to issue additional regulation on this topic at this time. We urge all issuers and providers to continue to ensure that they are providing full and equal access to all covered services to all enrollees, including those people with disabilities, and we remind them of the obligation to adhere to the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act. Issuers are encouraged to consult relevant Department of Justice guidance on accessibility of medical providers and effective communications at *www.ada.gov*. We will continue to monitor this issue.

d. Essential Community Providers (§ 156.235)

At § 156.235, we proposed to strengthen the essential community provider (ECP) standard in accordance with section 1311(c)(1)(C) of the Affordable Care Act, which requires that a QHP's network include ECPs, where available, that serve predominantly low-income and medically-underserved populations. As established in section 1311(c)(1)(C) of the Affordable Care Act, ECPs include entities defined in section 340B(a)(4) of the PHS Act and providers described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 211 of Pub. L. 111–8. Additionally, we proposed that ECPs may include not-for-profit or State-owned providers that would be entities described in section 340B of the PHS Act but do not receive Federal funding under the relevant section of law, as these providers satisfy the same 340B requirements and therefore meet the definition of ECPs by virtue of the following description in section 1311(c)(1)(C) of the Affordable Care Act—health care providers defined in section 340B(a)(4) of the PHS Act and providers in section 1927(c)(1)(D)(i)(IV) of the Act. For the same reasons described above, we proposed that such providers also include not-for-profit or governmental family planning service sites that do not receive a grant under Title X of the PHS Act. Other providers that provide health care to populations residing in low-income zip codes or Health Professional Shortage Areas could also be considered ECPs. We proposed that the above proposals apply to benefit years 2016 and thereafter.

To assist issuers in ensuring that, in future QHP certification years, they are providing sufficient consumer access to ECPs to satisfy the requirement in section 1311(c)(1)(C) of the Affordable Care Act, we also proposed in new paragraph (a)(2)(i) of this section that, for QHP certification cycles beginning with the 2016 benefit year, a health plan seeking certification to be offered through an FFE must satisfy the general ECP standard described in paragraph (a)(1) of this section by demonstrating in its applications for QHP certification that a sufficient percentage, as determined annually by HHS and specified in HHS guidance, of available ECPs in the plan's service area have a contractual agreement to participate in the plan's provider network. For purposes of this general ECP standard, we proposed that multiple providers at a single location would count as a single ECP toward the issuer's satisfaction of the proposed ECP participation standard. Any update to the general ECP inclusion standards would be based on HHS's post-certification assessments of the adequacy of ECP participation, and geographic distribution of such providers, and evidence of contractual negotiation efforts provided by issuers in the ECP supplemental response forms.

In addition, we proposed in paragraph (a)(2)(ii) of this section that, to satisfy the general ECP standard, the issuer of the plan seeking certification as a QHP in an FFE would be required to offer contracts for participation in the plan for which a certification application is being submitted to the following: (1) All available Indian health providers in the service area, applying the special terms and conditions necessitated by Federal law and regulations as referenced in the recommended model QHP addendum for Indian health providers developed by HHS; and (2) at least one ECP in each ECP category (see Table 11) in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type. We expect that issuers will offer contracts in good faith. A good faith contract offer should offer the same rates and contract provisions as other contracts accepted by or offered to similarly situated providers that are not ECPs.

TABLE 11—ECP CATEGORIES AND TYPES IN FFES

Major ECP category	ECP provider types
Federally Qualified Health Centers (FQHC).	FQHC and FQHC ''Look-Alike'' Clinics,[64] Outpatient health programs/facilities operated by tribes, tribal organizations, programs operated by Urban Indian Organizations.
Ryan White Providers	Ryan White HIV/AIDS Providers.
Family Planning Providers	Title X Family Planning Clinics and Title X ''Look-Alike'' Family Planning Clinics.[65]
Indian Health Care Providers	Tribes, Tribal Organization and Urban Indian Organization Providers, Indian Health Service Facilities.
Hospitals	Disproportionate Share Hospital (DSH) and DSH-eligible Hospitals, Children's Hospitals, Rural Referral Centers, Sole Community Hospitals, Free-standing Cancer Centers, Critical Access Hospitals.

TABLE 11—ECP CATEGORIES AND TYPES IN FFES—Continued

Major ECP category	ECP provider types
Other ECP Providers	STD Clinics, TB Clinics, Rural Health Clinics, Black Lung Clinics, Community Mental Health Centers, Hemophilia Treatment Centers, and other entities that serve predominantly low-income, medically underserved individuals.

We proposed to add paragraph (a)(3) to this section to specify that if an issuer's QHP certification application to the FFE does not satisfy the ECP standard described in paragraph (a)(2) of this section, the issuer must include as part of its application a narrative justification describing how the provider network(s) of the plans for which certification applications have been submitted provides an adequate level of service for individuals residing in low-income zip codes or Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year. The narrative justification should include the following: The number of contracts offered to ECPs for the benefit year; the number of additional contracts the issuer expects to offer for the benefit year and the timeframe of planned negotiations; the names of the ECP hospitals FQHCs, Ryan White providers, family planning providers, Indian health providers, and other ECPs to which the issuer has offered contracts, but with whom an agreement has not yet been reached; and contingency plans for how the issuer's provider network(s), as currently designed, will provide adequate care to enrollees who might otherwise be cared for by relevant ECPs. Through HHS's post-certification assessments, HHS may examine an issuer's progress toward satisfying the applicable ECP standard to ensure that the issuer continues to qualify for offering its plan on the Exchange, while OPM would retain this responsibility for issuers of multi-State plans, acting in coordination with HHS as may be appropriate.

We proposed to redesignate current paragraph (a)(3) as paragraph (a)(4), in which we clarify that nothing in the requirements under paragraphs (a)(1) through (a)(3) of this section requires any QHP to provide coverage for any specific medical procedure. We also proposed to redesignate current paragraph (a)(2) as paragraph (a)(5).

We proposed in paragraph (b)(1) that the alternate ECP standard described in § 156.235(a)(5) will apply to issuers with plans that provide a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group that offer QHPs in any Exchange. Additionally, for plans seeking QHP certification in FFEs, we proposed that a QHP issuer described in paragraph (a)(5) of this section be determined to have a sufficient number and geographic distribution of employed or contracted providers by demonstrating in its QHP application that the number of its providers in the following locations meets a percentage specified in HHS guidance of the number of available ECPs in the service area: (i) Located within a Health Professional Shortage Areas; or (ii) located within five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the Federal Poverty Line. For purposes of this alternate ECP standard, multiple providers at a single location will count as one ECP toward the available ECPs in the plan's service area and toward the issuer's satisfaction of the proposed ECP participation standard to ensure a sufficient number and geographic distribution of ECPs as required under § 156.235(a). Any modification to the alternate ECP inclusion standard in future benefit years would be based on HHS's post-certification assessments of the adequacy of ECP participation and geographic distribution of such providers to ensure reasonable and timely access to such ECPs for low-income, medically underserved individuals.

Furthermore, we proposed in new paragraph (b)(3) of this section that if a QHP certification application of a plan for the FFE does not satisfy the alternate ECP standard described in paragraph (b)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the issuer's provider network(s) provides an adequate level of service for low-income and medically underserved enrollees. When assessing whether an issuer has provided a satisfactory narrative justification under either the general or alternate ECP standard, as applicable, HHS will take into account factors and circumstances identified in the ECP Supplemental Response Form,[66] along with an explanation of how the issuer will provide access for individuals residing in low-income zip codes or Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year. Additionally, justifications that include verification of contracts offered in good faith, that include terms that a willing, similarly-situated, non-ECP provider would accept or has accepted, would be considered toward satisfaction of the ECP standard.

Finally, we proposed in paragraph (c) of this section to remove the language defining ECPs as meeting the criteria on the initial date of the regulation's publication. We proposed this change in recognition of the fact that the universe of ECPs, as well as the databases we use to delineate this universe, may vary over time for many reasons, including demographic and provider characteristics. We requested comment on these proposed changes. We are now finalizing these changes with modifications. The final rule specifies in regulation text that entities that could receive funding under Title X and 340B are ECPs, clarifies the application to SADPs, clarifies standards related to covered services, and clarifies the standard for integrated delivery systems.

Comment: A number of commenters supported the clarification that ECPs include not-for-profit or State-owned providers that would be entities described in section 340B of the PHS Act but do not receive Federal funding under the relevant section of law, including not-for-profit or governmental family planning service sites that do not receive a grant under Title X of the PHS Act. These commenters urged that HHS include this clarification in the regulation text. Some commenters recommended that we provide clear language to States and issuers indicating that Indian health providers are among

[64] For more information on FQHC ''Look-Alike'' Clinics, see *http://bphc.hrsa.gov/about/lookalike/index.html* and section 1861(a)(4) and section 1905(l)(2)(B) of the Act.

[65] For more information on Title X ''Look-Alike'' Clinics, see section 1927(c)(1)(D)(i)(IV) of the Social Security Act.

[66] More information on the supplemental response can be found on the CCIIO Web site at: *http://www.cms.gov/cciio/programs-and-initiatives/health-insurance-marketplaces/qhp.html.*

the ECP groups to which issuers must extend contract offers in good faith to satisfy § 156.235(a) of the ECP standard.

Response: Based on the comments received, we are codifying the inclusion of the following entities in the definition of an ECP in § 156.235(c): Not-for-profit or State-owned providers that would be entities described in section 340B of the PHS Act but do not receive Federal funding under the relevant section of law; not-for-profit or governmental family planning service sites that do not receive a grant under Title X of the PHS Act; and Indian health care providers. Effective January 1, 2016, we are making this modification to emphasize that these providers are among the ECP groups to which issuers must extend contract offers in good faith to satisfy § 156.235(a).

Comment: Several commenters recommended that HHS clarify that providers located in low-income zip codes or HPSAs must also serve predominately low-income, medically underserved individuals to satisfy the definition of an ECP.

Response: We agree with commenters. In alignment with the regulatory definition of an ECP at § 156.235(c), we emphasize that a provider must actually serve predominantly low-income, medically underserved individuals to be considered an ECP, and not simply be located in low-income zip codes or HPSAs.

Comment: We received a few comments expressing concern that removal of the language defining ECPs as meeting the criteria on the initial date of the regulation's publication risks the stability in the number and scope of ECPs and carries the risk that States, Exchanges, and other entities will attempt to limit the providers identified as an ECP.

Response: While we understand the commenters' desire for providers to retain a designated ECP status as of the initial date of the regulation's publication, such a policy could conflict with the statutory definition of an ECP if interpreted to extend past the reexamination period for determining continued eligibility of such providers on the list. To avoid any such misinterpretation, we proposed removing this language from § 156.235(c) to clarify that such providers must continue to qualify each benefit year as providers that serve predominantly low-income, medically underserved individuals to retain their ECP status on the list each year. Therefore, we are finalizing this provision as proposed, effective January 1, 2016.

Comment: We received a number of comments in support of our proposal that a health plan seeking QHP certification to be offered through an FFE must satisfy the general ECP standard by demonstrating in its applications for QHP certification that a sufficient percentage, as determined annually by HHS and specified in HHS guidance, of available ECPs in the plan's service area have a contractual agreement to participate in the plan's provider network. Some of these commenters urged that we increase the percentage each year beyond the existing 30 percent requirement. Some commenters urged that we set a minimum percentage requirement in the regulation text and encourage plans to include a greater number of ECPs in their networks as a part of ensuring access and continuity of care. One commenter pointed out that some States have implemented much higher ECP inclusion percentage standards.

In contrast, one commenter stated that the QHPs lack complete information to adequately identify the universe of ECPs. Furthermore, the commenter stated that the ECP lists provided to issuers in the past have included providers that either do not provide medical services or include inaccurate provider information. The commenter recommended that HHS improve the utility of ECP information by including National Provider Identifiers (NPIs) in their database of ECPs, and by publishing any revised ECP lists prior to the anticipated QHP application submission deadline and with any modifications made apparent to allow issuers to easily reconcile the HHS ECP list with their internal records. Some commenters recommended that SADP issuers be exempt from the ECP inclusion standard given that certain elements of the ECP requirements are less suited for dental issuers than medical issuers, and suggested that CMS instead require SADPs to provide evidence of offering meaningful access to lower income enrollees in their service areas.

Response: Based on our QHP certification reviews for the 2015 benefit year and the ongoing strengthening of our ECP list, we believe that specifying the ECP inclusion percentage in HHS guidance for the 2016 benefit year provides desirable flexibility at this time for HHS to further examine the adequacy of this inclusion standard for ensuring access to care for low-income, medically underserved individuals for future years. Furthermore, we agree with the recommendation that the accuracy of the ECP list be improved prior to increasing the ECP inclusion percentage standard. To this effect, we have recently published a draft ECP list for the 2016 benefit year [67] and solicited public comments in an effort to make corrections to the list and publish the list prior to the anticipated QHP application submission deadline. In response to comments, we also intend to make apparent the modifications to the list to allow issuers to easily reconcile the HHS ECP list with their internal records. We will further examine the feasibility of the commenter's recommendation to add NPIs to the ECP list in future years in coordination with our Federal partners from whom we collect the provider data.

Regarding the commenters' recommendation to exempt SADPs from the ECP inclusion standard, we proposed to modify the ECP requirement at § 156.235(a)(2)(ii)(B) to clarify that only the providers in the ECP categories that provide dental services would be considered available for an SADP's offering of a contract. In other words, we have added ''and provides medical or dental services that are covered by the issuer plan type'' to the end of that paragraph to ensure the applicability of this provision to SADPs. Given that this was the only ECP provision unsuited for SADPs, we believe we have addressed the need for its suitability by making this proposed modification, and are finalizing this language as proposed, effective January 1, 2016.

Comment: We received comments in support of our proposal that an issuer's satisfaction of the ECP inclusion percentage of available ECPs in the plan's service area be calculated based on multiple providers at a single location counting as a single ECP toward both the available ECPs in the plan's service area and the issuer's satisfaction of the ECP participation standard, stating that the proposal would help ensure access to a broad range of provider types and geographic distribution of ECPs for low-income, medically underserved individuals. However, several commenters suggested that counting multiple providers at a single location as only a single ECP may overlook availability of different services, and recommended that HHS count multiple providers at a single location as multiple ECPs toward satisfaction of the ECP inclusion percentage standard. One commenter contended that such a policy would undermine the ability of integrated

[67] *http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Description-and-Purpose-of-Draft-HHS-List-of-ECPs-for-PY-2016_12-24-14.pdf.*

delivery systems to provide high levels of consistent, quality care.

Response: We believe it is important to clarify the underlying rationale for this proposed provision. At § 156.235(a)(1) and (b)(1), we have established that a QHP issuer that satisfies the ECP inclusion standard must include a sufficient number and geographic distribution of ECPs in its provider network, or through its employed providers and hospital facilities if the issuer qualifies for the alternate ECP standard described at § 156.235(b). Therefore, we believe that our proposed provision is critical for ensuring that issuers satisfy both the sufficient number and geographic distribution requirements by not concentrating the majority of its providers at only one or a few locations. Furthermore, such an accounting of multiple providers at a single location aligns with the crediting of an issuer's inclusion of provider facilities on the available HHS ECP list, which includes practices and clinics, which generally consist of multiple providers at a single location. While such a policy may reduce the number of credited ECPs for an issuer, to the extent that multiple provider types practice at a given location and may map to different ECP categories, these different provider types could contribute to satisfying the requirement that an issuer offer a contract to at least one ECP in each category in each county in the plan's service area for multiple ECP categories. In response to issuers that qualify for the alternate ECP standard, as defined at § 156.235(a)(5), and commenters' concern that such a policy might be disruptive to an integrated delivery system, the narrative justification provision at § 156.235(b)(3) ensures that such issuers comply with the ECP inclusion standard by describing how the plan's provider networks provide an adequate level of service for low-income enrollees or individuals residing in HPSAs within the plan's service area. After careful consideration of the public comments applicable to issuers that qualify for both the general and alternate ECP standards, we are finalizing our proposal that an issuer's satisfaction of the ECP inclusion percentage of available ECPs in the plan's service area be calculated based on multiple providers at a single location counting as a single ECP toward both the available ECPs in the plan's service area and the issuer's satisfaction of the ECP participation standard, effective January 1, 2016.

Comment: One commenter recommended that HHS require that issuers that qualify for the alternate ECP standard, as defined at § 156.235(a)(5), that are unable to provide all of the categories of services provided by entities in each of the ECP categories in each county in the service area as outlined in the general ECP standard, be required to contract with outside providers or facilities that can provide those services to low-income, medically underserved individuals. In contrast, another commenter expressed concern that HHS's methodology for assessing the adequacy of ECP inclusion for issuers that provide the majority of their covered professional services through physicians employed by the issuer or through a single contracted medical group does not fit well for plans with well-established integrated care delivery systems. The commenter expressed concern that requirements to contract with outside providers that use different clinical protocols and thus have incomplete patient information and lack linkages for patients with chronic conditions, would fundamentally change how integrated delivery systems provide care to their patients and would undermine the ability of integrated care teams to provide high levels of consistent, quality care. The commenter contended that counting multiple providers at a single location as only one provider toward satisfaction of the alternate ECP standard is problematic for an entity that serves its members with large facilities and has systems in place (for example, telemedicine, etc.) that can serve members in a broad geographic area. This commenter urged CMS to better assess effectiveness of networks at delivering quality care, and rapid access.

Response: While we recognize the challenges for alternate ECP standard issuers that offer an integrated health care delivery system, we believe that consumers should experience equal access to covered benefits, regardless of whether they are enrolled in plans offered by issuers that qualify for the general or the alternate ECP standard. To ensure such equal access, issuers that qualify for the alternate ECP standard must provide access to the same categories of services provided by entities in each of the ECP categories in each county in the plan's service area as issuers that qualify for the general ECP standard. Therefore, effective January 1, 2016, we have modified our proposed provision at § 156.235(b)(2)(ii) to require issuers to provide within the issuer's integrated delivery system all of the categories of services provided by entities in each of the ECP categories in each county in the plan's service area as outlined in the general standard; or otherwise offer a contract to at least one ECP outside of the issuer's integrated delivery system per ECP category in each county in the plan's service area that can provide those services to low-income, medically underserved individuals.

Comment: We received several comments recommending that CMS retain the requirement that QHP issuers offer contracts to all Indian health care providers in the QHP's service area. These commenters also urged that CMS require QHP issuers to use the recommended model QHP addendum, rather than our proposal to require that contract offers apply the special terms and conditions necessitated by Federal law and regulations as referenced in the recommended model QHP addendum. These commenters expressed concern that not requiring use of the actual model QHP addendum could result in loss of the following provisions in the executed QHP-Indian health care provider (ICHP) contracts: (1) A listing of each Indian-specific provision in Federal law that is applicable to the provider contract; and (2) a clear statement of the meaning of each applicable Indian-specific provision.

Response: We believe the requirement that issuers apply the special terms and conditions necessitated by Federal law and regulations as referenced in the recommended model QHP addendum, along with encouraging issuer use of the recommended model QHP addendum in guidance, strikes the desirable balance between allowing the minimal flexibility that issuers have requested while ensuring inclusion of the fundamental provisions of the model QHP addendum within the issuer contractual offers to the Indian health providers. Therefore, while we strongly encourage issuers to use the model QHP Addendum, we are not requiring that they do so. We are finalizing, effective January 1, 2016, our proposal requiring that health plans seeking certification as a QHP in an FFE offer contracts for participation in the plan for which a certification application is being submitted to all available Indian health providers in the service area, applying the special terms and conditions necessitated by Federal law and regulations as referenced in the recommended model QHP addendum for Indian health providers developed by HHS.

Comment: One commenter recommended that if issuers met the ECP standard in the previous year, issuers not be required every year to offer contracts to all Indian health care providers in the service area and to at

least one ECP in each ECP category in each county in the service area.

Response: We share the commenter's interest in minimizing contracting burden on both issuers and providers; however, given the dynamic nature of the health insurance industry, we believe that a contract denial the previous year should not carry over to future years. Therefore, we are finalizing, effective January 1, 2016, our proposal that health plans seeking certification as a QHP in an FFE offer contracts for participation in the plan for which a certification application is being submitted to all available Indian health providers in the service area. Satisfaction of this requirement in previous years does not exempt a QHP from satisfying the requirement for future QHP application years.

Comment: Several commenters urged CMS to encourage application of the ECP inclusion requirement, including the requirement that issuers offer contracts to all Indian health providers, to issuers operating in State Exchanges, as well to issuers operating in the FFEs.

Response: We urge State Exchanges to employ the same standard when examining adequacy of ECPs as outlined in § 156.235, including the requirement that issuers offer contracts to all Indian health providers in the plan's service area.

Comment: A number of commenters urged that we require issuers to actually contract, as opposed to offer a contract, with at least one ECP in each ECP category in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type. Several commenters urged that we require issuers to offer contracts to all available ECPs in the plan's service area. A few commenters suggested that we require that issuers offer contracts to at least two ECPs in each ECP category in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type.

Several commenters supported the inclusion of Rural Health Clinics (RHCs) and Community Mental Health Centers in the ECP category listing in Table 11 of the preamble. Commenters expressed concern, though, that the requirement that QHPs offer contracts to at least one ECP in each ECP category in each county in the plan's service area is a county-based requirement, and suggested that the requirement be based on time and distance within the county.

A few commenters urged that we add freestanding birth centers located in medically underserved and rural areas as a new ECP category. Several commenters recommended that we list Hemophilia Treatment Centers as a separate ECP category, rather than grouped in the ''Other ECP Providers'' category. Another commenter suggested that we add migrant and community health centers as an ECP category. One commenter urged that HHS require issuers to offer a contract to any willing Ryan White provider. One commenter suggested adding dental providers, substance abuse and mental health providers, children's hospitals, and essential pediatric providers to the list of ECP categories.

Several commenters suggested that HHS disaggregate the providers listed in the ''Hospitals'' ECP category and the ''Other ECP Providers'' category. These commenters expressed concern that by grouping together providers such as Hemophilia Treatment Centers, Community Mental Health Centers, and Rural Health Clinics into one ECP category such that issuers are only required to offer a contract to one of these and other types of providers in a given county, HHS runs the risk that low-income, underserved enrollees will have inadequate access to key providers that are uniquely suited to meet their specialized health needs. Another commenter urged that HHS identify Nurse Managed Clinics within the providers listed in the ECP categories in Table 11 of the preamble, stating that they are primary care clinics similar to the FQHCs, but with a different funding source.

One commenter recommended that we remove Indian health care providers as a major ECP category due to the overlapping requirement that issuers offer contracts to all Indian health providers in the service area.

Numerous commenters urged HHS to continually monitor for issuer maintenance of their networks throughout the year to ensure that issuers do not discriminate against ECPs through contract negotiations, and to make sure contracts are offered in good faith. One commenter urged that HHS consider not just the number of ECPs included and their geographic distribution, but also the breadth of services they provide and the type of ECP providers and facilities that the networks include.

Response: Given the ongoing strengthening of the non-exhaustive HHS List of ECPs (available at *http://www.cms.gov/cciio/programs-and-initiatives/health-insurance-marketplaces/qhp.html*), we intend to revisit this requirement to offer contracts in good faith and may consider a stronger requirement in future benefit years.

In response to comments regarding the groupings of provider types in the ECP categories, we agree with the need to disaggregate several of these categories over time to ensure better access to a wider variety of health care services. More specifically, we considered modifying the ECP category listing to include a total of 11 ECP categories, by creating a separate ECP category each for children's hospitals and free-standing cancer centers, and disaggregating hemophilia treatment centers, community mental health centers, and rural health clinics from the ''Other ECP Providers'' category. However, because we recognize that issuers are in the process of finalizing their networks for 2016, we intend to propose this reclassification for 2017. We are not removing the Indian health care providers as a major ECP category, notwithstanding the overlapping requirement that issuers offer contracts to all Indian health care providers in the service area, because many providers and issuers rely on Table 11 to identify the universe of ECP types. In response to public comments supporting the inclusion of rural health clinics and Community Mental Health Centers as ECP provider types within the ''other ECP providers'' category, we are finalizing our proposal to include these provider types in our ECP category listing in Table 11, although we will not disaggregate them into their own separate ECP categories at this time.

For purposes of inclusion on the non-exhaustive HHS list of ECPs, we are clarifying that only those Medicare-certified rural health clinics that meet the following two requirements qualify: (1) Based on attestation, the clinic accepts patients regardless of ability to pay and offers a sliding fee schedule, or is located in a primary care Health Professional Shortage Area (whether geographic, population, or automatic [68]);

[68] As of January 1, 2014, more than 1,000 rural health clinics (RHCs) were designated as an automatic Health Professional Shortage Area (HPSA), the criteria for which include accepting patients regardless of ability to pay; offering a sliding fee schedule based on ability to pay (income); and accepting Medicare, Medicaid, CHIP and private health insurance patients. To receive the automatic HPSA designation, each RHC is required to complete an attestation form, which is available at: *http://bhpr.hrsa.gov/shortage/hpsas/certofeligibility.pdf*. CMS intends to include RHCs that are not listed on the current non-exhaustive ECP list and complete the attestation form to receive an automatic HPSA designation through the Health Resources and Services Administration in future non-exhaustive ECP lists. More information about the HPSA designation requirements and process is also available at: *http://bhpr.hrsa.gov/shortage/hpsas/ruralhealthhpsa.html*.

and (2) accepts patients regardless of coverage source (whether Medicare, Medicaid, CHIP, private health insurance, or other source). HHS has determined that all rural health clinics included on the non-exhaustive HHS list of ECPs satisfy these standards.

Lastly, we agree with commenters regarding the importance of monitoring issuer compliance with this important provision of our ECP standard, and intend to continue our post-certification monitoring activities to help ensure that consumers have access to the essential health benefits guaranteed to them under the Affordable Care Act. Therefore, we are finalizing our proposal, effective January 1, 2016, that a health plan seeking certification as a QHP in an FFE be required to offer contracts for participation in the plan for which a certification application is being submitted to at least one ECP in each ECP category in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type.

Comment: Some commenters recommended that we eliminate the option for an issuer to submit a narrative justification in cases where a plan's network does not meet the minimum ECP percentage requirement. Many of these commenters expressed concern that the narrative justification might be accepted in lieu of issuer compliance with the ECP inclusion percentage requirement specified by HHS. Commenters suggested that the narrative justification is inadequate in cases where an issuer fails to meet the minimum ECP percentage standard and suggested that issuers be required to contract with all available ECPs. These commenters also recommended that HHS make publicly available the narrative justifications submitted when issuers do not meet the minimum ECP percentage standard or other requirements of the ECP standard.

Some commenters stated that if HHS permits issuers to continue submitting narrative justifications when unable to satisfy the statutory ECP requirements, HHS should only allow the justifications in extremely rare circumstances, and issuers should be required to provide a reason for why the plan has failed to satisfy the standard to discourage plans from seeking an exemption when unwarranted.

Several commenters supported the requirement that QHPs not meeting the ECP standard must submit a justification describing how the plan's provider network is adequate for low-income enrollees in HPSAs. One of these commenters suggested that HHS clarify that this requirement extends to SADPs, as well.

Response: Based on our QHP certification reviews for the 2015 benefit year and the ongoing strengthening of our ECP list, we believe that the narrative justification provides desirable flexibility at this time for HHS to further assess the adequacy of our ECP inclusion standard, given the need to provide issuers with the flexibility to develop networks that deliver benefits at an affordable price to low-income, medically underserved individuals. At the same time, the vast majority of issuers are complying with the requirements without submission of a narrative justification, and therefore we believe this option is being used under relatively rare circumstances. Regarding the suggestion to make publicly available the narrative justifications submitted when issuers do not meet the ECP inclusion percentage, HHS will consider the feasibility of providing such increased transparency over the next year. We expect the need for issuers to submit such justifications to decrease over time as issuers further develop their networks in adherence to HHS standards. Lastly, we clarify that the narrative justification standard applies to SADPs as well as QHPs that provide medical services.

Comment: One commenter expressed concern that the language under § 156.235(a)(4) (that is, ''Nothing in paragraphs (a)(1) through (a)(3) of this section requires any QHP to provide coverage for any specific medical procedure provided by an ECP'') might be interpreted by issuers as permitting discrimination regarding which covered services among those provided by an ECP it will contract with the ECP to provide. The commenter pointed out that section 1311(c)(1)(C) of the Affordable Care Act regarding the inclusion of ECPs in QHP networks states that nothing in this subparagraph shall be construed to require any health plan to provide coverage for any specific medical procedure. The commenter expressed concern that our proposed regulation adds the additional language ''provided by an ECP'' that could permit issuers to contract with ECPs for only some, but not all, of the services for which they are licensed and otherwise fully able to provide in accordance with the same standards that the QHP applies to other non-ECP providers. This commenter urged HHS to remove the additional language from the regulatory text and clarify that, when contracting with ECPs, QHPs must do so for the full scope of services that the ECPs are licensed to provide.

Response: We agree with the commenter in part, and so we are removing the additional language ''provided by an ECP'' from § 156.235(a)(4), effective January 1, 2016. However, we emphasize that we are not requiring that QHPs contract with ECPs for the full scope of services that the ECPs are licensed to provide; rather, we are continuing to require only that they offer the same contract provisions as other contracts accepted by or offered to similarly situated providers.

Comment: One commenter recommended that HHS modify the language at § 156.235(d) to reflect the language used in the preamble to ensure that issuers offer ECPs rates comparable to other providers. Specifically, the commenter suggested that we replace the language ''. . . if such provider refuses to accept the generally applicable payment rates of such issuer,'' and replace it with language that reads ''. . . if such provider refuses to accept the same rates and contract provisions as included in contracts accepted by similarly situated providers that are not ECPs.'' The commenter noted that this would provide a clearer definition of an issuer's ''generally applicable payment rates'' and would prevent issuers from discriminating against ECPs in their payment rates.

Response: We agree with the commenter that such clarification would help prevent issuers from discriminating against ECPs in their payment rates and would align with the language used in our preamble. Therefore, we are making this change at § 156.235(d), effective January 1, 2016.

Comment: Several commenters urged that we retain the requirement that QHP issuers offer contracts in good faith. However, these commenters urged that HHS clarify that a minimum payment rate provision be required rather than expected, and that we include such a requirement in the regulation rather than in only the preamble.

Response: We do not intend to prescribe such specificity regarding contract negotiations between parties. Therefore, we are not requiring a minimum payment rate provision, and instead reiterate our expectation that QHP issuers offer contracts in good faith.

e. Meaningful Access to Qualified Health Plan Information (§ 156.250)

In the proposed rule, we proposed to amend § 156.250 to replace the cross-reference to the Exchange application and notices provision at § 155.230(b) with a cross-reference to § 155.205(c). We also proposed to change the title of

the provision to ''Meaningful access to qualified health plan information'' for improved clarity. As discussed above, amendments to § 155.205(c) for oral interpretation services were also proposed.

We also proposed to extend the requirements of § 156.250 so that not only applications and notices to enrollees, but all information that is critical for obtaining health insurance coverage or access to health care services through the QHP to qualified individuals, applicants, qualified employers, qualified employees, and enrollees, would be provided in a manner consistent with § 155.205(c). In addition, using the summary of benefits and coverage (SBC) disclosure required under § 147.200 as an example, we proposed that information would be deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer were required by State or Federal law or regulation to provide the document to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. We also indicated that, based on our proposed standard, we would consider information that is critical for obtaining health coverage or access to health care services to include: Applications; consent, grievance, appeal, and complaint forms; notices pertaining to the denial, reduction, modification, or termination of services, benefits, non-payment, or coverage; a plan's explanation of benefits or similar claim processing information; QHP ratings information; rebate notices; correspondence containing information about eligibility and participation criteria; notices advising individuals of the availability of free language assistance; and letters or notices that require a signature or response from the qualified individual, applicant, qualified employer, qualified employee, or enrollee. We stated that we would not consider marketing materials that are available for advertising purposes only and not otherwise required by law to be critical for obtaining health insurance coverage or access to health care services through the QHP, and therefore an issuer would not be required to be make such materials accessible to individuals with disabilities or limited English proficiency.

We are finalizing this provision as proposed.

Comment: Commenters expressed general support for our proposal, including our proposed standard for determining whether a document was ''critical'' such that an issuer would be required to provide meaningful access to it in accordance with the standards set forth in § 155.205(c). A few commenters requested that we specifically acknowledge other documents, such as evidences of coverage, or information needed to understand coverage, provider networks, or enrollment or re-enrollment processes, as meeting the standard. One commenter expressed concern that our identification in preamble of certain documents that we would consider to meet the standard was misplaced. The commenter stated that certain documents we had identified, such as ''rebate notices'' (concerning medical loss ratio requirements) and ''any letter or notice requiring a signature or response,'' were not inherent to obtaining services through the QHP or accessing health coverage.

Response: We are finalizing the provision as proposed. Therefore, QHP issuers must provide all information that is critical for obtaining health insurance coverage or access to health care services through the QHP, including applications, forms, and notices, to qualified individuals, applicants, qualified employers, qualified employees, and enrollees in accordance with the standards described in § 155.205(c). Information will be deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer is required by Federal or State law or regulation to provide the document to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. We agree that evidences of coverage, group certificates of coverage, contracts of insurance, benefits summaries, policies, formulary drug lists, provider directories, and other similar documents that are relied upon by individuals to understand their benefits and the full terms of coverage of the QHP are critical for obtaining health care services through the QHP and therefore must be provided by the issuer in a manner that satisfies the requirements in § 155.205(c). In addition, given the general significance of information, such as an MLR rebate notice, that a QHP issuer is required by Federal or State law or regulation to communicate to consumers, we believe it is appropriate to require a QHP issuer to provide meaningful access to such legally required information to all consumers in a manner that conforms to § 155.205(c) so that all consumers serviced by the QHP issuer can access and understand the legal rights or duties that are frequently discussed in such communication. With respect to our interpretation stated in the preamble to the proposed rule that our proposed standard would include any document provided by the issuer that requires a response or signature from the qualified individual, applicant, qualified employer, qualified employee, or enrollee, in our view, these documents, by requiring a signature or response, typically confer an agreement or important acknowledgement regarding benefits or claims payment which an individual must be able to access and affirmatively understand. Thus, we believe consumers receiving such documents from a QHP issuer should have meaningful access to this information within the meaning of § 155.205(c).

As we noted in the preamble to the proposed rule, we consider the SBC to be a document subject to § 156.250 for which a QHP issuer must provide meaningful access in accordance with the standards of § 155.205(c). As such, like any document that is considered to be ''critical'' within the meaning of § 156.250, in accordance with § 155.205(c)(2)(iii)(A), beginning no later than the first day of the Exchange individual market open enrollment period for the 2017 benefit year, a QHP issuer is required to include taglines with any SBC that reflects a QHP option or plan variation of a standard QHP option in the top 15 languages spoken by the LEP population in the applicable State. An issuer may satisfy this requirement if it includes a cover letter or other additional pages provided along with the SBC that contains all required taglines. In addition, in accordance with § 155.205(c)(2)(i), beginning when this rule takes effect, a QHP issuer is required to provide telephonic interpreter services in at least 150 languages with respect to any SBC that reflects a QHP option or plan variation of a standard QHP option. Because the requirements with respect to oral interpretation and taglines that are finalized in this rule are different in substance than those that apply generally to the SBC under § 147.200(a)(5) (which cross-references the internal claims and appeals and external review processes standards at § 147.136(e)), we clarify that these additional specific standards supplement the existing ''ten percent county-level'' language access standards in § 147.200(a)(5).[69] For example,

[69] Under § 147.200(a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of § 147.136(e), implementing standards for the form and manner of notices related to internal claims appeals and external review, are met as applied to the SBC. When we

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whereas the existing standards under § 147.136(e) require QHP issuers to provide taglines and oral language services with respect to an applicable non-English language spoken by a given LEP population that comprises ten percent or more of the total population residing in the applicable county, QHP issuers must also provide taglines on the SBC (or in a cover letter or other additional pages included with the SBC) in the top 15 non-English languages spoken by the LEP population in the relevant State as well as provide telephonic interpreter services in at least 150 languages with respect to any SBC that reflects a QHP option or plan variation of a standard QHP option. We note that based on an analysis of current data, the top 15 languages Statewide standard described in § 155.205(c)(2)(iii) will yield any language that is triggered by the county-level standards in § 147.136(e)(3).[70] In addition, under § 147.136(e)(2)(ii), a QHP issuer is still required to provide, upon request, a translated version of the SBC in an applicable non-English language if at least ten percent of the population in the applicable county is comprised of an LEP population that is literate in the same non-English language.

We make one clarification regarding our reference to ''QHP ratings information.'' By using this term, we intended to refer to the Quality Rating System and QHP Enrollee Experience Survey results established under sections 1311(c)(3) and (c)(4) of the Affordable Care Act. However, we recognize that this information, when available, is required to be displayed by Exchanges on the Exchange Web site, rather than by a QHP issuer directly. Therefore, unless a QHP issuer is required by other Federal or State law or regulation to provide QHP ratings information directly to consumers, that information would not be subject to § 156.250. A QHP issuer voluntarily providing the information to consumers is encouraged, but not required, to provide it in a manner that conforms to § 155.205(c).

Finally, though we do not consider marketing materials that are available for advertising purposes only and not otherwise required by law to be critical for obtaining health insurance coverage or access to health care services through the QHP, we remind issuers that they might have duties to make these materials accessible to individuals with disabilities and individuals with LEP under Federal civil rights laws that also might apply, including section 1557 of the Affordable Care Act, section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964.

f. Enrollment Process for Qualified Individuals (§ 156.265)

Sections 155.240 and 155.400 explicitly authorize Exchanges to establish certain requirements related to premium payment for enrollment in QHPs through the Exchange. Section 156.265 currently only cross-references § 155.240. To clarify that both sets of requirements apply to QHPs, we proposed that a QHP issuer must follow the premium payment process established by the Exchange in accordance with § 155.240 and the payment rules established in § 155.400(e).

We did not receive comments concerning the proposed enrollment process provisions. We are finalizing the provisions proposed in § 156.265 of the proposed rule without any modifications.

g. Termination of Coverage or Enrollment for Qualified Individuals (§ 156.270)

We are finalizing revisions in this section to conform to our interpretation of the guaranteed availability and guaranteed renewability requirements. For a discussion these revisions, please see the preamble for § 155.430.

h. Segregation of Funds for Abortion Services (§ 156.280)

Section 1303 of the Affordable Care Act and § 156.280 specify accounting and other standards for issuers of QHPs through the Exchange in the individual market that cover abortion services for which public funding is prohibited (also referred to as non-excepted abortion services). The statute and regulations establish that unless otherwise prohibited by State law, a QHP issuer may elect to cover such services. If an issuer elects to cover such services under a QHP sold through the individual market Exchange, the issuer must ensure that no premium tax credit or cost-sharing reduction funds are used to pay claims for abortion services for which public funding is prohibited.

In the proposed rule, we provided guidance on individual market Exchange issuer's responsibilities for requirements related to QHP coverage of abortion services for which public funding is prohibited. HHS works with stakeholders, including States and issuers, to help them fully understand and follow the statutes and regulations governing the provision of health insurance coverage under a QHP through the Exchange. As is the case with many provisions in the Affordable Care Act, States and State insurance commissioners are the entities primarily responsible for implementing and enforcing the provisions in section 1303 of the Affordable Care Act related to individual market QHP coverage of non-excepted abortion services. OPM may issue guidance related to these provisions for multi-State plan issuers.

Under section 1303(b)(2)(B) of the Affordable Care Act, as implemented in § 156.280(e)(2)(i), individual market Exchange issuers must collect a separate payment from each enrollee, for an amount equal to the AV of the coverage for abortions for which public funding is prohibited. However, section 1303 of the Affordable Care Act and § 156.280 do not specify the method an issuer must use to comply with the separate payment requirement. As we described in the proposed rule, this provision may be satisfied in a number of ways. Several such ways include: Sending the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-excepted abortion services; sending a separate monthly bill for these services; or sending the enrollee a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge. Section 1303 of the Affordable Care Act permits, but does not require, a QHP issuer to separately identify the premium for non-excepted abortion services on the monthly premium bill to comply with the separate payment requirement. A consumer may pay the premium payment for non-excepted abortion services and the separate payment for all other services in a single transaction, with the issuer depositing the two separate payments into the issuer's two separate allocation accounts as required by section 1301(b)(2)(C) of the Affordable Care Act, as implemented in § 156.280(e)(2)(ii) and (e)(3).

Section 1303(b)(2)(D) of the Affordable Care Act, as implemented in § 156.280(e)(4), establishes requirements for individual market Exchange issuers for how much they must charge each QHP enrollee for coverage of abortions for which public funding is prohibited. A QHP issuer must estimate the basic

refer to the ''ten percent county-level'' standards, we are referring to the standards set forth under § 147.136(e)(3), which states that with respect to an address in any United States county to which a notice is sent, a non-English language is an applicable non-English language if ten percent or more of the population residing in the county is literate only in the same non-English language, as determined in guidance published by the Secretary.

[70] In the counties for which the ten percent threshold triggers an applicable non-English language, Spanish is triggered in the vast majority of cases. In a few counties, Tagalog, Navajo, or Chinese are also triggered. 79 FR 78587 (Dec. 30, 2014).

per enrollee, per month cost, determined on an average actuarial basis, for including coverage of non-excepted abortion services. In making this estimate, a QHP issuer may not estimate the basic cost of coverage for non-excepted abortion services to be less than $1 per enrollee, per month. In the proposed rule and past guidance, we clarified that this means an issuer must charge each QHP enrollee a minimum premium of $1 per month for coverage of non-excepted abortion services.

Comment: Some commenters supported enrollees paying premiums in one single transaction for both non-excepted abortion services and other health care services. Commenters requested clarification on the guidance provided in the proposed rule so enrollees will not receive multiple notices regarding separate premium amounts. These commenters stated that a single payment transaction without notice to the consumer would minimize administrative complexity for issuers. Other commenters requested that QHP issuers be prohibited from collecting the two separate payments for coverage for non-excepted abortion services and other health care services, respectively, in a single transaction (for example, having them combined in a single check), and instead require that they be separated by the enrollee. Commenters also recommended HHS clarify the guidance regarding itemizing the two premium amounts on monthly invoices and provide additional technical guidance on maintaining separate allocation accounts for non-excepted abortion services and all other services, along with enforcement mechanisms.

Response: The discussion of § 156.280 in the proposed rule of the separate payment requirement constituted clarifying guidance, and did not propose to modify existing requirements under section 1303 of the Affordable Care Act and § 156.280. We affirm the guidance in the proposed rule. This guidance offers QHP issuers several ways to comply with the requirements, while minimizing burden on QHP issuers and consumers.

i. Non-Renewal and Decertification of QHPs (§ 156.290)

We are finalizing revisions in this section to conform with our interpretation of the guaranteed availability and guaranteed renewability requirements. For a discussion of these revisions, please see the preamble for § 155.430. We are also correcting a typographical error by inserting the words ''adhere to the'' in § 156.290(a)(1).

4. Health Insurance Issuer Responsibility for Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions

a. Plan Variations (§ 156.420)

In the proposed rule, we proposed to amend § 156.420 to add § 156.420(h) and require QHP issuers to provide SBCs that accurately represent plan variations in a manner consistent with the requirements set forth at § 147.200 to ensure that consumers have access to SBCs that accurately represent cost-sharing responsibilities for all coverage options, including plan variations, and are provided adequate notice of the plan variations.

We proposed that QHP issuers would be required to provide SBCs for plan variations no later than the first day of the next Exchange open enrollment period for the individual market for the 2016 benefit year, in accordance with § 155.410(e). We sought comments on whether the proposed applicability date would present implementation challenges for QHP issuers as well as on other aspects of the proposal. We also noted that QHP issuers would be required to provide the SBC in a manner that is consistent with the meaningful access requirements under § 155.205(c).

We are finalizing this provision as proposed, with one modification to specify that this standard will apply no later than November 1, 2015, which is the first day of the individual market open enrollment period for the 2016 benefit year.

Comment: Commenters expressed support for the proposal. Some commented that the proposal would better enable consumers who are eligible for cost-sharing reductions to take into account the overall out-of-pocket costs of a given QHP benefit package, rather than focusing primarily on premiums.

Response: We agree that requiring the provision of plan variation SBCs for individual market QHP options will increase the likelihood that consumers will select a plan option that is appropriate for both their financial and health care needs.

Comment: Commenters supported an implementation date of no later than the open enrollment period for the 2016 benefit year. Some commenters stated that issuers are already providing plan variation SBCs to enrollees and did not express opposition to our proposed implementation timeline. However, one commenter opposed the proposed implementation date because it did not believe issuers could receive State approval of their form filings, including plan variation SBCs, in time to make such SBCs available.

Response: We are finalizing the applicability date as proposed. We expect that States and issuers will continue to work collaboratively to ensure that the applicable form filing approvals are received sufficiently in advance of the open enrollment period for the 2016 benefit year.

b. Changes in Eligibility for Cost-Sharing Reductions (§ 156.425)

In the proposed rule, we proposed to amend § 156.425 to clarify when a QHP issuer would be required to provide an SBC if an individual's assignment to a standard plan or plan variation of the QHP changes in accordance with § 156.425(a). We proposed that a QHP issuer must provide an SBC that accurately represents a new plan variation (or the standard plan variation) as soon as practicable after receiving notice from the Exchange of the individual's change in eligibility, but in no case later than 7 business days following receipt of notice. We proposed that this requirement would be effective beginning on January 1, 2016.

We are finalizing these provisions as proposed.

Comment: Commenters generally expressed support. Some commenters requested that an additional notice, beyond the SBC, be sent to consumers whose eligibility for cost-sharing variations changes which would explain the change to the consumer, the reason for the change, and how many cost-sharing amounts already incurred by the consumer during the benefit year would be applied toward the new deductible(s) and out-of-pocket limit(s).

Response: While issuers are encouraged to develop health literacy tools and provide consumer-friendly explanatory information to enrollees when their eligibility for cost-sharing reductions changes, we are not requiring issuers to send an additional notice beyond the SBC at this time. We will continue to monitor the extent to which consumers understand cost-sharing reductions eligibility and whether other information should be provided to consumers in this context.

Comment: Some commenters requested additional time to send an SBC to an enrollee whose eligibility for cost-sharing reduction changes. One commenter requested as many as 14 business days from the date the issuer effectuates the assignment into a plan variation (or standard plan without cost-sharing reductions), while the other commenter requested 14 calendar days to send the SBC.

Response: We are finalizing the timing requirement to send the SBC as proposed, that is, 7 business days from the date the issuer receives notice of the change in the enrollee's eligibility from the Exchange. Virtually all issuers subject to this requirement have already incurred one-time costs to develop systems necessary to generate and provide SBCs in an automated and efficient fashion to meet the timing requirements specified in § 147.200. Further, in accordance with § 147.200(a)(1)(iv)(D), QHP issuers must already send an SBC when an individual requests an SBC as soon as practicable, but no later than 7 business days following the receipt of the request.

c. Cost-Sharing Reductions Reconciliation (§ 156.430)

Sections 1402(a) through (c) of the Affordable Care Act provide for cost-sharing reductions for EHB provided by a QHP. Cost-sharing reductions are advanced to issuers throughout the benefit year, and reconciled following the benefit year against actual cost-sharing amounts provided by issuers to enrollees.

The reconciliation process requires QHP issuers to submit to HHS the total allowed costs for EHB charged for each plan variation policy, the amounts paid by the issuer, and the amounts paid by or on behalf of the enrollee (other than by the Federal government under section 1402 of the Affordable Care Act), as well as the amounts that would have been paid by the enrollee under the standard plan. Under the standard methodology described at § 156.430(c)(2), costs paid by the issuer under the standard plan are calculated by applying actual cost-sharing requirements for the standard plan to the allowed costs for EHB under the enrollee's policy for the benefit year. The difference is the amount of cost-sharing reductions provided.

In the proposed Payment Notice, we reiterated that issuers will not be reimbursed for reductions in out-of-pocket spending for benefits other than EHB. However, we explained that because of technology challenges in these early years of the cost-sharing reduction program, some issuers are presently unable to differentiate on a policy level between EHB claims and non-EHB claims, as required by HHS when applying the standard cost-sharing reduction reconciliation methodology. The difficulty occurs in plan designs that allow enrollee out-of-pocket spending for EHB and non-EHB claims alike to accumulate toward deductibles and the reduced annual limit on cost sharing. Such plan designs benefit enrollees by allowing them to reach their spending limits sooner. As a result, for the purpose of cost-sharing reduction reconciliation, we proposed to allow QHP issuers to submit percentage estimates of the portion of claims attributable to non-EHB for the 2014 benefit year, and to reduce the total claims amount by that percentage, to arrive at an estimated total EHB amount. The percentage estimate would be the estimate of expected non-EHB claims costs previously submitted for each plan variation on the Uniform Rate Review Template (URRT) [71] and which HHS used to calculate 2014 advance cost-sharing reduction payments. An issuer using this procedure would be required to do so for all plan variations for which the criteria below are met.

As described in proposed § 156.430(c)(2)(i), this exception to permit QHP issuers to use plan-specific URRT estimates of non-EHB claims would be limited to plan designs in which out-of-pocket expenses for non-EHB benefits accumulate toward the deductible and reduced annual limitation on cost sharing, but for which copayments and coinsurance rates for non-EHB are not reduced. This limitation helps assure that the estimated percentage, which is calculated based on the proportion of claims attributable to EHB, does not overstate the proportion of reduced out-of-pocket spending associated with EHB. In addition, the exception would apply only when non-EHB estimated percentages account for less than 2 percent of total claims, helping assure that any inaccuracies in the estimate are unlikely to result in significant inaccuracies in total cost-sharing reduction reimbursement.

Comment: We received comments in support of our proposal to permit estimates of non-EHB cost sharing based on the URRT. One commenter asked HHS to make this exception permanent. Another commenter asked HHS to extend the exception to the simplified method of cost-sharing reduction reconciliation since it, too, requires comparison of standard plan cost sharing to the total allowed EHB costs for a plan variation, and issuers face similar problems identifying EHB. Another commenter asked us to clarify what we mean by reducing total claims amount by the percentage of non-EHB, and specifically whether issuers must reduce every claim before re-adjudication. Finally, a commenter asked HHS to permit issuers to use the simplified method of cost-sharing reduction reconciliation permanently, stating that the double adjudication required under the standard methodology is too complex for the variety of plan designs on the individual market.

Response: We are finalizing the exception proposed in § 156.430(c)(2)(i) to permit QHP issuers to use plan-specific URRT estimates of non-EHB claims, with two modifications. We are expanding this exception to include issuers using the simplified methodology for cost-sharing reduction reconciliation, since they are equally affected by technology challenges, and we are extending it to the 2015 benefit year. We also clarify that issuers should reduce total claims at the policy-level before re-adjudication. Finally, we believe the standard methodology will provide the most accurate permanent method of reconciling advanced cost-sharing reduction payments—the simplified methodology is an interim step.[72]

5. Minimum Essential Coverage

a. Other Coverage That Qualifies as Minimum Essential Coverage (§ 156.602)

Under § 156.602, State high risk pool coverage is designated as minimum essential coverage for a plan or policy year beginning on or before December 31, 2014, for a one-year transition period. However, many State high risk pools have continued into the 2015 policy year. The proposed rule would designate as minimum essential coverage any qualified high risk pool (as defined by section 2744(c)(2) of the PHS Act) established in any State as of the publication date of the proposed rule. This would provide States additional time to evaluate State-administered high risk pools and facilitate the transition of State high risk pool enrollees into QHPs through the Exchange or into other forms of minimum essential coverage. We sought comment on whether the designation should be permanent or time-limited (for example, for 2015 only). We also sought comment on the cut-off date for formation of State high

[71] *Percentage of the total allowed costs of benefits* as defined at § 156.20 means the anticipated covered medical spending for EHB coverage (as defined in § 156.110(a) of the subchapter) paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage.

[72] ''Timing of Reconciliation of Cost-Sharing Reductions for the 2014 Benefit Year.'' February 13, 2015. *https://www.regtap.info/uploads/library/APTC_CSR_Recon_timing_guidance_5CR_021315.pdf.*

risk pools that will qualify for recognition under the regulations.

Comment: Several commenters favored the proposal to permanently designate State high risk pool coverage as minimum essential coverage. One commenter suggested the designation should apply only through the 2016 plan year. Another commenter stated that State high risk pools must at least be required to provide minimum value to be recognized as minimum essential coverage after 2015.

Response: We believe States are in the best position to assess the unique circumstances in each State and determine when it is in the best interest of consumers to close State-administered high risk pools. While a one-year designation as minimum essential coverage would allow adequate time for some States to phase out high risk pools, many State laws require the retention of State high risk pools after 2015. Additionally, since the benefits are generally statutorily mandated, many States may not be able to easily alter the State high risk pool benefits to provide minimum value. Imposing a timeline that is not tailored to the unique circumstances of a particular State potentially disadvantages a vulnerable population that has significant health costs and that may be uninformed about the Exchanges and the availability of financial help to purchase health coverage. We received no comments on the cut-off date for formation for State high risk pools. Therefore we are establishing a permanent minimum essential coverage designation for any State high risk pool in existence as of November 26, 2014, the publication date of the proposed rule. The IRS has indicated that as long as HHS designates qualified high risk pool coverage as minimum essential coverage, an individual that is eligible but not enrolled in a qualified high risk pool will be treated as eligible for QHP coverage and the premium tax credit.[73]

6. Enforcement Remedies in Federally-Facilitated Exchanges

a. Available Remedies; Scope (§ 156.800)

In the first Program Integrity Rule,[74] HHS finalized § 156.800(c), which established a good faith compliance policy for QHP issuers offering coverage through an FFE for the 2014 calendar year. Specifically, the first Program Integrity Rule provides that HHS will not impose sanctions under subpart I of part 156 against a QHP issuer in an FFE if the QHP issuer has made good faith efforts to comply with applicable Exchange requirements. HHS adopted the good faith compliance policy to help QHP issuers become familiar with the standards unique to the FFEs during the initial stage of operations.

HHS is committed to ensuring that QHP issuers have the opportunity to learn from their experiences in 2014 without undue concern about being subject to formal enforcement actions when the QHP issuer has made reasonable efforts to comply with applicable standards. While immediate formal enforcement actions may be appropriate in some cases, we continue to prefer resolving most compliance issues by providing technical assistance. Accordingly, in the proposed rule we proposed extending the good faith compliance standard under § 156.800(c) through the end of calendar year 2015. We also noted, that irrespective of the good faith compliance standard, QHP issuers are required to comply with all applicable FFE standards (and any applicable Federal or State laws regarding privacy, security and fraud) at the time of certification and on an ongoing basis.

We are finalizing the provision as proposed.

Comment: Commenters generally supported the proposed extension of the good faith compliance standard. One commenter did not support the proposal, stating that the extension of the standard may impede HHS's efforts to enforce FFE standards. Some commenters also requested that HHS clarify that the good faith compliance policy would apply to non-compliance occurring during the 2015 benefit year that is identified after calendar year 2015.

Response: We note that issuers seeking to avoid enforcement actions under subpart I of part 156 through the good faith compliance standard may do so only by demonstrating that they exercised good faith efforts at complying with FFE standards. Consistent with the good faith compliance standard for the 2014 calendar year, HHS will determine whether the good faith compliance standard applies based on an evaluation of various factors surrounding the issuer's participation in the FFEs, including past instances of non-compliance, the gravity or severity of non-compliance, and the presence or absence of HHS guidance on the matter. We further clarify that the good faith compliance standard would apply to conduct occurring during the 2015 calendar year even if the activity is identified after 2015 calendar year. It would not apply to conduct that occurs in 2016 or later, even if that conduct was related to coverage provided in the 2015 calendar year.

b. Plan Suppression (§ 156.815)

In § 156.815(a), we proposed a definition of suppression, which would mean that a suppressed QHP temporarily would not be available for enrollment through the FFEs. In § 156.815(b), we proposed the bases for suppression of a QHP in the FFEs. Our first proposed basis for suppression, § 156.815(b)(1), is the issuer notifying HHS of its withdrawal of the QHP from the FFEs when one of the exceptions to guaranteed renewability of coverage related to discontinuing a particular product or discontinuing all coverage under § 147.106(c) or (d) applies. In § 156.815(b)(2), we proposed as a basis to suppress a QHP submission of data for the QHP that is incomplete or inaccurate. For example, incorrect rates submitted by a QHP issuer generally would lead to the suppression of the QHP until the rating data are corrected. In § 156.815(b)(3), we proposed as a basis to suppress a QHP that is undergoing decertification under § 156.810 or the appeal of a decertification under subpart J of part 156. In § 156.815(b)(4), we proposed as a basis to suppress a QHP pending, ongoing, or final State regulatory or enforcement action against the QHP that could affect the issuer's ability to enroll consumers or that otherwise relates to the issuer's ability to offer QHPs in the FFEs. In § 156.815(b)(5), we proposed as a basis for suppression of a QHP application of the special rule for network plans under § 147.104(c) or the financial capacity limits provision under § 147.104(d). In § 156.815(c), we proposed a basis for suppression of a QHP that is a multi-State plan upon notification by OPM of certain findings. We solicited comments on this proposal, including whether the proposed bases for suppression were appropriate and whether an appeals process should be available following suppression decisions.

We are finalizing the provision as proposed.

Comment: Some commenters supported the proposed provisions. Commenters requested that HHS clarify that QHP suppression would not be implemented in violation of State law. One commenter did not support QHP suppression, stating that it would conflict with HIPAA and one State's law on guaranteed renewability. Another commenter recommended that HHS clarify that, when the QHP continues to offer coverage through the FFEs but is

[73] See Notice 2013–41, 2013–29 I.R.B. 60.

[74] Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals, 78 FR 54074 (August 30, 2013).

being suppressed, consumers should be notified of the suppression. One commenter asked if the proposed process and reasons for QHP suppression would apply to QHPs in the SHOP.

Response: We envision suppressing a QHP when continuing to allow new enrollment in the QHP through an FFE is not in the interest of qualified individuals and employers, such as when the QHP has withdrawn from an FFE, when there is incorrect data being displayed about the QHP, and when the QHP will be decertified. Our experience shows that by removing QHPs subject to the suppression from an FFE Web site, it will minimize confusion by consumers, agents and brokers, and assisters about the QHPs that are available during plan selection. Federal regulations on guaranteed renewability at § 147.106(c) and (d) provide for circumstances under which an issuer may discontinue a particular product or discontinue all coverage in an applicable market. We intend to implement QHP suppression in coordination with States to ensure that conflicts with State law can be avoided and adverse effects minimized. We note that suppression does not affect re-enrollments into the plan, but temporarily restricts the availability of the plan for new enrollments through an FFE. We further note that if suppression of a plan ultimately leads to the plan being no longer available through an FFE, the issuer may be required to offer the same plan outside an FFE under §§ 147.104 and 147.106. We further clarify that the process and reasons for QHP suppression would also apply to QHPs in the FF–SHOP.

7. Quality Standards

a. Quality Improvement Strategy (§ 156.1130)

In § 156.1130(a), we proposed that a QHP issuer participating in an Exchange for at least 2 years must implement and report information regarding a quality improvement strategy (QIS), that is a payment structure that provides increased reimbursement or other market-based incentives in accordance with the health care topic areas in section 1311(g)(1) of the Affordable Care Act, for each QHP offered in an Exchange, consistent with the guidelines developed by HHS under section 1311(g)(2) of the Affordable Care Act. We noted that the statutory QIS requirements, similar to the other Exchange quality standards, extend to all Exchange types, including a State Exchange and the FFEs.[75] For the QIS standards, we proposed to provide State Exchanges flexibility to establish the timeline, format, validation, and other requirements related to the annual submission of QIS data by QHP issuers that participate in their respective Exchanges. Under this proposal, the establishment and implementation of such standards and other requirements by State Exchanges would support compliance with § 155.200(d), which requires the Exchange to evaluate and oversee implementation of the QIS (among other QHP issuer quality initiatives for coverage offered through Exchanges). We noted that we envisioned the standards that will be used for the FFEs would provide the minimum requirements for State Exchanges to build upon.

We proposed to phase in QIS implementation standards and reporting requirements to provide QHP issuers the necessary time to understand the populations enrolling in a QHP offered through the Exchange and to build quality performance data on their respective QHP enrollees. We believe that implementation of a QIS should be a continuous improvement process for which QHP issuers define the health outcome needs of their enrollees, set goals for improvement, and provide increased reimbursement to their providers or other market-based incentives to reward achievement of those goals. This approach is consistent with other QHP issuer quality standards for coverage offered through an Exchange including implementation and reporting for the patient safety standards, the Quality Rating System (QRS), and the Enrollee Satisfaction Survey (ESS). We further noted that, consistent with existing regulations at § 156.200(h), QHP issuers participating in Exchanges would be required to attest to compliance with QIS standards, along with the other QHP issuer quality initiatives for coverage offered through Exchanges established under subpart L of part 156, as part of the QHP application process.

In paragraph (b), we proposed to direct a QHP issuer to submit validated data in a form, manner, and reporting frequency specified by the Exchange to support evaluation of quality improvement strategies in accordance with § 155.200(d) and § 156.200(b)(5). We noted that we anticipate using the data collected as part of information used to evaluate and oversee compliance of QHP issuers in FFEs with the Exchange QIS standards and encourage State Exchanges to adopt a similar approach. State Exchanges would maintain the flexibility to add to the Federal minimum QIS standards and would also have the ability to establish their own form, manner, and reporting frequency. We proposed that beginning in 2016, a QHP issuer participating in an Exchange for at least 2 years would submit a QIS implementation plan for the 2017 plan year to the applicable Exchange, followed by annual progress updates. We noted that we anticipate that the implementation plan for a QHP issuer's proposed QIS would reflect a payment structure that provides increased reimbursement or other market-based incentives for addressing at least one of the topics in section 1311(g)(1) of the Affordable Care Act.

We proposed requesting information from QHP issuers regarding percentage of payments to providers that is adjusted based on quality and cost of health care services as this would promote transparency and assist Exchanges to make better informed QHP certification decisions. We also proposed that 1 year after submitting the QIS implementation plan, the QHP issuer would submit information including an annual update including a description of progress of QIS implementation activities, analysis of progress using proposed measures and targets, and any modifications to the QIS.

We noted that we believe that the implementation and reporting for the QIS over time would provide meaningful QIS data from QHP issuers by minimizing administrative effort while also allowing for flexibility and innovation. In the proposed rule, we explained that we anticipate issuing technical guidance in the future that will provide operational details including data validation, other data submission processes, timeframes and potential minimum enrollment size threshold for coverage offered through an FFE. We anticipate that this guidance would be updated on an annual basis (or more frequently as may be necessary). We proposed to allow State Exchanges to establish the data validation and submission requirements for QIS data from QHP issuers that participate in their respective Exchanges.

In paragraph (c), we proposed to direct a QHP issuer to submit data annually for activities that are conducted related to implementation of its QIS, in a manner and timeframe specified by the Exchange. For example, an issuer that participates in an FFE for

[75] Unless indicated otherwise, references in this section to the ''FFE'' include States performing plan management functions.

2 consecutive years for coverage beginning in January 2014 and January 2015 would submit a QIS implementation plan to an FFE during the fall 2016 post-certification period, and in a format specified by HHS. A progress update on the QHP issuer's QIS activities would be required the following year. Similarly, an issuer participating in an FFE for the first time during the 2015 open enrollment period for the 2016 coverage year and also offering coverage in the 2017 plan year would submit an implementation plan in the 2018 post-certification period to align with our proposed approach of phasing in the QIS over time and allowing a QHP issuer 2 years to collect data and develop quality improvement strategies for its QHPs offered through an Exchange, before the submission of an implementation plan is required. A progress update on the QHP issuer's QIS activities would be required the following year. We proposed to allow State Exchanges to establish the specific timeline and format requirements for the annual submission of QIS data by QHP issuers that participate in their respective Exchanges.

We noted that multi-State plans, as defined in § 155.1000(a), are subject to reporting QIS data for evaluation, as described in paragraph (b). In the proposed rule, we proposed to codify this general requirement at § 156.1130(d). We noted that we anticipate that OPM will provide guidance on QIS reporting to issuers with whom it holds multi-State plan contracts.

We sought comment on all aspects of this proposal, including whether the standard should apply to all types of QHPs offered through the Exchanges (for example, stand-alone dental plans, QHPs providing child-only coverage, and health savings accounts) or if different standards should be developed for the different types of QHPs. We also solicited feedback on: whether there should be a minimum enrollment size threshold to trigger the applicability of the QIS standards, what information should be included to effectively monitor and evaluate a QIS, and whether the information collected should be publically displayed to encourage transparency, support comparison of QHP issuer QIS activities, and align with other quality standards for QHP issuers participating in Exchanges.

We are finalizing these provisions as proposed, with the following modifications. For the initial years of implementation, QHPs that are stand-alone dental plans, provide child-only coverage, or are compatible with health savings accounts will not be subject to the QIS. Additionally, HHS intends to establish a minimum enrollment size that triggers the QIS obligations in alignment with the other Exchange quality initiatives (for example, the QRS and ESS) and will do so through technical guidance. Further, we clarify that, in the initial years of QIS implementation, HHS will not require QHP issuers to select measures from a set of standardized or uniform performance measures established by HHS for inclusion in their respective QIS implementation plans. HHS anticipates requiring QHP issuers to provide information regarding their payment structure that provides increased reimbursement or other incentives such as the percentage of payments made across various categories including fee-for-service with no link of payment to quality; fee-for-service with a link of payment to quality; alternative payment models built on fee-for-service architecture; and population-based payments, to promote transparency and align this approach with other current CMS and HHS payment reform initiatives. As detailed above, we intend to issue future technical guidance that will provide more information regarding these and other QIS data collection and submission details for QHP issuers participating on an FFE.

Comment: Several commenters supported requiring QIS compliance from QHP issuers that have been participating in an Exchange for at least 2 years. A few commenters agreed the phased-in approach of the QIS program would allow for the necessary preparations and knowledge building, while other commenters recommended a delay based on concerns that the timeline was too aggressive. While one commenter urged HHS to postpone its QIS proposals and requirements for the private sector until it has had time to evaluate lessons learned from the public sector, others recommended that HHS require all QHP issuers—not only those that have been participating in the Exchange for 2 or more consecutive years—to submit a QIS implementation plan, with one stating that QHP issuers will have sufficient information at the outset to design their quality improvement strategies.

Response: We maintain in the final rule the approach outlined in the proposed rule that QHP issuers participating in an Exchange for at least 2 consecutive years must implement and report information regarding a QIS, followed by annual progress updates. We believe that 2 years is an appropriate time period for QHP issuers to understand their populations who have enrolled through Exchanges, and develop relevant quality improvement strategies to meet the needs of that population. We anticipate requiring compliance with the QIS reporting requirements beginning in 2016 for the 2017 coverage year and will be issuing future guidance that addresses this, as well as other QIS operational and data submission details, for QHP issuers participating in the FFEs.

Comment: Some commenters suggested that a minimum QHP enrollment size that aligns with the minimum threshold requirements of the 2015 QRS beta test requirement and the QHP Enrollee Experience Survey should be required to trigger the applicability of the QIS certification standard. Other commenters suggested that all QHP issuers, regardless of enrollment size, should be required to develop and implement a quality improvement strategy.

Response: We considered the feedback regarding the applicability of a minimum enrollment size. In an effort to maintain consistency with other Exchange quality standards in the initial years, we will direct QHP issuers to comply with the QIS certification standard and report QIS data if they meet the minimum enrollment size threshold. We intend to include additional details regarding the applicability of the minimum enrollment threshold to the QIS standards in future technical guidance.

Comment: Some commenters suggested that the QIS should align with existing quality standards required as part of Exchange participation standards to be accredited by a recognized accrediting entity and that the accreditation certification standard should satisfy the QIS standards provided in § 156.1130(a).

Response: We note that the existing accreditation standards do not include the use of market-based incentives as outlined in § 156.1130(a) and required by section 1311(g) of the Affordable Care Act for QHP issuers participating in Exchanges. However, we would not restrict a QHP issuer from using quality improvement strategy information submitted to a recognized accrediting entity for QIS purposes as long as the information otherwise satisfies the QIS requirements included in this final rulemaking and future technical guidance.

Comment: Commenters expressed general support for the QIS principles and goal of improving quality of care delivered to Exchange enrollees through quality improvement strategies that provide for increased reimbursements,

benefit designs, and other market-based incentives. Commenters supported QIS alignment of priorities, performance measures, and reporting requirements with the National Quality Strategy, the CMS Quality Strategy, and other national and regional efforts to improve the quality of healthcare to reduce both QHP issuer and provider burden. Commenters remarked on the importance of leveraging quality improvement efforts in the public and private sectors to hasten achievement of better patient outcomes and lower costs.

Response: We made extensive efforts to incorporate similar standards and requirements from other quality initiatives into the QIS, and believe that the QIS requirements will align as consistently as possible with other quality initiatives. At this time, we do not intend to require QHP issuers to select specific measures from a set required by HHS.

Comment: Comments related to whether all QHP types (SADPs, child only coverage, and health savings accounts) should be required to implement a QIS fell into two categories. The first category of commenters noted that all types of QHPs should meet the QIS certification standard and be subject to the same QIS standards. The second category of commenters noted that the QIS should apply to all QHPs, but the standards should be directly relevant to the population(s) covered by the QHP (that is, different standards for SADPs, QHPs with rural enrollees, integrated delivery systems, etc.). Some commenters suggested that QHP issuers be allowed to target specific populations within their network when implementing a QIS instead of targeting all their QHP enrollees. Others recommended that QHP issuers be provided the flexibility to address the needs of specific enrollee populations while recommending HHS review QIS submissions to ensure that the strategies do not exclude any particular group, either by design or effect. Other commenters stressed the need to review quality improvement strategies to ensure that such strategies do not discriminate, either by design or by effect, against any one group of individuals. Some commenters also recommended excluding SADPs, noting that SADPs do not have the same ability to implement and track measures, and therefore should be exempt from the QIS requirements.

Response: We clarify in the final rule that the Federal QIS standards will apply to same QHP types that are required to comply with the QIS certification standard across all Exchange types. However, a QHP issuer's QIS does not need to apply to all populations covered by its QHPs, and the issuer has the option of developing multiple strategies to ensure that each QHP is covered by a QIS. We agree that it would be premature at this point in time to require all QHP types (for example, SADPs, child only coverage plans, or QHPs compatible with health savings accounts) to develop, implement, and track a QIS. We therefore clarify in the final rule that in the initial years of the QIS, SADPs, child only coverage plans, and QHPs that are compatible with health savings accounts will be exempt from the QIS certification and reporting requirements. This approach aligns with our current approach for other Exchange and QHP issuer quality requirements, allows the program to mature, and allows for additional measures for other QHP types to be developed for reporting. Consistent with the nondiscrimination prohibition in § 156.225, QIS implementation plans will be reviewed to ensure that they are not designed and do not have the effect of discouraging the enrollment of individuals with significant health needs.

Comment: We solicited comments on whether to require information relating to provider payment models, such as an issuer's minimum target or goal set with regards to the percentage of provider payments adjusted for quality and cost, to be submitted for compliance with QIS standards proposed in § 156.1130. While one commenter agreed with the concept, other commenters recommended that QHP issuers be required to indicate specifically to providers how payment is tied to performance or questioned the need for QHP issuers to report on the details of their proprietary contracts with providers, and encouraged HHS to let market factors drive quality improvements.

Response: We believe that understanding how QHP issuers participating in Exchanges are adjusting provider payments for quality and cost is important and directly aligns with the statutory definition of a QIS. As such, this type of information is subject to the periodic reporting of QIS information under section 1311(g)(3) of the Affordable Care Act. We anticipate requiring QHP issuers participating in Exchanges to establish and share with the applicable Exchange performance measure improvement targets and report on progress against those targets as they relate to QIS implementation. We anticipate alignment of QIS information collection requirements with current payment reform data collection efforts, including the adoption of safeguards to protect confidential or proprietary information. The goal is to collect issuer QIS information from QHP issuers participating in Exchanges that demonstrates compliance with 1311(g) of the Affordable Care Act and facilitates understanding of the issuer's payment structure framework that provides increased reimbursement or other market-based incentives for the implementation of activities related to the topics specified in section 1311 (g). We anticipate the display of a subset of this information to promote transparency and will provide additional details through future guidance. We do not intend that the public display of payment structure information will include information that is considered confidential or proprietary.

Comment: Commenters provided feedback on the definition of a quality improvement strategy as a payment structure. Various commenters recommended not linking incentives to cost, including cost-independent protections, and suggested that HHS recognize different types of provider incentives, and emphasize the importance of capturing outcome variations within a provider's control.

Response: We clarify that the description of a strategy described in 1311(g) of the Affordable Care Act is a payment structure that provides increased reimbursement or other market-based incentives. The purpose of soliciting comments was to understand the types of market-based incentives that are currently in use by issuers to reward quality and value. HHS intends to issue technical guidance to assist QHP with compliance with the QIS standards and reporting requirements.

Comment: Some commenters expressed concern with HHS's proposal that a QHP issuer could meet the QIS requirements by focusing on only one of the five topic areas in the Section 1311(g) of the Affordable Care Act. These commenters suggested requiring QHP issuers to focus on more than one topic area, with some commenters suggesting a requirement of at least three topic areas be addressed.

Response: While we agree that ideally QHP issuers participating in Exchanges would focus on more than one topic area as part of their QIS, we are cognizant that this could be difficult for issuers to accomplish immediately. Therefore, consistent with the phase in approach to implementation, for the initial years of the QIS, QHP issuers will have to address at least one of the topic areas included in section 1311(g) of the Affordable Care Act.

Comment: Some commenters expressed concern over the impact the QIS will have on providers if each QHP issuer is allowed to have extensive flexibility in designing its quality improvement strategies, in particular the performance measures used to track implementation progress. One commenter recommended that QHP issuers be required to use quality measures already in use by existing quality programs and for HHS to require QHP issuers to select their QIS quality measures from a limited subset of existing measures.

Response: Based on input from experts and stakeholders, we anticipate allowing QHP issuers to select their own performance measures and establish targets designed to measure the impact of their respective QIS plans. Our concern is that imposing specific performance measures on QHP issuers would limit their ability to target their strategies to their specific populations and possibly limit innovation. However, we will take these comments into consideration as we assess whether changes are warranted in the future.

Comment: Commenters strongly supported the proposal that QIS standards be developed in a public, accessible, and transparent manner that seeks and incorporates stakeholder feedback. Some commenters further recommended that HHS explicitly state that ''stakeholder feedback'' must include both consumer advocates and public and private purchasers, while another recommended that HHS reach out directly to State consumer health advocates, patient advocates, and case managers who represent consumer health perspectives.

Response: Consistent with the statutory directive at section 1311(g)(2) of the Affordable Care Act that requires consultation with experts in health care quality and stakeholders, HHS conducted numerous activities to seek feedback and develop the proposed approach to the QIS, including meetings with a QIS Technical Expert Panel and engagement of stakeholders through activities such as key informant interviews, listening sessions, discussions, and a pilot test. We will continue to engage a variety of public and private stakeholders, and will seek to incorporate their feedback to help inform the further development and evolution of the QIS.

Comment: Some commenters suggested we develop specific formats for data collection and reporting to ensure consistency, reliability in the data, and to reduce provider's data reporting burden. Other commenters encouraged HHS to develop a uniform standardized reporting format for use by QHP issuers in both the FFEs and the State Exchanges to allow QHP issuers to implement consistent quality improvement strategies, as well as enable fair comparison between QHP issuers operating in State Exchanges and the FFEs. Others urged HHS to allow for flexibility to ensure that QHP issuers can develop various strategies across their populations and across their provider contracts.

Response: We appreciate the feedback and clarify that we plan on establishing a standardized format for which QIS data must be submitted for those QHP issuers operating in the FFEs. We expect that the exact format and the validation process will be released as part of the operational details in technical guidance that will be issued later in 2015. State Exchanges will have the flexibility to add reporting requirements beyond the minimum Federal requirements, determine how they will communicate the process for submission, establish the timeframe and validation approach for the data submission, and any additional quality improvement requirements they may require beyond the minimum Federal requirements.

Comment: Some commenters felt that QIS data should not be made publicly available at all, adding that QHP issuers may be encouraged to take on more challenging or innovative strategies if the data are not made public. Other commenters suggested that if QIS data would be publicly available, HHS should create a uniform format for displaying the data using consumer-tested language, as well as provide evidence of effectiveness of different payment structures for QHP issuers' use. Some commenters urged HHS to make QIS data publicly available and require evaluation against benchmark data, allowing the data to be used for decision making by multiple stakeholder groups such as State Exchanges, health plans, consumers, employers, providers and provider organizations.

Response: We clarify in the final rule that HHS seeks to encourage transparency and align with other Exchange quality standards and data collection for QHP issuers, while protecting information that may be misinterpreted or misused if made publicly available. Similar to other quality standards and CMS programs collecting data from QHP issuers in the Exchanges, we do not anticipate publicly displaying information that is considered confidential or proprietary. As noted above, HHS anticipates the display of a subset of this information to promote transparency and will provide additional details through future guidance.

Comment: Many commenters recommended that HHS require the use of specific performance measures in the QIS, specifically those from the following organizations: NCQA (HEDIS); URAC; the Pediatric Quality Measurement Program; and the Dental Quality Alliance (DQA). There was also strong support for use of National Quality Forum (NQF)-endorsed measures, and measures that align with the National Quality Strategy. Commenters noted that requiring QHP issuers to include commonly used measures in their quality improvement strategies would minimize the data collection burden on QHP issuers as well as providers. Some comments supported inclusion of process-level and plan-level data and measures of improvement when evaluating a QIS. Some commenters stated that defining the health outcomes that will be the focus of interventions, setting goals for improvement, and the approach for linking improvement to payment incentives should be detailed in the QHP issuer's quality improvement strategy. They also suggested that these elements be fully disclosed so that regulators and other interested parties can properly evaluate a QHP issuer's quality improvement strategy. Other commenters supported collection of information such as the rationale for the targeted population, proposed performance measures, approaches to reducing health care disparities, and a description of the mitigation strategy.

Response: HHS will not require QHP issuers to include specific performance measures in a QIS. Instead, we have outlined the elements that should be included as part of a QIS, including a rationale that describes its relevance to the QHP's enrollee population, proposed performance measures and targets, a description of activities conducted to implement the strategy, a description of activities conducted to reduce health and health care disparities, as well as other chosen topics, goals, timeline, and information about challenges, barriers, and mitigation planning. As noted above, we anticipate requiring QHP issuers to include information in their respective QIS implementation plan regarding percentage of payments to providers that is adjudicated based on quality and cost of services as a range within categories of provider payments.

Comment: Several commenters provided comments specifically on evaluation. Commenters supported the evaluation of QHP issuers' quality improvement strategies, as long as the

purpose of the evaluation is to drive improvement in the strategies being implemented, and to create a national set of performance data against which to assess the strategies. Some commenters noted that evaluating the quality improvement strategies could be challenging, due to QHP issuers changing, removing, or adding QHPs, and enrollee movement across plans both within and outside of the Exchange. Additional challenges noted by commenters included aligning evaluation requirements with other State and Federal requirements and ensuring that QHP issuers have sufficient time to understand changing rules and regulations to meet compliance requirements.

Response: This final rule adopts a phased-in approach to implementation of the QIS and accompanying reporting requirements to provide QHP issuers the necessary time to understand the population enrolling in their respective QHPs offered through the Exchanges and to build quality performance data on its QHP enrollees. We also finalize an approach that requires a QHP issuer participating in the FFEs for at least 2 years to submit a QIS implementation plan for each QHP offered in the Exchange, followed by annual progress updates. The purpose of requiring a QHP issuer to submit an annual progress update on its QIS implementation plan is to evaluate progress. As detailed in the proposed rule (79 FR 70735), we believe that implementation of a QIS should be a continuous process under which QHP issuers define the health outcome needs of their enrollees, set goals for improvement, and use increased reimbursement to their providers or other market-based incentives as a reward for quality improvement and to stimulate achievement of those goals. As such, we anticipate that QHP issuers will be engaged in a continuous process of evaluating the populations enrolling in their respective QHPs offered through Exchanges, modifying or otherwise adjusting their QIS plan as may be appropriate, and building quality performance data on its QHP enrollees. This approach is designed to account for the changes with respect to QHP offerings, as well as enrollee movement across plans both within and outside of Exchanges. We further note that since QHP issuers will not be penalized if the implementation is not demonstrating an effect on the performance targets set out in the implementation plan, we believe that these challenges are not a barrier to performing an annual evaluation review. Additional details on the timing of the submission of the initial QIS implementation plan and the annual progress reports will be included in technical guidance.

Comment: Some commenters suggested that we provide additional technical guidance on the QIS requirements in § 156.1130(b), specifically those related to data validation and which entity will be reviewing data submissions for accuracy prior to public display.

Response: HHS intends to publish QIS technical guidance in 2015 that will establish the minimum enrollment size threshold to trigger the applicability of the QIS standards, as well as data validation, data submission, and evaluation requirements for QHP issuers participating in the FFEs. We anticipate that State Exchanges will be issuing similar guidance to their respective QHP issuers.

8. Qualified Health Plan Issuer Responsibilities

a. Administrative Appeals (§ 156.1220(c))

In the 2015 Payment Notice, we established an administrative appeals process designed to address unresolved discrepancies regarding 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. We established a three-tier appeals process: a request for reconsideration under § 156.1220(a); a request for an informal hearing before a CMS hearing officer under § 156.1220(b); and a request for review by the Administrator of CMS under § 156.1220(c).

Under § 156.1220(a), we provided that an issuer may file a request for reconsideration of a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error only for 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 for a benefit year. In § 156.1220(a)(6), we stated 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 decision for other matters would be subject to the outcome of a request for informal hearing filed in accordance with § 156.1220(b).

Under § 156.1220(b), an issuer that elects to challenge the reconsideration decision may request an informal hearing before a CMS hearing officer. The CMS hearing officer's decision would be final and binding, but subject to any Administrator's review initiated in accordance with § 156.1220(c).

We stated in § 156.1220(c)(1) that if the CMS hearing officer upholds the reconsideration decision, the issuer is permitted to request a review by the Administrator of CMS within 15 calendar days of the date of the CMS hearing officer's decision. We proposed a modification to this process to also permit CMS the opportunity to request review of the CMS hearing officer's decision, and to permit the Administrator of CMS to decline to review the CMS hearing officer's decision. Specifically, we proposed to amend § 156.1220(c)(1) to permit either the issuer or CMS to request review by the Administrator of the CMS hearing officer's decision. We proposed to provide that any request for review of the hearing officer's decision must be submitted to the Administrator of CMS within 15 calendar days of the date of the hearing officer's decision, and must specify the findings or issues that the issuer or CMS challenges. We proposed that the issuer or CMS be permitted to submit for review by the Administrator a statement supporting the decision of the CMS hearing officer.

We also proposed to amend § 156.1220(c)(2) to provide the Administrator of CMS with the discretion to review or not review the decision of the CMS hearing officer after receiving a request for review under § 156.1220(c)(1). We believe such discretion will permit the Administrator to focus resources on the priority matters, including disputes with implications for other issuers. In keeping with our current process set forth in § 156.1220(c), we proposed that if the Administrator elects to review the CMS hearing officer's decision, the Administrator will review the statements of the issuer and CMS, 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. We proposed that the issuer or CMS be required to prove its case by clear and convincing evidence for issues of fact, and that the Administrator will send the decision and the reasons for the decision to the issuer. As established in

§ 156.1220(c)(3), the Administrator's decision will be final and binding.

We received no comments on this proposal. We are finalizing these amendments as proposed.

F. Part 158—Issuer Use of Premium Revenue: Reporting and Rebate Requirements

1. Treatment of Cost-Sharing Reductions in MLR Calculation (§ 158.140)

The Premium Stabilization rule (77 FR 17220) aligned the definition of ''allowable costs'' under the risk corridors program at § 153.500 with the definition of incurred claims under the MLR program at § 158.140 and expenditures for health care quality and health information technology under § 158.150-§ 158.151. In the 2014 Payment Notice, we additionally specified that allowable costs under risk corridors must be reduced by the amount of cost-sharing reduction payments received by the issuer, to the extent not reimbursed to the provider. To align the calculations between the two programs, we proposed to specify that cost-sharing reduction payments should be deducted from incurred claims under the MLR program just as they are deducted from allowable costs under the risk corridors program. As we explained in the proposed rule, it is our understanding that in capitated arrangements, issuers will generally retain the cost-sharing reduction payments, and in such circumstances cost-sharing reduction payments should be accounted for as a reduction to incurred claims because capitation payments (which are reflected directly in an issuer's incurred claims) will be raised to account for the reductions in the providers' cost-sharing income. In contrast, in most fee-for-service arrangements, issuers will pass the cost-sharing reduction payments through to providers, and therefore no adjustment to incurred claims for cost-sharing reduction payments would be required in such situations.

We are finalizing this provision as proposed.

Comment: Several commenters supported our proposal as drafted, while one commenter opposed it. Several commenters expressed concern that the proposal could disadvantage issuers in capitated arrangements that do pass through the cost-sharing reduction payments to the providers.

Response: We agree with the commenters that issuers who pursue innovative cost containment practices involving capitation and cost-sharing reduction payments should not be treated differently than issuers in fee-for-service arrangements. However, we note that our proposed regulation text did not distinguish between capitation and fee-for-service arrangements. Under our proposal, issuers in either type of arrangement must deduct cost-sharing reduction payments from incurred claims, to the extent such payments are not reimbursed to the provider furnishing the item or service. Therefore, we are finalizing the clarification of the definition of incurred claims in § 158.140 as proposed.

2. Reporting of Federal and State Taxes (§ 158.162)

The MLR December 1, 2010 interim final rule (75 FR 74864) broadly describes Federal and State taxes and assessments that are excluded from premiums in the MLR and rebate calculations, and Federal and State taxes and assessments not excluded from premium in MLR and rebate calculations. In the proposed rule (79 FR 70737), we proposed to further clarify for future MLR reporting years the treatment of Federal and State employment taxes. Specifically, we proposed to amend the provisions for the reporting of Federal and State taxes in § 158.162(a)(2) and (b)(2) to provide that Federal and State employment taxes (such as the Federal Insurance Contributions Act (FICA) and the Railroad Retirement Tax Act (RRTA) taxes, the Federal Unemployment Act (FUTA) and State unemployment taxes, and other similar taxes) should not be excluded from premium in the MLR and rebate calculations.

Comment: Several commenters supported our proposal. One commenter noted that our proposal reflected their understanding of Congressional intent, as evidenced by the 2010 letter to the Secretary from six congressional committee chairs involved in drafting the Affordable Care Act.[76] In contrast, other commenters opposed our proposal, questioning our authority to amend the definition of taxes. These commenters stated that the reference to ''excluding Federal and State taxes'' in section 2718 of the PHS Act does not require clarification. These commenters alternatively asserted that to the extent the statute requires interpretation, only the NAIC has the authority to do so. Consequently, a subset of these commenters recommended that we obtain an official recommendation from the NAIC before adopting any modifications to the definition of taxes. Some commenters additionally expressed concern regarding the effective date of the proposed provision.

Response: We disagree that there is no need to clarify the statutory reference to taxes or that the NAIC, rather than HHS, has the authority to clarify it. Our review of the MLR reports submitted by issuers identified this issue as one that would benefit from further clarification for future reporting years due to the fact that there appeared to be inconsistent treatment among issuers. While most issuers do not exclude employment taxes from premium, others have adopted the opposite approach and exclude such taxes from premium. Further, as some of the commenters point out, section 2718 of the PHS Act directed the NAIC to develop the uniform definitions and standardized methodologies with regard to the MLR provisions. It directed the NAIC to develop such definitions and methodologies no later than December 31, 2010, and subjected all such definitions and methodologies to the certification of the Secretary. As a Federal agency, HHS retains the authority to implement the statute and interpret the statutory terms where necessary, including the authority to adjust the MLR definitions after 2010. Furthermore, the NAIC's recommendation to the Secretary provided that certain Federal and State taxes should not be excluded from premiums in MLR and rebate calculations, supporting our belief that the phrase ''excluding Federal and State taxes'' requires clarification and does not mean all taxes of any kind. This approach—the identification of those Federal and State taxes that must be excluded from premium and those that cannot be excluded—was codified in our regulations at § 158.162 as part of the MLR December 1, 2010 interim final rule. The use of uniform definitions and standardized methodologies when calculating the MLR and associated rebates (including the treatment of employment taxes) is critical to both ensuring a level playing field across issuers and to deliver to consumers the protections promised by the statute. Therefore, we are finalizing the amendment to the definition of Federal and State taxes that may be deducted from premium in § 158.162(a)(2) and (b)(2) as proposed. In recognition of commenters' concerns regarding the effective date of this provision, we note that this provision will become effective for the 2016 reporting year, and therefore must be reflected in reports submitted to the Secretary by July 31, 2017. This should provide adequate time for those issuers that previously

[76] *Available at http://www.politico.com/static/PPM170_100811_taxes.html.*

interpreted the regulation differently to adjust their financial planning. We also reiterate that this is simply a clarification to explicitly require inclusion, as our data indicate most issuers have been doing.

3. Distribution of Rebates to Group Enrollees in Non-Federal Governmental Plans (§ 158.242)

The December 7, 2011 MLR Rebate Requirements for Non-Federal Governmental Plans interim final rule (76 FR 76596) directs issuers to distribute rebates to the group policyholders of non-Federal governmental plans. Under CMS's direct enforcement authority over non-Federal governmental plans, the interim final rule further directs the group policyholders of such plans to use the portion of the rebate attributable to the amount of premium paid by subscribers of such plans for the benefit of subscribers in one of three prescribed ways. These provisions were put in place to ensure that rebates are used for the benefit of enrollees of non-Federal governmental plans, who do not receive the protections of Employee Retirement Income Security Act of 1974 (ERISA), as amended. Under ERISA and implementing regulations, most plan participants are assured that the rebate (when the rebate is determined to be a plan asset) is applied for their benefit within 3 months of receipt by the policyholder.

To afford similar protection to subscribers of non-Federal governmental plans, we proposed to amend the provisions for distribution of rebates in § 158.242(b) to require group policyholders of non-Federal governmental plans to use the subscribers' portion of the rebate for the subscribers' benefit within 3 months of receipt of the rebate by the group policyholder. Under the proposal, plans would continue to be able to use the rebate to reduce the subscribers' portion of premium for the subsequent policy year (including by spreading it over the 12 months of the policy year) as long as the subsequent policy year commences within 3 months of receipt of the rebate by the group policyholder. If the subsequent policy year commences outside this 3-month window, the group policyholder of a non-Federal governmental plan must distribute the subscribers' portion of the rebate within 3 months in the form of a cash refund or by applying a mid-policy year premium credit to the subscriber's portion of the premium. We also noted that, because under § 158.242(b)(3) group health plans that are not governmental plans and are not subject to ERISA (such as church plans) must follow the same rebate distribution rules in order to receive the rebate directly, the same distribution deadline would apply to such plans.

We are finalizing the amendments as proposed. In addition, we are finalizing the December 7, 2011 interim final rule (76 FR 76596) with minor changes after consideration of the comments received on that rule as noted below.

Comment: We received one comment supporting the requirement that policyholders that are non-Federal governmental or other group health plans not subject to ERISA apply or distribute rebates within 3 months of receipt, or pay interest on the rebates.

Response: We appreciate the comment regarding the distribution of rebates to group enrollees in non-Federal governmental and other group health plans not subject to ERISA. Policyholders that are non-Federal governmental or other group health plans not subject to ERISA that do not apply or distribute rebates within 3 months of receipt will be required to pay interest on the rebates, much the same as an issuer is required to do if they do not disburse the rebate to the policyholder by the due date.

Comment: We received several comments supporting the rules governing the distribution of rebates to subscribers of non-Federal governmental and other group health plans not subject to ERISA, which were set forth in the December 7, 2011 MLR Rebate Requirements for Non-Federal Governmental Plans interim final rule (76 FR 76596). Other commenters requested that we clarify the deadline for rebate distribution by such plans. One commenter expressed concern that the regulation does not afford such plans adequate time to use the rebate to reduce the subscribers' portion of premium or enhance benefits for a subsequent policy year. One commenter requested that such plans be permitted to distribute rebates directly to subscribers in situations where the policyholder has modified or ceased to offer group coverage.

Response: We agree with the commenters regarding the need for clarification of the rebate distribution deadline for policyholders that are non-Federal governmental or other group health plans not subject to ERISA. As noted above, we believe that requiring such policyholders to use the rebate for the benefit of subscribers no later than 3 months of receipt of the rebate by the policyholder ensures that consumers in group health plans not subject to ERISA receive the benefit of MLR rebates in a timely manner. Accordingly, we have clarified the deadline in this final rule, as described in more detail above. In addition, we agree that policyholders that are non-Federal governmental or other group health plans not subject to ERISA should be allowed to distribute rebates directly to subscribers in situations where the policyholder does not offer the same plan(s) or has ceased to offer group coverage. Therefore, we are amending the provisions in § 158.242(b)(1)(iii) to specify that as an alternative to providing a cash rebate to the subscribers enrolled in the plan option at the time the policyholder receives the rebate, the group policyholder may instead provide a cash rebate to the subscribers who were enrolled in the plan option during the MLR reporting year that generated the rebate.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-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 12.

In the November 26, 2014 (79 FR 70674) proposed rule, we requested public comment on each of the collection of information requirements contained in the proposed rule. The comments and our responses to them are discussed below:

A. ICRs Regarding Standards for Notification of Change of Ownership (§ 147.106(g))

When an issuer that offers a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan experiences a change of ownership as recognized by the State in which the plan is offered, the issuer is required to notify HHS in a manner to be specified by HHS and provide the legal name, Health Insurance Oversight System (HIOS) plan identifier,[77] tax identification number of the original and post-transaction issuers, as applicable, and the effective date of the change of ownership, and the summary description of transaction. The information must be submitted by the latest of (1) the date the transaction is entered into; or (2) the 30th day prior to

[77] OMB Control Number: 0938–1086.

the effective date of the transaction. The burden associated with this requirement is the time and effort for the issuer to notify HHS of a change of ownership. We estimate that it will take an insurance operations analyst 30 minutes (at an hourly wage rate of $56.63) to prepare the data related to the change of ownership, and 10 minutes for a senior manager (at an hourly wage rate of $103.95) to review the data and transmit it electronically to HHS. We estimate that it will cost an issuer $45.65 to comply with this reporting requirement. Although at this time we cannot precisely estimate the number of issuers that will be reporting changes of ownership, we expect that no more than 20 issuers will be subject to this reporting requirement annually, for a total burden of $913.

B. ICRs Regarding Effective Rate Review Programs (§ 154.301)

Under § 154.301(b)(2), if a State intends to make the information contained in Parts I, II, and III of the rate filing justification regarding proposed rate increases subject to review available to the public prior to the date specified in guidance by the Secretary, or if it intends to make the information contained in Parts I, II, and III of the rate filing justification regarding final rate increases available to the public prior to the first day of the annual open enrollment period in the individual market for the applicable calendar year, the State must notify CMS in writing of its intent to publish this information at least 30 days before it makes the information public and the date it intends to make the information public. We intend to seek OMB approval and solicit public comment on this information collection requirement, in accordance with the Paperwork Reduction Act of 1995, at a future date.

C. ICRs Regarding Standards for HHS-Approved Vendors of Federally-Facilitated Exchange Training and Information Verification for Agents and Brokers (§ 155.222)

In § 155.222, we describe the information collection and disclosure requirements that pertain to the approval of vendors' FFE agent and broker training programs, including information verification and administration of identity proofing. The burden estimate associated with these disclosure requirements includes the time and effort required for vendors to develop, compile, and submit the application information and any documentation or agreement necessary to support oversight in the form and manner required by HHS. We estimate that HHS will receive applications from nine or fewer vendors, and that it will take each vendor approximately 10 hours to complete an application and the agreement, at a cost of $24.10 per hour. Therefore, we estimate a total burden of approximately 90 hours and a cost of $2,169 as a result of this requirement. HHS will develop a model vendor application that will include data elements necessary for HHS review and approval. HHS will estimate the burden on vendors for complying with this provision of the regulation, and submit the application for OMB approval in the future. For vendors that choose to charge for their training, HHS will consider current training costs for State-licensed agents and brokers for comparable training to comparable audiences when reviewing vendor applications with proposed fee structures.

In § 155.222(d), we establish a process through which HHS will monitor approved vendors for ongoing compliance. HHS may require additional information from approved vendors to be submitted periodically to ensure continued compliance related to the obligations described in this section. We estimate that HHS will receive applications from nine or fewer vendors. We estimate that it will take no longer than 10 hours (at a cost of $24.10 per hour) for each vendor to comply with any additional monitoring by HHS. Therefore, we estimate a total annual burden of 90 hours for all vendors for a total cost burden estimate of $2,169. In § 155.222(e), we establish a process by which a vendor whose application is not approved or whose approval is revoked by HHS can appeal HHS's determination. We discuss the costs associated with the appeals process in the Regulatory Impact Analysis (RIA) section of this rule.

This section establishes a new method by which agents and brokers may complete training and information verification components of the registration process to be authorized to assist with enrollment in individual market and SHOP coverage through the FFE. The information collection associated with the current process by which agents and brokers may be authorized to assist with enrollment through the Exchange is approved under OMB Control Number 0938–1204. We intend to revise the current collection request to incorporate this new method by which agents and brokers may complete training and information verification components of the registration process. Based on information not available when the current collection request was developed in 2013, we also expect a significant reduction in the overall burden, both in terms of the total number of respondents and the time required for each response. We intend to seek OMB approval and solicit public comment on this information collection requirement in accordance with the Paperwork Reduction Act of 1995.

D. ICRs Regarding Notification of Effective Date for SHOP (§ 155.720(e))

Section § 155.720(e) has been amended to refer to enrollees and not qualified employees. This amendment establishes that issuers must provide a coverage effective date notice to anyone who enrolled in coverage through a SHOP under the new definition of ''enrollee,'' including dependents (including a new dependent of the employee, when the dependent separately joins the plan), former employees of a qualified employer, and certain business owners, who might be enrolled in coverage through a SHOP. We specify that when a primary subscriber and his or her dependents live at the same address, a separate notice need not be sent to each dependent at that address, so long as the notice sent to each primary subscriber at that address contains all the required information about the coverage effective date for the primary subscriber and each of his or her dependents at that address. When dependents live at a different address from the primary subscriber, a separate notice must be sent to those dependents. We note that the notices required under this proposal could be incorporated into existing notifications that QHPs provide to their new customers, for example in a welcome document. We are also making a conforming amendment to § 156.285(c)(3) to ensure that QHP issuers participating in a SHOP provide notice to a new enrollee of the enrollee's effective date of coverage. We note that the effective date for this notice requirement will take effect in plan years beginning on or after January 1, 2017 for enrollees that are not qualified employees. Issuers have already been providing these notices to qualified employees and are expected to continue sending these notices under the current rule. This final rule also expands issuers' obligation to send notices to former employees under the amended definition of a qualified employee.

The burden estimate associated with this requirement includes the time and effort needed to develop the notice and to distribute it through an automated process to enrollees, as appropriate. We estimate that approximately 445 QHP issuers (including dental issuers) will

participate on the SHOPs in all States. We estimate that it will take approximately 35 hours annually to develop and transmit this notice, including 4 hours for a health policy analyst (at an hourly wage rate of $58.05), 3 hours for an operations analyst (at an hourly wage rate of $56.63), 25 hours for a computer programmer (at an hourly wage rate of $48.61), 2 hours for a fulfillment manager (at an hourly wage rate of $27.00), and 1 hour for a senior manager (at an hourly wage rate of $103.95). Therefore, we estimate an aggregate burden of 15,575 hours and $790,004 for QHP issuers participating in a SHOP as a result of this requirement. We describe this burden in more detail in our discussion of the Information Collection Reporting section for § 156.285(d) in this final rule.

E. ICRs Regarding Collection of Data To Define Essential Health Benefits (§ 156.120)

In § 156.120, we require States that select a base-benchmark plan or an issuer that offers a default base-benchmark plan to submit to HHS certain information in a form and manner, and by a date, determined by HHS. We are also finalizing our proposal to allow each State to select a new base-benchmark plan and supplement if necessary for the 2017 plan year. The information collection associated with State or issuer submission of benchmark plan data is currently approved under OMB Control Number 0938–1174. We expect to collect less information for the 2017 plan year than we previously collected for this purpose, and therefore we have revised our current burden estimate to reflect the reduced burden on issuers. The burden estimate associated with this requirement includes the time and effort needed for issuers and States to file an electronic submission describing the benefits, limits, and exclusion of the plan chosen as the State benchmark for the 2017 benefit year. We estimate that approximately 51 entities are subject to the reporting requirements and that it will take approximately 1.5 hours annually to identify and submit the responsive records to CMS, including 1.5 hours for an issuer or health policy analyst (at an hourly wage rate of $58.05). Therefore, we estimate an aggregate burden of 76.5 hours and $4,440.83 for issuers and States as a result of this requirement.

We released information regarding this data collection requirement, in accordance with the Paperwork Reduction Act of 1995, on November 26, 2014 in CMS–10448,[78] for a 60-day comment period.[79] We did not receive any comments in relation to that release. This final rule serves to provide notice of a 30-day public comment period in relation to this proposed information collection which will be available on our Web site.[80]

F. ICRs Regarding Prescription Drug Benefits (§ 156.122)

In § 156.122, we require health plans that are required to comply with EHB, as part of a committee that meets the standards established in that section. We expect that health plans have already established P&T committees that meet these standards and follow these processes. These processes include recordkeeping requirements for the P&T committee. Because we believe that issuers are already required to maintain such documentation, such as for accreditation purposes, and that issuers tend to use the same formulary drug list for multiple plans, we believe that the recordkeeping requirement will only impose a minimal additional burden on issuers. Therefore, we estimate that it will take a compliance officer approximately 8 hours (at an hourly wage rate of $43.34) to prepare for and attend meetings on a quarterly basis, and maintain the required documentation. Therefore, for approximately 2,400 plans in the individual and small group market that would be subject to this requirement, we estimate an aggregate annual burden of 76,800 hours and $3,328,512.

G. ICRs Regarding Transparency in Coverage (§ 156.220)

In the proposed rule, we solicited comment regarding the type of information that QHP issuers would be required to provide and make available to the public in plain language under § 156.220. We intend to provide further detail regarding the proposed implementation approach in the future. We believe that the 2016 implementation date finalized in this rule will allow sufficient time for HHS to provide details regarding the data collection, review, and public display of transparency elements. We intend to seek public comments on a proposed information collection detailing the specific data elements, frequency of updates, file types, and other crucial information for OMB approval at a future date.

H. ICRs Regarding Termination Notices for SHOP (§ 156.285(d)(1)(ii)) and § 155.735(d)(1)(iii) and (g))

In § 156.285(d)(1)(ii) and § 155.735(d)(1)(iii) and (g) we require QHP issuers participating in the SHOP to provide notices to qualified employers and enrollees related to terminations of enrollment or coverage through the SHOP due to rescission in accordance with § 147.128 and due to the QHP's termination, decertification, or non-renewal of certification, while shifting the burden of notifying qualified employers and enrollees of terminations due to loss of eligibility or nonpayment of premiums to the SHOP. The amendments to § 156.285(d)(1)(ii) and new § 155.735(g) will take effect January 1, 2016. We note that, while our current rules require issuers to provide notice of terminations when coverage through the SHOP is rescinded in accordance with § 147.128, or when the issuer elects not to seek recertification for a QHP offered through the SHOP, this provision will expand QHP issuers' notice requirements to circumstances in which the QHP terminates or is decertified in accordance with § 155.1080. The notices must inform the enrollee and qualified employer of the termination effective date and the reason for the termination. We specify that when a primary subscriber and his or her dependents live at the same address, a separate notice need not be sent to each dependent at that address, so long as the notice sent to each primary subscriber at that address contains all the required information about the termination of coverage for the primary subscriber and each of his or her dependents at that address. We note that when dependents live at a different address from the primary subscriber, a separate notice must be sent to those dependents. The burden estimate associated with this requirement includes the time and effort needed to develop the notice and to distribute it through an automated process to qualified employer and the enrollee, as appropriate. We estimate that approximately 445 QHP issuers (including dental issuers) will participate on the SHOPs in all States. We estimate that it will take approximately 35 hours annually to develop and transmit this notice, including 4 hours for a health policy analyst (at an hourly wage rate of $58.05), 3 hours for an operations analyst (at an hourly wage rate of

[78] *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionAct of1995/PRA-Listing-Items/CMS-10448.html ?DLPage=2&DLSort=1&DLSortDir=descending.*

[79] *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReduction Actof1995/PRA-Listing-Items/CMS-10448.html ?DLPage=2&DLSort=1&DLSortDir=descending.*

[80] *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReduction Actof1995/PRA-Listing.html.*

$56.63), 25 hours for a computer programmer (at an hourly wage rate of $48.61), 2 hours for a fulfillment manager (at an hourly wage rate of $27.00), and 1 hour for a senior manager (at an hourly wage rate of $103.95). Therefore, we estimate an aggregate burden of 15,575 hours across and $790,004 for QHP issuers participating in the SHOP as a result of this requirement. HHS intends to seek public comment on a proposed information collection at a later date. We note that amendments to the definition of ''enrollee'' that are set forth in this final rule and that take effect sooner than January 1, 2016, may expand the universe of individuals who must receive these notices under both the current rule and the amendments that take effect January 1, 2016. As part of developing and proposing the information collection for this ICR, HHS will estimate the effect of the modified definition of ''enrollee'' on the information collection burden.

Based on the above per-notice development wage rates and hours, we believe that each State-based SHOP will spend roughly 70 hours annually to prepare the two termination notices (35 hours per notice), for a total cost of $3,550 to design and implement the notices proposed under § 155.735(g). We estimate that there will be approximately 18 State-based SHOPs, and that all State-based SHOPs will be subject to this requirement. Therefore, we estimate an aggregate burden of 1,260 hours and $63,900 for State-based SHOPs as a result of this requirement.

I. ICRs Regarding Plan Variation Notices and Changes in Eligibility for Cost-Sharing Reductions (§ 156.420 and § 156.425)

In § 156.420(h), we require an issuer to provide a summary of benefits and coverage (SBC) for each plan variation of a QHP it offers in accordance with the rules set forth under § 156.420 (referred to in this section as a ''plan variation SBC''), in a manner that is consistent with the standards set forth in § 147.200. In § 156.425(c), we provide that if an individual's assignment to a plan variation or standard plan without cost-sharing reductions changes in the course of a benefit year (in accordance with § 156.425(a)), an issuer must provide an SBC in a manner consistent with the standards set forth in § 147.200, as soon as practicable after receiving notice from the Exchange of the individual's change in eligibility and no later than 7 business days following receipt of notice. The burden associated with this requirement is the time and effort for an issuer to create and provide plan variation SBCs to affected individuals under § 156.420.

Nearly all issuers affected by this requirement have already incurred one-time start-up costs related to implementing the SBC requirements established under § 147.200, and are already providing SBCs that reflect the standard QHPs they offer.[81] We believe that QHP issuers will leverage existing processes to generate and distribute plan variation SBCs under § 156.420(h). We estimate that issuers would incur additional burden to produce and distribute plan variation SBCs under the proposed §§ 156.420(h) and 156.425(c). The additional burden will be associated with three tasks: (1) Producing plan variation SBCs; (2) distributing plan variation SBCs; and (3) distributing a plan variation SBC (or standard QHP without cost-sharing reductions) after a change in eligibility in the course of a benefit year. We intend to revise the information collection approved under OMB Control Number 0938–1187 to reflect this additional burden.

1. Producing Plan Variation SBCs

Because stand-alone dental plans are not required to complete SBCs, we exclude these plans from the number of QHPs that we estimate are required to comply with the requirement. We estimate that approximately 575 issuers participate in the Exchange, and that each issuer offers one QHP per metal level, with four zero cost-sharing plan variations and four limited cost-sharing plan variations (two per metal level per QHP) and three silver plan variations.[82] Therefore, we estimate that each issuer offers 11 plan variations, and would produce 11 SBCs to reflect each plan variation, for a total of 6,325 plan variation SBCs annually. We estimate that it will take up to 1 hour to produce each plan variation SBC, for an annual time burden of 11 hours for each issuer. We estimate that it would take an information technology (IT) professional 5 hours (at an hourly wage rate of $54.39), a benefits/sales professional 5.5 hours (an hourly wage rate of $44.9) per hour, and an attorney 30 minutes (at an hourly wage rate of $84.96) to comply with the requirements. Therefore, we estimate a total annual cost burden of $561.44 per issuer, and $322,828 (6,325 hours) for all issuers affected by this requirement.

2. Distributing Plan Variation SBCs

We are unable to estimate the number of cost-sharing reduction-eligible enrollees at this time and the related burden on issuers to provide for these disclosures. We expect that the vast majority (approximately 95 percent) of the total number of plan variation SBCs provided in accordance with § 156.420(h) would be sent prior to enrollment and electronically at minimal cost, under the timing and form requirements set forth in § 147.200(a)(1)(iv) and (a)(4)(iii). Of the remaining number of plan variation SBCs, we estimate that approximately 4 percent of these disclosures will be sent in other instances, in accordance with the other timing requirements that may apply, including, requests for a plan variation SBC made by a consumer in the course of the benefit year. We expect that the vast majority of these disclosures will be provided electronically at minimal cost. We assume that there are costs for paper disclosures, but no costs for electronic disclosures.[83] We expect that up to 1 percent of plan variation SBCs will be provided in paper form. We estimate that the labor costs associated with distributing each SBC will be $1.63 (3 minutes for an administrative assistant at an hourly wage rate of $32.59), and that printing, mailing, and supply costs will be $0.69 per SBC ($0.05 to print each page and $0.49 for first class postage), for a total cost of $2.32 per SBC. We estimate an annual burden of $331 for each QHP issuer and an aggregate burden of $190,240 for all issuers that are subject to the requirement.

[81] Summary of Benefits and Coverage and Uniform Glossary Final Rule (''SBC Final Rule''), 77 FR 8690 (Feb. 14, 2012). We have already received OMB approval under OMB control number 0938–1146 for the collection of information requirements related to the SBC provisions as finalized under current rules.

[82] Under § 156.420(a), for each of its silver health plans that an issuer offers, the issuer must offer three variations of the standard silver plan that reflect, in addition to the applicable annual limitation on cost-sharing, the following: (1) A silver plan variation with cost-sharing reductions such that the actuarial value (AV) of the variation is 94 percent plus or minus the de minimis variation for a silver plan variation; (2) a silver plan variation with cost-sharing reductions such that the AV of the variation is 87 percent plus or minus the de minimis variation for a silver plan variation; and (3) a silver plan variation with cost-sharing reductions such that the AV of the variation is 73 percent plus or minus the de minimis variation for a silver plan variation. Under § 156.420(b), for each QHP at any metal level that an issuer offers, the issuer must offer two variations to American Indians/Alaska Natives that reflect the following: (1) A variation of the QHP with all cost sharing eliminated; and (2) a variation of the QHP with no cost-sharing on any item or service that is an essential health benefit furnished directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or through referral under contract health services.

[83] SBC Final Rule, 77 FR 8691 (Feb. 14, 2012).

3. Notice After Changes in Eligibility for Cost-Sharing Reductions

In § 156.425(c), we require an issuer to provide adequate notice to the individual about the availability of the SBC that accurately reflects the applicable plan variation of the QHP (or the standard QHP without cost-sharing reductions) if an enrollee's eligibility for cost-sharing reductions changes in the course of a benefit year. Similarly, if an enrollee changes QHPs as the result of a special enrollment period in accordance with § 155.420(d)(6), the issuer of the new QHP will be required to provide the individual with an SBC that accurately reflects the new QHP. We are unable to estimate the number of cost-sharing reduction-eligible enrollees who would experience a change in eligibility for cost-sharing reductions at this time and the related burden on issuers to provide for these disclosures. We expect that the vast majority (approximately 99 percent) of the total number of SBCs provided in accordance with § 156.425(c) will be sent electronically at minimal cost. We estimate that the labor costs associated with producing each SBC will be approximately $1.63 (3 minutes for an administrative assistant at an hourly wage rate of $32.59), and that printing, and mailing costs will be $0.69 ($0.05 to print each page and $0.49 for first class postage), for a total cost of $2.32 per SBC. We estimate a total annual cost of $165 for each QHP issuer and $95,120 for all QHP issuers that are subject to this requirement.

J. ICRs Regarding the Collection and Reporting of Quality Improvement Strategies (§ 156.1130)

In § 156.1130, we established requirements for QHP issuers related to data collection and submission of information regarding a quality improvement strategy (QIS). QIS standards will establish the minimum requirements for the FFEs, States with plan management functions and that State-based Exchanges must follow. State-based Exchanges can, if desired, build additional reporting requirements in accordance with their needs.

Because SADPs will not be included in the initial years, this estimate assumes 575 QHP issuers (all issuers in all Marketplaces excluding SADPs) and covers the annual costs for a QHP issuer over a 3-year period (2016–2018). The burden associated with submitting initial attestations as part of the QHP certification process is currently accounted for under OMB Control Number 0938–1187. We estimate that it will take each QHP issuer 48 hours (at a cost of $3,372) to collect this QIS data and to submit this information to the Exchange. Therefore, we estimate an aggregate burden of 27,600 hours and $1,938,900 for 575 QHP issuers as a result of these requirements.

TABLE 12—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 ($)	Total cost ($)
§ 147.106(g)	20	20	0.67	13.4	68.17	913	0	913
§ 155.222(a)	9	9	10.00	90	24.10	2,169	0	2,169
§ 155.222(d)	9	9	10.00	90	24.10	2,169	0	2,169
§ 155.720(e) and § 156.285(c)(3)	445	445	35.00	15.575	50.72	790,004	0	790,004
§ 155.735(g)	18	36	35.00	1,260	50.71	63,900	0	63,900
§ 156.120	51	51	1.5	76.5	58.05	4,480.83	0	1,480.28
§ 156.122	2,400	2,400	32.00	76,800	43.34	3,328,512	0	3,328,512
§ 156.285(d)(1)(ii)	445	445	35.00	15,575	50.72	790,004	0	790,004
§ 156.420	575	6,325	1.00	6,325	51.04	322,828	0	322,828
§ 156.420(h)	575	81,000	0.05	4,050	32.59	131,990	58,250	190,240
§ 156.425	575	41,000	0.05	2,025	32.59	65,995	29,125	95,120
§ 156.1130	575	575	48	27,600	70.25	1,938,900	0	1,938,900
Total	2,400			149,504.9		7,441,865	87,375	7,529,240

Copies of the supporting statement and any related forms for information collections identified above can be found at: *http://www.cms.hhs.gov/PaperworkReductionActof1995* or can be obtained by emailing your request, including your address, phone number, OMB number, and CMS document identifier, to: *Paperwork@cms.hhs.gov*, or by calling the Reports Clearance Office at: 410–786–1326. If you comment on these proposed information collection, please reference the CMS document identifier and the OMB control number. To be assured consideration, comments and recommendations must be received in one of the following ways prior to the public comment deadline: 1. Electronically. You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments. 2. By regular mail. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier (CMS–10523), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, and, OMB Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: 202–395– 6974.

V. Regulatory Impact Analysis

A. Statement of Need

This final rule sets forth standards related to the premium stabilization programs (risk adjustment, reinsurance, and risk corridors) for the 2016 benefit year, as well as certain modifications for the 2015 benefit year, 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 and 2015 Payment Notices provided detail on the implementation of these programs, including the specific parameters for the 2014 and 2015 benefit years applicable to these programs. This final rule sets forth

additional standards related to essential health benefits, meaningful access in the Exchange, consumer assistance tools and programs of an Exchange, non-Navigator assistance personnel, cost-sharing parameters and cost-sharing reduction notices, quality improvement strategy standards for issuers of QHPs participating in Exchanges, guaranteed availability, guaranteed renewability, minimum essential coverage, the rate review program, the medical loss ratio program, the Small Business Health Options Program, 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 1 year).

OMB has determined that this final 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 1 year. Accordingly, we have prepared an RIA that presents the costs and benefits of this rule.

Although it is difficult to discuss the wide-ranging effects of these provisions in isolation, the overarching goal of the premium stabilization, market standards, and Exchange-related provisions and policies in 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 help prevent risk selection and decrease the risk of financial loss that health insurance issuers might otherwise expect in 2016 and the advance payments of the premium tax credit and cost-sharing reduction programs assist low- and moderate-income consumers and American Indians/Alaska Natives 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 quality improvement strategy 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 affordable health coverage.

HHS anticipates that the provisions of this final rule will help further the Department's goal of ensuring that all consumers have access to quality, affordable health care and are able to make informed choices, that Exchanges operate smoothly, that premium stabilization programs work as intended, that SHOPs are provided flexibility, and that employers and consumers are protected from fraudulent and criminal activities. Affected entities such as QHP issuers will incur costs to comply with the provisions specified in the final rule, including administrative costs related to notices, quality improvement strategy requirements, training and recertification requirements, and, in some cases, establishing a larger provider network. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

C. Impact Estimates of the Payment Notice Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 13 below 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 rule—such as improved health outcomes and longevity due to continuous quality improvement and increased insurance enrollment—and certain costs—such as the cost of providing additional medical services to newly-enrolled individuals. The effects in Table 13 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this final rule for reinsurance contributing entities and health insurance issuers. The annualized monetized costs described in Table 13 reflect direct administrative costs to these entities as a result of these provisions, and include administrative costs related to notices, quality improvement strategy requirements, and training and recertification requirements that are estimated in the Collection of Information section of this final rule. The annual monetized transfers described in Table 13 include costs associated with the reinsurance contribution fee, FFE user fees, and the risk adjustment user fee paid to HHS by issuers, and additional MLR rebate payments from issuers to consumers. We also note that reinsurance administrative expenses, included in the reinsurance contribution rate, will increase slightly from 2015 to 2016. In addition, as a result of HHS's increased contract costs related to risk adjustment operations and risk adjustment data validation, we will collect a total of $50 million in risk adjustment user fees or $1.75 per enrollee per year from risk adjustment issuers, which is greater than the $0.96 per-enrollee-per-year risk adjustment user fee amount established for benefit year 2015. This increase is due in large part to risk adjustment data validation costs that will occur in 2016. The increase in FFE user fee collections is a result of a constant user fee rate from 2015 to 2016 (3.5 percent) but expected growth in enrollment in the FFEs. We are also including costs associated with administrative appeals under § 156.1220 in the RIA of this final rule.

TABLE 13—ACCOUNTING TABLE

Benefits:
Qualitative:

TABLE 13—ACCOUNTING TABLE—Continued

* 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.
* Encourage continuous quality improvement among QHP issuers to improve health outcomes at lower costs.
* Allow Exchanges to make informed QHP certification decisions.
* Increasing coverage options for small businesses and their employees while mitigating the effect of adverse selection.
* Ensure that consumers in group health plans not subject to ERISA receive the benefit of MLR rebates in a timely manner.

Costs:

	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	6.77	2015	7	2015–2018
	6.77	2015	3	2015–2018

Quantitative:
* Costs incurred by issuers and contributing entities to comply with provisions in the rule.
* Costs incurred by States for complying with audits of State-operated reinsurance programs.

Transfers:

	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	418.61	2015	7	2015–2018
	418.52	2015	3	2015–2018

* Transfers reflect incremental cost increases from 2015–2016 for reinsurance administrative expenses, FFE user fees, and the risk adjustment user fee, which are transfers from contributing entities and health insurance issuers to the Federal government. FFE user fees are newly included in the estimated transfers as collections are now projected for the period covered. Transfers also reflect annual transfer from shareholders or nonprofit stakeholders to enrollees of rebates paid by issuers for coverage in the individual and group markets, resulting from clarification regarding MLR methodology to account for Federal and State employment taxes.
* Unquantified: Lower premium rates in the individual market due to the improved risk profile of the insured, competition, and pooling risk.

This RIA expands upon the impact analyses of previous rules and utilizes the Congressional Budget Office's (CBO) analysis of the Affordable Care Act's impact on Federal spending, revenue collection, and insurance enrollment. Table 14 summarizes the effects of the risk adjustment and reinsurance programs on the Federal budget from fiscal years 2015 through 2018, with the additional, societal effects of this proposed 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, reinsurance, and risk corridors programs that are described in Table 14. For this RIA, we are shifting the estimates for the risk adjustment and reinsurance programs to reflect the 4-year period from fiscal years 2015 through 2018, because these payments and charges will begin in the 2015 calendar year for the 2014 benefit year. 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 13).

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 finalized in this rule are consistent with our previous estimates in the 2015 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.

TABLE 14—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT, REINSURANCE, AND RISK CORRIDORS PROGRAMS FROM FY 2014–2018

[In billions of dollars]

Year	2015	2016	2017	2018	2019	2015–2019
Risk Adjustment, Reinsurance, and Risk Corridors Program Payments	17	17.5	19.5	15	17	86
Risk Adjustment, Reinsurance, and Risk Corridors Program Collections	18	16.5	19.5	15	17	86

Source: Congressional Budget Office. Updated Estimates of the Insurance Coverage Provisions of the Affordable Care Act, January 2015.

1. Rate Review

The final rule will trigger review of rate increases that meet or exceed the applicable review threshold when such increases happen at the ''plan'' level rather than at the ''product'' level. This will protect consumers against unreasonable rate increases for their plans, since, under current regulations,

it is possible for a plan to experience a rate increase higher than the threshold and still avoid review because the average rate increase for the product does not meet or exceed the threshold. States may have to review more submissions and experience an increase in related costs. The establishment of a uniform timeframe by which issuers in every State must submit a completed Rate Filing Justification to CMS and the applicable State for all rate increases, including both QHPs and non-QHPs, will provide timely information to consumers and other stakeholders and ensure that State and Federal regulators have adequate time for review prior to implementation of a rate increase. The amendment to specify the timing for States to make proposed and final rate increase information available to the public will ensure that consumers have timely access to this information. These provisions will also reduce the potential for anti-competitive behavior and promote fair market competition between issuers inside and outside of the Exchange.

2. Change of Ownership Notification Requirement

This final rule provides that when an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan, experiences a change in ownership as recognized by the State in which the plan is offered, the issuer must notify HHS in a manner specified by HHS, by the latest of (1) the date the transaction is entered into; or (2) the 30th day prior to the effective date of the transaction. We expect that upon notification, issuers may need to work with HHS to clarify operational processes related to the HHS-administered programs, and will follow with guidance related to such operational processes. We estimate the administrative costs associated with the notification requirement in the Collection of Information section of this final rule.

3. Appeals Process for HHS-Approved Vendors for FFE Training and Information Verification for Agents and Brokers

In § 155.222, we proposed information collection and disclosure requirements that pertain to the approval of vendors to have their FFE agent and broker training and information verification programs recognized as sufficient for agents and brokers to satisfy the training requirement to assist or facilitate enrollment in individual market or SHOP coverage through the FFEs. We also establish a monitoring and appeals process for such HHS-approved vendors. We estimate that five vendors that apply may not have their application approved, and one vendor may have their approval revoked, and all of those vendors will appeal HHS's determination and submit additional documentation to HHS. We estimate that filing an appeal with HHS will take no longer than 1 hour. Therefore, at an hourly wage rate of $24.10, we estimate a total cost of $144.60 as a result of this appeals process.

4. 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. We established standards for the administration of the risk adjustment program in subparts D and G of part 45 of the CFR.

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 and 2015 Payment Notices, 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 2016 benefit year, we estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2016 will be approximately $50 million, and that the risk adjustment user fee would be approximately $1.75 per enrollee per year. The increased risk adjustment user fee for 2016 is the result of the increased contract costs to support the risk adjustment data validation process.

5. 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 by helping to pay the cost of treating high-cost enrollees. In the 2014 and 2015 Payment Notices, we expanded upon the standards set forth in subparts C and E of the Premium Stabilization Rule and established the 2014 and 2015 uniform reinsurance payment parameters and national contribution rate. In this rule, we finalize the 2016 uniform reinsurance payment parameters and contribution rate and a modification to the 2015 benefit year attachment point.

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 for the 2014 benefit year (the reinsurance payment pool), $6 billion for the 2015 benefit year, and $4 billion for the 2016 benefit year. 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 for the 2014 benefit year, $2 billion for the 2015 benefit year, and $1 billion for the 2016 benefit year. 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 2014, 2015 and 2016 benefit years for the reinsurance program under the uniform per capita contribution rate.

In the 2015 Payment Notice, we estimated that the Federal administrative expenses of operating the reinsurance program would be $25.4 million, based on our estimated contract and operational costs. We used the same methodology to estimate the administrative expenses for the 2016 benefit year. We estimate this amount to be approximately $32 million for the 2016 benefit year. This estimate increased for the 2016 benefit year due to increased audit and data validation contract costs. 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 2016, we are finalizing a uniform reinsurance contribution rate of $0.17 annually per capita for HHS administrative expenses. If a State establishes its own reinsurance program, HHS would transfer $0.085 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.085 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.

6. Risk Corridors

The Affordable Care Act creates a temporary risk corridors program for the years 2014, 2015, and 2016 that applies to QHPs, as defined in § 153.500. Section 1342 of the Affordable Care Act directs the Secretary to establish a temporary risk corridors program that protects issuers against inaccurate rate setting from 2014 through 2016. The Affordable Care Act establishes the risk corridors program as a Federal program; consequently, HHS will operate the risk corridors program under Federal rules with no State variation.

We finalize a clarification to the risk corridors transitional adjustment for benefit year 2014. We clarify that we intend to implement the risk corridors transitional adjustment for transitional plans only, as stated in the 2015 Payment Notice. This clarification does not affect the impact of the risk corridors transitional adjustment.

For benefit year 2016, we are finalizing the treatment of excess risk corridors collections that may remain after the 3-year duration of the program. We will adjust the allowable administrative cost ceiling and profit floor so that any excess risk corridors collections that remain in benefit year 2016 are paid out to eligible QHP issuers. We anticipate that collections will fully offset payments over the 3-year duration of the program. Consequently, we do not believe that this provision will have a monetary impact on QHP issuers or the Federal government.

7. SHOP

The SHOP facilitates 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.[84]

Please see the Collection of Information section of this proposed rule for the costs expected to be incurred by State-based SHOPs and QHP issuers participating in the SHOP related to the notification requirements related to terminations of coverage or enrollment through the SHOP and the notification requirement for the coverage effective date under the new definition of an enrollee. We believe the cost associated with termination notices is justified because SHOPs are best positioned to provide meaningful notice regarding terminations due to loss of eligibility and nonpayment of premiums in a timely manner, while issuers are best positioned to provide meaningful notice when coverage or enrollment through the SHOP is terminated due to a rescission in accordance with § 147.128 or when the QHP is terminated, decertified, or its certification is not renewed, as well as notices of the effective date of coverage. We believe expanding the notice requirement under § 155.720(e) benefits all individuals with coverage, including dependents, former employees of a qualified employer, and certain business owners, with a notification of effective date of coverage.

8. 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 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 2016 benefit year, we are finalizing a monthly user fee rate equal to 3.5 percent of the monthly premium. As described in the Budget of the United States Government, Fiscal Year 2016, we expect approximately $1.514 billion in user fee collections would be obligated in fiscal year 2016. For the user fee charge assessed on issuers in the FFE, we received an exception to OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit. This exception ensures that the FFEs can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage as advanced by § 156.50(d).

9. Essential Health Benefits, Cost Sharing, and Actuarial Value

Issuers may incur minor administrative costs associated with altering benefits, cost-sharing and/or AV parameters of their plan designs to ensure compliance with the EHB requirements in this rule. For example, issuers that do not currently meet the standards for EHB prescription drug coverage will incur contracting and one-time administrative costs to bring their prescription drug benefits into compliance. HHS expects that the process for compliance with the revised EHB requirements will not significantly add to existing compliance costs because issuers have extensive experience in offering products with various benefits and levels of cost sharing and these modifications are expected to be relatively minor for most issuers.

In addition, we are adding standards for a health plan's formulary exception process that includes an external review. We believe that issuers that provide EHB already have formulary exceptions processes and procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the plan. We do not expect these requirements to significantly increase the volume of reviews conducted under issuers' contracts with Independent Review Organizations. Therefore, we do not anticipate that these requirements would result in any significant new cost for issuers.

10. Network Adequacy

Issuers may incur minor administrative costs associated with updating their provider directory to ensure compliance with the requirements under this final rule. Since issuers already maintain a directory and the expected modification is to re-locate that directory to a more user-friendly location on the issuer Web site, HHS expects that compliance will not demand any additional resources.

11. Downstream Entities

We revised § 156.200(b)(7), to clarify that a QHP issuer is required to comply with the standards under part 153 and not just the standards related to the risk adjustment program. Under § 156.340, notwithstanding any relationship(s) that a QHP issuer may have with delegated and downstream entities, a QHP issuer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities, as applicable, with all applicable standards, including the standards of subpart C of part 156 for each of its QHPs on an ongoing basis. Because we believe that QHP issuers have existing agreements with downstream entities that define responsibilities, we do not believe that this requirement will impose an additional burden on QHP issuers.

12. 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

[84] Available at: *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf.*

many low- and moderate-income individuals and families obtain health insurance—for many people, cost sharing is a barrier to obtaining needed health care.[85]

To support the administration of the cost-sharing reduction program, we set forth in this final rule the reductions in the maximum annual limitation on cost sharing for silver plan variations. Consistent with our analysis in the 2014 and 2015 Payment Notices, we developed three model silver level QHPs and analyzed the impact on their AVs of the reductions described in the Affordable Care Act to the estimated 2016 maximum annual limitation on cost sharing for self-only coverage ($6,850). We do not believe these changes will result in a significant economic impact.

We are also finalizing the premium adjustment percentage for the 2016 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. The annual premium adjustment percentage sets the rate of increase for three parameters detailed in the Affordable Care Act: The annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage by individuals for minimum essential health coverage the Secretary may use to determine eligibility for hardship exemptions under Section 5000A of the Code, and the section 4980H(a) and section 4980H(b) assessable payment amounts (finalized at 26 CFR 54.4980H in the ''Shared Responsibility for Employers Regarding Health Coverage,'' published in the **Federal Register** on February 12, 2014 (79 FR 8544)). We believe that the 2016 premium adjustment percentage of 8.316047520 percent is well within the parameters used in the modeling of the Affordable Care Act, and we do not expect that these proposed provisions will alter CBO's January 2015 baseline estimates of the budget impact.

13. Minimum Essential Coverage

The final rule provides continued recognition of State high risk pools as minimum essential coverage. This will facilitate the transition of State high risk pool enrollees into QHPs through the Exchange or into other forms of minimum essential coverage, while ensuring continued access to coverage. It will also help ensure that this vulnerable population will not be subject to the shared responsibility payment during this transition, and thereby avoid an increase in out-of-pocket costs.

14. Quality Improvement Strategy

The standards requiring QHP issuers participating in Exchanges to establish and submit information regarding a quality improvement strategy will encourage continuous quality improvement among QHP issuers to help strengthen system-wide efforts to improve health outcomes at lower costs, promote provider payment models that link quality and value of services, allow for flexibility and innovation of diverse market-based incentive approaches, encourage meaningful improvements as well as provide regulators and stakeholders with information to use for monitoring and evaluation purposes. We discuss the administrative costs associated with submitting this information in the Collection of Information section of this proposed rule.

15. Administrative Appeals

In § 156.1220, we establish an administrative appeals process to address unresolved discrepancies for advance payments 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). We estimated the burden associated with the administrative appeals process in the 2015 Payment Notice, and in the Supporting Statement approved under OMB Control Number 0938–1155. We will revise the information collection currently approved OMB Control Number 0938–1155 with an October 31, 2015 expiration date. We do not believe that the provisions in this final rule will alter the economic impact of this requirement that was estimated in the 2015 Payment Notice.

16. Medical Loss Ratio

This final rule clarifies the treatment of cost-sharing reductions in the MLR calculations. This final rule also ensures timely distribution of rebates for the benefit of subscribers of group health plans not subject to ERISA. Specifically, the amendments to the MLR provisions governing the distribution of rebates to group enrollees in non-Federal governmental and other group health plans not subject to ERISA ensure that group policyholders of such plans do not withhold the benefit of rebates from the enrollees for longer than 3 months. This final rule also provides an additional option for distribution of rebates by such policyholders. We do not anticipate that these provisions will have any significant effect on MLR program estimates. This final rule also amends the MLR regulations to provide that premium in MLR and rebate calculations should not be reduced by the amount of Federal and State employment taxes. Based on MLR data for the 2013 MLR reporting year, the clarification regarding the treatment of such taxes in the MLR and rebate calculations may result in additional rebate payments to consumers of approximately $35 million from issuers that previously interpreted the MLR December 1, 2010 interim final rule to permit the reduction of premium by the amount of such taxes.

D. Regulatory Alternatives Considered

When considering the final 2016 reinsurance payment parameters we also considered a set of uniform reinsurance payment parameters that would have substantially lowered the reinsurance cap, but believe those uniform reinsurance payment parameters would have raised the complexity of estimating the effects of reinsurance for issuers.

We also considered expanding the risk corridors transitional adjustment to apply to early renewal plans. This approach would have increased the impact of the risk corridors adjustment and altered the impact analysis related to the risk corridors transitional adjustment that was published in the 2015 Payment Notice. However, we decided not to propose or finalize this alternate policy.

We considered for the 2016 benefit year requiring issuers to separate visit limits for rehabilitative and habilitative services and devices. However, we determined that issuers' claims systems are unable to distinguish rehabilitative and habilitative services and devices at this time. Therefore, we determined that this requirement should not be effective until 2017 to allow issuers to modify their claims systems.

We considered ending the good faith compliance policy for QHP issuers. However, we determined that subjecting QHP issuers to increased punitive actions in the early years of the Exchange would be less effective than working with issuers to address compliance issues. We also considered

[85] 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.*

a more expansive good faith compliance policy, but believe that 2 years is a sufficient transition period.

We considered not suppressing QHPs on the FFE, but this approach would have resulted in less flexibility for the FFE to address situations that could affect consumers' interests. For example, this alternative could cause disruption by requiring consumers to select a new QHP mid-year if their QHP was decertified rather than just suppressed for new enrollments.

We also considered not recognizing vendors as an alternative avenue for FFE training and information verification of agents and brokers. However, we believe that recognizing vendors will make it easier for agents and brokers to identify appropriate vendors who meet HHS standards for training and registration.

Additionally, we considered not requiring QIS reporting for QHP issuers. However, we decided to finalize the policy in this rule because we believe that QIS reporting will result in higher quality QHPs being offered in the Exchange and make it easier for consumers to select a high-quality QHP.

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 proposed 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 set forth standards 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 firms 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 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 $32.5 million or less.

In this final rule, we set forth standards for employers that choose to participate in a SHOP Exchange. Until 2017, the SHOPs are limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many employers who would be affected by these requirements would meet the SBA standard for small entities. We do not believe that these provisions impose requirements on employers offering health insurance through the SHOP that are more restrictive than the current requirements on small businesses offering employer-sponsored insurance. We believe the processes that we have established constitute the minimum amount of 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.

Based on data from MLR annual report submissions for the 2013 MLR reporting year, approximately 141 out of 500 issuers of health insurance coverage nationwide had total premium revenue of $38.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since 77 percent of these small companies belong to larger holding groups, and many if not all of these small companies are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million. Only 16 of these small entities owed a rebate for the 2013 reporting year, and none of these small entities are estimated to experience a rebate increase of more than 0.1 percent of total premium revenue under the MLR provisions of this final rule. None of the small entities that did not previously owe rebates are expected to owe rebates as a result of the provisions of this final rule. Based on data from MLR annual report submissions for the 2013 MLR reporting year, approximately 286,750 out of 1.6 million small group policyholders and 13,500 out of 228,000 large group policyholders nationwide were owed rebates for the 2013 reporting year. It is uncertain how many of the group policyholders obtaining coverage from health insurance issuers subject to MLR are both (a) small entities that fall below the size thresholds set by the SBA for various industries, and (b) enrolled in group health plans not subject to ERISA, and would therefore be subject to the proposed provisions related to MLR. However, the provisions of this final rule only establish a deadline for the use of MLR rebates by certain policyholders similar to the deadline that is already followed by most group policyholders, and do not otherwise alter the requirements for rebate use by such policyholders. In addition, the clarification regarding how health insurance issuers must treat cost-sharing reductions in their MLR calculations simply aligns the MLR regulatory language with the risk corridors program.

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 rule that includes any Federal mandate that may result in expenditures in any 1 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 2015, that threshold is approximately $141 million. Although we have not been able to quantify all costs, 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 proposed 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 program, 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 may charge user fees to issuers.

In HHS's view, while this rule would 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 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 proposed 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 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, and 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 154

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Required Contribution Percentage, Cost-sharing reductions, Advance payments of the 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 the premium tax credit, Advertising, Advisory Committees, American Indian/Alaska Natives, 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, 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, Medical loss ratio, Penalties, Premium revenues, Rebating Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 144, 147, 153, 154, 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 definitions of ''Plan'' and ''State'' to read as follows:

§ 144.103 Definitions.

* * * * *

Plan means, with respect to an issuer and a product, the pairing of the health insurance coverage benefits under the product with a particular cost-sharing structure, provider network, and service area. The product comprises all plans offered with those characteristics and the combination of the service areas for all plans offered within a product constitutes the total service area of the product. With respect to a plan that has been modified at the time of coverage renewal consistent with § 147.106 of this subchapter—

(1) The plan will be considered to be the same plan if it:

(i) Has the same cost-sharing structure as before the modification, or any variation in cost sharing is solely related to changes in cost or utilization of medical care, or is to maintain the same metal tier level described in sections 1302(d) and (e) of the Affordable Care Act;

(ii) Continues to cover a majority of the same service area; and

(iii) Continues to cover a majority of the same provider network. For this purpose, the plan's provider network on the first day of the plan year is compared with the plan's provider

network on the first day of the preceding plan year (as applicable).

(2) The plan will not fail to be treated as the same plan to the extent the modification(s) are made uniformly and solely pursuant to applicable Federal and State requirements if—

(i) The modification is made within a reasonable time period after the imposition or modification of the Federal or State requirement;

(ii) The modification is directly related to the imposition or modification of the Federal or State requirement.

(3) A State may permit greater changes to the cost-sharing structure, or designate a lower threshold for maintenance of the same provider network or service area for a plan to still be considered the same plan.

* * * * *

State means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands; except that for purposes of part 147, the term does not include Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

* * * * *

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 147.104 is amended by—

■ a. Revising paragraphs (b)(1)(i)(C), (b)(2), and (b)(4).

■ b. Redesignating paragraphs (f) through (h) as paragraphs (g) through (i), respectively.

■ c. Adding new paragraph (f).

The revisions and addition read as follows:

§ 147.104 Guaranteed availability of coverage.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) With respect to coverage in the small group market, and in the large group market if such coverage is offered through a Small Business Health Options Program (SHOP) in a State, coverage must become effective consistent with the dates described in § 155.725 of this subchapter, except as provided in paragraph (b)(1)(iii) of this section.

* * * * *

(2) *Limited open enrollment periods.* A health insurance issuer in the individual market must provide a limited open enrollment period for the events described in § 155.420(d) of this subchapter, excluding § 155.420(d)(3) of this subchapter (concerning citizenship status), § 155.420(d)(8) of this subchapter (concerning Indians), and § 155.420(d)(9) of this subchapter (concerning exceptional circumstances).

* * * * *

(4) *Length of enrollment periods.* (i) In the group market, enrollees must be provided 30 calendar days after the date of the qualifying event described in paragraph (b)(3) of this section to elect coverage.

(ii) In the individual market, enrollees must be provided 60 calendar days after the date of an event described in paragraph (b)(2) and (3) of this section to elect coverage, as well as 60 calendar days before certain triggering events as provided for in § 155.420(c)(2) of this subchapter.

* * * * *

(f) *Calendar year plans.* An issuer that offers coverage in the individual market, or in a merged market in a State that has elected to merge the individual market and small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, must ensure that such coverage is offered on a calendar year basis with a policy year ending on December 31 of each calendar year.

* * * * *

■ 5. Section 147.106 is amended by—

■ a. Redesignating paragraphs (g) through (j) as paragraphs (h) through (k), respectively.

■ b. Adding new paragraph (g).

The addition reads as follows:

§ 147.106 Guaranteed renewability of coverage.

* * * * *

(g) *Notification of change of ownership.* If an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan experiences a change of ownership, as recognized by the State in which the plan is offered, the issuer must notify HHS in a manner specified by HHS, by the latest of—

(1) The date the transaction is entered into; or

(2) The 30th day prior to the effective date of the transaction.

* * * * *

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 153.100 is amended by revising paragraph (c) to read as follows:

§ 153.100 State notice of benefit and payment parameters.

* * * * *

(c) *State notice deadlines.* If a State is required to publish an annual State notice of benefit and payment parameters for a particular benefit year, it must do so by the later of March 1 of the calendar year prior to the applicable benefit year, or by the 30th day following the publication of the final HHS notice of benefit and payment parameters for that benefit year.

* * * * *

■ 8. Section 153.400 is amended by revising paragraph (a)(1)(iii) and adding paragraph (c) to read as follows:

§ 153.400 Reinsurance contribution funds.

(a) * * *

(1) * * *

(iii) Such plan or coverage is expatriate health coverage, as defined by the Secretary, or for the 2015 and 2016 benefit years only, is a self-insured group health plan with respect to which enrollment is limited to participants who reside outside of their home country for at least 6 months of the plan year, and any covered dependents; or

* * * * *

(c) *Determination of a debt.* Any amount owed to the Federal government by 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) and its affiliates for reinsurance is a determination of a debt.

■ 9. Section 153.405 is amended by—

■ a. Revising paragraphs (b), (c)(1), (d) introductory text, (g)(4)(i) introductory text, and (g)(4)(ii) introductory text.

■ b. Removing paragraph (c)(2).

■ c. Redesignating paragraph (c)(3) as paragraph (c)(2).

■ d. Revising newly designated paragraph (c)(2).

The revisions read as follows:

§ 153.405 Calculation of reinsurance contributions.

* * * * *

(b) *Annual enrollment count.* No later than November 15 of benefit year 2014,

2015, or 2016, as applicable, or, if such date is not a business day, the next business day, a contributing entity must submit an annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS. The count must be determined as specified in paragraphs (d) through (g) of this section, as applicable.

(c) * * *

(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, administrative expenses, and the U.S. Treasury to be paid for the applicable benefit year.

(2) A contributing entity must remit reinsurance contributions to HHS no later than January 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next business day, if making a combined contribution or the first payment of the bifurcated contribution, and no later than November 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next business day, if making the second payment of the bifurcated contribution.

(d) *Procedures for counting covered lives for health insurance issuers.* A health insurance issuer must use the same method in a benefit year for all of its health insurance plans in the State (including both the individual and group markets) for which reinsurance contributions are required. To determine the number of covered lives of reinsurance contribution enrollees under all health insurance plans in a State for a benefit year, a health insurance issuer must use one of the following methods:

* * * * *

(g) * * *

(4) * * *

(i) *Multiple group health plans including an insured plan.* If at least one of the multiple plans is an insured plan, the average number of covered lives of reinsurance contribution enrollees must be calculated using one of the methods specified in either paragraph (d)(1) or (2) of this section, applied across the multiple plans as a whole. The following information must be determined by the plan sponsor:

* * * * *

(ii) *Multiple group health plans not including an insured plan.* If each of the multiple plans is a self-insured group health plan, the average number of covered lives of reinsurance contribution enrollees must be calculated using one of the methods specified either in paragraph (e)(1) or (2) of this section, applied across the multiple plans as a whole. The following information must be determined by the plan sponsor:

* * * * *

■ 10. Section 153.500 is amended by revising the definition of ''Adjustment percentage'' to read as follows:

§ 153.500 Definitions.

* * * * *

Adjustment percentage means, with respect to a QHP:

(1) For benefit year 2014—

(i) 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

(ii) Zero percent.

(2) For benefit year 2015, for a QHP offered by a health insurance issuer in any State, 2 percent.

(3) For benefit year 2016—

(i) For a QHP offered by a health insurance issuer with allowable costs of at least 80 percent of after-tax premium, the percentage specified by HHS; and otherwise

(ii) Zero percent.

* * * * *

■ 11. Section 153.740 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 153.740 Failure to comply with HHS-operated risk adjustment and reinsurance data requirements.

(a) *Enforcement actions.* If an issuer of a risk adjustment covered plan or reinsurance-eligible plan fails to establish a dedicated distributed data environment in a manner and timeframe specified by HHS; fails to provide HHS with access to the required data in such environment in accordance with § 153.700(a) or otherwise fails to comply with the requirements of §§ 153.700 through 153.730; fails to adhere to the reinsurance data submission requirements set forth in § 153.420; or fails to adhere to the risk adjustment data submission and data storage requirements set forth in §§ 153.610 through 153.630, HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805 of this subchapter. Civil monetary penalties will not be imposed for non-compliance with these requirements during the 2014 or 2015 calendar years under this paragraph if the issuer has made good faith efforts to comply with these requirements.

* * * * *

(c) *Information sharing.* HHS may consult with and share information about issuers of risk adjustment covered plans and reinsurance-eligible plans with other Federal and State regulatory and enforcement entities to the extent the consultation or information is necessary for purposes of Federal or State oversight and enforcement activities.

PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

■ 12. The authority citation for part 154 continues to read as follows:

Authority: Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

■ 13. Section 154.102 is amended by—

■ a. Revising the definitions of ''Individual market'', ''Rate increase'', ''Small group market'', and ''State''.

■ b. Adding a definition of ''Plan'' in alphabetical order.

The revisions and addition read as follows:

§ 154.102 Definitions.

* * * * *

Individual market has the meaning given the term in § 144.103 of this subchapter.

* * * * *

Plan has the meaning given the term in § 144.103 of this subchapter.

* * * * *

Rate increase means, with respect to rates filed—

(1) For coverage effective prior to January 1, 2017, any increase of the rates for a specific product offered in the individual or small group market.

(2) For coverage effective on or after January 1, 2017, any increase of the rates for a specific product or plan within a product offered in the individual or small group market.

* * * * *

Small group market has the meaning given the term in § 144.103 of this subchapter.

State means each of the 50 States and the District of Columbia.

* * * * *

■ 14. Section 154.200 is amended by revising paragraphs (a) and (c) to read as follows:

§ 154.200 Rate increases subject to review.

(a) A rate increase filed in a State, or effective in a State that does not require a rate increase to be filed, is subject to review if:

(1) The rate increase is 10 percent or more applicable to a 12-month period

that begins on January 1, as calculated under paragraph (c) of this section; or

(2) The rate increase meets or exceeds a State-specific threshold applicable to a 12-month period that begins on January 1, as calculated under paragraph (c) of this section, determined by the Secretary. A State-specific threshold shall be based on factors impacting rate increases in a State to the extent that the data relating to such State-specific factors is available by August 1. States interested in proposing a State-specific threshold for approval are required to submit a proposal to the Secretary by August 1.

* * * * *

(c) A rate increase meets or exceeds the applicable threshold set forth in paragraph (a) of this section if—

(1) For rates filed for coverage beginning before January 1, 2017, the average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold.

(2) For rates filed for coverage beginning on or after January 1, 2017, an increase in the plan-adjusted index rate (as described in § 156.80 of this subchapter) for any plan within the product meets or exceeds the applicable threshold.

* * * * *

■ 15. Section 154.215 is amended by revising paragraph (a) to read as follows:

§ 154.215 Submission of rate filing justification.

(a) If any plan within a product is subject to a rate increase, a health insurance issuer must submit a Rate Filing Justification for all products in the single risk pool, including new or discontinuing products, on a form and in a manner prescribed by the Secretary.

* * * * *

■ 16. Section 154.220 is revised to read as follows:

§ 154.220 Timing of providing the rate filing justification.

A health insurance issuer must submit a Rate Filing Justification for all rate increases that are filed in a State, or effective in a State that does not require the rate increase to be filed, as follows:

(a) For rate increases for coverage effective prior to January 1, 2016:

(1) If a State requires that a proposed rate increase be filed with the State prior to the implementation of the rate, the health insurance issuer must submit to CMS and the applicable State the Rate Filing Justification on the date on which the health insurance issuer submits the proposed rate increase to the State.

(2) For all other States, the health insurance issuer must submit to CMS and the State the Rate Filing Justification prior to the implementation of the rate increase.

(b) For rate increases for coverage effective on or after January 1, 2016, the health insurance issuer must submit to CMS and the applicable State a Rate Filing Justification by the earlier of the following:

(1) The date by which the State requires that a proposed rate increase be filed with the State; or

(2) The date specified in guidance by the Secretary.

■ 17. Section 154.301 is amended by revising paragraph (b) to read as follows:

§ 154.301 CMS's determinations of Effective Rate Review Programs.

* * * * *

(b) *Public disclosure and input.* (1) In addition to satisfying the provisions in paragraph (a) of this section, a State with an Effective Rate Review Program must provide:

(i) For proposed rate increases subject to review, access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's Web address for such information), and have a mechanism for receiving public comments on those proposed rate increases, no later than the date specified in guidance by the Secretary.

(ii) Beginning with rates filed for coverage effective on or after January 1, 2016, for all final rate increases (including those not subject to review), access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification (as applicable) that CMS makes available on its Web site (or provide CMS's Web address for such information), no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

(2) If a State intends to make the information in paragraph (b)(1)(i) of this section available to the public prior to the date specified by the Secretary, or if it intends to make the information in paragraph (b)(1)(ii) of this section available to the public prior to the first day of the annual open enrollment period in the individual market for the applicable calendar year, the State must notify CMS in writing, no later than 30 days prior to the date it intends to make the information public, of its intent to do so and the date it intends to make the information public.

(3) A State with an Effective Rate Review Program must ensure the information in paragraphs (b)(1)(i) and (ii) of this section is made available to the public at a uniform time for all proposed and final rate increases, as applicable, in the relevant market segment and without regard to whether coverage is offered through or outside an Exchange.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 18. The 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).

■ 19. Section 155.20 is amended by—

■ a. Revising paragraph (2) of the definition of ''Applicant.''

■ b. Revising the definitions of ''Enrollee'' and ''Qualified employee.''

The revisions read as follows:

§ 155.20 Definitions.

* * * * *

Applicant * * *

(2) An employer, employee, or former employee seeking eligibility for enrollment in a QHP through the SHOP for himself or herself, and, if the qualified employer offers dependent coverage through the SHOP, seeking eligibility to enroll his or her dependents in a QHP through the SHOP.

* * * * *

Enrollee means a qualified individual or qualified employee enrolled in a QHP. Enrollee also means the dependent of a qualified employee enrolled in a QHP through the SHOP, and any other person who is enrolled in a QHP through the SHOP, consistent with applicable law and the terms of the group health plan. Provided that at least one employee enrolls in a QHP through the SHOP, enrollee also means a business owner enrolled in a QHP through the SHOP, or the dependent of a business owner enrolled in a QHP through the SHOP.

* * * * *

Qualified employee means any employee or former employee of a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP for himself or herself and, if the qualified employer offers dependent coverage through the SHOP, for his or her dependents.

* * * * *

■ 20. Section 155.205 is amended by revising paragraphs (c)(2)(i) and (iii) and

adding paragraph (c)(2)(iv) to read as follows:

§ 155.205 Consumer assistance tools and programs of an Exchange.

* * * * *

(c) * * *

(2) * * *

(i) For all entities subject to this standard, oral interpretation.

(A) For Exchanges and QHP issuers, this standard also includes telephonic interpreter services in at least 150 languages.

(B) For an agent or broker subject to § 155.220(c)(3)(i), beginning November 1, 2015, or when such entity been registered with the Exchange for at least 1 year, whichever is later, this standard also includes telephonic interpreter services in at least 150 languages.

* * * * *

(iii) For all entities subject to this standard, taglines in non-English languages indicating the availability of language services.

(A) For Exchanges and QHP issuers, beginning no later than the first day of the individual market open enrollment period for the 2017 benefit year, this standard also includes taglines on Web site content and any document that is critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. A document is deemed to be critical for obtaining health insurance coverage or access to health care services through a QHP if it is required to be provided by law or regulation to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. Such taglines must indicate the availability of language services in at least the top 15 languages spoken by the limited English proficient population of the relevant State, as determined in guidance published by the Secretary.

(B) For an agent or broker subject to § 155.220(c)(3)(i), beginning on the first day of the individual market open enrollment period for the 2017 benefit year, or when such entity has been registered with the Exchange for at least 1 year, whichever is later, this standard also includes taglines on Web site content and any document that is critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. A document is deemed to be critical for obtaining health insurance coverage or access to health care services through a QHP if it is required to be provided by law or regulation to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. Such taglines must indicate the availability of language services in at least the top 15 languages spoken by the limited English proficient population of the relevant State, as determined in guidance published by the Secretary.

(iv) For Exchanges, QHP issuers, and an agent or broker subject to § 155.220(c)(3)(i), Web site translations.

(A) For an Exchange, beginning no later than the first day of the individual market open enrollment period for the 2017 benefit year, content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees on a Web site that is maintained by the Exchange must be translated into any non-English language that is spoken by a limited English proficient population that reaches 10 percent or more of the population of the relevant State, as determined in guidance published by the Secretary.

(B) For a QHP issuer, beginning no later than the first day of the individual market open enrollment period for the 2017 benefit year, if the content of a Web site maintained by the QHP issuer is critical for obtaining health insurance coverage or access to health care services through a QHP, within the meaning of § 156.250 of this subchapter, it must be translated into any non-English language that is spoken by a limited English proficient population that reaches 10 percent or more of the population of the relevant State, as determined in guidance published by the Secretary.

(C) For an agent or broker subject to § 155.220(c)(3)(i), beginning on the first day of the individual market open enrollment period for the 2017 benefit year, or when such entity has been registered with the Exchange for at least 1 year, whichever is later, content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees on a Web site that is maintained by the agent or broker must be translated into any non-English language that is spoken by a limited English proficient population that reaches 10 percent or more of the population of the relevant State, as determined in guidance published by the Secretary.

* * * * *

■ 21. Section 155.215 is amended by revising paragraph (h) to read as follows:

§ 155.215 Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.

* * * * *

(h) *Physical presence.* All non-Navigator entities carrying out consumer assistance functions under § 155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and all non-Navigator entities funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees. In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a non-Navigator entity or as non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area.

* * * * *

■ 22. Section 155.220 is amended by revising 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 enrollees in a QHP through the Exchange, under paragraph (c)(3) of this section.

■ 23. Section 155.222 is added to read as follows:

§ 155.222 Standards for HHS-approved vendors of Federally-facilitated Exchange training and information verification for agents and brokers.

(a) *Application for approval.* (1) A vendor must be approved by HHS, in a form and manner to be determined by HHS, in order to have its training and information verification program recognized for agents and brokers assisting with or facilitating enrollment in individual market or SHOP coverage through the Exchanges consistent with § 155.220.

(2) As part of the training program, the vendor must require agents and brokers to provide identifying information and proof of valid State licensure, and successfully complete the

required curriculum and identity proofing.

(3) HHS will approve vendors on an annual basis for a given plan year, and each vendor must submit an application for each year that approval is sought.

(b) *Standards.* To be approved by HHS and maintain its status as an approved vendor for plan year 2016 and future plan years, a vendor must meet each of the following standards:

(1) Submit a complete and accurate application by the deadline established by HHS, which includes demonstration of the following:

(i) Prior experience with successfully conducting online training, verification of valid State license, as well as providing technical support to a large customer base; and

(ii) The ability to conduct identity proofing.

(2) Adhere to HHS specifications for content, format, and delivery of training and information verification, which include offering continuing education units (CEUs) for at least five States in which a Federally-facilitated Exchange is operating.

(3) Collect, store, and share with HHS all data from agent and broker users of the vendor's training and information verification in a manner, format, and frequency specified by HHS, and protect the data in accordance with applicable privacy and security laws and regulations.

(4) Execute an agreement with HHS, in a form and manner to be determined by HHS, which requires the vendor to comply with HHS guidelines for interfacing with HHS data systems, the implementation of the training and information verification processes, and the use of all data collected.

(5) Permit any individual who holds a valid State license or equivalent State authority to sell health insurance products to access the vendor's training and information verification.

(c) *Approved list.* A list of approved vendors will be published on an HHS Web site.

(d) *Monitoring.* HHS may periodically monitor and audit vendors approved under this subpart, and their records related to the training and information verification functions described in this section, to ensure ongoing compliance with the standards in paragraph (b) of this section. If HHS determines that an HHS-approved vendor is not in compliance with the standards required in paragraph (b) of this section, the vendor may be removed from the approved list described in paragraph (c) of this section and may be required by HHS to cease performing the training and information verification functions described under this subpart.

(e) *Appeals.* A vendor that is not approved by HHS after submitting the application described in paragraph (a) of this section, or an approved vendor whose agreement is revoked under paragraph (d) of this section, may appeal HHS's decision by notifying HHS in writing within 15 days from receipt of the notification of not being approved and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) of this section and (if applicable) the terms of its agreement with HHS. HHS will review the submitted documentation and make a final approval determination within 30 days from receipt of the additional documentation.

■ 24. Section 155.400 is amended by revising paragraph (e) to read as follows:

§ 155.400 Enrollment of qualified individuals into QHPs.

* * * * *

(e) *Premium payment.* Exchanges may, and the Federally-facilitated Exchange will, require payment of the first month's premium to effectuate an enrollment. Exchanges may, and the Federally-facilitated Exchange will, establish a standard policy for setting premium payment deadlines:

(1) In a Federally-facilitated Exchange, for first month (or binder payment) premiums:

(i) For coverage being effectuated under regular coverage effective dates, as provided for in §§ 155.410(f) and 155.420(b)(1), premium payment deadlines must be no earlier than the coverage effective date, but no later than 30 calendar days from the coverage effective date; and

(ii) For coverage being effectuated under special effective dates, as provided in § 155.420(b)(2), premium payment deadlines must be 30 calendar days from the date the issuer receives the enrollment transaction.

(2) [Reserved]

* * * * *

■ 25. 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.* (1) 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.

(2) For the benefit year beginning on January 1, 2016, the annual open enrollment period begins on November 1, 2015 and extends through January 31, 2016.

(f) *Effective date.* (1) For the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective—

(i) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014.

(ii) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014 through January 15, 2015.

(iii) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015 through February 15, 2015.

(2) For the benefit year beginning on January 1, 2016, the Exchange must ensure that coverage is effective—

(i) January 1, 2016, for QHP selections received by the Exchange on or before December 15, 2015.

(ii) February 1, 2016, for QHP selections received by the Exchange from December 16, 2015 through January 15, 2016.

(iii) March 1, 2016, for QHP selections received by the Exchange from January 16, 2016 through January 31, 2016.

* * * * *

■ 26. Section 155.420 is amended by—

■ a. Revising paragraphs (b)(2)(i), (b)(2)(iv), (c)(2), (c)(3), (d)(1)(ii), (d)(2), and (d)(4).

■ b. Adding paragraphs (b)(2)(v), (b)(2)(vi), and (d)(6)(iv).

■ c. Removing paragraph (d)(10).

The revisions and additions read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(b) * * *

(2) * * *

(i) In the case of birth, adoption, placement for adoption, or placement in foster care as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following the date of birth, adoption, placement for adoption, or placement in foster care, or in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date of either the first of the month following the date of birth, adoption, placement for adoption or placement in foster care or in accordance with paragraph (b)(1) of this section, the Exchange must ensure

coverage is effective on the date duly selected by the qualified individual or enrollee.

* * * * *

(iv) If a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii), or gains access to a new QHP as described in paragraph (d)(7) of this section, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the plan selection is made after the day of the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.

(v) In the case of a court order as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date the court order is effective, or it may permit the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly selected by the qualified individual or enrollee.

(vi) If an enrollee or his or her dependent dies as described in paragraph (d)(2)(ii) of this section, the Exchange must ensure that coverage is effective on the first day of the month following the plan selection, or it may permit the enrollee or his or her dependent to elect a coverage effective date in accordance with paragraph (b)(1) of this section. If the Exchange permits the enrollee or his or her dependent to elect a coverage effective date in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly selected by the enrollee or his or her dependent.

* * * * *

(c) * * *

(2) *Advanced availability.* A qualified individual or his or her dependent who is described in paragraph (d)(1) or (d)(6)(iii) or, beginning on January 1, 2017 or earlier at the option of the Exchange, paragraph (d)(7) of this section, has 60 days before and after the triggering event to select a QHP. Prior to January 1, 2017, a qualified individual or his or her dependent who is described in paragraph (d)(7) of this section may select a QHP in accordance with paragraph (c)(1) of this section.

(3) *Special rule.* In the case of a qualified individual or enrollee who is eligible for a special enrollment period as described in paragraphs (d)(4), (5), or (9) of this section, the Exchange may define the length of the special enrollment period as appropriate based on the circumstances of the special enrollment period, but in no event may the length of the special enrollment period exceed 60 days.

(d) * * *

(1) * * *

(ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage. The date of the loss of coverage is the last day of the plan or policy year;

* * * * *

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) At the option of the Exchange, the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

* * * * *

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

* * * * *

(6) * * *

(iv) A qualified individual in a non-Medicaid expansion State who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL, who was ineligible for Medicaid during that same timeframe, and who has experienced a change in household income that makes the qualified individual newly eligible for advance payments of the premium tax credit.

* * * * *

■ 27. Section 155.430 is amended by—
■ a. Revising the section heading.
■ b. Revising paragraphs (a), (b)(1), (b)(2) introductory text, (c), (d) paragraph heading, (d)(2) introductory text, (d)(2)(iv), (d)(3) through (7), and (e)(1) and (2).
■ c. Adding paragraphs (b)(2)(vi), (d)(2)(v), and (d)(8).

The revisions and additions read as follows:

§ 155.430 Termination of Exchange enrollment or coverage.

(a) *General requirements.* The Exchange must determine the form and manner in which enrollment in a QHP through the Exchange may be terminated.

(b) * * *

(1) *Enrollee-initiated terminations.* (i) The Exchange must permit an enrollee to terminate his or her coverage or enrollment in a QHP through the Exchange, including as a result of the enrollee obtaining other minimum essential coverage. To the extent the enrollee has the right to terminate the coverage under applicable State laws, including ''free look'' cancellation laws, the enrollee may do so, in accordance with such laws.

(ii) The Exchange must provide an opportunity at the time of plan selection for an enrollee to choose to remain enrolled in a QHP if he or she becomes eligible for other minimum essential coverage and the enrollee does not request termination in accordance with paragraph (b)(1)(i) of this section. If an enrollee does not choose to remain enrolled in a QHP in such a situation, the Exchange must initiate termination of his or her enrollment in the QHP upon completion of the redetermination process specified in § 155.330.

(iii) The Exchange must establish a process to permit individuals, including enrollees' authorized representatives, to report the death of an enrollee for purposes of initiating termination of the enrollee's Exchange enrollment. The Exchange may require the reporting party to submit documentation of the death. Any applicable premium refund, or premium due, must be processed by the deceased enrollee's QHP in accordance with State law.

(2) *Exchange-initiated terminations.* The Exchange may initiate termination of an enrollee's enrollment in a QHP through the Exchange, and must permit a QHP issuer to terminate such coverage or enrollment, in the following circumstances:

* * * * *

(vi) Any other reason for termination of coverage described in § 147.106 of this subchapter.

(c) *Termination of coverage or enrollment tracking and approval.* The Exchange must—

(1) Establish mandatory procedures for QHP issuers to maintain records of termination of enrollment in a QHP through the Exchange;

(2) Send termination information to the QHP issuer and HHS, promptly and without undue delay in accordance with § 155.400(b).

(3) Require QHP issuers to make reasonable accommodations for all individuals with disabilities (as defined by the Americans with Disabilities Act) before terminating enrollment of such individuals through the Exchange; and

(4) Retain records in order to facilitate audit functions.

(d) *Effective dates for termination of coverage or enrollment.*

* * * * *

(2) In the case of a termination in accordance with paragraph (b)(1) of this section, the last day of enrollment through the Exchange is—

* * * * *

(iv) If the enrollee is newly eligible for Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, the last day of enrollment in a QHP through the Exchange is the day before the individual is determined eligible for Medicaid, CHIP, or the BHP.

(v) The retroactive termination date requested by the enrollee, if specified by applicable State laws.

(3) In the case of a termination in accordance with paragraph (b)(2)(i) of this section, the last day of enrollment in a QHP through the Exchange is the last day of eligibility, as described in § 155.330(f), unless the individual requests an earlier termination effective date per paragraph (b)(1) of this section.

(4) In the case of a termination in accordance with paragraph (b)(2)(ii)(A) of this section, the last day of enrollment in a QHP through the Exchange will be the last day of the first month of the 3-month grace period.

(5) In the case of a termination in accordance with paragraph (b)(2)(ii)(B) of this section, the last day of enrollment in a QHP through the Exchange should be consistent with existing State laws regarding grace periods.

(6) In the case of a termination in accordance with paragraph (b)(2)(v) of this section, the last day of coverage in an enrollee's prior QHP is the day before the effective date of coverage in his or her new QHP, including any retroactive enrollments effectuated under § 155.420(b)(2)(iii).

(7) In the case of a termination due to death, the last day of enrollment in a QHP through the Exchange is the date of death.

(8) In cases of retroactive termination dates, the Exchange will ensure that appropriate actions are taken to make necessary adjustments to advance payments of the premium tax credit, cost-sharing reductions, premiums, claims, and user fees.

(e) * * *

(1) *Termination.* A termination is an action taken after a coverage effective date that ends an enrollee's enrollment through the Exchange for a date after the original coverage effective date, resulting in a period during which the individual was enrolled in coverage through the Exchange.

(2) *Cancellation.* A cancellation is specific type of termination action that ends a qualified individual's enrollment through the Exchange on the date such enrollment became effective resulting in enrollment through the Exchange never having been effective.

* * * * *

■ 28. Section 155.605 is amended by revising paragraphs (g)(3) and (g)(6)(i) and adding paragraph (g)(6)(iii) to read as follows:

§ 155.605 Eligibility standards for exemptions.

* * * * *

(g) * * *

(3) *Filing threshold.* The IRS may allow an applicant to claim an exemption without obtaining an exemption certificate number from an Exchange for a taxable year if, for such year, the applicant could not be claimed as a dependent by another taxpayer and the applicant's gross income was less than the applicant's applicable return filing threshold described in section 5000A(e)(2) of the Code;

* * * * *

(6) * * *

(i) The Exchange must determine an applicant eligible for an exemption for any month if he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.51 and not otherwise eligible for an exemption under paragraph (f) of this section, or an individual eligible for services through the Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3).

* * * * *

(iii) The IRS may allow an applicant to claim the exemption specified in paragraph (g)(6) of this section without obtaining an exemption certificate number from an Exchange.

■ 29. Section 155.700(b) is amended by removing the definition of ''Group participation rule'' and by adding the definition of ''Group participation rate'' in alphabetical order to read as follows:

§ 155.700 Standards for the establishment of a SHOP.

* * * * *

(b) * * *

Group participation rate means the minimum percentage of all eligible individuals or employees of an employer that must be enrolled.

* * * * *

■ 30. Section 155.705 is amended by—

■ a. Revising paragraph (b)(4)(i)(B).

■ b. Redesignating paragraphs (b)(4)(ii)(A) and (B) as paragraphs (b)(4)(ii)(B) and (C), respectively.

■ c. Adding new paragraph (b)(4)(ii)(A).

■ d. Revising paragraphs (b)(7) and (10).

The additions and revisions read as follows:

§ 155.705 Functions of a SHOP.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) Collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees except as provided for in paragraph (b)(4)(ii)(A) of this section; and

* * * * *

(ii) * * *

(A) The SHOP may, upon an election by a qualified employer, enter into an agreement with a qualified employer to facilitate the administration of continuation coverage by collecting premiums for continuation coverage enrolled in through the SHOP directly from a person enrolled in continuation coverage through the SHOP consistent with applicable law and the terms of the group health plan, and remitting premium payments for this coverage to QHP issuers. A Federally-facilitated SHOP may elect to limit this service to the collection of premiums related to continuation coverage required under 29 U.S.C. 1161, *et seq.*

* * * * *

(7) *QHP availability in merged markets.* If a State merges the individual market and the small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, the SHOP may permit a qualified employee to enroll in any QHP meeting level of coverage requirements described in section 1302(d) of the Affordable Care Act.

* * * * *

(10) *Participation rules.* Subject to § 147.104 of this subchapter, the SHOP

may authorize a uniform group participation rate for the offering of health insurance coverage in the SHOP, which must be a single, uniform rate that applies to all groups and issuers in the SHOP. If the SHOP authorizes a minimum participation rate, such rate must be based on the rate of employee participation in the SHOP, not on the rate of employee participation in any particular QHP or QHPs of any particular issuer.

(i) For plan years beginning before January 1, 2016, subject to § 147.104 of this subchapter, a Federally-facilitated SHOP must use a minimum participation rate of 70 percent, calculated as the number of qualified employees accepting coverage under the employer's group health plan, divided by the number of qualified employees offered coverage, excluding from the calculation any employee who, at the time the employer submits the SHOP application, is enrolled in coverage through another employer's group health plan or through a governmental plan such as Medicare, Medicaid, or TRICARE. For purposes of this calculation, qualified employees who are former employees will not be counted.

(ii) For plan years beginning on or after January 1, 2016, subject to § 147.104 of this subchapter, a Federally-facilitated SHOP must use a minimum participation rate of 70 percent, calculated as the number of full-time employees accepting coverage offered by a qualified employer plus the number of full-time employees who, at the time the employer submits the SHOP group enrollment, are enrolled in coverage through another group health plan, governmental coverage (such as Medicare, Medicaid, or TRICARE), coverage sold through the individual market, or in other minimum essential coverage, divided by the number of full-time employees offered coverage.

(iii) Notwithstanding paragraphs (b)(10)(i) and (ii) of this section, a Federally-facilitated SHOP may utilize a different minimum participation rate in a State if there is evidence that a State law sets a minimum participation rate or that a higher or lower minimum participation rate is customarily used by the majority of QHP issuers in that State for products in the State's small group market outside the SHOP.

* * * * *

■ 31. Section 155.710 is amended by revising paragraph (e) to read as follows:

§ 155.710 Eligibility standards for SHOP.

* * * * *

(e) *Employee eligibility requirements.* An employee is a qualified employee eligible to enroll in coverage through a SHOP if such employee receives an offer of coverage from a qualified employer. A qualified employee is eligible to enroll his or her dependents in coverage through a SHOP if the offer from the qualified employer includes an offer of dependent coverage.

■ 32. Section 155.720 is amended by:

■ a. Removing ''; '' from paragraph (b)(5) and adding ''; and'' in its place.

■ b. Removing ''; and'' from paragraph (b)(6) and adding a period in its place.

■ c. Removing paragraph (b)(7).

■ d. Revising paragraph (e).

The revisions read as follows:

§ 155.720 Enrollment of employees into QHPs under SHOP.

* * * * *

(e) *Notification of effective date.* (1) For plan years beginning before January 1, 2017, the SHOP must ensure that a QHP issuer notifies a qualified employee enrolled in a QHP through the SHOP of the effective date of his or her coverage.

(2) For plan years beginning on or after January 1, 2017, the SHOP must ensure that a QHP issuer notifies an enrollee enrolled in a QHP through the SHOP of the effective date of his or her coverage.

(3) When a primary subscriber and his or her dependents live at the same address, a separate notice of the effective date of coverage need not be sent to each dependent at that address, provided that the notice sent to each primary subscriber at that address contains all required information about the coverage effective date for the primary subscriber and his or her dependents at that address.

* * * * *

■ 33. Section 155.725 is amended by revising paragraphs (a), (b), (g), (h), (i), and (j)(5) and adding paragraph (k) to read as follows:

§ 155.725 Enrollment periods under SHOP.

(a) *General requirements.* The SHOP must ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with this section.

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage, unless the plan is issued in a State that has elected to merge its individual and small group risk pools under section 1312(c)(3) of the Affordable Care Act, in which case the plan year will end on December 31 of the calendar year in which coverage first became effective.

* * * * *

(g) *Newly qualified employees.* (1) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period beginning on the first day of becoming a qualified employee. A newly qualified employee must have at least 30 days from the beginning of his or her enrollment period to select a QHP. The enrollment period must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible.

(2) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee must always be the first day of a month, and must generally be determined in accordance with § 155.725(h), unless the employee is subject to a waiting period consistent with § 147.116 of this subchapter, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with § 147.116 of this subchapter.

(h) *Initial and annual open enrollment effective dates.* (1) The SHOP must establish effective dates of coverage for qualified employees enrolling in coverage for the first time, and for qualified employees enrolling during the annual open enrollment period described in paragraph (e) of this section.

(2) For a QHP selection received by the Federally-facilitated SHOP from a qualified employee in his or her initial or annual open enrollment period:

(i) Between the first and fifteenth day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the following month.

(ii) Between the 16th and last day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the second following month.

(i) *Renewal of coverage.* (1) If a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage, such employee will remain in the QHP selected the previous year unless—

(i) The qualified employee terminates coverage from such QHP in accordance with standards identified in § 155.430;

(ii) The qualified employee enrolls in another QHP if such option exists; or

(iii) The QHP is no longer available to the qualified employee.

(2) The SHOP may treat a qualified employer offering coverage through the SHOP as offering the same coverage under § 155.705(b)(3) at the same level of contribution under § 155.705(b)(11) unless:

(i) The qualified employer is no longer eligible to offer such coverage through the SHOP;

(ii) The qualified employer elects to offer different coverage or a different contribution through the SHOP;

(iii) The qualified employer withdraws from the SHOP; or

(iv) In the case of a qualified employer offering a single QHP, the single QHP is no longer available through the SHOP.

(j) * * *

(5) The effective dates of coverage for special enrollment periods are determined using the provisions of § 155.420(b).

* * * * *

(k) *Limitation.* Qualified employees will not be able to enroll unless the employer group meets any applicable minimum participation rate implemented under § 155.705(b)(10).

■ 34. Section 155.735 is amended by—

■ a. Revising the section heading.

■ b. Revising paragraphs (a), (b), (c)(2)(ii), (c)(2)(iii), (d)(1) introductory text, and (d)(1)(iii), and the headings of paragraphs (d) and (e).

■ c. Adding paragraphs (c)(2)(iv), (c)(3), and (g).

The revisions and additions read as follows:

§ 155.735 Termination of SHOP enrollment or coverage.

(a) *General requirements.* The SHOP must determine the timing, form, and manner in which coverage or enrollment in a QHP through the SHOP may be terminated.

(b) *Termination of employer group health coverage or enrollment at the request of the employer.* (1) The SHOP must establish policies for advance notice of termination required from the employer and effective dates of termination.

(2) In the Federally-facilitated SHOP, an employer may terminate coverage or enrollment for all enrollees covered by the employer group health plan effective on the last day of any month, provided that the employer has given notice to the Federally-facilitated SHOP on or before the 15th day of any month. If notice is given after the 15th of the month, the Federally-facilitated SHOP may terminate the coverage or enrollment on the last day of the following month.

(c) * * *

(2) * * *

(ii) If premium payment is not received 31 days from the first of the coverage month, the Federally-facilitated SHOP may terminate the qualified employer for lack of payment. The termination would take effect on the last day of the month for which the Federally-facilitated SHOP received full payment.

(iii) If a qualified employer is terminated due to lack of premium payment, but within 30 days following its termination the qualified employer requests reinstatement, pays all premiums owed including any prior premiums owed for coverage during the grace period, and pays the premium for the next month's coverage, the Federally-facilitated SHOP must reinstate the qualified employer in its previous coverage. A qualified employer may be reinstated in the Federally-facilitated SHOP only once per calendar year.

(iv) Enrollees enrolled in continuation coverage required under 29 U.S.C. 1161, *et seq.* through the Federally-facilitated SHOP may not be terminated if timely payment is made to the Federally-facilitated SHOP in an amount that is not less than $50 less than the amount the plan requires to be paid for a period of coverage unless the Federally-facilitated SHOP notifies the enrollee of the amount of the deficiency and the enrollee does not pay the deficiency within 30 days of such notice, pursuant to the notice requirements in § 155.230.

(3) *Payment for COBRA Continuation Coverage.* Nothing in this section modifies existing obligations related to the administration of coverage required under 29 U.S.C. 1161, *et seq.,* as described in 26 CFR part 54.

(d) *Termination of employee or dependent coverage or enrollment.* (1) The SHOP must establish consistent policies regarding the process for and effective dates of termination of employee or dependent coverage or enrollment in the following circumstances:

* * * * *

(iii) The QHP in which the enrollee is enrolled terminates, is decertified as described in § 155.1080, or its certification as a QHP is not renewed;

* * * * *

(e) *Termination of enrollment or coverage tracking and approval.* * * *

* * * * *

(g) *Notice of termination.* Beginning January 1, 2016:

(1) Except as provided in paragraph (g)(3) of this section, if any enrollee's coverage or enrollment through the SHOP is terminated due to non-payment of premiums or due to a loss of the enrollee's eligibility to participate in the SHOP, including where an enrollee loses his or her eligibility because a qualified employer has lost its eligibility, the SHOP must notify the enrollee of the termination. Such notice must include the termination effective date and reason for termination, and must be sent within 3 business days if an electronic notice is sent, and within 5 business days if a mailed hard copy notice is sent.

(2) Except as provided in paragraph (g)(3) of this section, if an employer group's coverage or enrollment through the SHOP is terminated due to non-payment of premiums or, where applicable, due to a loss of the qualified employer's eligibility to offer coverage through the SHOP, the SHOP must notify the employer of the termination. Such notice must include the termination effective date and reason for termination, and must be sent within 3 business days if an electronic notice is sent, and within 5 business days if a mailed hard copy notice is sent.

(3) Where State law requires a QHP issuer to send the notices described in paragraphs (g)(1) and (2) of this section, a SHOP is not required to send such notices.

(4) When a primary subscriber and his or her dependents live at the same address, a separate termination notice need not be sent to each dependent at that address, provided that the notice sent to each primary subscriber at that address contains all required information about the termination for the primary subscriber and his or her dependents at that address.

■ 35. Section 155.1000 is amended by adding paragraph (d) to read as follows:

§ 155.1000 Certification standards for QHPs.

* * * * *

(d) *Special rule for SHOP.* Except when a QHP is decertified by the Exchange pursuant to § 155.1080, in a SHOP that certifies QHPs on a calendar-year basis, the certification shall remain in effect for the duration of any plan year beginning in the calendar year for which the QHP was certified, even if the plan year ends after the calendar year for which the QHP was certified.

■ 36. Section 155.1075 is amended by revising paragraph (b) to read as follows:

§ 155.1075 Recertification of QHPs.

* * * * *

(b) *Timing.* The Exchange must complete the QHP recertification process no later than 2 weeks prior to the beginning of the open enrollment date at § 155.410(e)(2) of the applicable calendar year.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 37. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, 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).

■ 38. Section 156.20 is amended by adding a definition of ''Plan'' in alphabetical order to read as follows:

§ 156.20 Definitions.

* * * * *

Plan has the meaning given the term in § 144.103 of this subchapter.

* * * * *

■ 39. Section 156.100 is amended by revising paragraph (c) to read as follows:

§ 156.100 State selection of benchmark.

* * * * *

(c) *Default base-benchmark plan.* If a State does not make a selection using the process described in this section, the default base-benchmark plan will be the largest plan by enrollment in the largest product by enrollment in the State's small group market.

■ 40. Section 156.110 is amended by revising paragraphs (c)(4) and (5) and removing paragraph (c)(6) to read as follows:

§ 156.110 EHB-benchmark plan standards.

* * * * *

(c) * * *

(4) The plan described in paragraph (b)(2)(i) of this section for pediatric oral care benefits; and

(5) The plan described in paragraph (b)(3)(i) of this section for pediatric vision care benefits.

* * * * *

■ 41. Section 156.115 is amended by revising paragraphs (a)(5)(i) and (ii) and adding paragraphs (a)(5)(iii) and (a)(6) to read as follows:

§ 156.115 Provision of EHB.

(a) * * *

(5) With respect to habilitative services and devices—

(i) Cover health care services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings;

(ii) Do not impose limits on coverage of habilitative services and devices that are less favorable than any such limits imposed on coverage of rehabilitative services and devices; and

(iii) For plan years beginning on or after January 1, 2017, do not impose combined limits on habilitative and rehabilitative services and devices.

(6) For plan years beginning on or after January 1, 2016, for pediatric services that are required under § 156.110(a)(10), provide coverage for enrollees until at least the end of the month in which the enrollee turns 19 years of age.

* * * * *

■ 42. Section 156.120 is added to read as follows:

§ 156.120 Collection of data to define essential health benefits.

(a) *Definitions.* The following definitions apply to this section, unless the context indicates otherwise:

Health benefits means benefits for medical care, as defined at § 144.103 of this subchapter, which may be delivered through the purchase of insurance or otherwise.

Health plan has the meaning given to the term ''Portal Plan'' in § 159.110 of this subchapter.

State has the meaning given to that term in § 155.20 of this subchapter.

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. Treatment limitations include only quantitative treatment limitations. A permanent exclusion of all benefits for a particular condition or disorder is not a treatment limitation.

(b) *Reporting requirement.* A State that selects a base-benchmark plan or an issuer that offers a default base-benchmark plan in accordance with § 156.100 must submit to HHS the following information in a form and manner, and by a date, determined by HHS:

(1) Administrative data necessary to identify the health plan;

(2) Data and descriptive information for each plan on the following items:

(i) All health benefits in the plan;

(ii) Treatment limitations;

(iii) Drug coverage; and

(iv) Exclusions.

■ 43. Section 156.122 is amended by revising paragraphs (a)(1), (a)(2), and (c) and adding paragraphs (a)(3), (d), and (e) to read as follows:

§ 156.122 Prescription drug benefits.

(a) * * *

(1) Subject to the exception in paragraph (b) of this section, covers at least the greater of:

(i) One drug in every United States Pharmacopeia (USP) category and class; or

(ii) The same number of prescription drugs in each category and class as the EHB-benchmark plan;

(2) Submits its formulary drug list to the Exchange, the State or OPM; and

(3) For plans years beginning on or after January 1, 2017, uses a pharmacy and therapeutics (P&T) committee that meets the following standards.

(i) *Membership standards.* The P&T committee must:

(A) Have members that represent a sufficient number of clinical specialties to adequately meet the needs of enrollees.

(B) Consist of a majority of individuals who are practicing physicians, practicing pharmacists and other practicing health care professionals who are licensed to prescribe drugs.

(C) Prohibit any member with a conflict of interest with respect to the issuer or a pharmaceutical manufacturer from voting on any matters for which the conflict exists.

(D) Require at least 20 percent of its membership to have no conflict of interest with respect to the issuer and any pharmaceutical manufacturer.

(ii) *Meeting standards.* The P&T committee must:

(A) Meet at least quarterly.

(B) Maintain written documentation of the rationale for all decisions regarding formulary drug list development or revision.

(iii) *Formulary drug list establishment and management.* The P&T committee must:

(A) Develop and document procedures to ensure appropriate drug review and inclusion.

(B) Base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, pharmacoeconomic studies, outcomes research data, and other such information as it determines appropriate.

(C) Consider the therapeutic advantages of drugs in terms of safety and efficacy when selecting formulary drugs.

(D) Review policies that guide exceptions and other utilization management processes, including drug utilization review, quantity limits, and therapeutic interchange.

(E) Evaluate and analyze treatment protocols and procedures related to the plan's formulary at least annually.

(F) Review and approve all clinical prior authorization criteria, step therapy protocols, and quantity limit restrictions applied to each covered drug.

(G) Review new FDA-approved drugs and new uses for existing drugs.

(H) Ensure the issuer's formulary drug list:

(*1*) Covers a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all disease states, and does not discourage enrollment by any group of enrollees; and

(*2*) Provides appropriate access to drugs that are included in broadly accepted treatment guidelines and that are indicative of general best practices at the time.

* * * * *

(c) A health plan providing essential health benefits must have the following processes in place that allow an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber, as appropriate) to request and gain access to clinically appropriate drugs not otherwise covered by the health plan (a request for exception). In the event that an exception request is granted, the plan must treat the excepted drug(s) as an essential health benefit, including by counting any cost-sharing towards the plan's annual limitation on cost-sharing under § 156.130 and when calculating the plan's actuarial value under § 156.135.

(1) *Standard exception request.* For plans years beginning on or after January 1, 2016:

(i) A health plan must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request a standard review of a decision that a drug is not covered by the plan.

(ii) A health plan must make its determination on a standard exception and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following receipt of the request.

(iii) A health plan that grants a standard exception request must provide coverage of the non-formulary drug for the duration of the prescription, including refills.

(2) *Expedited exception request.* (i) A health plan must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request an expedited review based on exigent circumstances.

(ii) Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a non-formulary drug.

(iii) A health plan must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours following receipt of the request.

(iv) A health plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

(3) *External exception request review.* For plans years beginning on or after January 1, 2016:

(i) If the health plan denies a request for a standard exception under paragraph (c)(1) of this section or for an expedited exception under paragraph (c)(2) of this section, the health plan must have a process for the enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request that the original exception request and subsequent denial of such request be reviewed by an independent review organization.

(ii) A health plan must make its determination on the external exception request and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following its receipt of the request, if the original request was a standard exception request under paragraph (c)(1) of this section, and no later than 24 hours following its receipt of the request, if the original request was an expedited exception request under paragraph (c)(2) of this section.

(iii) If a health plan grants an external exception review of a standard exception request, the health plan must provide coverage of the non-formulary drug for the duration of the prescription. If a health plan grants an external exception review of an expedited exception request, the health plan must provide coverage of the non-formulary drug for the duration of the exigency.

(d)(1) For plan years beginning on or after January 1, 2016, a health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, the U.S. Office of Personnel Management, and the general public. A formulary drug list is easily accessible when:

(i) It can be viewed on the plan's public Web site through a clearly identifiable link or tab without requiring an individual to create or access an account or enter a policy number; and

(ii) If an issuer offers more than one plan, when an individual can easily discern which formulary drug list applies to which plan.

(2) A QHP in the Federally-facilitated Exchange must make available the information described in paragraph (d)(1) of this section on its Web site in an HHS-specified format and also submit this information to HHS, in a format and at times determined by HHS.

(e) For plan years beginning on or after January 1, 2017, a health plan providing essential health benefits must have the following access procedures:

(1) A health plan must allow enrollees to access prescription drug benefits at in-network retail pharmacies, unless:

(i) The drug is subject to restricted distribution by the U.S. Food and Drug Administration; or

(ii) The drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.

(2) A health plan may charge enrollees a different cost-sharing amount for obtaining a covered drug at a retail pharmacy, but all cost sharing will count towards the plan's annual limitation on cost sharing under § 156.130 and must be accounted for in the plan's actuarial value calculated under § 156.135.

■ 44. Section 156.130 is amended by revising paragraph (c) to read as follows:

§ 156.130 Cost-sharing requirements.

* * * * *

(c) *Special rule for network plans.* In the case of a plan using a network of providers, cost sharing paid by, or on behalf of, an enrollee for benefits provided outside of such network is not required to count toward the annual limitation on cost sharing (as defined in paragraph (a) of this section).

* * * * *

■ 45. Section 156.145 is amended by revising paragraph (a) introductory text to read as follows:

§ 156.145 Determination of minimum value.

(a) *Acceptable methods for determining MV.* An employer-sponsored plan provides minimum value (MV) only if the percentage of the total allowed costs of benefits provided under the plan is greater than or equal to 60 percent, and the benefits under the plan include substantial coverage of inpatient hospital services and physician services. An employer-sponsored plan may use one of the following methods to determine whether the percentage of the total allowed costs of benefits provided under the plan is not less than 60 percent.

* * * * *

■ 46. Section 156.200 is amended by revising paragraph (b)(7) to read as follows:

§ 156.200 QHP issuer participation standards.

* * * * *

(b) * * *

(7) Comply with the standards under 45 CFR part 153.

* * * * *

■ 47. Section 156.230 is amended by revising paragraph (a) introductory text and paragraph (b) and adding paragraph (c) to read as follows:

§ 156.230 Network adequacy standards.

(a) *General requirement.* Each QHP issuer that uses a provider network must ensure that the provider network consisting of in-network providers, as available to all enrollees, meets the following standards—

* * * * *

(b) *Access to provider directory.* (1) A QHP issuer must make its provider directory for a QHP available to the Exchange for publication online in accordance with guidance from HHS and to potential enrollees in hard copy upon request. In the provider directory, a QHP issuer must identify providers that are not accepting new patients.

(2) For plan years beginning on or after January 1, 2016, a QHP issuer must publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS and OPM. A provider directory is easily accessible when—

(i) The general public is able to view all of the current providers for a plan in the provider directory on the issuer's public Web site through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number; and

(ii) If a health plan issuer maintains multiple provider networks, the general public is able to easily discern which providers participate in which plans and which provider networks.

(c) *Increasing consumer transparency.* A QHP issuer in a Federally-facilitated Exchange must make available the information described in paragraph (b) of this section on its Web site in an HHS specified format and also submit this information to HHS, in a format and manner and at times determined by HHS.

■ 48. Section 156.235 is revised to read as follows:

§ 156.235 Essential community providers.

(a) *General ECP standard.* (1) A QHP issuer that uses a provider network must include in its provider network a sufficient number and geographic distribution of essential community providers (ECPs), where available, to ensure reasonable and timely access to a broad range of such providers for low-income individuals or individuals residing in Health Professional Shortage Areas within the QHP's service area, in accordance with the Exchange's network adequacy standards.

(2) A plan applying for QHP certification to be offered through a Federally-facilitated Exchange has a sufficient number and geographic distribution of ECPs if it demonstrates in its QHP application that—

(i) The network includes as participating providers at least a minimum percentage, as specified by HHS, of available ECPs in each plan's service area with multiple providers at a single location counting as a single ECP toward both the available ECPs in the plan's service area and the issuer's satisfaction of the ECP participation standard; and

(ii) The issuer of the plan offers contracts to—

(A) All available Indian health care providers in the service area, applying the special terms and conditions required by Federal law and regulations as referenced in the recommended model QHP addendum for Indian health care providers developed by HHS; and

(B) At least one ECP in each of the ECP categories (Federally Qualified Health Centers, Ryan White Providers, Family Planning Providers, Indian Health Care Providers, Hospitals and other ECP providers) in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type.

(3) If a plan applying for QHP certification to be offered through a Federally-facilitated Exchange does not satisfy the ECP standard described in paragraph (a)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the plan's provider network provides an adequate level of service for low-income enrollees or individuals residing in Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year.

(4) Nothing in paragraphs (a)(1) through (3) of this section requires any QHP to provide coverage for any specific medical procedure.

(5) A plan that provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group may instead comply with the alternate standard described in paragraph (b) of this section.

(b) *Alternate ECP standard.* (1) A plan described in paragraph (a)(5) of this section must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities, to ensure reasonable and timely access for low-income individuals or individuals residing in Health Professional Shortage Areas within the plan's service area, in accordance with the Exchange's network adequacy standards.

(2) A plan described in paragraph (a)(5) of this section applying for QHP certification to be offered through a Federally-facilitated Exchange has a sufficient number and geographic distribution of employed or contracted providers if it demonstrates in its QHP application that—

(i) The number of its providers that are located in Health Professional Shortage Areas or five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the Federal Poverty Line satisfies a minimum percentage, specified by HHS, of available ECPs in the plan's service area with multiple providers at a single location counting as a single ECP; and

(ii) The issuer's integrated delivery system provides all of the categories of services provided by entities in each of the ECP categories in each county in the plan's service area as outlined in the general ECP standard, or otherwise offers a contract to at least one ECP outside of the issuer's integrated delivery system per ECP category in

each county in the plan's service area that can provide those services to low-income, medically underserved individuals.

(3) If a plan does not satisfy the alternate ECP standard described in paragraph (b)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the plan's provider networks provide an adequate level of service for low-income enrollees or individuals residing in Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year.

(c) *Definition.* An essential community provider is a provider that serves predominantly low-income, medically underserved individuals, including a health care provider defined in section 340B(a)(4) of the PHS Act; or described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 221 of Pub. L. 111–8; or a State-owned family planning service site, or governmental family planning service site, or not-for-profit family planning service site that does not receive Federal funding under special programs, including under Title X of the PHS Act, or an Indian health care provider, unless any of the above providers has lost its status under either of these sections, 340(B) of the PHS Act or 1927 of the Act as a result of violating Federal law.

(d) *Payment rates.* Nothing in paragraph (a) of this section may be construed to require a QHP issuer to contract with an ECP if such provider refuses to accept the same rates and contract provisions included in contracts accepted by similarly situated providers.

(e) *Payment of Federally qualified health centers.* If an item or service covered by a QHP is provided by a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the Federally qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service. Nothing in this paragraph (e) precludes a QHP issuer and Federally-qualified health center from agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as that rate is at least equal to the generally applicable payment rate of the issuer described in paragraph (d) of this section.

■ 49. Section 156.250 is revised to read as follows:

§ 156.250 Meaningful access to qualified health plan information.

A QHP issuer must provide all information that is critical for obtaining health insurance coverage or access to health care services through the QHP, including applications, forms, and notices, to qualified individuals, applicants, qualified employers, qualified employees, and enrollees in accordance with the standards described in § 155.205(c) of this subchapter. Information is deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer is required by law or regulation to provide the document to a qualified individual, applicant, qualified employer, qualified employee, or enrollee.

■ 50. Section 156.265 is amended by revising paragraph (d) to read as follows:

§ 156.265 Enrollment process for qualified individuals.

* * * * *

(d) *Premium payment.* A QHP issuer must follow the premium payment process established by the Exchange in accordance with § 155.240 of this subchapter and the payment rules established in § 155.400(e) of this subchapter.

* * * * *

■ 51. Section 156.270 is amended by revising the section heading and paragraphs (a), (b), (c) introductory text, (g), and (i) to read as follows:

§ 156.270 Termination of coverage or enrollment for qualified individuals.

(a) *General requirement.* A QHP issuer may only terminate enrollment in a QHP through the Exchange as permitted by the Exchange in accordance with § 155.430(b) of this subchapter. (See also § 147.106 of this subchapter for termination of coverage.)

(b) *Termination of coverage or enrollment notice requirement.* If a QHP issuer terminates an enrollee's coverage or enrollment in a QHP through the Exchange in accordance with § 155.430(b)(2)(i), (ii), or (iii) of this subchapter, the QHP issuer must, promptly and without undue delay:

(1) Provide the enrollee with a notice of termination that includes the termination effective date and reason for termination.

(2) [Reserved]

(c) *Termination of coverage or enrollment due to non-payment of premium.* A QHP issuer must establish a standard policy for the termination of enrollment of enrollees through the Exchange due to non-payment of premium as permitted by the Exchange in § 155.430(b)(2)(ii) of this subchapter. This policy for the termination of enrollment:

* * * * *

(g) *Exhaustion of grace period.* If an enrollee receiving advance payments of the premium tax credit exhausts the 3-month grace period in paragraph (d) of this section without paying all outstanding premiums, the QHP issuer must terminate the enrollee's enrollment through the Exchange on the effective date described in § 155.430(d)(4) of this subchapter, provided that the QHP issuer meets the notice requirement specified in paragraph (b) of this section.

* * * * *

(i) *Effective date of termination of coverage or enrollment.* QHP issuers must abide by the termination of coverage or enrollment effective dates described in § 155.430(d) of this subchapter.

* * * * *

■ 52. Section 156.285 is amended by—

■ a. Revising paragraphs (b)(1), (b)(4), (d) introductory text, (d)(1) introductory text, (d)(1)(i), and (d)(1)(iii);

■ b. Redesignating paragraphs (c)(3), (4), (5), (6), and (7) as paragraphs (c)(4), (5), (6), (7), and (8), respectively.

■ c. Adding new paragraph (c)(3).

■ d. Adding and reserving paragraph (d)(2).

The revisions and addition read as follows:

§ 156.285 Additional standards specific to SHOP.

* * * * *

(b) * * *

(1) Enroll a qualified employee in accordance with the qualified employer's initial and annual employee open enrollment periods described in § 155.725 of this subchapter;

* * * * *

(4) Adhere to effective dates of coverage established in accordance with § 155.725 of this subchapter.

(c) * * *

(3) Notify new enrollees of their effective date of coverage consistent with § 155.720(e) of this subchapter.

* * * * *

(d) *Termination of coverage or enrollment in the SHOP.* QHP issuers offering a QHP through the SHOP must:

(1) Comply with the following requirements with respect to termination of enrollees in the SHOP:

(i)(A) Effective in plan years beginning on or after January 1, 2015, requirements regarding termination of

coverage or enrollment established in § 155.735 of this subchapter, if applicable to the coverage or enrollment being terminated; otherwise

(B) General requirements regarding termination of coverage or enrollment established in § 156.270(a).

* * * * *

(iii)(A) Effective in plan years beginning on or after January 1, 2015, requirements regarding termination of coverage or enrollment effective dates as set forth in § 155.735 of this subchapter, if applicable to the coverage or enrollment being terminated; otherwise

(B) Requirements regarding termination of coverage or enrollment effective dates as set forth in § 156.270(i).

(2) [Reserved]

* * * * *

■ 53. Section 156.285 is further amended, effective January 1, 2016, by revising paragraph (d)(1)(ii) to read as follows:

§ 156.285 Additional standards specific to SHOP.

* * * * *

(d) * * *

(1) * * *

(ii) If a QHP issuer terminates an enrollee's coverage or enrollment through the SHOP in accordance with § 155.735(d)(1)(iii) or (v) of this subchapter, the QHP issuer must notify the qualified employer and the enrollee of the termination. Such notice must include the termination effective date and reason for termination, and must be sent within 3 business days if an electronic notice is sent, and within 5 business days if a mailed hard copy notice is sent. When a primary subscriber and his or her dependents live at the same address, a separate termination notice need not be sent to each dependent at that address, provided that the notice sent to each primary subscriber at that address contains all required information about the termination for the primary subscriber and his or her dependents at that address.

* * * * *

■ 54. Section 156.290 is amended by revising paragraphs (a)(1), (a)(2), (a)(5), and (c) introductory text to read as follows:

§ 156.290 Non-renewal and decertification of QHPs.

(a) * * *

(1) Notify the Exchange of its decision prior to the beginning of the recertification process and adhere to the procedures adopted by the Exchange in accordance with § 155.1075 of this subchapter;

(2) Fulfill its obligation to cover benefits for each enrollee through the end of the plan or benefit year through the Exchange;

* * * * *

(5) Terminate the coverage or enrollment through the Exchange of enrollees in the QHP in accordance with § 156.270, as applicable.

* * * * *

(c) *Decertification.* If a QHP is decertified by the Exchange, the QHP issuer must terminate the enrollment of enrollees through the Exchange only after:

* * * * *

■ 55. Section 156.410 is amended by removing the second paragraph designated as paragraph (d)(4)(ii) and adding paragraph (d)(4)(iii) to read as follows:

§ 156.410 Cost-sharing reductions for enrollees.

* * * * *

(d) * * *

(4) * * *

(iii) If the excess cost sharing was not paid by the provider, then, if the enrollee requests a refund, the refund must be provided to the enrollee within 45 calendar days of the date of the request.

■ 56. Section 156.420 is amended by adding paragraph (h) to read as follows:

§ 156.420 Plan variations.

* * * * *

(h) *Notice.* No later than November 1, 2015, for each plan variation that an issuer offers in accordance with the rules of this section, an issuer must provide a summary of benefits and coverage that accurately represents each plan variation consistent with the requirements set forth in § 147.200 of this subchapter.

■ 57. Section 156.425 is amended by adding paragraph (c) to read as follows:

§ 156.425 Changes in eligibility for cost-sharing reductions.

* * * * *

(c) *Notice upon assignment.* Beginning on January 1, 2016, if an individual's assignment to a standard plan or plan variation of the QHP changes in accordance with paragraph (a) of this section, the issuer must provide to that individual a summary of benefits and coverage that accurately reflects the new plan variation (or standard plan variation without cost-sharing reductions) in a manner consistent with § 147.200 of this subchapter as soon as practicable following receipt of notice from the Exchange, but not later than 7 business days following receipt of notice.

■ 58. Section 156.430 is amended by adding paragraph (c)(2)(i) and adding and reserving paragraph (c)(2)(ii) to read as follows:

§ 156.430 Payment for cost-sharing reductions.

* * * * *

(c) * * *

(2) * * *

(i) For reconciliation of cost-sharing reduction amounts advanced for the 2014 and 2015 benefit years, an issuer of a QHP using the standard or simplified methodology may calculate claims amounts attributable to EHB, including cost sharing amounts attributable to EHB, by reducing total claims amounts by the plan-specific percentage estimate of non-essential health benefit claims submitted on the Uniform Rate Review Template for the corresponding benefit year, if the following conditions are met:

(A) The non-essential health benefits percentage estimate is less than 2 percent; and

(B) Out-of-pocket expenses for non-EHB benefits are included in the calculation of amounts subject to a deductible or annual limitation on cost sharing, but copayments and coinsurance rates on non-EHB benefits are not reduced under the plan variation.

(ii) [Reserved]

* * * * *

■ 59. Section 156.602 is amended by revising paragraph (d) to read as follows:

§ 156.602 Other coverage that qualifies as minimum essential coverage.

* * * * *

(d) *State high risk pool coverage.* A qualified high risk pool as defined by section 2744(c)(2) of the Public Health Service Act established on or before November 26, 2014 in any State.

* * * * *

■ 60. Section 156.800 is amended by revising paragraph (c) to read as follows:

§ 156.800 Available remedies; Scope.

* * * * *

(c) *Compliance standard.* For calendar years 2014 and 2015, sanctions under this subpart will not be imposed if the QHP issuer has made good faith efforts to comply with applicable requirements.

* * * * *

■ 61. Section 156.815 is added to subpart I to read as follows:

§ 156.815 Plan suppression.

(a) *Suppression* means temporarily making a QHP certified to be offered through the Federally-facilitated

Exchange unavailable for enrollment through the Federally-facilitated Exchange.

(b) *Grounds for suppression.* A QHP may be suppressed as described in paragraph (a) of this section on one or more of the following grounds:

(1) The QHP issuer notifies HHS of its intent to withdraw the QHP from a Federally-facilitated Exchange when one of the exceptions to guaranteed renewability of coverage related to discontinuing a particular product or discontinuing all coverage under § 147.106(c) or (d) of this subchapter applies;

(2) Data submitted for the QHP is incomplete or inaccurate;

(3) The QHP is in the process of being decertified as described in § 156.810(c) or (d), or the QHP issuer is appealing a completed decertification as described in subpart J of this part;

(4) The QHP issuer offering the QHP is the subject of a pending, ongoing, or final State regulatory or enforcement action or determination that could affect the issuer's ability to enroll consumers or otherwise relates to the issuer offering QHPs in the Federally-facilitated Exchanges; or

(5) One of the exceptions to guaranteed availability of coverage related to special rules for network plans or financial capacity limits under § 147.104(c) or (d) of this subchapter applies.

(c) A multi-State plan as defined in § 155.1000(a) of this subchapter may be suppressed as described in paragraph (a) of this section if OPM notifies the Exchange that:

(1) OPM has found a compliance violation within the multi-State plan, or

(2) One of the grounds for suppression in paragraph (b) of this section exists for the multi-State plan.

■ 62. Section 156.1130 is added to subpart L to read as follows:

§ 156.1130 Quality improvement strategy.

(a) *General requirement.* A QHP issuer participating in an Exchange for 2 or more consecutive years must implement and report on a quality improvement strategy including a payment structure that provides increased reimbursement or other market-based incentives in accordance with the health care topic areas in section 1311(g)(1) of the Affordable Care Act, for each QHP offered in an Exchange, consistent with the guidelines developed by HHS under section 1311(g) of the Affordable Care Act.

(b) *Data requirement.* A QHP issuer must submit data that has been validated in a manner and timeframe specified by the Exchange to support the evaluation of quality improvement strategies in accordance with § 155.200(d) of this subchapter.

(c) *Timeline.* A QHP issuer must submit data annually to evaluate compliance with the standards for a quality improvement strategy in accordance with paragraph (a) of this section, in a manner and timeframe specified by the Exchange.

(d) *Multi-State plans.* Issuers of multi-State plans, as defined in § 155.1000(a) of this subchapter, must provide the data described in paragraph (b) of this section to the U.S. Office of Personnel Management, in the manner and timeframe specified by the U.S. Office of Personnel Management.

■ 63. Section 156.1220 is amended by revising paragraph (c) to read as follows:

§ 156.1220 Administrative appeals.

* * * * *

(c) *Review by the Administrator of CMS.* (1) Either the issuer or CMS may request review by the Administrator of CMS of the CMS hearing officer's decision. A request for review of the CMS hearing officer's decision must be submitted to the Administrator of CMS within 15 calendar days of the date of the CMS hearing officer's decision, and must specify the findings or issues that the issuer or CMS challenges. The issuer or CMS may submit for review by the Administrator of CMS a statement supporting the decision of the CMS hearing officer.

(2) After receiving a request for review, the Administrator of CMS has the discretion to elect to review the CMS hearing officer's decision or to decline to review the CMS hearing officer's decision. If the Administrator of CMS elects to review the CMS hearing officer's decision, the Administrator of CMS will also review the statements of the issuer and CMS, 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 or CMS must prove its case by clear and convincing evidence for issues of fact. The Administrator of CMS will send the decision and the reasons for the decision to the issuer.

(3) The Administrator of CMS's determination is final and binding.

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 64. 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.

■ 65. Section 158.140 is amended by adding paragraph (b)(1)(iii) to read as follows:

§ 158.140 Reimbursement for clinical services provided to enrollees.

* * * * *

(b) * * *

(1) * * *

(iii) Cost-sharing reduction payments received by the issuer to the extent not reimbursed to the provider furnishing the item or service.

* * * * *

■ 66. Section 158.162 is amended by revising paragraph (a)(2) and adding paragraph (b)(2)(iv) to read as follows:

§ 158.162 Reporting of Federal and State taxes.

(a) * * *

(2) Federal taxes not excluded from premium under subpart B of this part which include Federal income taxes on investment income and capital gains, as well as Federal employment taxes, as other non-claims costs.

(b) * * *

(2) * * *

(iv) State employment and similar taxes and assessments.

* * * * *

■ 67. Section 158.242 is amended by

■ a. Revising paragraph (b)(1)(iii);

■ b. Amending paragraph (b)(1)(iv) by removing the period and adding ''; and'' in its place; and

■ c. Adding paragraph (b)(1)(v).

The revision and addition read as follows:

§ 158.242 Recipients of rebates.

* * * * *

(b) * * *

(1) * * *

(iii) A cash refund to subscribers of the group health plan option for which the issuer is providing a rebate, who were enrolled in the group health plan option either during the MLR reporting year that resulted in the issuer providing the rebate or at the time the rebate is received by the policyholder;

* * * * *

(v) All rebate distributions made under paragraphs (b)(1)(i), (ii), or (iii) of this section must be made within 3 months of the policyholder's receipt of the rebate. Rebate distributions made after 3 months must include late payment interest at the current Federal Reserve Board lending rate or 10 percent annually, whichever is higher, on the total amount of the rebate, accruing from the date payment was due under this section.

* * * * *

Dated: February 6, 2015.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: February 17, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–03751 Filed 2–20–15; 4:15 pm]

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Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Parts 1193 and 1194

Information and Communication Technology (ICT) Standards and Guidelines; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

[Docket No. ATBCB–2015–0002]

RIN 3014–AA37

Information and Communication Technology (ICT) Standards and Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board or Board), is proposing to revise and update, in a single document, both its standards for electronic and information technology developed, procured, maintained, or used by federal agencies covered by section 508 of the Rehabilitation Act of 1973, and its guidelines for telecommunications equipment and customer premises equipment covered by Section 255 of the Communications Act of 1934. The proposed revisions and updates to the section 508-based standards and section 255-based guidelines are intended to ensure that information and communication technology covered by the respective statutes is accessible to and usable by individuals with disabilities.

DATES: Submit comments by May 28, 2015. Two hearings will be held on the proposed rule on:

1. March 5, 2015, 9:30 to 11:30 a.m., San Diego, CA and

2. March 11, 2015, 9:30 to 11:30 a.m., Washington, DC.

To preregister to testify at either of the hearings, contact Kathy Johnson at (202) 272–0041 (voice), (202) 272–0082 (TTY), or *johnson@access-board.gov*.

ADDRESSES: Submit comments by any one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Regulations.gov ID for this docket is ATBCB–2015–0002.
- Email: *docket@access-board.gov*. Include docket number ATBCB–2015–0002 in the subject line of the message.
- Fax: 202–272–0081.
- Mail or Hand Delivery/Courier: Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments, including any personal information provided, will be posted without change to *http://www.regulations.gov* and be available for public viewing.

The hearing locations are:

1. San Diego, CA: Manchester Grand Hyatt Hotel (Mission Beach A & B, 3rd floor), One Market Place, San Diego, CA 92101.

2. Washington, DC: Access Board conference room, 1331 F Street NW., Suite 800, Washington, DC 20004.

Witnesses can testify in person at the hearing in San Diego. Witnesses can testify in person or by telephone at the hearing in Washington, DC. Copies of the rule will not be available at the hearings. Call-in information and a communication access real-time translation (CART) web streaming link for the Washington, DC hearing will be posted on the Access Board's Web site at *http://www.access-board.gov/ictrefresh*. The hearings will be accessible to persons with disabilities. An assistive listening system, communication access real-time translation, and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access board.gov/about/policies/fragrance.htm* for more information).

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone: (202) 272–0016 (voice) or (202) 272–0074 (TTY). Email address: *508@access-board.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

In this preamble, the Architectural and Transportation Barriers Compliance Board is referred to as ''Access Board,'' ''Board,'' ''we,'' or ''our.''

I. Public Participation and Request for Comments

The Access Board encourages all persons interested in the rulemaking to submit comments on this proposed rule, as well as the preliminary assessment of its estimated benefits and costs. While the Board invites comment on any aspect of our proposed rule and regulatory assessment, we particularly seek information and data in response to the questions posed throughout this preamble. Instructions for submitting and viewing comments are provided under the **ADDRESSES** heading above. The Board will consider all timely comments and may change the proposed rule based on such comments.

II. Executive Summary

Purpose and Legal Authority

We are proposing to update our existing Electronic and Information Technology Accessibility Standards under section 508 of the Rehabilitation Act of 1973, (''508 Standards''), as well as our Telecommunications Act Accessibility Guidelines under Section 255 of the Communications Act of 1934 (''255 Guidelines''). Since the guidelines and standards were issued in 2000 and 1998 respectively, there has been a technological revolution, accompanied by an ever-expanding use of technology and a proliferation of accessibility standards globally. Technological advances have resulted in the widespread use of multifunction devices that call into question the ongoing utility of the product-by-product approach used in the Access Board's existing 508 Standards and 255 Guidelines. For example, since the existing 508 Standards were issued in 2000, mobile phones moved from devices with voice-only capability, to so-called ''smartphones'' offering voice, text, and video communications. Desktop computers are no longer the only information processing hardware: Mobile devices and tablets, which have very different input and output characteristics, can typically process vast amounts of electronic information and function like desktop computers or telephones. In recognition of these converging technologies, one of the primary purposes of the proposed rule is to replace the current product-based approach with requirements based on functionality, and, thereby, ensure that accessibility for people with disabilities keeps pace with advances in electronic and information technology.

Additionally, a number of voluntary consensus standards have been developed by standards organizations worldwide over the past decade. Examples of these standards include: The Web Accessibility Initiative's Web Content Accessibility Guidelines (WCAG) 2.0, EN 301 549 V1.1.1 (2014–02), ''Accessibility requirements for public procurement of ICT products and services in Europe,'' and the Human Factors Ergonomics Society's ANSI/HFES 200.2 (2008) ergonomics specifications for the design of accessible software. The harmonization with such international standards and guidelines creates a larger marketplace

for accessibility solutions, thereby attracting more offerings and increasing the likelihood of commercial availability of accessible information and communication technology options.

These dramatic changes have led the Access Board to propose revisions to the existing 508 Standards and 255 Guidelines. We are proposing to update the two sets of regulatory provisions jointly to ensure consistency in accessibility across the spectrum of communication and electronic and information technologies and products. The proposed standards and guidelines would support the access needs of individuals with disabilities, while also taking into account the costs to federal agencies and manufacturers of telecommunications equipment of providing accessible electronic information and communication technology.

The term ''information and communication technology'' (ICT) is used widely throughout this preamble and the proposed rule. Unless otherwise noted, it is intended to broadly encompass electronic and information technology covered by Section 508, as well as telecommunications products, interconnected Voice over Internet Protocol (VoIP) products, and Customer Premises Equipment (CPE) covered by Section 255. Examples of ICT include computers, information kiosks and transaction machines, telecommunications equipment, multifunction office machines, software, Web sites, and electronic documents.

This proposed rule would eliminate 36 CFR part 1193 in its entirety, revise 36 CFR 1194, and add three new appendices to Part 1194 containing the Application and Scoping Requirements for the 508 Standards (Appendix A), the Application and Scoping Requirements for the 255 Guidelines (Appendix B), and new Technical Requirements that apply to both Section 508-covered and Section 255-covered ICT. In this preamble, the Board refers to specific provisions of the proposed new 508 Standards and 255 Guidelines by their proposed new section numbers: E101–103 (508 Chapter 1: Application and Administration); E201–208 (508 Chapter 2: Scoping Requirements); C101–103 (255 Chapter 1: Application and Administration); C201–206 (255 Chapter 2: Scoping Requirements); 301–302 (Chapter 3: Functional Performance Criteria); 401–413 (Chapter 4: Hardware); 501–504 (Chapter 5: Software); and 601–603 (Support Documentation and Services).

Legal Authority for 508 Standards: Section 508 of the Rehabilitation Act of 1973 (hereafter, ''Section 508''), as amended, 29 U.S.C. 794d, mandates that federal agencies ''develop, procure, maintain, or use'' ICT in a manner that ensures federal employees with disabilities have comparable access to and use of such information and data relative to other federal employees, unless doing so would impose an undue burden. The Rehabilitation Act also requires federal agencies to ensure that members of the public with disabilities have comparable access to publicly-available information and services unless doing so would impose an undue burden on the agency. In accordance with section 508(a)(2)(A), the Access Board must publish standards that define electronic and information technology along with the technical and functional performance criteria necessary for accessibility, and periodically review and amend the standards as appropriate. When the Access Board revises its existing 508 Standards (whether to keep up with technological changes or otherwise), the Rehabilitation Act mandates that, within six months, both the Federal Acquisition Regulatory Council (FAR Council) and federal agencies incorporate these revised standards into their respective acquisition regulations and procurement policies and directives. Thus, with respect to procurement-related matters, the Access Board's 508 Standards are not self-enforcing; rather, these standards become enforceable when adopted by the FAR Council and federal agencies.

Legal Authority for 255 Guidelines: Section 255 of the Communications Act, 47 U.S.C. 255 (hereafter, ''Section 255''), requires telecommunications equipment and services to be accessible to and usable by individuals with disabilities, where readily achievable. ''Readily achievable'' is defined in the statute as ''easily accomplishable and able to be carried out without much difficulty or expense.'' In determining whether an access feature is readily achievable, the Federal Communications Commission (FCC), which has exclusive authority over enforcement under Section 255, has directed telecommunications equipment manufacturers and service providers to weigh the nature and cost of that feature against the individual company's overall financial resources, taking into account such factors as the type, size, and nature of its business operation. Under Section 255, the Access Board is required to develop guidelines for the accessibility of telecommunications equipment and customer premises equipment in conjunction with the FCC and to review and update the guidelines periodically. The FCC is responsible for enforcing Section 255 and issuing implementing regulations; it is not bound to adopt the Access Board's guidelines as its own or to use them as minimum requirements.

Summary of Key Provisions

A. Proposed 508 Standards

The proposed standards replace the current product-based approach with a functionality-based approach. The proposed technical requirements, which are organized along the lines of ICT functionality, provide standards to ensure that covered hardware, software, electronic content, and support documentation and services are accessible to people with disabilities. In addition, the proposed standards include functional performance criteria, which are outcome-based provisions for cases in which the proposed technical requirements do not address one or more features of ICT. The four major changes in the proposed 508 Standards are:

- *Broad application of WCAG 2.0:* The proposed rule would incorporate by reference the Web Content Accessibility Guidelines (WCAG) 2.0, a voluntary consensus standard developed by ICT industry representatives and other experts. It would also make WCAG 2.0 Success Criteria applicable not only to content on the ''World Wide Web'' (hereafter, Web), but also to non-Web electronic documents and software (*e.g.,* word processing documents, portable document format files, and project management software). By applying a single set of requirements to Web sites, electronic documents, and software, this proposed provision would adapt the 508 Standards to reflect the newer multifunction technologies (*e.g.,* smartphones that have telecommunications functions, video cameras, and computer-like data processing capabilities) and address the accessibility challenges that these technologies pose for individuals with disabilities.
- *Delineation of covered electronic ''content'':* The proposed rule would also specify that all types of public facing content, as well as eight enumerated categories of non-public facing content that communicate agency official business, would have to be accessible, with ''content'' encompassing all forms of electronic information and data. The existing standards require federal agencies to make electronic information and data accessible, but do not delineate clearly the scope of covered information and data; as a result, document accessibility has been inconsistent across federal

agencies. By focusing on public facing content and certain types of agency official communications that are not public facing, the proposed rule would bring needed clarity to the scope of electronic content covered by the 508 Standards and, thereby, help federal agencies make electronic content accessible more consistently.

• *Expanded interoperability requirements:* The existing standards require ICT to be compatible with assistive technology—that is, hardware or software that increases or maintains functional capabilities of individuals with disabilities (*e.g.,* screen magnifiers or refreshable braille displays). But, because this requirement has given rise to ambiguity in application, the proposed rule would provide more specificity about how operating systems, software development toolkits, and software applications should interact with assistive technology. These proposed requirements would allow assistive technology users to take full advantage of the functionalities that ICT products provide.

• *Requirement for RTT functionality:* The proposed standards would require real-time text (RTT) functionality wherever an ICT product provides real-time, two-way voice communication. RTT is defined in the proposed rule as text that is transmitted character by character as it is being typed. An RTT recipient can read a message while it is being written, without waiting for the message to be completed; this is different from other message technologies such as ''short messaging service'', or SMS, which transmit the entire message only after typing is complete. This proposed requirement would have an impact on federal agencies as well as ICT providers, federal employees, and members of the public.

B. Proposed 255 Guidelines

Given the trend toward convergence of technologies and ICT networks, the Access Board is updating the 255 Guidelines at the same time that it is updating the 508 Standards. The existing guidelines include detailed requirements for the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment. For example, the guidelines require input, output, display, control, and mechanical functions to be accessible to individuals with disabilities. The compatibility requirements focus on the need for standard connectors, compatibility of controls with prosthetics, and TTY compatibility. The guidelines define ''usable'' as providing access to information about how to use a product, and direct that instructions, product information, documentation, and technical support for users with disabilities be functionally equivalent to that provided to individuals without disabilities. The proposed guidelines include many non-substantive revisions to the existing requirements for clarity along with a few important new provisions. Two notable proposed additions to the proposed 255 Guidelines are:

• *Requirement for RTT functionality:* Just as the proposed 508 Standards would require federal agencies to offer RTT functionality in certain ICT, the proposed 255 Guidelines would require the manufacturers of telecommunications equipment to provide RTT functionality wherever a telecommunications product provides real-time, two-way voice communication. This proposed requirement would allow people who are deaf or hard of hearing to have faster and more natural conversations than the current text-messaging functionality.

• *Application of WCAG 2.0 to electronic documents:* The proposed 255 Guidelines would preserve the current requirement that when a document is provided in a non-electronic format, alternate formats (such as large-print or braille) usable by individuals with vision impairments need to be provided. The proposed guidelines also would require documentation in electronic formats—including Web-based self-service support and electronic documents—to conform to all Level A and AA Success Criteria in WCAG 2.0 or ISO 14289–1 (PDF/UA–1). This proposal for accessible electronic support documentation is derived from the existing guidelines, but would newly require compliance with WCAG 2.0 or PDF/UA–1. This proposal is intended to address the problem that many online product (or support) documents for telecommunications equipment are inaccessible to individuals with visual impairments.

Summary of Preliminary Regulatory Analysis

Consistent with the obligation that federal agencies under Executive Orders 12866 and 13563 propose and adopt regulations only upon a reasoned determination that benefits justify costs, the proposed rule has been evaluated from a benefit-cost perspective in a preliminary regulatory impact analysis (Preliminary RIA) prepared by the Board's consulting economic firm. The focus of the Preliminary RIA is to define and, where possible, quantify and monetize the potential economic benefits and costs of the proposed 508 Standards and 255 Guidelines. We summarize its methodology and results below; a complete copy of this regulatory assessment is available on the Access Board's Web site (*www.access-board.gov*), as well as the federal government's online rulemaking portal (*www.regulations.gov*).

To estimate likely incremental compliance costs attributable to the proposed rule, the Preliminary RIA estimates, quantifies, and monetizes costs in the following broad areas: (1) Costs to federal agencies and contractors related to policy development, employee training, development of accessible ICT, evaluation of ICT, and creation or remediation electronic documents; and (2) costs to manufacturers of telecommunications equipment and customer premises equipment of ensuring that that their respective Web sites and electronic support documentation conform to accessibility standards, including WCAG 2.0.

On the benefits side, the Preliminary RIA estimates likely incremental benefits by monetizing the value of three categories of benefits expected to accrue from the proposed 508 Standards: (a) Increased productivity of federal employees with certain disabilities who are expected to benefit from improved ICT accessibility; (b) time saved by members of the public with certain disabilities when using more accessible federal Web sites; and (c) reduced phone calls to federal agencies as members of the public with certain disabilities shift their inquiries and transactions online due to improved accessibility of federal Web sites. The Preliminary RIA, for analytical purposes, defines the beneficiary population as persons with vision, hearing, and speech disabilities, as well as those with manipulation, reach, or strength limitations. The Preliminary RIA does not formally quantify or monetize benefits accruing from the proposed 255 Guidelines due to insufficient data and methodological constraints.

Table 1 below summarizes the results from the Preliminary RIA with respect to the likely monetized benefits and costs, on an annualized basis, from the proposed 508 Standards and 255 Guidelines. All monetized benefits and costs are incremental to the applicable baseline, and were estimated for a 10-year time horizon using discount rates of 7 and 3 percent.

TABLE 1—ANNUALIZED VALUE OF MONETIZED BENEFITS AND COSTS UNDER THE PROPOSED RULE, 2015–2024

[In 2015 dollars]

	7% discount rate (in millions)	3% discount rate (in millions)
Monetized incremental benefits to federal agencies, members of the public with vision disabilities (under proposed 508 Standards)	$69.1	$67.5
Monetized incremental costs to federal agencies (under proposed 508 Standards)	$155.0	$146.8
Monetized incremental costs to telecommunications equipment manufacturers (under proposed 255 Guidelines)	$10.6	$9.8

While the Preliminary RIA monetizes likely incremental benefits and costs attributable to the proposed rule, this represents only part of the regulatory picture. Today, though ICT is now woven into the very fabric of everyday life, millions of Americans with disabilities often find themselves unable to use—or use effectively—computers, mobile devices, federal agency Web sites, or electronic content. The Board's existing standards and guidelines are greatly in need of a ''refresh'' to keep up with technological changes over the past fifteen years. The Board expects this proposed rule to be a major step toward ensuring that ICT is accessible to and usable by individuals with disabilities—both in the federal workplace and society generally. Indeed, much—if not most—of the significant benefits expected to accrue from the proposed rule are difficult if not impossible to quantify, including: Greater social equality, human dignity, and fairness. Each of these values is explicitly recognized by Executive Order 13563 as important qualitative considerations in regulatory analyses.

Moreover, American companies that manufacture telecommunications equipment and ICT-related products would likely derive significant benefits from the harmonized accessibility standards. Given the relative lack of existing national and globally-recognized standards for accessibility of mobile technologies, telecommunications equipment manufacturers would greatly benefit from harmonization of the 255 guidelines with consensus standards. Similar benefits would likely accrue more generally to all ICT-related products as a result of harmonization.

It is also equally important to note that some potentially substantial incremental costs arising from the proposed rule are not evaluated in the Preliminary RIA, either because such costs could not be quantified or monetized (due to lack of data or for other methodological reasons) or are inherently qualitative. The impact of the proposed 255 Guidelines on telecommunications equipment manufacturers is, as the Preliminary RIA notes, particularly difficult to quantify due to lack of cost data and a dynamic telecommunications marketplace. As a consequence, for example, the Preliminary RIA thus neither quantifies nor monetizes potential compliance costs related to the proposed requirement that ICT providing real-time, two-way voice communication support RTT functionality.

The Access Board welcomes comments on all aspects of the Preliminary RIA to improve the assumptions, methodology, and estimates of the incremental benefits and costs of the proposed rule. The full Preliminary RIA posted on the Board's Web site poses numerous regulatory assessment-related questions or areas for public comment, and interested parties are encouraged to review that document and provide responsive data and other information. In addition, the Board sets forth below—in the section providing a more in-depth discussion of the Preliminary RIA—several additional questions on which it seeks input. See Section VIII.A.6 (Regulatory Process Matters—Preliminary Regulatory Impact Analysis—Conclusion).

III. Statutory Background

Section 508 of the Rehabilitation Act of 1973, as amended (hereafter, ''Section 508''), calls for the Access Board to issue and publish standards setting forth the technical and functional performance criteria necessary to implement the Act's accessibility requirements for electronic and information technology. The statute also provides that the Board shall periodically review and, as appropriate, amend the standards to reflect technological advances or changes in electronic and information technology. This proposed rule uses the term ''508 Standards'' to refer to the standards called for by the Rehabilitation Act.

Section 255 of the Communications Act of 1934, as amended (hereafter, ''Section 255''), tasks the Access Board with the development of guidelines for accessibility of telecommunications equipment and customer premises equipment, and provides that the Board shall review and update the guidelines periodically. Note that reference is made here to ''Section 255 of the Communications Act,'' rather than the commonly used reference to ''Section 255 of the Telecommunications Act of 1996'' because the Telecommunications Act does not itself contain a section 255. Instead, the Telecommunications Act amended the Communications Act by adding a new section 255 to it. Therefore, for the sake of simplicity and accuracy, this proposed rule uses the term ''255 Guidelines'' to refer to the guidelines called for by the amended Communications Act.

As noted in the Summary above, this proposed rule seeks to revise and update both the 508 Standards and 255 Guidelines in a single rulemaking. The Access Board is taking this approach because we feel that the two sets of requirements, by virtue of their subject matter, are inextricably linked from a regulatory and policy perspective.

IV. Rulemaking History

A. Existing 508 Standards and 255 Guidelines (1998–2000)

We issued the 255 Guidelines in 1998, 63 FR 5608 (Feb. 3, 1998), and these are available on our Web site at *www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-telecommunications-act-guidelines/section-255-guidelines.* The Board's 508 Standards, issued in 2000, 65 FR 80500 (Dec. 21, 2000), are available at *www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards/section-508-standards.* They were codified in 36 CFR part 1193 and 36 CFR part 1194, respectively. In this preamble, all citations to 36 CFR part 1193 refer to the existing 255 Guidelines in force since 1998, while all citations to 36 CFR part 1194 refer to the existing 508 Standards in force since 2000.

The existing 508 Standards require federal agencies to ensure that persons

with disabilities—namely, federal employees with disabilities and members of the public with disabilities—have comparable access to, and use of, electronic and information technology (regardless of the type of medium) absent a showing of undue burden. See 36 CFR part 1194. Among other things, these standards: Define key terms (such as ''electronic and information technology'' and ''undue burden''); establish technical requirements and functional performance criteria for covered information and technologies; require agencies to document undue burden determinations when procuring covered products; and mandate accessibility of support documentation and services. Generally speaking, the existing 508 Standards take a product-based regulatory approach in that technical requirements for electronic and information technology are grouped by product type: Software applications and operating systems; Web-based intranet and Internet information and applications; telecommunications products; self-contained, closed products; and desktop and portable computers.

The existing 255 Guidelines require manufacturers of telecommunications equipment and customer premises equipment to ensure that new and substantially upgraded existing equipment is accessible to, and usable by, individuals with disabilities when readily achievable. See 36 CFR part 1193. The existing guidelines, as with the 508 Standards, define key terms (such as ''telecommunications equipment'' and ''readily achievable'') and establish technical requirements for covered equipment, software, and support documentation. These guidelines also require manufacturers of covered equipment to consider inclusion of individuals with disabilities in their respective processes for product design, testing, trials, or market research.

B. Advisory Committee and Final Report (2006–2008)

In the years following our initial promulgation of the 508 Standards and 255 Guidelines, technology continued to evolve at a rapid pace. Pursuant to our statutory mandate, the Board deemed it necessary and appropriate to review and update the 508 Standards and 255 Guidelines in order to make them consistent with one another and reflective of technological changes. The Board formed the Telecommunications and Electronic and Information Technology Advisory Committee (hereafter, ''Advisory Committee'') in 2006 to review the existing 508 Standards and 255 Guidelines and recommend amendments. The Advisory Committee's forty-one members comprised a broad cross-section of stakeholders representing industry, disability groups, and government agencies. The Advisory Committee also included representatives from the European Commission, Canada, Australia, and Japan. The Advisory Committee recognized the importance of standardization across markets worldwide and coordinated its work with standard-setting bodies in the U.S. and abroad, such as the World Wide Web Consortium (W3C®), and with the European Commission. The Advisory Committee addressed a range of issues, including new or convergent technologies, market forces, and international harmonization.

On April 3, 2008, the Advisory Committee presented us with its report (hereafter, ''TEITAC Report'') recommending amendments to the 508 Standards and 255 Guidelines. The TEITAC Report is available at *www.access-board.gov/teitac-report*.

C. First Advance Notice of Proposed Rulemaking (2010)

1. General

Based on the TEITAC Report, the Board developed an Advance Notice of Proposed Rulemaking in 2010 (2010 ANPRM) to update the 508 Standards as well as the 255 Guidelines. On the recommendation of the Advisory Committee, the Board used the phrase ''Information and Communication Technology'' (ICT) to collectively refer to the products addressed by the rules. A complete discussion of this proposed change is found in Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E103), and Section VI.C (Section-by-Section Analysis—255 Guidelines: Application and Scoping—C103). The 2010 ANPRM was published in the **Federal Register**, 75 FR 13457 (March 22, 2010), and is available at *www.access-board.gov/ict2010anprm*.

2. Structure

The 2010 ANPRM began with two separate introductory chapters. ''508 Chapter 1: Application and Administration,'' contained provisions preceded by the letter ''E,'' and included scoping, application, and definition provisions particular to the 508 Standards. ''255 Chapter 1: Application and Administration,'' contained provisions preceded by the letter ''C,'' and included similar provisions particular to the 255 Guidelines. The 2010 ANPRM also included, in Chapter 2, a common set of functional performance criteria for the 508 Standards and the 255 Guidelines that required ICT to provide access to all functionality in at least one of each of ten specified modes. Chapter 3 contained technical requirements applicable to features of ICT found across a variety of platforms, formats, and media.

Chapters 4, 5, and 6 all contained technical requirements that were closely adapted from the Web Content Accessibility Guidelines (WCAG) 2.0 Success Criteria but rephrased as mandatory requirements. Chapter 4 addressed platforms, applications, interactive content, and applications. Chapter 5 covered access to electronic documents and common interactive elements found in content, and Chapter 6 addressed access to audio and visual content, as well as players of such content.

Chapter 7 addressed hardware aspects of ICT, such as standard connections and reach ranges. Chapter 8 addressed ICT with audio output functionality when that output is necessary to inform, alert, or transmit information or data. Chapter 9 addressed ICT supporting real-time simultaneous conversation in audio, text, or video formats and Chapter 10 covered product support documentation and services.

3. Hearings and General Comments

The Access Board held two public hearings on the 2010 ANPRM—March 2010 (San Diego, CA) and July 2010 (Washington, DC). We also received 384 written comments during the comment period. Comments came from industry, federal and state governments, foreign and domestic companies specializing in information technology, disability advocacy groups, manufacturers of hardware and software, trade associations, institutions of higher education, research and trade organizations, accessibility consultants, assistive technology industry and related organizations, and individuals.

In general, commenters agreed with our approach to addressing the accessibility of ICT through functionality rather than discrete product types. Commenters also expressed strong support for our efforts to update the 508 Standards and 255 Guidelines, as well as our decision to follow the Advisory Committee's recommendation to require harmonization with WCAG 2.0. However, many commenters expressed concern that the 2010 ANPRM was not user-friendly, *e.g.,* that it was too long (at close to 100 pages), organized in a

confusing manner, and suffered from some internal inconsistencies. For example, commenters noted confusion by virtue of the fact that some chapters focused on functional features of accessibility while others addressed specific types of technology, or that the meaning of ''ICT'' seemed to vary depending on the context of the specific chapter.

D. Second Advance Notice of Proposed Rulemaking (2011 ANPRM)

1. General

Upon reviewing the extensive and detailed comments on the 2010 ANPRM, the Board realized the need to reorganize the structure of the proposed rule. More importantly, we needed to obtain further public comment on major issues and harmonize with the European Commission's ICT standardization efforts that were already underway at that time. Accordingly, the Board issued a second ANPRM (2011 ANPRM) that, as discussed in detail below, differed significantly from the 2010 ANPRM in terms of both structure and content. The 2011 ANPRM was published in the **Federal Register**, 76 FR 76640 (Dec. 8, 2011), and is also available at *www.access-board.gov/ict2011anprm.*

2. Structure

In response to public comments on the 2010 ANPRM that the length and organization of the document made it unwieldy, the Board consolidated and streamlined provisions into six chapters (from ten), consolidated advisories, and reduced the page count from close to 100 to less than 50. The Board also removed scoping and application language from the chapters containing technical provisions and relocated them to new chapters applicable to Section 508 (508 Chapters 1 and 2) and Section 255 (255 Chapters 1 and 2) respectively. We revised the overall structure of the functional performance criteria so that the provisions had parallel structure, and grouped technical requirements for similar functions together in the same chapter. To address inconsistencies in the 2010 ANPRM, where some chapters focused on features of products and others addressed specific types of products, the Board standardized its approach by removing references to types of products while focusing instead on specific features of products. We also removed specific proposed requirements relating to Web and non-Web content, documents and user applications, and referenced WCAG 2.0 instead.

3. Hearings and General Comments

Hearings were held in January 2012 in Washington, DC and in March 2012 in San Diego, CA. Additionally, ninety-one written comments were received in response to the 2011 ANPRM. Comments came from industry, federal and state governments, foreign and domestic companies specializing in information technology, disability advocacy groups, manufacturers of hardware and software, trade associations and trade organizations, institutions of higher education and research, accessibility consultants, assistive technology industry and related organizations, and individual stakeholders who did not identify with any of these groups.

In general, commenters continued to agree with our approach to address ICT accessibility by focusing on features, rather than discrete product types. Commenters supported the conciseness of the proposed provisions in the 2011 ANPRM, and asked for further streamlining where possible. Comments addressed a variety of other topics, which are discussed below in Section IV.E. (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues), and Section V (Major Issues).

E. 2010 and 2011 ANPRMs: Significant Issues

In this section, the Board collectively reviews the principle issues from the 2010 ANPRM and 2011 ANPRM in consolidated fashion.

1. Evolving Approach to Covered Electronic Content

Nearly two decades have passed since promulgation of the existing 508 Standards. Since that time, the types of—and uses for—electronic documents and other content have grown tremendously. This growth, coupled with the fact that the existing standards do not clearly spell out the scope of covered electronic content, led to inconsistencies in accessibility of electronic data and information across federal agencies. One of the goals of this rulemaking is thus to provide updated standards for electronic content that clearly delineate the accessibility requirements applicable to electronic content.

In the 2010 ANPRM, the Board proposed that, when federal agencies communicate using electronic content, that content would be required to comply with the revised 508 Standards when ''(a) an official communication by the agency or a representative of the agency to federal employees which contains information necessary for them to perform their job functions; or (b) an official communication by an agency or a representative of the agency to a member of the public, which is necessary for them to conduct official business with the agency as defined by the agency's mission.'' Many commenters disagreed with this approach because, in their view, all agency communications would fall into one of the two categories, and therefore no content would be exempt. In addition, commenters feared that our approach would require each employee to be capable of creating accessible content for all of his or her own individual communications. According to the commenters, this, in turn, would require costly training without necessarily resulting in greater accessibility.

We responded to these concerns in the 2011 ANPRM by proposing that electronic content need be made accessible only if it both communicated official agency business to a federal employee or a member of the public and fell into one of nine specified categories: (1) Content that is public facing; (2) content that is broadly disseminated throughout an agency, including templates; (3) letters adjudicating any cause within the agency's jurisdiction; (4) internal or external program and policy announcements; (5) notices of benefits, program eligibility, and employment opportunities and decisions; (6) forms, questionnaires, and surveys; (7) emergency notifications; (8) formal acknowledgements and receipts; and (9) educational and training materials. This included all formats of official communications by agencies, including Web pages, postings on social media, and email. Our intent was to clarify what information and data would be required to be accessible without placing an undue burden on government communications and operations.

Commenters to the 2011 ANPRM generally supported this approach. However, one commenter expressed concern that limiting coverage of electronic content to certain specific categories could lead to a non-inclusive work environment for employees and that agencies would make accessible only that content covered by the 508 Standards to the exclusion of anything else. Some commenters recommended that the Board associate templates with forms in one category and differentiate that category from the category containing questionnaires and surveys. Several commenters—including federal agencies—found the language in the provision on content that was ''broadly disseminated'' to be vague and

overbroad, and requested that this provision be either revised or withdrawn.

Another key issue addressed in the Board's advance notices of proposed rulemaking was the scope of exceptions to covered content. In the 2010 ANPRM, the Board proposed an exception for content stored solely for archival purposes or retained solely to preserve the exact image of the original hard copy. We retained that exception in the 2011 ANPRM, but added a second exception for ''works in progress and drafts that are not public facing and that are intended for limited internal distribution.''

Commenters to the 2011 ANPRM raised many questions as to how those exceptions would apply. For example, some commenters expressed confusion about the exception for archival materials. Many commenters viewed ''archival'' as referring to content preserved in agencies' internal information technology content management systems, rather than public records preservation generally, and asked us to clarify what the Board meant by the term. Other commenters expressed concern that otherwise accessible materials might be rendered inaccessible during the archiving process.

In addition to making significant revisions in the 2011 ANPRM to covered content under the proposed 508 Standards, the Board also amended our approach to content subject to the 255 Guidelines. We proposed that ''electronic content integral to the use of ICT'' covered by the 255 Guidelines must conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0, as incorporated by reference in C102 (Referenced Standards). The Board received no comments on this provision in the 2011 ANPRM.

In this proposed rule, the Board clarifies areas of confusion and makes various other changes to the scope of covered electronic content. We discuss our approach in further detail in Section V.A (Major Issues—Electronic Content), Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E205), and Section VI.C (Section-by-Section Analysis—Technical Requirements—C203).

2. Treatment of WCAG 2.0

The Access Board and the World Wide Web Consortium (W3C)—the leading international standards organization for the World Wide Web—share a rich history of collaboration on guidelines for Web site accessibility. The existing 508 Standards and WCAG 1.0 were under development around the same time period in the late 1990s; WCAG 1.0 was finalized in May 1999, and the existing 508 Standards shortly thereafter in December 2000. The existing 508 Standards, § 1194.22—which addresses ''Web-based Intranet and Internet Information and Applications''—has two endnotes, the first of which notes the Board's view that eleven out of our sixteen provisions of the standards are consistent with Web Content Accessibility Guidelines (WCAG) 1.0 Priority 1 Checkpoints. The remaining five provisions in that section do not have close analogs to WCAG 1.0 Priority 1 checkpoints, but they strongly influenced the development of the next iteration of WCAG, WCAG 2.0.

As part of the 508 Standards refresh, the Advisory Committee recommended—and the Access Board agreed—that closer harmonization with WCAG 2.0 was necessary to promote greater accessibility. Consequently, in the 2010 ANPRM, the Board proposed to include most Level A and Level AA WCAG 2.0 Success Criteria. However, rather than using the text of relevant portions of WCAG 2.0 verbatim, the Board restated those Success Criteria in mandatory language thought to be better suited for a regulatory environment. Comments to the 2010 ANPRM identified three major problems with that approach. First, many expressed concern that rephrasing WCAG 2.0's Success Criteria would introduce discrepancies in, and fragmentation of, the 508 Standards. Second, other commenters feared that rephrasing of success criteria, rather than incorporating WCAG 2.0 by reference, would make dynamic linkages in the online version of WCAG 2.0 to important supplementary information less available to the reader. These commenters emphasized the usefulness of the online in-context hypertext links to robust guidance materials as aids for understanding and applying the WCAG 2.0 Success Criteria. Lastly, commenters found our division of provisions (including the many rephrased WCAG Success Criteria) into those respectively oriented towards either documents or software to be somewhat arbitrary and counterproductive.

In response to these comments, the Access Board substantially revised the approach to WCAG 2.0 in the 2011 ANPRM. We proposed to require all covered content to conform to WCAG 2.0, which would be incorporated by reference in the proposed 508 Standards.

Commenters generally voiced strong support for the Board's decision to incorporate by reference WCAG 2.0 and apply it to all types of covered ICT, rather than simply seeking harmonization between WCAG 2.0 and the proposed rule. While commenters expressed concern as to how closely WCAG 2.0 would apply to some types of content, they generally supported the concept of expanding the application of WCAG 2.0 to all types of Web and non-Web ICT. A few commenters, including representatives of the software industry, also suggested that the rule allow for compliance with any subsequent and, as yet unpublished, revisions to WCAG 2.0 by the W3C.

Some commenters, on the other hand, requested that the Board return to its previous approach in the 2010 ANPRM, rather than incorporate WCAG 2.0 by reference. Most of these commenters believed that this approach would make the Board's rule easier to use because the necessary text would be contained in a single document. Some of these commenters also asserted that the structure of WCAG 2.0 is confusing and makes it difficult to separate the normative and non-normative portions.

In this NPRM, the Board is retaining the Level A and Level AA Success Criteria and Conformance Requirements in WCAG 2.0 for all ICT subject to Sections 508 and 255, including documents and software. The Board also proposes, as in the 2011 ANPRM, to incorporate WCAG 2.0 by reference, rather than restating its requirements in the proposed rule. Incorporating the WCAG Success Criteria verbatim in the rule would be unhelpful because they are best understood within the context of the original source materials. WCAG 2.0 incorporates context-sensitive hypertext links to supporting advisory materials. The two core linked resources are Understanding WCAG 2.0 and Techniques for WCAG 2.0. The first provides background information, including discussion of the intention behind each of the success criteria. The second provides model sample code for conformance. The linked expository of documents, which is publicly available online free of charge, comprise a rich and informative source of detailed technical assistance and are updated regularly by standing working committees. These linked resources are not themselves requirements and agencies adopting WCAG 2.0 are not bound by them.

The Board cannot accept the suggestion of software industry representatives that the proposed rule permit compliance with any follow-on versions of WCAG 2.0. Federal agencies cannot ''dynamically'' incorporate by reference future editions of consensus

standards.[1] Such action is legally prohibited since it would, among other things, unlawfully delegate the government's regulatory authority to standards development organizations, as well as bypass rulemaking requirements (which would typically include a public notice-and-comment period). Federal agencies are required to identify the particular version of consensus standards incorporated by reference in a regulation. When an updated edition of a consensus standard is published, the agency must revise its regulation if it seeks to incorporate any of the new material. Nevertheless, the Access Board plans to remain abreast of updates to voluntary consensus standards bearing on ICT, and will consider incorporating them into future rulemakings, as appropriate.

We discuss incorporation of WCAG 2.0 in further detail below in Section V.B (Major Issues—WCAG 2.0 Incorporation by Reference), Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E205 and E207.2), and Section VI.C (Section-by-Section Analysis—255 Guidelines: Application and Scoping—C203 and C205.2).

3. Relationship Between Functional Performance Criteria and Technical Provisions

Over the years, agencies and other stakeholders had expressed confusion concerning the interaction between the technical requirements and functional performance criteria in the existing 508 Standards. To address this confusion, in the 2010 ANPRM, the Board proposed language to clarify that ICT may be deemed accessible if satisfying all applicable technical requirements, irrespective of whether the functional performance criteria had been met. In other words, the Board proposed that the technical requirements took precedence over the functional performance criteria in the sense that agencies should look first to applicable technical provisions, and only turn to the functional performance criteria when such requirements did not fully address the technology at issue. Commenters objected to this approach, citing the concern that ICT procurements satisfying only the technical requirements would not necessarily ensure sufficient access to individuals with disabilities.

We responded to this concern by proposing in the 2011 ANPRM that ICT be required to conform to the functional performance criteria in every case, even when technical provisions were met. We also proposed to use the functional performance criteria (as did the 2010 ANPRM) to evaluate equivalent facilitation. That is, a covered entity would have the option of applying the concept of equivalent facilitation in order to achieve conformance with the intent of the technical requirements, provided that the alternative afforded individuals with disabilities substantially equivalent or greater accessibility and usability than would result from compliance with the technical requirements.

Some commenters, such as those representing federal agencies, the disability community, and other interested parties applauded this approach. Other commenters representing industry objected, noting that functional performance criteria are subjective and cannot be tested objectively. Industry commenters stated that they could not guarantee that the functional performance criteria had been met unless they controlled all the components of the end-to-end solution.

In this NPRM, the Board is not proposing that the functional performance criteria apply in every case. However, the Board does propose application of the functional performance criteria (with some modifications) to determine equivalent facilitation (E101.2 and C101.2), and to assess accessibility when technical provisions do not address one or more features of ICT. The Board discusses this issue in further detail below in Section V.C (Major Issues—Functional Performance Criteria), Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E203 and E204), and Section VI.C (Section-by-Section Analysis—255 Guidelines: Application and Scoping—C202).

4. Coverage of Real-Time Text

As noted previously, the existing 508 Standards and 255 Guidelines were promulgated nearly fifteen years ago. At that time, TTYs were the most commonly available text-based system for communicating within a voice communication system. Since then, technology has greatly advanced to the point where, in addition to TTYs, multiple text-based means of communication are available in the marketplace. One such emerging means of communication is real-time text technology. RTT technology provides the ability to communicate using text messages that are transmitted in near real-time as each character is typed, rather than as a block of text after the entire message is completed. RTT is important as an equivalent alternative to voice communications for persons who are deaf, or who have limited hearing or speech impairments. It allows the recipient to read the sender's text as soon as it is entered, thus making RTT more conversational and interactive, in a manner similar to a telephone conversation. This also makes RTT particularly useful in an emergency situation when speed and accuracy of a message—or even a partial message—are critical.[2]

The Advisory Committee examined real-time text technology and recommended that the Board update the 508 Standards and 255 Guidelines to include specifications for RTT. More specifically, the Advisory Committee recommended that, when hardware or software provides real-time voice conversation functionality, it must provide at least one means of RTT communication. See TEITAC Report, Part 6, Subpt. C, Rec. 6–A. With respect to interoperability (*i.e.,* operating outside a closed network), the Committee had two recommendations. First, the Advisory Committee recommended use of the TIA 825–A (Baudot) standard when ICT interfaces with the publicly switched telephone network (PSTN). Second, when ICT interoperated with VoIP products or systems using Session Initiation Protocol (SIP), the Advisory Committee did not recommend a specific standard, noting that there were several possible standards at that time (April 2008), such as RFC 4103, TIA 1001, and MSRP (RFC 4975). Id.

In keeping with the Advisory Committee's recommendation, the Board proposed in the 2010 ANPRM, to require ICT providing real-time voice communication to support RTT

[1] See, *e.g.,* 1 CFR 51.1(f) (2014) (''Incorporation by reference of a publication is limited to the edition of the publication that is approved [by the Office of Federal Register]. Future amendments or revisions of the publication are not included.''); Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (1998); see also Nat'l Archives & Records Admin., Federal Register Document Drafting Handbook, Ch. 6 (April 2014 Revision).

[2] Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, the FCC formed an Emergency Access Advisory Committee. In January 2012, the committee issued an ''Emergency Access Advisory Committee (EAAC) Report and Recommendations.'' In the report, the committee discussed a number of policy and technical recommendations. These recommendations cover both interim and future action in Emergency Communications (see *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312161A1.doc*). In Appendix C to the report, the committee recommended that terminals offering real-time text conversation support ITU–T Recommendation T.140 and that text conversation be provided according to RFC 4103.

functionality. The Board also proposed prescriptive standards for RTT (*e.g.,* transmission delay, error rates), as well as interoperability requirements. For interoperability with PSTN, the Board proposed (as did the Advisory Committee) use of the TIA 825–A (Baudot) standard. For ICT interoperating with VoIP products or systems using SIP, the Board did not propose a specific standard; instead, the Board proposed that such products or systems support transmission of RTT conforming to a ''commonly used cross-manufacturer, non-proprietary standard.'' The Board considered referencing RFC 4103, but elected not to do so because, at that time, it was not thought to be a referenceable standard.

Commenters responding to the RTT-related proposals in the 2010 ANPRM generally supported RTT, but offered mixed views on the Board's proposed technical specifications. Commenters representing people with disabilities strongly supported inclusion of RTT functionality requirements in the proposed rule. They emphasized, among other things, that RTT represented a major advance by allowing persons with hearing- or speech-related disabilities to communicate through real-time text on mainstream devices, rather than having to use special and expensive devices (such as TTYs). They were critical, however, of the Board's decision not to incorporate a specific VoIP-related interoperability standard. Commenters representing people with disabilities (and also academia) urged the Board to adopt RFC 4103 for RTT interoperating with VoIP using SIP, and provided information to support its use as a referenceable standard. Commenters from industry, on the other hand, encouraged the Board to take a cautious approach to RTT. They believed that, while RTT technology held promise as a major improvement in text communication (particularly in emergency situations), it was not sufficiently mature at that time to warrant adoption of a particular interoperability standard—including RFC 4103—for Internet-based calls. Commenters also objected to the proposed character and transmission delay rates as being overly prescriptive, thus potentially restricting the development of future technologies. (No commenters took issue with the Board's proposal to incorporate TIA 825–A as the standard for interoperability with PSTN.)

Based on these comments, in the 2011 ANPRM, the Board proposed to retain the references to the TIA 825–A standard for TTY signals on the PSTN, and to add a requirement for conformance with the RFC 4103 standard for VoIP products or systems using SIP. We did not retain the provisions specifying character and transmission delay rates. Overall, commenters largely supported the Board's revisions to RTT-related requirements in the 2011 ANPRM. However, several commenters representing industry and a local government agency asserted that RTT was not sufficiently mature or deployed widely enough to be useful. Some commenters also identified other standards aside from RFC 4103 that were currently in use (*e.g.,* XMPP and XEP–0301) and could serve to facilitate RTT for Internet-based calls.

In this NPRM, the Board proposes to require that, where ICT provides real-time, two-way voice communication, such ICT must also support RTT functionality. Proposed 410.6 would require features capable of text generation to be compatible with real-time voice communication used on a network. ICT would be required to interoperate either within its own closed system or outside a network. For example, a closed communication system, such as within a federal agency, would be required to interoperate with either the publicly switched telephone network (PSTN) or Voice over Internet Protocol (VoIP) products or systems to support the transmission of real-time text. The Board believes that RTT is sufficiently mature as a technology (and has sufficiently proliferated in the current ICT marketplace) to warrant coverage in the proposed rule. For example, real-time instant messaging programs—such as Yahoo!®Messenger and AOL Instant Messenger's ''Real-Time IM'' —have, in the past, used proprietary protocols that were very similar to SIP.

Where federal agencies provide their employees with smartphones or similar technology, this NPRM would require such ICT to have the potential to communicate using RTT. The Board does not, however, thereby intend to require that all phone users (with or without disabilities) communicate using RTT in all circumstances. Similar to several other proposed accessibility features in the proposed rule, RTT must only be enabled and used when needed to ensure comparable access and use of ICT by persons with hearing disabilities. For example, federal managers will need to make clear that, when deaf or hard-of-hearing employees with agency-provided smartphones use RTT, coworkers without disabilities using agency smartphones will also need the RTT feature on their respective phones enabled. Such an approach ensures that communications among deaf and hearing coworkers are equally effective as voice conversations among employees who do not have hearing impairments. Employees who do not need to communicate using RTT would otherwise be able to disable or ignore this feature.

The Board does not suggest that other forms of electronic communication—text or email, for example—would not be used by deaf employees and their colleagues. However, RTT offers many of the same benefits as voice communication. For example, a deaf attorney may need to seek the advice of his supervisor or colleagues during a break in a sensitive negotiation. Given the urgency and time-sensitive nature of the communications between employees, the deaf employee may request that his colleagues make themselves available during the negotiation by enabling RTT on their phones.

The Board did not consider proposing that agencies be permitted to provide RTT-enabled phones to employees only upon request. We did not consider this approach for two significant reasons. First, making accessible ICT available only upon request would run counter to Section 508's basic premise that information and data must be accessible to all employees without special treatment or the necessity for individualized treatment. Permitting issuance of RTT-enabled smartphones only when requested or deemed needed would be no different than permitting agencies to procure inaccessible ICT, such as a copy machine, where they have not identified a need for the accessible features among current staff. Second, while a proposal permitting agencies to issue non-RTT smartphones absent a special request for RTT features might modestly reduce an agency's ICT costs (to the extent, if any, that the purchase cost of RTT-enabled smartphones exceeds the cost of smartphones without this feature) and allow agencies to take user preferences regarding RTT into account, such an alternative would erode the proposed rule's benefits because employees with disabilities who need RTT would not be able to communicate with coworkers who are using government-issued, non-RTT smartphones.

Question 1. To realize the full potential benefits of the Section 508 proposal to require RTT functionality wherever an ICT product provides real-time, two-way voice communication, federal managers would need to direct their employees to keep the RTT features on their phones enabled when needed to accommodate employees with

disabilities who use RTT, and federal employees would need to follow such directives. How would keeping RTT enabled on an ''as needed'' basis affect federal employees' use of texting? For example, would it cause them to substitute texting with other methods of communication? How can the Board analyze and quantify such effects?

Question 2. The benefits of the RTT proposal under Section 255 are dependent upon the extent RTT features would be enabled and used by the public. The public would not be required to use or keep the RTT features on their phones enabled. Is there available information regarding the extent the public would use RTT features if they were available on their phones? Would use of RTT be different for people with and without disabilities?

In terms of RTT standards, the Board is proposing to require that ICT interoperating with VoIP products using SIP must support the transmission of RTT that conforms to RFC 4103 (RTP Payload for Text Conversion (2005)). In the Major Issues section, the Board also seeks comment on whether additional standards for real-time text, which are in the process of being finalized (such as XEP–0301), should be referenced. See Section V.D, Question 8. We discuss RTT-related issues in further detail below in Section V.D (Major Issues—Real-Time Text), and Section VI.D (Section-by-Section Analysis—Technical Requirements and Functional Performance Criteria—section 410.6).

5. Interoperability Requirements for Assistive Technology

Assistive technology (AT) is hardware or software used to increase, maintain, or improve the functional capabilities of individuals with disabilities. Examples of assistive technology commonly used with computers include: Screen readers, screen magnification software, specialized keyboards, refreshable braille displays, and voice recognition software. Assistive technology provides access beyond that offered by so-called ''mainstream'' hardware or software.

Compatibility with assistive technology is a foundational concept common to the existing 508 Standards and 255 Guidelines. ICT and assistive technologies must generally work together to provide users with necessary interface functions and features. The existing 508 Standards include general requirements for ICT to be compatible with assistive technology. Section 1194.21(b) requires that applications not disrupt or disable activated features of other products that are identified as accessibility features where those features are developed and documented according to industry standards. Additionally, this section requires that applications not disrupt or disable activated features of any operating systems that are identified as accessibility features. Section 1194.21(b) is directed only to applications, and does not require assistive technology to be compatible with other assistive technology. Section 1194.21(d), moreover, obligates mainstream software to provide ''sufficient information'' about its user interface elements to assistive technology.

The existing 255 Guidelines, though taking a slightly different tact, also require mainstream products to be compatible with assistive technologies. Under these guidelines, telecommunications equipment must be compatible with ''peripheral devices and specialized premises equipment commonly used by individuals with disabilities to achieve accessibility.'' 36 CFR 1193.51. Compatibility is specified by provisions requiring: External access to controls and information needed for product operation, connection points for external audio processing devices, compatibility of controls with prosthetic devices, and TTY connectability and compatibility.

The existing 508 Standards and 255 Guidelines are, however, equally silent concerning whether (or how) their requirements apply to assistive technology. That is, while these standards and guidelines require ICT to interoperate with assistive technology, they do not directly regulate assistive technology. Over the years, this silence in the 508 Standards has led to confusion. We have thus viewed coverage of assistive technology as a key issue throughout the process of updating the 508 Standards and 255 Guidelines.

The Advisory Committee, when addressing assistive technology, offered several perspectives. First, to improve ICT–AT compatibility, the committee recommended updated—and more comprehensive—technical standards that require mainstream computer operating systems and software with user interfaces to ''expose'' (*i.e.,* make available at the underlying program level) accessibility information that facilitates use of assistive technology. For example, screen reading and voice recognition software may be used to emulate, respectively, the physical click of a mouse button or the keystrokes from a hardware keyboard. These ICT interoperability requirements were carefully crafted among the various stakeholders on the committee, as well as harmonized with an international consensus standard for software accessibility (ISO 9241–171 Ergonomics of human-system interaction—Part 171: Guidance on software accessibility (2008)). See TEITAC Report, Part 6, Subpt. C, Recs. 3–V & 3–U. Second, the committee debated—though could not reach consensus on—a recommendation obligating assistive technology to use (as applicable) the standardized set of accessibility information provided by mainstream operating systems and software, rather than taking customized approaches. See TEITAC Report, Part 7, Subpt. C, Rec. 3–VV.

In the 2010 and 2011 ANPRMs, which drew heavily from the TEITAC Report, the Board took similar approaches to assistive technology. These ANPRMs largely adopted the committee's recommended set of updated technical standards governing the program-level accessibility information mainstream operating systems and software must make available to assistive technology. The Board also proposed to require assistive technology to use this accessibility information to achieve interoperability. Commenters generally applauded the Board's proposed refresh of the interoperability requirements for mainstream operating systems and software, and viewed these requirements as a big step forward. Assistive technology vendors and trade organizations, however, uniformly objected to the imposition of requirements on assistive technology. They expressed a need to be wholly unconstrained to best serve consumers. They also expressed concern that accessibility services varied widely from platform to platform, and were often insufficient to support necessary features of their assistive technology products. All other commenter groups—including individuals with disabilities and the mainstream IT industry—advocated maintaining the minimal requirements for assistive technology included in the ANPRMs.

In this NPRM, the Board proposes to retain, with minimal changes, the technical interoperability requirements for mainstream operating systems and software from the prior ANPRMs. The Board also found commenters' arguments for inclusion of minimal requirements for assistive technology to be compelling. Accordingly, the Board has also retained the proposal requiring assistive technology to use the basic set of accessibility information provided by operating systems and software to achieve interoperability. We discuss these issues in further detail below in Section V.E (Major Issues—Assistive Technology), and Section VI.D (Section-by-Section Analysis—Functional

Performance Criteria and Technical Requirements—502 and 401)

6. Modifications to the Functional Performance Criterion for Limited Vision

In order to ensure that ICT meets the needs of a wider range of users, the Board proposed in the 2010 ANPRM to revise the functional performance criterion for limited vision. The existing criterion specifies that ICT providing a visual mode of operation must furnish at least one accessible mode that accommodates visual acuity up to 20/70. The Board proposed to increase the covered acuity range to 20/200 (or a field of vision less than 20 degrees)—which is a common legal definition of blindness—to afford more individuals with disabilities the option of a visual mode of operation. Organizations representing persons with disabilities disagreed with the visual acuity proposed requirement, stating that it did not sufficiently address the needs of users with severe low vision. Industry groups suggested that the proposed visual acuity criterion contradicted several technical requirements. These commenters also indicated that our approach did not address features that could improve accessibility for persons with low vision, and were critical of the limitation that only one feature had to be provided for each mode of operation.

In response to these comments, in the 2011 ANPRM, the Access Board dispensed with specified measurements of visual acuity and relied instead on a functional approach reflective of the needs of users with low vision. We proposed that, when ICT provides a visual mode of operation, it must also provide at least one mode of operation that magnifies, one mode that reduces the field of vision, and one mode that allows user control of contrast. These modes would need to be supplied directly in the same ICT or through compatible assistive technology. Commenters to the 2011 ANPRM strongly approved of our approach to functional performance criteria for limited vision.

Accordingly, the Board proposes to retain this approach to functional performance criteria for limited vision in this propose rule. We discuss the issue in further detail in Section VI.B (Section-by-Section Analysis—Section 508 Application and Scoping—E203), Section VI.C (Section-by-Section Analysis—255 Guidelines Application and Scoping—C201.3), and Section VI.D (Section-by-Section Analysis—Functional Performance Criteria and Technical Requirements—302.2).

7. Definition and Coverage of Technology with ''Closed Functionality''

In its TEITAC Report, the Advisory Committee recommended that the Board make a nomenclature change to ''closed functionality'' from the existing term ''self-contained, closed products'' to better reflect a regulatory approach to ICT based on functionality, rather than type of product. The Advisory Committee observed that, due to technological changes since the promulgation of the existing standards and guidelines, some formerly ''closed'' product types were now open, while some formerly open product types were now closed—frequently by policy, rather than technological constraint. See TEITAC Report, Part 4, section 4.2. It suggested that when the functionality of a technology product is closed for any reason, including policy or technical limitations, then such product should be treated as having closed functionality.

In the 2010 ANPRM, the Board followed the Advisory Committee's recommendation and proposed to substitute the term ''closed functionality'' for ''self-contained, closed products,'' as used in the existing 508 Standards. See 36 CFR 1194.4. While both terms refer to ICT with characteristics that limit its functionality, the term ''closed functionality''—in the Board's view—better describes situations where the ICT is locked down by policy, rather than design. This may occur, for example, when an agency provides computers with core configurations that cannot be changed or adjusted by a user. We proposed permitting ICT to have closed functionality; however, such ICT still would need to be accessible to and usable by individuals with disabilities without assistive technology. Commenters did not object to the new terminology of ''closed functionality'' but asked for more detail and clarity in the applicable standards.

In the 2011 ANPRM, the Access Board proposed specific requirements for ICT with closed functionality to ensure accessibility to individuals with disabilities, which included a provision requiring ICT with closed functionality to be speech-output enabled. The term ''speech-output enabled'' means that the ICT can transmit speech output. These proposed requirements were derived from the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA and ABA Accessibility Guidelines), 36 CFR Part 1191, Appendix D, section 707.5 Speech Output.

Commenters to the 2011 ANPRM generally supported our proposed requirement for ''closed functionality,'' and the Board proposes to retain it in this proposed rule. We discuss the issue further in detail below in Section VI.D (Section-by-Section Analysis—Functional Performance Criteria and Technical Requirements—section 402).

8. Revisions to Exceptions Under 508 Standards

In the 2010 ANPRM, the Board reorganized the exceptions in the existing 508 Standards and recommended deleting three others that were unnecessary or had led to confusion. The three exceptions proposed for deletion were: § 1194.3(c) (assistive technology at federal employees' workstations); § 1194.3(d) (access to agency-owned ICT in public locations); and § 1194.3(f) (ICT equipment in maintenance spaces or closets). By proposing deletion of these three exceptions, the Board intended only administrative changes to clarify the 508 Standards; there was no intent to narrow their scope or application.

First, with respect to § 1194.3(c), which provides that assistive technology need not be supplied at all federal employees' workstations, the Board proposed its deletion because, in essence, it provided an exception where none was needed, and thus led to confusion. There is no general rule in the existing 508 Standards that agencies provide assistive technology at all employee workstations; rather, these standards merely require compatibility with assistive technology when ICT is not directly accessible.

Second, the Board proposed deletion of § 1194.3(d) because it conveys the impression that the 508 Standards govern the locations where ICT must be made available to the public. The 508 Standards do not, in any way, control where ICT is located. Therefore, the exception was unnecessary.

Third, the Board proposed to delete the exception in 1194.3(f) for ICT equipment located in maintenance spaces or closets frequented only by service personnel for ''maintenance, repair, and occasional monitoring of equipment.'' We reasoned that, since maintenance spaces or closets are already exempted from accessibility requirements under section F203.6 of the Architectural Barriers Act (ABA) Standards, there was no need for a similar exception in the 508 Standards.

Commenters' views on the proposed deletion of these three exceptions were mixed. On the one hand, most commenters supported removal of the exceptions pertaining to employee

workstations and public availability of agency-owned ICT. On the other hand, however, many commenters objected to our proposed removal of the exception for ICT located in maintenance spaces since there are still many functions—particularly with respect to maintenance, repair, and monitoring—that, in the commenters' view, could only be performed in maintenance spaces. In response to these comments, the Board has retained the exception for maintenance spaces in this NPRM, but proposes to limit its application to situations in which the controls for ICT functions are located in spaces that are frequented only by service personnel. This is consistent with the ADA and ABA Accessibility Guidelines, which exempt such spaces from accessibility requirements. However, where the functions of ICT located in maintenance spaces can be controlled remotely, this exception would not apply to such remote functions. These remote functions would still need to comply with applicable 508 Standards.

Lastly, in the 2010 ANPRM, the Access Board proposed to revise and relocate the exception in § 1194.3(b), which exempts ICT acquired by a contractor that is ''incidental to a contract'' from compliance with 508 Standards. Specifically, the Board proposed deleting the phrase ''incidental to a contract'' and relocating the exception to a new section relating to federal contracts. We did so in an effort to streamline and clarify the text of this exception. Commenters criticized this approach as confusing, particularly since the phrase ''incidental to a contract'' is a well-established term within the federal procurement community—a group that would likely be significantly impacted by the provision. Consequently, in the 2011 ANPRM, the Board proposed to restore the exception in § 1194.3(b) to its original language. We retain this approach in this NRPM, and thereby propose to exempt ICT acquired by a federal contractor that is ''incidental to a contract'' from compliance with the 508 Standards.

We discuss exception issues in further detail below in Section VI.B (Section-by-Section—508 Standards: Application and Scoping—E202.3 and E202.4).

9. Broadening of Documentation Requirement for Undue Burden Exception

Section 1194.2(a)(2) of the existing 508 Standards requires agencies to provide supporting documentation when determining that procurement of a compliant product would impose an undue burden. In the 2010 ANPRM, the Access Board proposed to broaden the undue burden documentation requirement so that it applied not only to ICT procurement, but also to other situations in which the 508 Standards applied—namely, the development, maintenance, or use of ICT. We did not receive any comments directly related to this approach, but did receive a few comments requesting clarification of the factors to be addressed in the determination of undue burden. In the 2011 ANPRM, the Board retained the broadened scope of the undue burden documentation requirement, but clarified the factors to be applied in the undue burden calculus. We proposed that an agency would be required to consider the extent to which conformance would impose significant difficulty or expense in light of the resources available to the program or component for which the ICT is being procured, developed, maintained or used. Commenters generally supported this approach.

In this NPRM, in proposed E202.5.2, the Board retains the undue burden documentation requirement as proposed in the 2011 ANPRM. This proposed provision is discussed in detail below in Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E202.5.2).

F. Harmonization With European Activities

1. History

In 2006, as noted above, the Access Board convened a Telecommunications and Electronic and Information Technology Advisory Committee to review and update the existing standards and guidelines. The Advisory Committee met from 2006 to 2008. Four of the forty-one members of the Advisory Committee were international stakeholders: the European Commission, Canada, Australia, and Japan. Among other issues, the Advisory Committee addressed harmonization of standards across markets and worked closely with standard-setting bodies in the United States and abroad. The Advisory Committee issued its final report in 2008.

While the Access Board was in the process of updating its existing 508 Standards and 255 Guidelines, a similar process began in Europe to create the first European set of ICT accessibility standards. As a result of the 2005 EU–US Economic Initiative, the Access Board and the European Commission began to work closely on the issue of Information and Communications Technology standards (See: *http://trade.ec.europa.eu/doclib/docs/2006/june/tradoc_127643.pdf*).

In 2005, the European Commission released Mandate 376, ''Standardisation Mandate to CEN, CENELEC, and ETSI in Support of European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain'' (*http://www.ictsb.org/Working_Groups/DATSCG/Documents/M376.pdf*). The Mandate required the three European standards organizations—European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC) and European Telecommunications Standards Institute (ETSI)—to: inventory European and international accessibility requirements; provide an assessment of suitable testing and conformity schemes; and, develop a European accessibility standard for ICT products and services along with guidance and support material for public procurements including an online toolkit.

In 2010, the Board released an ANPRM based on the 2008 TEITAC Report. We then published a second ANPRM in 2011 and took notice of the standardization work going on in Europe at the time, stating:

> [T]he Board is interested in harmonizing with standards efforts around the world in a timely way. Accordingly, the Board is now releasing this second Advance Notice of Proposed Rulemaking (2011 ANPRM) to seek further public comment on specific questions and to harmonize with contemporaneous standardization efforts underway by the European Commission.

In February 2013, the European Commission published its draft standard EN 301 549 V1.0.0 (2013–02), ''Accessibility requirements for public procurement of ICT products and services in Europe'' (*http://www.etsi.org/deliver/etsi_en/301500_301599/301549/01.00.00_20/en_301549v010000c.pdf*). The vote on the standard was completed in February 2014. The European Standard has been formally adopted by all three European standards organizations—CEN, CENELEC, and ETSI. The standards are now available to the target audience, government officials, who may use the standards as technical specifications or award criteria in public procurements of ICT products and services. The standard harmonizes and facilitates the public procurement of accessible ICT products and services within Europe. More information is available at: *http://www.mandate376.eu/*

2. Comparison of Proposed Rule With EN 301 549 Standard

a. General Comparison: Approach, Terminology and Organization

In this NPRM, the Board makes several proposals that are similar to those in the most recently published EN 301 549. Both the proposed rule and EN 301 549 address the functions of technology, rather than categories of technologies. Similarly, both offer technical requirements and functional performance criteria for accessible ICT. For example, our use of the phrase ''information and communication technology'' (ICT) in this NRPM, as a replacement of the existing term ''electronic and information technology,'' originates in the common usage of ICT throughout Europe and the rest of the world. Moreover, both documents are organized in similar ways, in that they both have initial scoping and definitions chapters, followed by separate chapters containing technical requirements and functional performance criteria.

Organizationally, the documents differ in several respects. These general differences are outlined in Table 2 below:

TABLE 2—FORMATTING DIFFERENCES BETWEEN THE NPRM AND EN 301 549

Differences	ICT NPRM (2014)	EN 301 549 V1.1.1 (2014–02)
Number of chapters. **Note:** EN 301 549 breaks out several sections as separate chapters which are combined in the ICT NPRM.	6	13.
	Chapter 1—Application and Administration	Chapter 2—References.
	.....	Chapter 3—Definitions and Abbreviations.
	Chapter 2—Scoping Requirements	Chapter 1—Scope.
		Chapter 10—Documents.
	Chapter 3—Functional Performance Criteria ...	Chapter 4—Functional Performance Criteria.
	Chapter 4—Hardware	Chapter 5—Generic Requirements (Biometrics, volume control, receipts and tickets, closed functionality, assistive technology).
		Chapter 6—ICT with two way voice communications.
		Chapter 7—ICT with video capabilities.
		Chapter 8—Hardware.
	Chapter 5—Software	Chapter 9—Web content.
	.....	Chapter 11—Non-Web software.
	Chapter 6—Support Documentation and Services.	Chapter 12—Documentation and support services.
Unique chapters	No comparable chapter	13—Relay and Emergency Services.
	• Incorporated by reference (Sections E207.2 and C205.2).	Annex A—Copy of WCAG 2.0.
	• Similar comparisons are found in the TEITAC Report.	Annex B—Charts showing relationships between requirements and functional performance criteria.
	• Not within the scope of Section 508 or Section 255; Section 508 compliance is determined by each federal agency.	Annex C—Determination of Compliance.
	• Not within the scope of Section 508 or Section 255.	Section 8.3.2 Clear floor space. Section 8.3.2.1 Change in level. Section 8.3.2.2 Operating area.
	• Most similar to ''303 Changes in Level'' from the 2010 ADA Standards for Accessible Design.	
Differing treatment of similar concepts	Section 410.6 Real-Time Text Functionality Discussed more fully.	Section 6.3 Real-time text (RTT) functionality Discussed more fully.
	410.8 Video Communication Discussed more fully.	6.6 Video Communication Discussed more fully.

b. Specific Examples: Differing Treatment of Similar Concepts

Real-Time Text Functionality

In this NPRM, the Board proposes that where ICT provides real-time voice communication, it must also support real-time text (RTT) functionality, as described in 410.6. Most significantly, the Board proposes to require that where ICT interoperates with Voice over Internet Protocol (VoIP) products using Session Initiation Protocol (SIP), it must support the transmission of RTT that conforms to RFC 4103 (RTP Payload for Text Conversion (2005)). In the Major Issues section, the Board asks whether additional standards for real-time text, which are in the process of being finalized (such as XEP–0301), should also be referenced. See Section V.D, Question 8. The proposed rule limits the approach to RTT by proposing to only incorporate by reference a maximum of two standards for RTT interoperating with VoIP.

In contrast, EN 301 549 allows the use of multiple standards for RTT. In addition to referencing RFC 4103 (section 6.3.3(b)), it permits the use of four other standards and an unspecified ''common specification'' for RTT exchange. The only criterion in the common specification is that it must indicate a method for indicating loss or corruption of characters. For a further discussion of RTT functionality, see Section V.D (Major Issues—Real-Time Text) below.

We are not proposing to adopt the other four standards referenced by EN 301 549 because they are not applicable to the type of technology used in the United States. Just as mobile phones are not directly compatible between the United States and Europe (*i.e.,* CDMA phone systems versus GSM (Global System Mobile)), portions of the four standards referenced in EN 301 549 are simply not relevant in the U.S. market, and there are no indications that they

will have domestic relevance in the near future.

The standards referenced by EN 301 549 address more than just real-time text functionality. Some are quite broad and address several communications features, such as video speed and accuracy. One example of such a standard is ETSI TS 126 114 (Universal Mobile Telecommunications System (UMTS)) which covers voice, video, and data transmission rates and speeds. This standard supports an approach to communication known as ''total communication.'' We are not proposing to adopt this approach. In the 2010 ANPRM, the Board proposed transmission accuracy rates and speeds for video, text and voice data, based on recommendations from the Advisory Committee. In response, we received numerous comments questioning the accuracy of the proposed rates, the sources for the proposals and the research underlying the proposed rates. Consequently, the Board removed those proposals in the 2011 ANPRM.

Question 3. We are seeking further information on the benefits and costs associated with adopting standards that address total communications, including voice, video, and data transmission rates and speeds. We seek recommendations for specific standards that the Board might reference to address total communication.

Video Communication

In this NPRM, the Board proposes that where ICT provides two-way voice communication that includes real-time video functionality, the quality of the video must be sufficient to support communication using sign language (section 410.8). The provision specifies a desired outcome and does not provide specific technical requirements. This approach resulted from public comments in response to our proposal in the 2010 ANPRM. Public commenters noted there were no existing standards supporting the technical requirements the Board had proposed concerning resolution, frame rates, and processing speed. In the 2011 ANPRM, the Board elected to remove those proposed technical requirements in favor of simply requiring the quality of the video to be sufficient to support communications using sign language. We received no comments on this approach, and retain it here in this NPRM.

EN 301 549, on the other hand, takes a different tact. In ''6.6 Video Communication,'' the standard specifies numeric measurements for such features as resolution (6.6.2), frame rates (6.6.3) and alternatives to video-based services (6.7). This approach is similar to our proposal in the 2010 ANPRM, which, as noted, the Board dropped due to significant negative comments.

In general, the approaches taken in EN 301 549 and this NPRM are similar and complimentary. The Access Board's proposed rule contains less detail in some proposed provisions, as discussed above. We elected to pursue this course in response to public comments and our desire to make use of a number of voluntary consensus standards by incorporating them by reference. This approach will result in better harmonization of accessibility standards worldwide.

V. Major Issues

The five major issues addressed in this NPRM are: (a) Scope of covered electronic content; (b) incorporation by reference of WCAG 2.0; (c) relationship between functional performance criteria and technical requirements; (d) coverage of real-time text; and (e) interoperability requirements for assistive technology. Each of these areas is discussed below.

A. Electronic Content

In this NPRM, the Board aims to bring needed clarity to the scope of electronic content subject to accessibility requirements in the 508 Standards. Based on the language of the Rehabilitation Act, § 1194.1 of the existing standards speaks of federal agencies ensuring that federal employees and members of the public with disabilities have comparable ''access to and the use of [electronic] information and data.'' Given its breadth, federal agencies have—not altogether surprisingly—had difficulty applying this mandate. The existing requirement does not adequately address what is meant by comparable access to information and data. Consequently, there has been confusion over whether and how such electronic content must be made accessible. Agencies have been reluctant to apply the existing 508 Standards to electronic information and data, except for Web pages.

The proposed rule would address these deficiencies in the existing 508 Standards by clearly delineating the scope of covered electronic content, as well as specifying concrete, testable, technical requirements to ensure the accessibility of such content. The Board proposes that all covered electronic content would be required to conform to WCAG 2.0 Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages or, where applicable, ISO 14289–1 (PDF/UA–1).

Covered electronic content would, under the proposed rule, include two discrete groups of content. First, the Board proposes in E205.2 that all public-facing content—which encompasses electronic information and data made available by agencies to members of the general public—must satisfy applicable accessibility requirements in the proposed rule (*i.e.,* WCAG 2.0 Level A and Level AA Success Criteria or PDF/UA–1). This would include, for example, agency Web sites (and documents posted thereon), blog posts, and social media sites. Coverage of this broad category of agency-sponsored content is important because persons with disabilities should have equal access to electronic information and data made available to the public generally. This is an essential right established by the Rehabilitation Act.[3]

The central principle underlying the accessibility requirement for public-facing content is the notion that federal agencies must ensure equal access to electronic information that they themselves directly make available to the general public by posting on a public fora. So, for example, if a federal agency posts a PDF version of a recent settlement agreement on its Web site as part of a press release, that document would need to comply with PDF/UA–1. Or, if an agency posts a video created by an advocacy organization on the agency's Web site (or, alternatively, on a social media site hosted by a third party), the agency would also be required to ensure that that electronic information complied with accessibility requirements in proposed E205.2 for public-facing content. On the other hand, if a federal agency is the plaintiff in a lawsuit and serves an electronic version of a legal brief on a corporate defendant, the agency's legal brief would not be considered public-facing content even if the corporation subsequently posts a copy of the agency's document on its own Web site.

Second, with respect to electronic content that is not public facing, the Board aims to limit the scope of covered content to eight discrete categories of agency official communications that are most likely to affect a significant number of federal employees or the general public. Proposed E205.3 would require an agency's non-public facing electronic content to meet the accessibility requirements in the proposed rule (*i.e.,* WCAG 2.0 Level A

[3] An analogous provision in proposed C203.1 would require telecommunications equipment manufacturers to make content integral to the use of ICT conform to WCAG 2.0 or PDF/UA–1.

and Level AA Success Criteria or PDF/UA–1) when such content (a) constitutes agency official business, and (b) falls within one or more of eight categories of communication. Coverage would extend to all forms of content constituting official communications by agencies, including Web pages, postings on social media, emails, and electronic documents. The Board believes that this approach strikes an appropriate balance in ensuring the accessibility of essential electronic content for persons with disabilities, while also tempering agency compliance obligations. This approach also compliments the requirements of sections 501 and 504 of the Rehabilitation Act, which require agencies to provide reasonable accommodations as necessary to address the disability-related needs of employees and the public respectively.

Specifically, proposed E205.3 sets forth the following eight categories of non-public facing agency official communications that must satisfy the accessibility requirements in the proposed 508 Standards: (1) Emergency notifications (*e.g.,* an evacuation announcement in response to fires or other emergencies); (2) initial or final decisions adjudicating administrative claims or proceedings; (3) internal or external program or policy announcements (*i.e.,* information promulgated by an agency relating to programs it offers or policy areas it deals with); (4) notices of benefits, program eligibility, employment opportunities or personnel actions; (5) formal acknowledgements or receipts (*i.e.,* official replies by an agency that recognize the receipt of a communication); (6) questionnaires or surveys; (7) templates or forms; and (8) educational or training materials.

By limiting the scope of covered electronic content to these proposed eight categories of official communications, the Board intends to encourage agencies to do more to ensure that individuals with disabilities have comparable access to, and use of, electronic information and data. The Board does not intend this proposed approach to disturb or override the independent legal obligations of agencies—whether arising under sections 501 or 504 of the Rehabilitation Act or other statutes—to provide accessible communications as a reasonable accommodation or other required accommodations. For example, draft electronic documents exchanged by federal employees as part of an agency working group would not be covered by proposed E205.3, but might still be required to be accessible by Section 501 when needed by a federal employee with a disability to perform his or her job.

Question 4. Are the eight proposed categories of non-public facing content sufficiently clear? Do they ensure a sufficient level of accessibility without imposing an unnecessary burden on agencies? If not, the Board encourages commenters to suggest revisions to these categories that would improve clarity or strike a more appropriate balance.

Notably absent from the proposed eight categories of non-public facing content is a type of content—namely, content ''broadly disseminated throughout an agency''—that was included in the 2011 ANPRM. Several federal agencies and other commenters found this language to be vague and overbroad, and called for its revision or withdrawal. The Board acknowledges that the ''broadly disseminated'' category could, in practice, prove challenging to apply and lead to inconsistent implementation across agencies that the proposed 508 Standards are designed to address. Accordingly, the Board has not included ''broadly disseminated'' content as a category in the proposed rule. The Board nonetheless welcomes comment on this issue, and may include a ''widely disseminated''-style category in the final rule should there prove to be a workable definition or metric to assess compliance.

Question 5. Should a category for ''widely disseminated'' electronic content be included among the categories of non-public facing official communications by agencies that must meet the accessibility requirements in the 508 Standards? Why or why not? If such a category were to be included in the final rule, what metrics might be used to determine whether a communication is broadly disseminated throughout an agency?

Lastly, with respect to exceptions, the Board proposes in this NPRM an exception in E205.3 for non-public facing records maintained by the National Archives and Records Administration (NARA) for archival purposes under federal recordkeeping requirements. As proposed, such content—even if otherwise meeting the conditions in proposed E205.3 for electronic content that must be made accessible (*i.e.,* non-public facing agency official communications that fall within one or more of the eight enumerated categories)—would not be required to comply with the proposed 508 Standards so long as it remained non-public facing. The Board anticipates that the only content covered by this exception would be non-public facing archival materials administered or maintained by NARA in compliance with federal recordkeeping requirements, such as the Federal Records Act (codified at 44 U.S.C. Chapters 21, 29 and 33). It bears noting that NARA is not generally responsible for remediating inaccessible materials submitted to NARA by other agencies unless such materials are made publicly available by, for example, being posted on NARA's Web site.

Though the 2011 ANPRM included an express exception for draft materials, no such exception is included in either proposed E205.2 (Public Facing) or E205.3 (Agency Official Communications) for two main reasons. First, public-facing content—such as that covered by proposed E205.2—should be equally accessible to all members of the public regardless of whether it is in draft or final form. For example, a draft policy published for comment on an agency Web site should be accessible so that all affected individuals may provide feedback. Secondly, drafts, by their very nature, would typically fall outside the scope of the eight categories of content constituting agency official communications subject to proposed E205.3. Only final electronic documents that are ready for distribution would qualify as the type of content identified in proposed categories 1 through 8 of this provision. For example, a draft memorandum by an agency component announcing a new telework policy would not constitute a ''policy announcement'' (Category 3) subject to proposed E205.3 until it is finalized and ready to be transmitted to its intended audience of component employees.

B. WCAG 2.0 Incorporation by Reference

As noted above, the Board proposes in this NPRM to incorporate by reference WCAG 2.0. In the following sections, the Board discusses the rationale for, and certain issues related to, incorporation of this consensus standard.

1. Rationale for Incorporation by Reference

We have four principal reasons for incorporation by reference of WCAG 2.0. They are as follows:

First, our approach is consistent with that taken by other international standards organizations dealing with this issue. Standards developed in Australia, New Zealand, and Canada already directly reference WCAG 2.0. Moreover, WCAG 2.0 serves as the basis for Web accessibility standards in Germany (under ''BITV 2''), France (under ''RGAA 2.2.1'') and Japan (under ''JIS X 83141'') and has so far generated

eight formal authorized translations. In addition, the European Commission references WCAG 2.0 in EN 301 549.

Second, incorporation by reference of WCAG 2.0 is consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), as well as Office of Management and Budget (OMB) Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (1998), which direct agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. See *http://www.whitehouse.gov/omb/circulars_a119*.[4]

Third, our approach is consistent with that being taken by another federal agency addressing a similar topic, namely the Department of Transportation's recent final rule addressing, among other things, the accessibility of air carrier and ticket agent Web sites. See Nondiscrimination on the Basis of Disability in Air Travel, 78 FR 67882 (Nov. 12, 2013).

Fourth, incorporation of WCAG 2.0 directly serves the best interests of Americans with disabilities because it will help accelerate the spread of Web accessibility. The accessibility of the Web is essential to enable the participation of individuals with disabilities in today's information society.

2. Justification for Applying WCAG 2.0 to Non-Web ICT

The Access Board is proposing to require not only Web content to conform to the Level A and Level AA Success Criteria and Conformance Requirements in WCAG 2.0—an approach with which commenters to the 2010 and 2011 ANPRMs unanimously agreed—but also software and non-Web documents. Several commenters to the 2011 ANRPM were critical of this approach, and questioned the propriety of applying WCAG 2.0 to non-Web ICT. For the reasons noted below, the Board believes that applying WCAG 2.0 outside the web browser environment not only ensures greater accessibility for persons with disabilities, but also minimizes the incremental burden on regulated entities by simplifying compliance through incorporation of a technologically-neutral consensus standard.

Because WCAG 2.0 was written to be technology neutral, the language and phrasing of the Success Criteria can be applied to any technology found on the Web. Since most file types are found on the Web and much software is now Web-enabled, it is reasonable to utilize WCAG 2.0 to evaluate off-line documents and software interfaces with straightforward substitution of terms to address this new application. This approach has the potential to significantly simplify accessibility conformance and assessment.

We find support for our approach from two other sources, namely the European Commission's Standardization Mandate M 376 (M376) of March 2012 and the World Wide Web Consortium's WCAG2ICT Task Force (''Task Force''). The W3C formed the Task Force in June 2012 in part to address reservations, expressed by some of the commenters to our 2011 ANPRM, about applying the criteria for accessible Web content to off-line documents and software. W3C invited participation from subject-matter experts from around the world, including representatives of federal agencies and others who had concerns with our approach. The Task Force's final consensus report provides guidance concerning application of WCAG 2.0 to non-Web ICT, specifically non-Web documents and software. See W3C Web Accessibility Initiative, WSC Working Group Note—Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (Sept. 5, 2013), available at *http://www.w3.org/TR/wcag2ict/*.

The Task Force analyzed each of the WCAG 2.0 Success Criteria to determine their suitability for application to non-Web content. There are thirty-eight Level A and Level AA Success Criteria in WCAG 2.0. The Task Force found that the majority of Success Criteria from WCAG 2.0 can be applied to non-Web documents and software with no, or only minimal, changes. Specifically, twenty-six Success Criteria do not include any Web-related terms and, therefore, can be applied directly as written and as described in the ''Intent'' sections of the most current version of ''Understanding WCAG 2.0.'' Thirteen of these twenty-six can be applied without any additional notes. The other thirteen also can be applied as written, but the Task Force provided additional informative notes in its report for the sake of clarity.

Of the remaining twelve Success Criteria, the Task Force found that eight of them can be applied as written when certain Web-specific terms or phrases like ''Web page'' are replaced with non-Web terms or phrases like ''non-Web documents and software.'' Additional notes are provided in the Task Force report to assist in the application of these Success Criteria to non-Web ICT. One example is Success Criterion 2.4.5 Multiple Ways. The Task Force noted that, when applied to the non-Web environment, this criterion requires that there be more than one way to locate a document (or software program) within a set of documents or programs. For mobile devices, this criterion could be satisfied by an operating system that makes files locatable by directory and search functions—features that are nearly ubiquitous among mobile operating systems in use today.

Another example is Success Criterion 3.2.3 Consistent Navigation. For this criterion, the Task Force noted that application to the non-Web environment would require consistency among navigational elements when such elements were repeated within sets of documents or software programs. To be conformant, navigational elements would be required to occur in the same relative order each time they are presented. It is unlikely that authors would provide navigation elements for a set of related documents and then present them differently from document to document, thereby defeating their purpose.

The Task Force's report also notes that applying the success criteria in WCAG 2.0 to non-Web ICT with closed functionality proves problematic when a success criterion assumes the presence of assistive technologies, since closed functionality—by definition—does not allow attachment or use of assistive technology. This might occur, for example, when an eBook allows assistive technologies to access all of the user interface controls of the eBook program (open functionality), but does not allow such technologies to access the actual content of books (closed functionality). The Task Force identified 14 success criteria for which compliance might prove challenging for developers of ICT products with closed functionality. We propose to resolve this issue by exempting ICT with closed functionality from certain WCAG 2.0 Success Criteria, in conjunction with the addition of requirements specific to such products in Chapter 402, Closed Functionality.

[4] OMB is in the process of updating Circular A–119. See Request for Comments on a Proposed Revision of OMB Circular No. A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, 79 FR 8207 (proposed Feb. 11, 2014). In its request for comment, OMB stated: ''The revised Circular would maintain a strong preference for using voluntary consensus standards in Federal regulation and procurement. It would also acknowledge, however, that there may be some standards not developed using a consensus-driven process that are in use in the market—particularly in the information technology space—and that may be relevant (and necessary) in meeting agency missions and priorities.

By incorporating WCAG 2.0 by reference, the proposed standards would provide a single set of requirements for Web sites, documents, and software. WCAG 2.0 addresses new technologies and is responsive to the fact that the characteristics of products (*e.g.,* native browser behavior and plug-ins and applets) have converged over time. Today, there are fewer distinctions among product categories, and some are outdated. For example, modern smartphones include: Software applications and operating systems, Web-based intranet and Internet information and applications, and video and multimedia products. Additionally, smartphones are portable computers, telecommunications products, and self-contained closed products. New requirements in WCAG 2.0 also address gaps in the existing 508 Standards. Examples include: A requirement for a logical reading order, the ability to resize text, and the ability to turn off background audio that might interfere with comprehension and screen reading software.

3. Comparison of WCAG 2.0 to Existing 508 Standards

While the WCAG 2.0 Success Criteria build on the heritage of the existing 508 Standards, they are generally more explicit than the standards. Careful attention was given during their development to ensure that the Success Criteria are written as objectively testable requirements. In addition, unlike the existing 508 Standards, WCAG 2.0 is written in a technologically neutral fashion, which makes it directly applicable to a wide range of content types and formats.

For example, operability of ICT through keyboards (or alternate keyboard devices) is often critical to accessibility. Persons who are blind or who have limited vision often use screen readers to navigate Web pages using only the keyboard. Keyboard operability is also essential for many individuals with motor impairments who use alternate keyboards, or input devices that act as keyboard emulators when accessing ICT because they find mouse pointing to be cumbersome or impossible. Keyboard emulators include voice recognition software, sip-and-puff software, and on-screen keyboards. The existing 508 Standards envision keyboard operability from both software and Web-based information or applications, but such requirements were not necessarily explicit. Section 1194.21(a) expressly mandates that, when software is designed to run on a keyboard, all product functions must generally be executable through a keyboard. With respect to Web-based information and applications, the 508 Standards are not so explicit. At the time these standards were promulgated, Web pages created with HyperText Markup Language (HTML®) were always keyboard operable. Therefore, an express requirement for keyboard operability by Web pages was unnecessary. The existing 508 Standards expressly require keyboard operability for Web pages that require applets and plug-ins to interpret page content since keyboard operation in these contexts was not ubiquitous. See 36 CFR 1194.22(m). Collectively, the existing 508 Standards thus address keyboard operability both within and outside the Web environment, but do so in a variety of ways.

Over the years, however, Web technologies have become more complex. Use of keyboards is often secondary to mouse or touch-only interfaces. Success Criterion 2.1.1 requires all functionality to be operable through a keyboard interface. Section 1194.21(a) of the existing 508 Standards requires that ''[w]hen software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.'' This current wording is phrased as an input requirement based on output, and it leaves ''discerned textually'' as an undefined term. These are both flaws that may create accessibility gaps in application. For example, an operating system feature like ''mouse keys'' (where the keyboard cursor keys are used to steer the mouse pointer) satisfies this provision on its face, even though that feature is of no use to someone who cannot see the screen and relies on screen reading software. Success Criterion 2.1.1, on the other hand, while longer, only references input and uses no special jargon. This success criterion reads: ''All functionality of the content [must be] operable through a keyboard interface without requiring specific timings for individual keystrokes, except where the underlying function requires input that depends on the path of the user's movement and not just the endpoints.''

The Access Board has created a comprehensive table comparing WCAG 2.0 Level A and AA Success Criteria to the corresponding requirements in the existing 508 Standards. The table can be found on our Web site at *www.access-board.gov/wcag2-508.* In this table, the Board has identified WCAG 2.0 success criteria as either ''substantially equivalent'' or ''new'' relative to the existing 508 Standards. Identification of a WCAG 2.0 success criterion as ''new'' indicates that it has no corresponding provision in the existing 508 Standards; rather, it addresses a deficiency with the existing 508 Standards as identified by the developers of WCAG. In most cases, agencies with Section 508 compliance testing processes have adapted their procedures to address these accessibility concerns.

In sum, there are 38 WCAG 2.0 Level A and AA Success Criteria. After careful comparison of these success criteria to the existing 508 Standards, the Access Board deems 22 success criteria to be substantially equivalent in substance to our existing standards. The Board estimates that agencies with content that meets this group of existing 508 Standards will incur no or minimal costs by virtue of incorporation of WCAG 2.0 into our proposed rule. For the remaining 16 success criteria the Board deems to be new, it is anticipated that agencies would, to a greater or lesser extent (depending on the content and criteria at issue), incur some costs when implementing WCAG 2.0.

Question 6. The Board seeks comment on the extent that the proposed incorporation of WCAG 2.0 Level A and Level AA Success Criteria would result in new costs or benefits. We have characterized the majority of success criteria as ''substantially equivalent'' to requirements under the existing 508 Standards and 255 Guidelines and request comment as to the accuracy of this characterization.

4. Proposed Updates to Other Web-Specific Provisions in Existing 508 Standards

Along with the incorporation by reference of WCAG 2.0, the Board also proposes to update six provisions in the existing 508 Standards related to Web content to account for technological changes or their respective obsolescence. These six provisions for which the Board proposes deletion or replacement are as follows:

We propose to replace § 1194.21(g) of the existing 508 Standards, which prohibits applications from overriding user-selected contrast and color selections and other individual display attributes, with a new section 503.2 User Preferences. As with § 1194.21(g), this proposed provision requires applications to permit user preferences from platform settings for display settings. However, proposed 503.2 also provides an exception for applications—such as Web software—that are designed to be isolated from their operating systems. By design, Web applications (such as, for example, software used to create interactive

multimedia content) are isolated from the operating system (*i.e.,* ''sand boxed'') for security reasons. An expectation that certain platform settings (*e.g.,* font preferences) apply globally to all documents found on the Web is not practical.

We propose to delete § 1194.22(d) of the existing 508 Standards, which requires that Web documents be organized so they are readable without requiring an associated style sheet. Cascading style sheets (CSS) are now well supported by assistive technology and, consequently, this provision is unnecessary. For example, contemporary techniques using CSS to selectively hide irrelevant content from all users also selectively hides irrelevant content from users of assistive technology.

We propose to delete § 1194.22(k) of the existing 508 Standards, which permits text-only Web pages under certain circumstances, because incorporation of WCAG 2.0 success criteria renders this provision obsolete. While WCAG 2.0 does permit ''conforming alternate versions,'' text-only pages could not provide equivalent information or functionality for all but the most trivial Web content. The WCAG requirement for a conforming alternate version significantly exceeds the expectations for text only pages.

Question 7. A Web page can conform to WCAG 2.0 either by satisfying all success criteria under one of the levels of conformance or by providing a conforming alternate version. WCAG 2.0 always permits the use of conforming alternate versions. Are there any concerns that unrestricted use of conforming alternate versions of Web pages may lead to the unnecessary development of separate Web sites or unequal services for individuals with disabilities? Should the Board restrict the use of conforming alternate versions beyond the explicit requirements of WCAG 2.0? The Board requests that responses be provided in the context of the WCAG definition for conforming alternate versions (>*http://w3.org/TR/WCAG20/<#conforming-alternate-versiondef*). Commenters should review the guidance material as to why conforming alternate versions are permitted (>*http://w3.org/TR/UNDERSTANDING-WCAG20/conformance.html<#uc-whypermit-head*).

We propose to delete § 1194.22(l) of the existing 508 Standards, which applies when pages utilize scripting languages to display content or to create interface elements and requires the scripted information to be identified with functional text that can be read by assistive technology. Because WCAG 2.0 is technology neutral, inclusion of a separate provision applicable to scripting languages would be redundant; the same requirements that apply to HTML and other Web technologies also apply to scripting languages.

We propose to delete § 1194.22(m) of the existing 508 Standards, which applies when a Web page needs an applet, plug-in, or other application present on the client system to interpret page content and requires that such page provide a link to a plug-in or applet that complies with other referenced standards (in § 1194.21) relating to software applications. Because WCAG 2.0 applies directly to applets, plug-ins, and Web applications, § 1194.22(m) is redundant.

Lastly, the Board proposes to delete § 1194.24(e) of the existing 508 Standards, which requires that the non-permanent display or presentation of alternate text presentation or audio descriptions be user-selectable. Section 1194.24(e) essentially duplicates requirements for video and multimedia products already set forth in other provision in the same section (*i.e.,* subsections (c) and (d)). The provision for user selectable closed captions and audio description restates existing practice, so it is unnecessary.

C. Functional Performance Criteria

The functional performance criteria are outcome-based provisions that address barriers to using ICT by individuals with certain disabilities, such as those related to vision, hearing, color blindness, speech, and manual dexterity. Both the existing 508 Standards and 255 Guidelines provide functional performance criteria. However, the existing 508 Standards do not expressly define the relationship between its functional performance criteria and technical requirements. To address this gap, the Board proposes to clarify when application of the functional performance criteria in the 508 Standards is required. (We are not proposing to change the application of the functional performance criteria in the 255 Guidelines.) The Board also proposes, in this NPRM, to update several functional performance criteria in Chapter 3 to refine some criteria and to make editorial changes necessitated by revisions elsewhere in the proposed rule.

1. Application of Functional Performance Criteria: 508 Standards

Section 1194.31 of the existing 508 Standards, which sets forth six specific functional performance criteria, does not specify when federal agencies and other covered entities should or must apply these criteria. As described in the preamble to the final rule for the existing standards:

> This section [1194.31] provides functional performance criteria for overall product evaluation and for technologies or components for which there is no specific requirement under other sections. These criteria are also intended to ensure that the individual accessible components work together to create an accessible product. (65 FR 80519 (Dec. 21, 2000))

Over the ensuing years, some have raised questions about application of the functional performance criteria in the existing 508 Standards. The General Services Administration's IT Accessibility and Workforce (GSA/ITAW)—which is the federal government's principal coordinator for Section 508 implementation—provides the following information in a ''Q&A'' format concerning application of the functional performance criteria:

> How should an agency proceed in identifying ''applicable'' technical provisions in Subparts B [technical provisions], C [functional performance criteria], and D [information, documentation, and support] of the Access Board's standards to ensure acquired products provide comparable access?
>
> Agencies should first look to the provisions in Subpart B [technical provisions] to determine if there are specific technical provisions that apply to the [ICT] need they are seeking to satisfy.
>
> If there are applicable provisions in Subpart B [technical provisions] that fully address the product or service being procured, then the agency need not look to Subpart C [functional performance criteria]. Acquired products that meet the specific technical provisions set forth in Subpart B [technical provisions] will also meet the broader functional performance criteria in Subpart C [functional performance criteria].
>
> If an agency's procurement needs are not fully addressed by Subpart B [technical provisions], then the agency must look to Subpart C [functional performance criteria] for applicable functional performance requirements.[5]

The GSA/ITAW's Q&A document also suggests that the functional performance criteria in the existing 508 Standards be used to evaluate ICT products for equivalent facilitation. Id.

As recounted previously, the Board's approach to specifying requirements for application of the functional performance criteria has evolved over the course of this rulemaking. The Advisory Committee recommended that the Board clarify the relationship

[5] General Services Admin., Section 508 Frequently Asked Questions 11 (Jan. 2014) (response to Question B.2.ii), available at *http://section508.gov/Section508_FAQs.*.

between the functional performance criteria and the technical provisions in the 508 Standards, but did not reach consensus on how to address this issue. In the 2010 ANPRM, the Board proposed to use the approach suggested in the GSA/ITAW's Q&A document—namely, that agencies first look to the technical provisions in the 508 Standards to determine whether there were specific provisions that applied to the ICT being procured. If there were technical provisions that fully addressed the ICT being procured, then the agency would not need to apply the functional performance criteria. Application of the functional performance criteria would thus only be required under the following two circumstances: When the agency's procurement needs were not fully addressed by technical provisions in the 508 Standards, or when evaluating ICT for equivalent facilitation. This proposal was intended to reflect current agency practice.

Concerns expressed by commenters led the Board to propose redefining the relationship between the functional performance criteria and the technical provisions in the 508 Standards. In the 2011 ANPRM, the Board proposed that ICT would be required to conform to the functional performance criteria, even when the technical provisions were met. This proposal, too, received mixed reviews from commenters. While some commenters supported this approach, industry groups objected to it as unworkable. They viewed the functional performance criteria as overly subjective and not subject to objective testing. As one commenter from the IT industry noted: ''[A] supplier cannot guarantee that the functional performance criteria have been met unless the supplier controls all the components of the end-to-end solution.''

In this NPRM, the Board heeds the concerns of industry groups and effectively returns to our original proposal whereby the functional performance criteria in the 508 Standards apply only in two specific circumstances—when there are ''gaps'' in the technical requirements and when evaluating equivalent facilitation. Specifically, agencies would be required to apply the functional criteria as follows. First, where the proposed requirements in Chapter 4 for hardware and Chapter 5 for software do not address one or more of the features of ICT, sections E204.1 and C202.1 would require the features that are not addressed in those chapters to conform to the functional performance criteria in Chapter 3. This is consistent with the GSA/ITAW's recommended approach under the existing 508 Standards. It is also consistent with §§ 1193.21 and 1193.41 of the existing 255 Guidelines. Second, section E101.2 proposes to require the functional performance criteria to be used when evaluating ICT for equivalent facilitation. This is consistent with the GSA/ITAW's recommended approach under the existing 508 Standards.

With respect to the 255 Guidelines, neither the Advisory Committee (in its TEITAC Report) nor the Board (in the 2010 and 2011 ANPRMs) previously proposed any changes to the manner in which telecommunications equipment manufacturers must apply the functional performance criteria. Likewise, the Board proposes no changes in this NPRM. See Section VI.D (Section-by-Section Analysis—Functional Performance Criteria and Technical Requirements—C201.3 and C202).

2. Updates to Functional Performance Criteria: 508 Standards and 255 Guidelines

As noted above, the Board is also proposing in this NPRM to update several functional performance criteria in Chapter 3 (located in Appendix C—Technical Requirements)—which applies to both the 508 Standards and the 255 Guidelines—by refining some criteria and making editorial changes necessitated by revisions elsewhere in the proposed rule. We highlight below several of the principle revisions to the functional performance criteria proposed in this NPRM. In addition, Table 3, which follows at the end of this section, provides a detailed comparison of the functional performance criteria in the existing 508 Standards (§ 1194.31), 255 Guidelines (1193.41), and the proposed rule (section 302).

First, while the functional performance criteria in proposed 302 no longer reference assistive technology, this amounts to an editorial change only. The existing 508 Standards and 255 Guidelines allow certain functional performance criteria to be satisfied either directly or indirectly through support for assistive technology. (See, *e.g.,* existing 508 Standards §§ 1194.31(a)–(e)). The functional performance criteria in the proposed rule do not provide for compliance through support for assistive technology because other proposed revisions to the 508 Standards (E203.1) and 255 Guidelines (C201.3) would impose a general requirement that agencies and telecommunications equipment manufacturers respectively ensure that all functionality of ICT is accessible to and usable by individuals with disabilities, either directly or by supporting the use of assistive technology.

Second, as discussed in Section IV.E.6, the Board proposes to revise the criteria for users with limited vision in section 302.2. The existing 508 Standards require at least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 to be provided in audio and enlarged print output working together or independently. The existing 255 Guidelines are similar, except that they define users with limited vision as users possessing visual acuity that ranges between 20/70 and 20/200. The proposed rule would require at least one mode of operation that magnifies, one mode that reduces the field of vision required, and one mode that allows user control of contrast where a visual mode of operation is provided. The proposed rule does not refer to visual acuity since comments in response to proposals in the 2010 and 2011 ANPRMs recommended that the criteria should address features that would improve accessibility for users with limited vision instead of using visual acuity as a measure of limited vision.

Third, there are two functional performance provisions in the existing 255 Guidelines that are not found in the functional performance criteria for existing 508 Standards: operations without time-dependent controls (255 Guidelines § 1193.41(g)) and operations with limited cognitive skills (255 Guidelines § 1193.41(i)). There is a technical provision in the existing 508 Standards that corresponds to 255 Guidelines § 1193.41(g) requiring the operation of ICT without time-dependent controls (508 Standards § 1194.22(p)). This is addressed in the proposed rule in WCAG 2.0 Success Criteria 2.2.1 Timing Adjustable and 2.2.2 Pause, Stop and Hide. We propose to incorporate by reference WCAG 2.0 Success Criteria in proposed E207.2 and C205.2.

Fourth, the Board proposes not to include a functional performance criteria relating to limited cognitive skills. The existing 255 Guidelines provide a criterion for at least one mode of operation that minimizes cognitive skills required of the user (§ 1193.41(i)), while the existing 508 Standards have no parallel provision. Such a criterion has not been included in the proposed rule on the advice of the Advisory Committee, which recommended deletion of this criteria pending future research. (See Section VI.C (Section-by-Section Analysis—Application and Scoping).

Table 3 below provides a provision-by-provision summary of how the proposed rule would revise the existing functional performance criteria by comparing the criteria in proposed 302 (in the left-hand column of the table) to its counterparts in existing 508 Standards § 1194.31 (in the middle column of the table) and existing 255 Guidelines § 1193.41 (in the right-hand column of the table).

TABLE 3—COMPARISON OF THE FUNCTIONAL PERFORMANCE CRITERIA IN THE NPRM AND EXISTING 508 STANDARDS AND 255 GUIDELINES

Proposed Sections E207.2 and C205.2 (incorporating WCAG 2.0 by reference) and 302	Existing 508 Standards	Existing 255 Guidelines
302.1 Without Vision. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that does not require user vision.	§ 1194.31 (a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who or blind or visually impaired shall be provided.	§ 1193.41(a) Operable without vision. Provide at least one mode that does not require user vision.
302.2 With Limited Vision. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that magnifies, one mode that that reduces the field of vision required, and one mode that allows user control of contrast.	§ 1194.31 (b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who or visually impaired shall be provided.	§ 1193.41 (b) Operable with low vision and limited or no hearing. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.
302.3 Without Perception of Color. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that does not require user perception of color..	No criteria for users without perception of color.	§ 1193.41 (c) Operable with little or no color perception. Provide at least one mode that does not require user color perception.
302.4 Without Hearing. Where an auditory mode of operation is provided, ICT shall provide at least one mode of operation that does not require user hearing.	§ 1194.31 (c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.	§ 1193.41 (d) Operable without hearing. Provide at least one mode that does not require user auditory perception.
302.5 With Limited Hearing. Where an auditory mode of operation is provided, ICT shall provide at least one mode of operation that improves clarity, one mode that reduces background noise, and one mode that allows user control of volume.	§ 1194.31 (d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.	Operable with low vision and limited or no hearing. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.
302.6 Without Speech. Where a spoken mode of operation is provided, ICT shall provide at least one mode of operation that does not require user speech.	§ 1194.31 (e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.	§ 1193.41(h) Operable without speech. Provide at least one mode that does not require user speech.
302.7 With Limited Manipulation. Where a manual mode of operation is provided, ICT shall provide at least one mode of operation that does not require fine motor control or operation of more than one control at the same time.	§ 1194.31 (f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.	§ 1193.41 (e) Operable with limited manual dexterity. Provide at least one mode that does not require user fine motor control or simultaneous actions.
302.8 With Limited Reach or Strength. Where a manual mode of operation is provided, ICT shall provide at least one mode of operation that is operable with limited reach and limited strength.	.....	§ 1193.41 (f) Operable with limited reach and strength. Provide at least one mode that is operable with user limited reach and strength.
WCAG 2.2.1 Timing Adjustable: For each time limit that is set by the content, at least one of the following is true: (Level A).		
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• Turn off: The user is allowed to turn off the time limit before encountering it; or		
.		
• Adjust: The user is allowed to adjust the time limit before encountering it over a wide range that is at least ten times the length of the default setting; or	§ 1194.22 (p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.	§ 1193.41 (g) Operable without time-dependent controls. Provide at least one mode that does not require a response time. Alternatively, a response time may be required if it can be by-passed or adjusted by the user over a wide range.

TABLE 3—COMPARISON OF THE FUNCTIONAL PERFORMANCE CRITERIA IN THE NPRM AND EXISTING 508 STANDARDS AND 255 GUIDELINES—Continued

Proposed Sections E207.2 and C205.2 (incorporating WCAG 2.0 by reference) and 302	Existing 508 Standards	Existing 255 Guidelines
• Extend: The user is warned before time expires and given at least 20 seconds to extend the time limit with a simple action (for example, "press the space bar"), and the user is allowed to extend the time limit at least ten times; or • Real-time Exception: The time limit is a required part of a real-time event (for example, an auction), and no alternative to the time limit is possible; or • Essential Exception: The time limit is essential and extending it would invalidate the activity; or • 20 Hour Exception: The time limit is longer than 20 hours.		
WCAG 2.2.2 Pause, Stop, Hide: For moving, blinking, scrolling, or auto-updating information, all of the following are true: (Level A).		
.		
• Moving, blinking, scrolling: For any moving, blinking or scrolling information that (1) starts automatically, (2) lasts more than five seconds, and (3) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it unless the movement, blinking, or scrolling is part of an activity where it is essential; and • Auto-updating: For any auto-updating information that (1) starts automatically and (2) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it or to control the frequency of the update unless the auto-updating is part of an activity where it is essential.	§ 1194.22 (h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.	§ 1193.43 (c) Access to moving text. Provide moving text in at least one static presentation mode at the option of the user.
No corresponding provisions.	No corresponding provisions	§ 1193.41 (i) Operable with limited cognitive skills. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

D. Real-Time Text

In this NPRM, the Board proposes to require that ICT support RTT functionality whenever such ICT also provides real-time, two-way voice communication. This proposal represents a significant shift in approach for both the 508 Standards and the 255 Guidelines to better align with current technology. The existing 508 Standards and 255 Guidelines were published over a decade ago. At the time, TTYs were the most commonly available text-based system for communicating within a voice communication system. Since then, technology has greatly advanced. There are now, in addition to TTYs, multiple text-based means of communication available in the marketplace. This proposed revision will update the standards to reflect changes in telecommunications technology.

Section 410.6 of the proposed rule would require ICT with real-time voice communication features to also support communication through real-time text. Such ICT would be required to support RTT either within its own closed system or outside a network. For example, a closed communication system, such as within a federal agency, would be required to interoperate with either the publicly switched telephone network (PSTN) or Voice over Internet Protocol (VoIP) products or systems to support the transmission of real-time text. When ICT interoperates with VoIP products or systems using Session Initiation Protocol (SIP), the Board proposes to require the transmission of real-time text to conform to the Internet Engineering Task Force's RFC 4103 standard for RTP Payload for Text Conversation. Where ICT interoperates with the PSTN, real-time text would be required to conform to the Telecommunications Industry Association's TIA 825–A standard for TTY signals at the PSTN interface (also known as Baudot). RFC 4103 and TIA 825–A are final standards proposed for incorporation by reference in 508 Chapter 1 and 255 Chapter 1 (see sections E102 and C102, respectively).

Commenters to the 2011 ANPRM noted that other standards aside from RFC 4103—such as XMPP and XEP–0301—were currently in use and could be referenced as specifications for ICT interoperability with VoIP using SIP. XEP–0301 is one of several pending standards developed for use in the Extensible Messaging and Presence Protocol (XMPP). XMPP is a set of open technologies for instant messaging, multi-party chat, voice and video calls, collaboration, and generalized routing of XML data. XMPP was originally developed in the Jabber open-source community to provide an open, secure,

spam-free, decentralized alternative to closed instant messaging services. XMPP differs from SIP, which is an application layer protocol used to establish, modify, and terminate multimedia sessions such as VoIP calls. Currently, both the XMPP and the SIP protocol are used in the marketplace. At this time, however, only the standard supporting the transmission of RTT over SIP (RFC 4103) is final. The standard supporting RTT over XMPP (XEP–0301) is not yet finalized.

XEP–0301, In-Band Real-time Text, is a specification for real-time text transmitted in-band over an XMPP network. It is used for text messaging. As of the date of this publication, according to the XMPP Standards Foundation, the XEP–0301 standard is under review and not yet final. XEP–0301 has many advantages: It allows transmission of real-time text with minimal delays; it supports message editing in real-time; and, it has reliable real-time text delivery. It can be used for multiple users and allows alternate optional presentations of real-time text, including split screen or other layouts. The standard also allows use within gateways to interoperate with other real-time text protocols, including RFC 4103. It allows immediate conversational text through mobile phone text messaging and mainstream instant messaging. For more information on the benefits of XEP–0301, see *http://www.realjabber.org/xep/xep-0301.html*.

Yet despite its potential benefits, the Board cannot incorporate XEP–0301 until it becomes a final standard. However, should the XEP–0301 standard be finalized before publication of the final rule, the Board plans to incorporate it by reference as an alternative technology to support transmission of RTT when interoperating with VoIP products or systems using XMPP. RFC 4103 would, in any event, be retained for ICT interoperating with VoIP products or systems using SIP technology.

Question 8. If the XEP–0301 standard is finalized, the Board is considering incorporating it by reference as an alternative standard for XMPP networks. We seek comment on the benefits, costs, and possible drawbacks associated with referencing this standard in addition to the RFC 4103 standard.

The European standard, EN 301 549 would allow the use of multiple standards for RTT. As discussed in 4.6, Harmonization with European Activities above, EN 301 549 lists several standards for RTT, as well as an unspecified ''common specification'' for RTT. The common specification must indicate a method for indicating loss of corruption of characters. The Board seeks comment on whether other standards should be incorporated by reference. The other standards are:

- ITU–T v.18, Recommendation ITU–T V.18 (2000) ''Operational and interworking requirements for DCEs operating in the text telephone mode'' (see EN 301 549 6.3.3(a)). This Recommendation specifies features to be incorporated in data carrier equipment intended for use in, or communicating with, text telephones primarily used by people who are deaf or hard of hearing.
- IP Multimedia Sub-System (IMS) protocols specified in TS 126 114, TS 122 173, and TS 134 229 (see EN 301 549 6.3.3(c)). ETSI TS 126 114, Universal Mobile Telecommunications System (which was referenced in the EAAC Report and Recommendation noted previously in Section IV.F.2) supports a ''total communication'' approach by establishing a minimum set of codecs and transport protocols that must be supported by all elements in the IMS system for video, real-time text, audio, and high definition (HD) audio. As noted previously, the Board decided not to require standards for video, audio, or HD audio in this proposed rule beyond the technical requirements set forth in proposed 410 (ICT with Two-Way Voice Communication). Both the ETSI TS 122 173 and ETSI TS 134 229 standards are still under development, and, therefore, cannot be referenced at this time.

Question 9. Are there sufficient net benefits to be derived from requiring ITU–T v.18 that the Board should reference it in addition to TIA 825–A (2003)? We are requesting that telecommunication equipment manufacturers, in particular, provide any data regarding potential costs related to complying with this standard. Are there suggestions for other standards which would result in the same level of accessibility?

Question 10. Are there net benefits to be derived from requiring more standards addressing multimedia than what we propose? The Board is requesting that telecommunication equipment manufacturers, in particular, provide any data regarding potential costs related to complying with the standards in EN 301 549 6.3.3(c). Are there suggestions for other standards which would result in the same level of accessibility?

Question 11. Is ETSI TS 122 173 or ETSI TS 134 229 sufficiently significant that the Board should consider referencing either standard when it becomes final?

E. Assistive Technology

Based on the work of the Advisory Committee and feedback from commenters, the Board proposes in this NPRM to directly cover some, but not all, aspects of assistive technology (AT). All stakeholders agreed that improving ICT–AT interoperability was critically important, but offered differing perspectives on how to make this happen. There was general consensus on some proposals (*e.g.,* requirements for mainstream ICT), but not for others (*e.g.,* requirements for, and status of, AT). In this NPRM, the Board proposes to revise its existing 508 Standards and 255 Guidelines by: (a) Updating the existing requirements for mainstream ICT software products—namely, platforms, operating systems, and applications—to interoperate with assistive technology based on consensus standards; (b) adding a new requirement for AT with a user interface to interoperate with mainstream platforms and industry standard accessibility services; and (c) clarifying that assistive technology is generally exempted from compliance with otherwise applicable technical requirements for hardware (Chapter 4) and software (Chapter 5). Each of these areas are discussed briefly below.

With respect to the ICT side of the ICT–AT interoperability equation, the Board proposes a set of updated technical requirements for platforms and applications that will result in improved interoperation. This proposal received strong support from industry stakeholders who lauded it as an important improvement from the existing requirements because it was comprehensive, testable, and harmonized with international consensus standards for software accessibility. Proposed 502 contains three main subsections. Proposed 502.2 Documented Accessibility Features largely tracks § 1194.21(b) of the existing 508 Standards, and was strongly recommended by the Advisory Committee. Proposed 502.3 (Platform) Accessibility Services incorporates much of existing 508 Standards §§ 1194.21(b), (c), (d), and (f), but proposed 502.3.1 through 502.3.9 provide significantly greater detail. Lastly, in 502.4 Platform Accessibility Features, the Board proposes to require that platforms provide specific accessibility features common to most platforms. This provision is being proposed in response to concerns raised by consumers and the assistive technology industry that the Board was not being sufficiently proactive in spelling out the accessibility features

that are well-established best practices. This proposal is based on requirements in the ANSI/HFES 200.2 Human Factors Engineering of Software User Interfaces standard, and represents current industry practice.

Second, to address the role of the AT in ICT–AT interoperability, the Board proposes modest requirements for assistive technology. Proposed 503.3 Alternate User Interfaces would require assistive technology to use the basic set of platform accessibility information provided by operating systems and software (*i.e.,* platform accessibility information provided under proposed 502.2) to aid interoperability, and, thereby, decrease the need for customized approaches. In other words, software providing an alternative user interface would need to support the platform for which it is designed. Commenters outside the AT industry voiced strong support for this proposal; these views convinced the Board that this modest shift in approach from the existing requirements would better ensure ICT–AT interoperability. Because it is sometimes ambiguous whether a software product is serving as assistive technology, this proposed provision speaks in terms of ''alternate user interface[s] that function[] as assistive technology.'' Proposed 503.3 is the only manner in which the Board is proposing to directly impose requirements on assistive technology; in all other respects, provisions aiding interoperability are directed at platforms, operating systems, and other types of applications.

Third, to provide clarification sought by a number of commenters, the Board proposes to expressly exempt assistive technology from compliance with technical requirements generally applicable to hardware (Chapter 4) and software (Chapter 5). Commenters had expressed concern that, if assistive technology was treated as ICT for all purposes, some assistive technology would not be able to fulfill its intended function. For example, an individual with low muscle tone may find that a specialized, flat membrane keyboard best serves his or her needs; however, such a keyboard would not satisfy the requirements of Chapter 4 because, among other things, it does not have tactilely discernable separation between keys (proposed 407.3). Accordingly, proposed 401.1 provides an exception for hardware that is assistive technology, and a similar exception is proposed for assistive technology software (501.1—Exception 2).

VI. Section-by-Section Analysis

A. Introduction

As noted above, the Board is proposing to revise and update both the 508 Standards and 255 Guidelines. The existing standards and guidelines are set forth in two separate regulatory parts—36 CFR parts 1194 and 1193—and apply to different types of covered entities (*e.g.,* federal entities and telecommunications equipment manufacturers). Nonetheless, these two sets of provisions contain many similar provisions and are, in our view, inextricably linked from a regulatory perspective. Both the 508 Standards and 255 Guidelines contain technical requirements for the design of accessible ICT. Both contain functional performance criteria, which apply when there are gaps in one or more of their respective technical provisions. Both address hardware and software features of ICT. Finally, both require that support documentation and services, when offered, are provided in a manner that meets the communication needs of individuals with disabilities and conveys information on the accessibility features of ICT.

We are proposing to combine the 508 Standards and 255 Guidelines into a single comprehensive set of requirements with three parts that will appear as Appendices A, B, and C to 36 CFR part 1194. Appendix A covers the proposed application and scoping requirements for ICT subject to Section 508 (''508 Chapter 1'' and ''508 Chapter 2''). Appendix B addresses the proposed application and scoping requirements for ICT covered by Section 255 (''255 Chapter 1'' and ''255 Chapter 2''). Appendix C includes the proposed functional performance criteria (Chapter 3) and the proposed technical requirements (Chapters 4 through 6) that are referenced by the Section 508 and Section 255 scoping provisions in Appendices A and B.[6]

Application and scoping includes instructions on when and how the provisions in proposed chapters 3 through 6 would apply under Sections 508 and 255. With this proposed format, it is critical for covered entities to review scoping and application in either Appendix A (508 Chapters 1 and 2) or Appendix B (255 Chapters 1 and 2) before consulting the functional performance and technical criteria in Appendix C (Chapters 3, 4, 5 and 6). For example, under Section 508, federal agencies that wish to procure, use, maintain or develop ICT, must first understand what ICT is covered by the proposed technical requirements and functional performance criteria. This information exists only in Appendix A. Agencies would not consult Appendix B because it applies only to telecommunications equipment manufacturers subject to Section 255. Similarly, telecommunications equipment manufacturers would consult Appendix B to ascertain what ICT is subject to the proposed technical requirements and functional performance criteria under Section 255; they would not be required to comply with Appendix A. Nonetheless, it bears noting that, while a Section 255-covered manufacturer is not obligated to comply with the 508 Standards, such manufacturers may still elect at their discretion to consult the standards if they wish. For example, if a telecommunications equipment manufacturer wished to make certain products (or features of products) more marketable to federal agencies, this manufacturer might choose to consult the 508 Standards to be familiar with standards governing federal agencies' procurement obligations.

Naming conventions used in the Appendices for requirements also help indicate whether a particular provision applies under Section 508, Section 255, or both. In Appendix A, all proposed provisions are preceded by the letter ''E'' to indicate the provision would be applicable under Section 508 only. In Appendix B, all proposed provisions are preceded by the letter ''C'' to indicate the provision would be applicable under Section 255 only.[7] The proposed technical requirements in Appendix C do not include an alphabetic prefix because, as discussed above, they would be applied in accordance with the application and scoping requirements in either Appendix A or Appendix B, depending on whether the covered entity is subject to Section 508 (federal entities) or Section 255 (telecommunications equipment manufacturers).

This proposed formatting and organizational structure is based on recommendations made by the Advisory Committee and public comments submitted in response to the 2010 and 2011 ANPRMs. Section VI.B (508 Standards: Application and Scoping) and Section VI.C (255 Guidelines:

[6] Advisory sections and figures that illustrate the technical requirements are available on the Internet at: *www.access-board.gov.* The advisory sections provide guidance only and do not contain mandatory requirements.

[7] The ''C'' prefix for Section 255-specific requirements is a shorthand reference to ''communications'' in ICT, while the ''E'' prefix for requirements exclusive to the 508 Standards derives from ''electronic'' in the former regulatory term, E&IT.

Application and Scoping), below, summarize the proposed rule and explain any differences between the existing requirements for Section 508 and Section 255 and the proposed rule. Due to the overlapping nature of the proposed 508 Standards and 255 Guidelines, some of the following section-by-section discussions of particular standards also address a ''sister'' guideline. In addition, in a number of these sections, the Board poses questions soliciting comments, information, or data from the public.

B. 508 Standards: Application and Scoping

508 Chapter 1: Application and Administration

This chapter proposes general requirements reflecting the purpose of the 508 Standards (E101.1). It also proposes criteria for equivalent facilitation (E101.2), lists referenced standards and where they may be obtained (E102), and provides definitions of terms used in the standards (E103). 508 Chapter 1 proposes, in large part, to simplify and reorganize similar provisions contained in existing 508 Standards §§ 1194.1 Purpose, 1194.4 Definitions, and 1194.5 Equivalent Facilitation.

E101 General

This is an introductory section.

E101.1 Purpose

This section states that the purpose of the 508 Standards is to provide scoping and technical requirements for ICT that is accessible to and usable by individuals with disabilities. Compliance with these requirements is mandatory for federal agencies subject to Section 508.

E101.2 Equivalent Facilitation

This section is based on existing 508 Standards § 1194.5. It would permit the use of an alternative design or technology in lieu of conformance to the proposed technical requirements in Chapters 4 and 5, but only if the alternative design or technology provides substantially equivalent or greater accessibility and usability by persons with disabilities than would be provided by conforming to the proposed technical provisions. This section also would require the proposed functional performance criteria in Chapter 3 to be used to determine whether the alternative design or technology provides individuals with disabilities with substantially equivalent or greater accessibility and usability. The application of the functional performance criteria for this purpose would fill in a gap in the existing 508 Standards, which do not explain how the functional performance criteria are to be used in relation to the technical provisions. We explain our approach in greater detail above in Section V.C (Major Issues—Functional Performance Criteria).

E101.3 Conventional Industry Tolerances

This section would provide that dimensions are subject to conventional industry tolerances except where dimensions are stated as a range. This proposed provision would be new to the 508 Standards and would clarify how dimensions are to be interpreted when specified in the text or a referenced standard.

E101.4 Units of Measurement

This section would note measurements are stated in U.S. customary and metric units and that the values stated in each system (U.S. customary and metric units) may not be exact equivalents. This section would also provide that each system be used independently of the other. This proposed section is new to the 508 Standards and would clarify dimensions stated in the text of the proposed rule.

E102 Referenced Standards

This is an introductory section.

E102.1 Incorporation by Reference

This section lists the technical standards developed by voluntary consensus standard-setting bodies that the Board proposes to incorporate by reference in the proposed 508 Standards. It would require that where there is a difference between a provision of the proposed 508 Standards and the referenced standards, the 508 Standards would apply.

Incorporating these standards complies with the federal mandate—as set forth in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A119—that agencies use voluntary consensus standards in their regulatory activities unless doing so would be legally impermissible or impractical. The standards proposed for incorporation would improve clarity because they are built on consensus standards developed by stakeholders. Most of these standards are widely used and, therefore, should be familiar to many regulated entities.

Incorporation by reference of these standards would be a distinct change and improvement from the existing 508 Standards, which contain no referenced standards. The Advisory Committee strongly recommended the adoption of specific accessibility consensus standards in order to promote harmonization. The adoption of consensus standards results in a more unified regulatory environment in which all participants benefit from clarity and simplicity. As noted in the TEITAC Report:

> Industry supports harmonization in principle because it allows the ICT market to address accessibility through a global process—one product developed to be sold world-wide—rather than by trying to meet unique, potentially conflicting standards required by different countries. Harmonization should result in more accessible products, delivered through a more economically efficient market. Consumers thus benefit directly from harmonization; they also benefit indirectly because harmonization allows advocates to focus their efforts on fewer standards development activities. It is this economy of focused effort that may offer the greatest net benefit to people with disabilities. (TEITAC Report, Part 4, section 4.3).

Once incorporated by reference, the referenced standards become part of the 508 Standards. We are unaware of any duplication or overlap among the parts of the proposed standards, including the standards incorporated by reference. However, in order to address any potential conflicts, proposed E102.1 (as well as C102.1) provide that, when a conflict occurs between the 508 Standards (or 255 Guidelines) and a standard incorporated by reference, the 508 Standards (or 255 Guidelines) apply.

While a discussion of the estimated economic impact of the proposed rule—including the proposed incorporation by reference of the consensus technical standards listed in E102.1 and C102.1—follows below in Section VIII, two points bear noting here. First, the cost of implementing this proposed rule can be mitigated, in part, through use of an updated product accessibility template that includes WCAG 2.0 and the other referenced standards. The product accessibility template, available through the GSA Section508.gov site is intended to help agencies understand which provisions apply to particular products. We expect GSA will update this tool so that it will be available for use by agencies on or before the effective date of revised 508 Standards. Second, the W3C WCAG Web site provides readily available technical assistance—free of charge—that is linked to each technical requirement in WCAG 2.0. A great deal of third-party information is also available. Collectively, these resources should also greatly aid federal agencies and other regulated entities become conversant with the provisions in this

standard, to the extent they are not already familiar with them.

The Office of the Federal Register recently promulgated a final rule requiring federal agencies to provide information to the public in regulatory preambles relating to the availability of materials to be incorporated by reference. In Section VII.G (Regulatory Process Matters—Availability of Materials Incorporated by Reference) below, the Board provides information on the availability of ten consensus standards proposed for incorporation by reference in the 508 Standards and 255 Guidelines.

The proposed 508 Standards would incorporate by reference the following standards:

E102.2 ANSI/HFES

ANSI/HFES 200.2, Human Factors Engineering of Software User Interfaces—Part 2: Accessibility (2008), would be incorporated by reference at 502.4. This standard provides ergonomic guidance and specifications for the design of accessible software for use at work, in the home, in educational settings, and in public places. It covers issues associated with designing accessible software for people with a wide range of physical, sensory and cognitive abilities, including those who are temporarily disabled and the elderly.

This proposed standard would be new to both the 508 Standards and 255 Guidelines. Referencing this standard will ensure that ICT operating systems provide accessibility features (*e.g.,* keyboard entry with a single finger, visual alerts paired with audible prompts) that users with disabilities expect and have come to rely upon. These features are commonly available in platform operating systems; the standard, therefore, serves mainly to codify current industry practices.

E102.3 ANSI/IEEE

ANSI/IEEE C63.19–2011, American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, would be incorporated by reference at 410.4.1. This standard is consistent with current telecommunications industry practices.

Products conforming to this standard minimize interference to hearing aids by wireless telephones. When telephone interference is not minimized, it can create noise in hearing aids that masks the sound of conversation. An added value of this standard is that it provides a uniform method of measurement for compatibility between hearing aids and wireless communications devices.

E102.4 ATSC

A/53 Digital Television Standard, Part 5: AC–3 Audio System Characteristics (2010) would be incorporated by reference at 412.1.1. This standard provides technical requirements for digital television tuners when they process audio description. This standard is consistent with current telecommunications industry practice.

E102.5 IETF

RFC 4103, RTP Payload for Text Conversation (2005), would be incorporated by reference at 410.6.3.2. This standard describes how to carry real-time text conversation session contents in RTP packets. Real-time text conversation is used alone, or in connection with other conversational modalities, to form multimedia conversation services. Examples of other conversational modalities are video and voice. When using RTT, text is received at the same time it is generated. For people who communicate without voice, RTT offers a way to interact that more closely resembles a live two-way call. This proposed standard would be new to the 508 Standards (as well as the 255 Guidelines), and represents a significant shift to better align with current technology. IP-based RTT is the only modern technology that offers the same functionality that TTYs have historically provided. Contemporary TTYs do not work with modern IP desk phones because the acoustic signal (Baudot) is garbled due to incompatible compression algorithms. When communication in real time is important, as in emergency situations, RTT allows users to communicate in a manner similar to a live two-way voice call. Parties exchange information in real time and can interrupt each other during the conversation. This technology most closely approximates the useful features of TTYs. Real-time text is also discussed in detail in Section V.D (Major Issues—Real-Time Text) above.

E102.6 ISO

ISO 14289–1 (2012), Document management applications — Electronic document file format enhancement for accessibility — Part 1: Use of ISO 32000–1 (PDF/UA–1), would be incorporated by reference at E205.1 and 602.3.1. This is an international standard for accessible portable document format (PDF) files. PDF/UA–1 provides a technical, interoperable standard for the authoring, remediation, and validation of PDF content to ensure accessibility for people with disabilities who use assistive technology such as screen readers, screen magnifiers, joysticks and other assistive technologies to navigate and read content. This proposed standard is new to both the 508 Standards and the 255 Guidelines. It is offered as an option to WCAG 2.0 for accessible PDFs.

E102.7 ITU–T

ITU–T Recommendation G.722, General Aspects of Digital Transmission Systems, Terminal Components, 7 kHz Audio-Coding within 64 kbits/s (Sept. 2012), would be incorporated by reference at 410.5. This standard is an ITU–T standard coder-decoder program that provides 7 kHz wideband audio at data rates from 48, 56, and 64 kbits/s. This standard provides a significant improvement in speech quality over earlier standards. It was previously proposed in the 2011 ANPRM and received no objections.

ITU–T Recommendation E.161: Arrangement of digits, letters and symbols on telephones and other devices that can be used for gaining access to a telephone network (Feb. 2001), would be incorporated by reference at section 407.3.2. This standard is an ITU–T standard that defines the assignment of the basic 26 Latin letters (A to Z) to the 12-key telephone keypad. It provides guidance for arranging alphabetic keys in a predictable, consistent manner. This proposed standard is new to the 508 Standards (as well as the 255 Guidelines), though it reflects current industry practice.

E102.8 TIA

TIA 825–A (2003), A Frequency Shift Keyed Modem for Use on the Public Switched Telephone Network, would be incorporated by reference at 410.6.3.1. This is the standard for TTY signals on the public switched telephone network interface (PSTN). This standard is consistent with current industry practice in the telecommunications industry.

TIA 1083 (2007), Telephone Terminal Equipment Handset Magnetic Measurement Procedures and Performance Requirements, would be incorporated by reference at 410.4.2. This standard defines measurement procedures and performance requirements for the handset generated audio band magnetic noise of wire line telephones, including digital cordless telephones. This standard is consistent with current telecommunications industry practice.

E102.9 W3C

Web Content Accessibility Guidelines (WCAG) 2.0, W3C Recommendation,

December 11, 2008, would be incorporated by reference in sections E205.1, E207.2, 405.1 Exception, 501.1 Exception 1, 504.2, 504.3, 504.4, and 602.3.1. WCAG 2.0 offers a series of recommendations to make Web content more accessible to all users, including persons with disabilities. We discuss our proposal to incorporate WCAG 2.0 by reference in greater detail above in Section V.B (Major Issues—WCAG 2.0 Incorporation by Reference).

E103 Definitions

This is an introductory section.

E103.1 Terms Defined in Referenced Standards

This section proposes that terms defined in referenced standards, which are not otherwise defined in section E103.4, would have the meaning given them in their respective referenced standards.

E103.2 Undefined Terms

This section proposes that the meaning of terms not defined in section E103.4 or in referenced standards shall be given their ordinarily accepted meanings in the sense that the particular context implies.

E103.3 Interchangeability

This section proposes that words, terms, and phrases used in the singular shall include the plural and those used in the plural shall include the singular.

E103.4 Defined Terms

This section includes definitions for terms used in, or integral to, the proposed 508 Standards. Some of the definitions have been carried over in whole or in part from the existing 508 Standards, while others represent terms that are new to these standards. We also propose to delete several definitions from the existing 508 Standards that are either obsolete or no longer needed. A summary of the proposed definitions in E103.4 follows below. Terms that are not discussed remain unchanged from the existing 508 Standards.

For four terms in the existing 508 Standards, the Board proposes to retain the term, but make slight changes to their respective definitions to improve clarity or to account for technological advances. The definition of the term ''agency'' would be revised to expressly include agencies and departments of the United States as defined in 44 U.S.C. 3502 and the U.S. Postal Service. The term ''assistive technology'' would include minor editorial changes from the text in the existing 508 Standards. The term ''operable controls'' would be revised to ''operable part,'' which would be defined as ''a component of ICT used to activate, deactivate, or adjust the ICT.'' The proposed definition would not include the requirement for physical contact found in the definition in the existing 508 Standards and would not include examples of controls. The term ''TTY'' would be updated to reflect modern technologies currently in use, and would specifically mention such examples as devices for real-time text communications, voice and text intermixed communications (*e.g.* voice carry over and hearing carry over), and computers with TTY-emulating software and a modem.

Two other terms are new to the proposed 508 Standards, but have close analogs in the existing standards. First, the term ''closed functionality'' would replace ''self-contained closed products.'' The proposed new definition would provide a more accurate description of the characteristics of the ICT that is addressed in the proposed provision in section 402 ''Closed Functionality.'' In addition, this term would address both those features of ICT that are closed by design and other features that are closed because of policies that may restrict specific functions of ICT, where the ICT might normally be capable of being made accessible to an individual with a disability. For example, a policy not allowing the attachment of data storage devices to ICT would, in the case of an individual with low vision, essentially block that person from being able to attach a device containing magnification software. The new definition would include examples of ICT with closed functionality, such as self-service machines and fax machines.

Second, the term ''information and communication technology'' (ICT) would replace ''electronic and information technology'' (E&IT), and revise the definition significantly. The proposed definition for ICT would be broader than the existing definition of E&IT in that it encompasses both electronic and information technology covered by Section 508, and telecommunications products, interconnected Voice over Internet Protocol (VoIP) products, and Customer Premises Equipment (CPE) covered by Section 255. Using a common term that is applicable to both the 508 Standards and 255 Guidelines supports one of the central goals of this rulemaking—namely, development of a single set of comprehensive requirements for two substantive areas that are inseparable from regulatory and policy perspectives. Additionally, to address confusion regarding application of the existing 508 Standards to electronic documents, the proposed ICT definition expressly clarifies that electronic content—such as Web pages and PDFs—falls within the definition of ICT. Lastly, this newly defined term provides an updated set of illustrative examples that better reflect today's technologies.

We developed the definition for ICT by using the concepts from the existing definitions of ''electronic and information technology,'' ''information technology,'' and ''telecommunications equipment,'' albeit with significantly revised language. Defining a common term that covers both Section 508-covered E&IT and Section 255-covered telecommunications products and services is consistent with the overall approach in the proposed rule of presenting a unitary set of regulatory requirements under these two statutes. The proposed definition of ICT is also consistent with the terminology used by the Advisory Committee in its TEITAC report. That report noted:

> Section 255 covers telecommunications products and services. Section 508 covers electronic and information technologies (E&IT). For convenience and clarity, wherever these two categories are taken together, we are using the common term ''information and communication technologies, or ICT. (TEITAC Report, Part 1 & fn. 1.)

The TEITAC Report further noted that the 255 Guidelines developed by the Access Board ''cover customer premises equipment and telecommunications equipment, but do not address services.'' (See TEITAC Report, Part 1 & fn. 2.)

We proposed in the 2010 and 2011 ANPRMs that the term ''information and communication technology (ICT)'' be used to refer to electronic and information technology covered by Section 508 as well as to telecommunications products, interconnected Voice over Internet Protocol (VoIP) products, and Customer Premises Equipment (CPE) covered by Section 255. Commenters to the 2010 and 2011 ANPRMs supported this approach. In the proposed rule, the Board retains this approach.

The remaining 18 terms defined in proposed E103.4 have no counterparts in the existing 508 Standards. We propose adding these terms to the 508 Standards to provide definitions for key terms used in the proposed standards, reflect technological advances since promulgation of the existing 508 Standards, and aid stakeholder understanding. These new terms are described below.

The term ''508 Standards'' is defined in order to provide consistent cross-reference within the standards to all

chapters that apply to Section 508-covered federal entities, namely: 508 Chapters 1 and 2 (36 CFR part 1194, Appendix A), and Chapters 3 through 6 (36 CFR part 1194, Appendix C). This definition is consistent with proposed § 1194.1, as well as usage of the term throughout this NPRM.

The term ''audio description'' is used in existing 508 Standards § 1194.24(d) but not defined. We would add a definition derived from WCAG 2.0, which would in part explain that ''audio description'' is ''narration added to the soundtrack to describe important visual details that cannot be understood from the main soundtrack alone.''

The term ''authoring tool'' would be defined to mean ''any software, or collection of software components, that can be used by authors, alone or collaboratively, to create or modify content for use by others, including other authors,'' and would be included to explain the proposed provision in section 504, ''Authoring Tools.''

The term ''content'' would be defined as ''Electronic information and data, as well as the encoding that defines its structure, presentation, and interactions.'' The definition is based on WCAG 2.0, and is proposed to promote harmonization and greater clarity in the proposed Standards and Guidelines.

The term ''keyboard'' would be defined as ''a set of systematically arranged alphanumeric keys or a control that generates alphanumeric input by which a machine or device is operated.'' This proposed definition would also clarify that a ''keyboard'' includes ''tactilely discernible keys used in conjunction with the alphanumeric keys if their function maps to keys on the keyboard interfaces.'' This proposed new definition would clarify the use of the term ''keyboard'' in Chapter 4 (Hardware).

The term ''Voice over Internet Protocol (VoIP)'' is new and is defined consistent with current FCC regulations.

The remaining twelve proposed new terms would be added to aid stakeholder understanding of particular requirements or criteria in the 508 Standards. Definitions for the terms ''label,'' ''name,'' ''programmatically determinable,'' and ''text'' are taken from WCAG 2.0. Additionally, the terms ''application,'' ''hardware,'' and ''software'' are based on definitions provided in the FCC's regulations implementing Section 255 of the Communications Act. See 47 CFR part 14. Definitions for the terms ''menu,'' ''platform accessibility services,'' ''platform software,'' ''real-time text,'' and ''terminal'' were drawn from the work of the Advisory Committee and other sources. ''Menu,'' ''platform accessibility services,'' and ''real-time text'' were proposed in the 2010 and 2011 ANPRMs. We received no public comments in response to these definitions in the two ANPRMs.

Lastly, proposed E103.4 would not include several terms that are defined in the existing 508 Standards. There terms are not included in this proposed rule because either the proposed technical requirement associated with the term sufficiently conveys its meaning (*i.e.,* ''alternate formats'' and ''undue burden''), or because the term is not used in the proposed rule (*i.e.,* ''alternate methods,'' ''product,'' and ''self-contained, closed products'').

508 Chapter 2: Scoping Requirements

This chapter proposes scoping for ICT that is procured, developed, maintained or used by federal agencies—that is, the types of ICT that would be required to conform to the proposed functional performance criteria and technical requirements in the 508 Standards, as well as the conditions under which these provisions would apply. Chapter 2 would contain provisions currently addressed in existing 508 Standards §§ 1194.2 ''Application'' and 1194.3 ''General Exceptions,'' thereby locating all scoping provisions in a single chapter.

E201 Application

This is an introductory section.

E201.1 Scope

This section proposes that ICT procured, developed, maintained, or used by agencies must conform to the proposed requirements set forth (or referenced) in 508 Chapter 2. This provision is consistent with existing 508 Standards § 1194.2.

E202 General Exceptions

This section contains proposed exceptions to the general scoping provisions in proposed 201. The structure of the proposed standards reinforces the principle that, under the general scoping provision, all ICT procured, developed, maintained or used by agencies would be required to conform to the proposed requirements, unless otherwise exempted. General exceptions apply broadly and, where applicable, exempt ICT from conformance with the proposed 508 Standards. Most of the proposed general exemptions are the same as those in existing 508 Standards § 1194.3, with only minor editorial changes. A brief discussion of the proposed changes to the General Exceptions follows below.

The Board is proposing to exclude from this rule two exceptions that are contained in the existing 508 Standards: §§ 1194.3(c) and 1194.3(d). Section 1194.3(c) provides that assistive technology need not be provided at the workstations of all federal employees. However, there is no general rule in either the existing or proposed 508 Standards that requires agencies to provide assistive technology at all workstations. Instead, these standards require compatibility with assistive technology when ICT is not directly accessible. The exception in § 1194.3(c) is thus unnecessary and potentially confusing. Consequently, the Board is not retaining it in the proposed rule.

We are also proposing to exclude the exception in § 1194.3(d) of the existing 508 Standards, which provides that when agencies provide the public access to ICT, they are not required to make agency-owned ICT available to individuals with disabilities who are members of the public at non-public locations. We are proposing to remove this exception because there is nothing in the proposed 508 Standards that would require an agency to provide accessible ICT at a specific location, or that would require public access to locations not open to the public. Consequently, this exception is not needed, and its removal from the 508 Standards would have no practical impact. The Board intends to address the continuing obligation of agencies to provide accommodations under Sections 501 and 504 of the Rehabilitation Act in forthcoming guidance material to be posted on our Web site following publication of the final rule.

E202.1 General

This section proposes that ICT is exempt from these requirements to the extent specified by section E202.

E202.2 National Security Systems

This section proposes that ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a), is exempt from the requirements of this document. This is unchanged from existing 508 Standards § 1194.3(a).

E202.3 Federal Contracts

This section proposes that ICT acquired by a contractor that is incidental to a contract would not be required to conform to this document. This proposed exception is unchanged from existing 508 Standards § 1194.3(b), and the Board's approach is discussed in greater detail above in Section IV.E.8 (Rulemaking History—2010 and 2011

ANPRMs: Significant Issues—Revisions to Exceptions under 508 Standards).

E202.4 Functions Located in Maintenance or Monitoring Spaces

This section proposes to revise § 1194.3(f) of the existing 508 Standards to clarify that, where status indicators and operable parts for ICT functions are located in spaces that are only frequented by service personnel for maintenance, such items need not conform to the requirements of 508 Chapter 2. Functions of ICT located in maintenance spaces that can be controlled remotely, however, would still be required to comply with applicable standards. For example, if a server is located on a tall rack in a maintenance closet accessed only by service personnel, the controls on the server need not be accessible. However, any network or other server functions that could be accessed remotely would be required to comply with the proposed 508 Standards. We discuss our approach with respect to this exception in greater detail above in Section IV.E.8 (Rulemaking History—Major Issues Addressed in the 2010 and 2011 ANPRMs—Revisions to Exceptions under 508 Standards).

E202.5 Undue Burden or Fundamental Alteration

This section proposes to retain the provisions in existing 508 Standards §§ 1194.3(e) and 1194.2(a)(1), but would combine them in a single provision. This section would require that agencies comply with the requirements of the 508 Standards up to the point where conformance would impose an undue burden on the agency or would result in a fundamental alteration in the nature of the ICT. Proposed subsections E202.5.1 and E202.5.2 respectively set forth criteria for undue burden determinations and establish requirements for written documentation of undue burden and fundamental alteration findings.

E202.5.1 Basis for a Determination of Undue Burden

This section proposes to incorporate language from the definition of ''undue burden'' in the existing 508 Standards § 1194.4 into a separate scoping provision. It would require that, when determining whether conformance to the proposed 508 Standards would impose an undue burden on the agency, the agency must consider the extent to which conformance would impose significant difficulty or expense taking into consideration the agency resources available to the program or component for which the ICT is to be procured, developed, maintained, or used. The proposed organizational restructuring of the undue burden provision represents an editorial revision only that is not intended to have substantive impact.

E202.5.2 Required Documentation

This section proposes to require responsible agency officials to document in writing the basis for determining that compliance with the proposed 508 Standards would either impose an undue burden or result in a fundamental alteration in the nature of the ICT. This proposed documentation requirement is derived from existing 508 Standards § 1194.2(a)(2) applicable to a determination of undue burden in the procurement context. Proposed 202.5.2 would, however, broaden this existing requirement by requiring written determinations in two new settings: (a) When an agency determines that conformance would result in a fundamental alteration in the nature of the ICT; and (b) when an agency determines that conforming to one or more provisions applicable to the development, maintenance, or use of ICT would impose an undue burden. This change is intended to ensure accountability and transparency in agencies' Section 508 implementation efforts by treating documentation obligations equally as between procurement and non-procurement contexts.

Under Section 508, it is the responsibility of each agency to establish policies and procedures describing how they will comply with the standards, including those for making undue burden and fundamental alteration determinations. The Department of Justice's 2012 Biennial Report on Section 508 notes that ''[n]early forty percent of agency components reported establishing a formal, written policy to document Section 508 exceptions claimed on [ICT] procurements. Many of these agency components reported that their [ICT] procurements met the Section 508 requirements and that reliance on an exception was unnecessary.'' [8]

The Access Board anticipates that the burdens associated with broadening the scope of the documentation requirement will be minimal. First, proposed 202.5.3 deliberately does not prescribe criteria for needed documentation to ensure a deliberative and documented decisional process without being overly prescriptive. In this way, each agency is free to develop documentation policies and practices that best suit its respective needs and resources. Such an approach is consistent with, and respectful of, Section 508's grant of independent responsibility for Section 508 enforcement to each agency.

Second, the Board expects that invocation of the undue burden and fundamental alteration exceptions will be infrequent, which would also mean an infrequent need for written determinations. For example, in the procurement context, the DOJ 2012 Biennial Report notes that many responding agency components reported having never relied on any exception. Agency components that did make occasional use of available exceptions, assertions of undue burden or fundamental alteration were, in turn, relatively uncommon. Use of these exceptions in procurements was limited to ''large'' and ''very large'' agencies; small and mid-size agencies (*i.e.,* agencies with 10,000 employees or less) did not report using these exceptions. For larger agencies, only about 20 percent of agency components reported using the undue burden or fundamental alteration exceptions respectively. Thus, because proposed 202.5.2 broadens only agencies' respective obligation to document undue burden or fundamental alteration determinations, and does not change the underlying substantive criteria for these exceptions, it is expected that occasions in which agencies must document use of these exceptions will be infrequent in both procurement and non-procurement contexts.

E202.5.3 Alternative Means

This section proposes that, when an agency determines that an undue burden or fundamental alteration exists, it must provide individuals with disabilities access to and use of information and data by an alternative means that meets identified needs. The proposed provision is taken from existing 508 Standards § 1194.2(a)(1) addressing undue burden, but adds the reference to fundamental alteration to clarify that agencies must still provide people with disabilities access to and use of information and data when either of these exceptions applies.

E202.6 Best Meets

This section proposes that, where ICT conforming to one or more provisions of the 508 Standards is not commercially available, the agency must procure the product that best meets these standards consistent with its business needs. This section would editorially revise existing 508 Standards § 1194.2(b).

[8] Department of Justice, Section 508 Report to the President and Congress: Accessibility of Federal Electronic and Information Technology (Sept. 2012), available at: *http://www.ada.gov/508/508_Report.htm.*

Question 12. We are requesting information on how many times a year, on average, federal agencies respectively procure ICT that ''best meets'' the 508 Standards.

E202.6.1 Required Documentation

This section proposes to require that agencies document in writing the basis for determining that ICT fully conforming to applicable 508 Standards is not commercially available. Documenting the exception for commercial non-availability is not a requirement in the existing 508 Standards, though such documentation is mandated under the current federal acquisition regulations. See 48 CFR 39.203. A number of commenters to the 2010 ANPRM requested this change and supported its inclusion in the 2011 ANPRM. A documentation requirement was proposed in the 2011 ANPRM, and the Board did not receive any negative comments.

Question 13. The Board seeks information from federal agencies on the estimated number of hours, on average, they anticipate needing to prepare each written documentation of commercial unavailability determination under proposed E202.6.1.

E202.6.2 Alternative Means

This section proposes to require agencies to provide individuals with disabilities the information and data that would have been provided by fully conforming ICT when such ICT is commercially unavailable. Proposed E202.6.2 is similar in intent to proposed E202.5.3 (Undue Burden—Alternative Means), and would reinforce the statutory requirement for agencies to ensure that individuals with disabilities have comparable access to information and data.

E203 Access to Functionality

This is an introductory section.

E203.1 General

This section proposes to require agencies to ensure that all functionality of ICT is accessible to and usable by individuals with disabilities, either directly or by supporting the use of assistive technology. While this provision would be new to the 508 Standards, it is consistent with current agency practice. The Board interprets the statutory requirement to provide comparable access to information and data to be consistent with granting access to all functionality of ICT. This proposed requirement was strongly supported by the Advisory Committee, as well as commenters to the 2010 and 2011 ANPRMs.

E203.2 Agency Business Needs

This section proposes that, when agencies procure, develop, maintain or use ICT, they must identify the business needs of individuals with disabilities affecting vision, hearing, color perception, speech, dexterity, strength, or reach, in order to determine how such users will perform the functions supported by such ICT. The provision would also require agencies to assess how the ICT will be installed, configured, and maintained to support users with disabilities. The list of disabilities in this provision parallels the functional performance criteria proposed in Chapter 3.

The Board intends, through this provision, to reinforce the fundamental principle that agencies have an affirmative, continuing obligation under Section 508 to maintain the accessibility of ICT. While this is not a new requirement under Section 508, it is not expressly addressed in the existing 508 Standards. The Board proposes to include this section in response to many concerns raised over the years about the requirements under Section 508 to maintain ICT accessibility over time. Proposed 203.2 would make clear, for example, that agencies have an affirmative duty to ensure that when an accessible operating system is updated, the current or an updated version of screen reading software is compatible with the updated operating system.

E204 Functional Performance Criteria

This is an introductory section.

E204.1 General

This section proposes that, when the technical provisions of Chapter 4 and 5 do not address one or more features of ICT, any unaddressed features must conform to the Functional Performance Criteria specified in Chapter 3. This proposed section is consistent with current agency practice. The Functional Performance Criteria, and the manner in which they are to be used in evaluating equivalent facilitation under proposed E101.2, is discussed in Section IV.E.3 (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues—Relationship between Functional Performance Criteria and Technical Provisions), and Section V.C (Major Issues—Functional Performance Criteria).

E205 Content

This is an introductory section.

E205.1 General

This section proposes that public-facing content, along with eight specific categories of non-public facing content, must conform to proposed E205. In turn, proposed E205 requires conformance to the Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 or ISO 14289–1 (PDF/UA–1), both of which are incorporated by reference in 508 Chapter 1 and 255 Chapter 1. An exception is provided for non-public facing records maintained by the National Archives and Records Administration (NARA) under federal recordkeeping statutes. These proposed requirements and related exception are also discussed in Section IV.E.1 (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues—Evolving Approaches to Covered Electronic Content), and Section V.A (Major Issues—Electronic Content).

Some file formats, it should be noted, do not directly support accessibility. For example, the JPEG compression standard for digital images does not facilitate embedded text description (commonly referred to as ''alt tags''), and the MPEG–4 compression standard for audio and video digital data does not support closed captioning. Conformance may nonetheless be achieved through a variety of techniques, including providing requisite accessibility through the manner in which the inaccessible file is delivered or publicly posted. For example, JPEG photos posted to a Web site can be associated with descriptive identification using HTML. Photos attached to an email could have the text alternative provided in the body of the email. Similarly, there are commonly available methods for displaying caption text so that it is synchronized with MPEG–4 multimedia.

E205.2 Public Facing

This section proposes that all public-facing content must meet the accessibility requirements in E205.4, which, in turn, requires conformance to WCAG 2.0 Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages or, where applicable, ISO 14289–1 (PDF/UA–1). Public-facing content subject to this provision would include, for example: agency Web sites; electronic documents, images or video posted on agency Web sites; and agency social media sites or postings. Content regardless of form or format—including draft electronic documents—would be covered under this proposed section when public facing. Central to the analysis of whether an electronic document should be considered public facing is the identity of the party making the electronic content available to the public. If a federal agency posts an electronic document on its own Web

site, third-party social media site, or other electronic public forum, that document—whether authored by the agency or a third party—is public facing and must comply with E205.2. Coverage of this broad category of agency-sponsored content is important because the Rehabilitation Act mandates that persons with disabilities—both those employed by the federal government and members of the public—have comparable access to, and use of, electronic information and data relative to persons without disabilities.

Question 14. Is the scope of public facing content covered by proposed E205.2 sufficiently clear? Are there other issues the Board should consider in defining the scope of the term ''public facing''?

E205.3 Agency Official Communication

This section proposes that an agency's non-public facing content be required to meet the accessibility requirements in E205.4 (*i.e.,* WCAG 2.0 Level A and Level AA Success Criteria or PDF/UA–1) when such content (a) constitutes agency official business, and (b) falls within one or more of eight categories of communication. The eight proposed categories are: (1) Emergency notifications; (2) initial or final decisions adjudicating administrative claims or proceedings; (3) internal or external program or policy announcements; (4) notices of benefits, program eligibility, employment opportunities or personnel actions; (5) formal acknowledgements or receipts; (6) questionnaires or surveys; (7) templates or forms; and (8) educational or training materials.

While there is no express exception for draft content in E205.3, the Board expects that drafts, by their very nature, would typically fall outside the scope of agency official communications covered by this section. Generally speaking, only final documents and other electronic materials that are ready for dissemination to their intended audience would qualify as the type of content covered by categories 1 through 8. Draft content would, however, fall within the ambit of proposed E205.3 (and, therefore, be required to conform to WCAG 2.0 or PDF/UA–1) when an agency intends a draft to be ''final'' in the sense that it is being formally disseminated or published for input or comment by its intended audience. For example, if any agency task force is seeking to improve agency-wide telecommuting policies and circulates a draft policy memorandum by email to the office of human resources for review, neither the email nor draft memorandum would be covered under proposed E205.3. However, if instead, the agency task force had completed its draft policy on telecommuting and circulated the draft policy as an email attachment sent to all agency employees soliciting their input and comments, then both the email and attached draft policy memorandum—regardless of format (*e.g.,* word processing document, PDF)—would be covered by this section and, accordingly, need to satisfy the accessibility requirements in E205.4.

Proposed E205.3 also provides an exception for non-public facing content maintained by NARA for archival purposes even if such content otherwise falls into one of the foregoing eight categories. Such electronic records would not need to conform to the accessibility requirements in proposed E205.4 so long as they remained non-public facing. The Board intends the scope of this exception to be limited, and anticipates that it will extend only to non-public facing electronic materials administered or maintained by NARA in compliance with federal recordkeeping statutes and implementing regulations.

E206 Hardware

This is an introductory section.

E206.1 General

This section proposes that components of ICT that are hardware, and transmit information or have a user interface, must conform to the applicable provisions of Chapter 4.

One hardware provision in the existing 508 Standards that has not been retained in the proposed rule is § 1194.23(a). This section has two parts. First, it requires telecommunications products that provide voice communication to provide a standard non-acoustic connection for a TTY unless the product includes a TTY. Second, it requires microphones to be capable of being turned on and off to allow a user to intermix speech with TTY use. Newer technologies for texting have made the requirement for a standard non-acoustic connection for a TTY obsolete. To address the use of TTYs by individuals also using speech or hearing, the Board is proposing to add section 410.6.5 (HCO and VCO Support). Proposed 410.6.5 would support real-time text functionality and address the capacity for users to intermix speech with text. See Section VI.D. (Section-by-Section Analysis—Technical Requirements—410.6). Comments received in response the 2011 ANPRM did not object to these proposed changes.

E207 Software

This is an introductory section.

E207.1 Software

This section proposes that components of ICT that transmit information or have a user interface—such as are firmware, platforms, or software applications—must conform to the applicable provisions in Chapter 5.

E207.2 WCAG Conformance

This section would require that user interface components, along with the content of platforms and applications, conform to Level A and AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0. For a more complete discussion of WCAG conformance requirements in the proposed rule, see the discussion in Section IV.E.2 (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues—Treatment of WCAG 2.0), and Section V.B (Major Issues—WCAG 2.0 Incorporation by Reference).

E208 Support Documentation and Services

This is an introductory section.

E208.1 General

This section proposes to require agencies, when providing support services or documentation for ICT, to do so in conformance to the provisions of Chapter 6.

C. 255 Guidelines: Application and Scoping

These two proposed chapters contain information on the application and administration of the 255 Guidelines. As discussed above, whereas the 508 Standards relate to the accessibility and usability of electronic and information technology, the 255 Guidelines relate to the accessibility and usability of telecommunications equipment and customer premises equipment, as defined by the Communications Act.

Because the technologies covered by the 508 Standards and 255 Guidelines often have similar features and functional and technical aspects, the standards and guidelines share common requirements. For ease of reference, the Board discusses here only those requirements in the 255 Guidelines that differ from those in the 508 Standards. Requirements not discussed in the section below (or mentioned only in brief detail) should be deemed to be the same for both the 255 Guidelines and 508 Standards.

Of note, there are two provisions in the existing 255 Guidelines which the Board proposes to not include in the proposed rule: §§ 1193.41(i) and

1193.51(d). Section 1193.41(i) requires input controls on telecommunications equipment to provide at least one mode of operation that minimizes the cognitive skills needed by the user. The Advisory Committee was unable to reach consensus on recommendations for requirements to make ICT accessible for individuals with cognitive disabilities, citing a lack of common standards or testable metrics to verify conformance. Consequently, the Advisory Committee recommended deletion of the existing requirement pending future research.

In the 2010 ANPRM, the Board followed this recommendation and proposed removal of the existing functional performance criterion specifically directed to cognitive disabilities. The Board did, however, seek public input on whether other proposed functional performance criteria adequately addressed cognitive impairments, and solicited input on how updated ICT rules might best address such impairments. Commenters responded with a variety of views. Some commenters believed that cognitive disabilities were already sufficiently addressed through other criteria and requirements, while others preferred inclusion of a functional performance criterion for cognitive disabilities but offered no substantive proposals. Still other commenters—particularly those representing the IT community—thought more research was needed before meaningful requirements could be crafted. Given the variety of commenters' views and the inherent difficulty in creating a single functional performance criterion that adequately covers the wide spectrum of cognitive and intellectual disabilities, the Board elected not to reinstate this functional performance criterion in either the 2011 ANPRM or this NPRM.

We also propose to exclude existing § 1193.51(d) of the 255 Guidelines relating to TTY connectability from the proposed rule for the reasons outlined above in the discussion regarding proposed E206.1 (which, in turn, addresses proposed deletion of a ''sister'' existing provision in the 508 Standards). See Section VI.B. (Section-by-Section Analysis—508 Standards: Application and Scoping—E206.1).

255 Chapter 1: Application and Administration

This chapter proposes general requirements reflecting the purpose of the 255 Guidelines (C101.1). It lists referenced standards and where they may be obtained (C102), and provides definitions of terms used in the proposed 255 Guidelines (C103). 255 Chapter 1 proposes to simplify and reorganize similar provisions contained in existing §§ 1193.1 ''Purpose'' and 1193.3 ''Definitions'' of the 255 Guidelines.

C101 General

This is an introductory section.

C101.1 Purpose

In keeping with the Board's statutory charge under the Communications Act, this section states that the purpose of the proposed 255 Guidelines is the provision of scoping and technical requirements for telecommunications equipment and customer premises equipment to ensure that such equipment is accessible to and usable by individuals with disabilities. This section also emphasizes, moreover, that the proposed guidelines are to be applied to the extent required by regulations issued by the Federal Communications Commission under the Telecommunications Act of 1996 (47 U.S.C. 255). As noted previously, the FCC has exclusive authority to enforce Section 255 and issue implementing regulations; the FCC may—but is not required to—adopt the proposed guidelines when finalized as enforceable accessibility standards for manufacturers of telecommunications equipment and customer premises equipment.

C101.2 Equivalent Facilitation

This proposed section addresses when telecommunications equipment manufacturers may use equivalent facilitation, and mirrors a corresponding provision in the proposed 508 Standards (E101.2). While the existing 255 Guidelines do not expressly address equivalent facilitation, the concept of allowing alternative technological solutions for accessibility beyond those specified in the guidelines derives from the Appendix to 36 CFR part 1193—Advisory Guidance, Introduction, paragraph 1, which notes that ''Manufacturers are free to use these [suggested strategies in the Appendix] or other strategies in addressing the guidelines.'' We proposed inclusion of this equivalent facilitation provision in the 2011 ANPRM and received no comments.

C101.3 Conventional Industry Tolerances

This proposed section, which has a parallel provision in the proposed 508 Standards (E101.3), would provide that dimensions are subject to conventional industry tolerances except where dimensions are stated as a range. This proposed provision would be new to the 255 Guidelines. It is intended to clarify how dimensions should be interpreted when specified in the text of a guideline or referenced standard.

C101.4 Units of Measurement

This proposed section, which also has a counterpart in the proposed 508 Standards (E101.4), provides that measurements are stated in metric and U.S. customary units and that the values stated in each system (metric and U.S. customary units) may not be exact equivalents. This section would also provide that each system be used independently of the other. This proposed section is new to the 255 Guidelines, and would clarify dimensions stated in the text of the guidelines or referenced standards.

C102 Referenced Standards

This section identifies the consensus standards that would be incorporated by reference in the proposed 255 Guidelines. The section also proposes that, where there is a difference between a provision of the proposed 255 Guidelines and a referenced standard, the provision of the 255 Guidelines would take precedence.

Incorporation by reference of these standards would be an improvement from the existing 255 Guidelines, which contain no referenced standards. The Advisory Committee strongly recommended the adoption of specific accessibility consensus standards in order to promote harmonization. The adoption of consensus standards results in a more unified regulatory environment in which all participants benefit from clarity and simplicity.

The standards listed in proposed C102 would apply to ICT subject to the 255 Guidelines to the extent that it is readily achievable to do so. The Board is proposing to incorporate by reference the same standards as those incorporated in the proposed 508 Standards. For a discussion of these standards, see Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E102).

As noted above, one of the standards proposed for incorporation is WCAG 2.0. As applied telecommunications equipment, this would require manufacturers to conform to WCAG 2.0 when providing electronic content integral to the use of their equipment (under proposed C203.1), a user interface (under proposed C205.2), or support documentation (under proposed C206.1 and 602.3). This would include, for example, consumer manuals for telecommunications equipment posted on manufacturer Web sites, online registration forms, and interactive

consumer support interfaces. A similar provision was proposed in the 2011 ANPRM. Commenters strongly supported incorporation of WCAG 2.0 to web content, but some telecommunications industry groups objected to application of this standard outside the web environment. The Board's bases for applying WCAG 2.0 to non-web ICT is detailed above in the Major Issues section. See Section V.B.2 (Major Issues—WCAG 2.0 Incorporation by Reference—Justification for Applying WCAG 2.0 to Non-Web ICT).

Question 15. The Access Board requests data or other information from telecommunications equipment manufacturers regarding the potential costs and benefits of incorporating WCAG 2.0 by reference and applying its success criteria to both web and non-web environments. What difficulties, if any, do telecommunications equipment manufacturers foresee in applying WCAG 2.0 outside the web environment? Does the WCAG2ICT Task Force's final report provide sufficient guidance concerning application of WCAG 2.0 to non-web ICT? If not, what additional guidance would telecommunications equipment manufacturers find helpful?

C103 Defined Terms

This section sets forth definitions of terms used in, or integral to, the proposed 255 Guidelines. Some of the definitions have been carried over in whole or in part from the existing 255 Guidelines, while others represent terms that are new to these guidelines. Proposed C103 would include nearly all of the same defined terms in the proposed 508 Standards, with the exception of one term (*i.e.,* ''agency'') that has no application in the guidelines. We also propose to revise or delete several definitions from the existing 255 Guidelines. Highlighted below are notable changes to, or deletion of, defined terms in the existing 255 Guidelines. For a complete discussion of all defined terms, see Section VI.B. (Section-by-Section Analysis—508 Standards: Application and Scoping—E103.4).

As with the proposed 508 Standards, the Board proposes to replace the term ''electronic and information technology (E&IT)''—which appears in both the existing 255 Guidelines and the 508 Standards—with ''information and communication technology (ICT).'' The scope and application of the term ''ICT'' are discussed in detail in the Section-by-Section Analysis of the proposed 508 Standards. See Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping). We note here that ICT is a broad term that encompasses not only information technology and other electronic systems and processes covered by the 508 Standards, but also telecommunications equipment and customer premises equipment subject to the 255 Guidelines. The term ''ICT,'' moreover, embraces not only telecommunications equipment, but also its related software and electronic content.

We also propose to revise definitions for ''customer premises equipment'' (CPE) and ''specialized customer premises equipment'' found in the existing 255 Guidelines to be consistent with current FCC regulations implementing Section 255 of the Communications Act. (See 47 CFR part 14 (2013)).

Additionally, the Board proposes to add several terms that would be new to the 255 Guidelines. As with the proposed 255 Guidelines, these newly defined terms are being proposed to reflect, among other things, new terminology used in the proposed guidelines or technological changes. One proposed new term is ''255 Guidelines.'' This term is newly defined in order to provide consistent cross-reference within the guidelines to all chapters that apply to Section 255-covered manufacturers of telecommunications equipment and customer premises equipment, namely: 255 Chapters 1 and 2 (36 CFR part 1194, Appendix B), and Chapters 3 through 6 (36 CFR part 1194, Appendix C). This definition is consistent with proposed § 1194.2, as well as usage of the term throughout this NPRM.

Other newly defined terms in the proposed 255 Guidelines are: ''application,'' ''assistive technologies,'' ''audio description,'' ''authoring tool,'' ''closed functionality,'' ''content,'' ''hardware,'' ''keyboard,'' ''label,'' ''name,'' ''operable part,'' ''programmatically determinable,'' ''text,'' ''menu,'' ''platform accessibility services,'' ''platform software,'' ''real-time text,'' ''software,'' ''terminal,'' and ''Voice over Internet Protocol (VOIP).'' Each of these new terms is discussed above in the context of the proposed 508 Standards. See Section VI.B. (Section-by-Section Analysis—508 Standards: Application and Scoping—E103.4).

Lastly, proposed C103.4 would exclude several terms that are defined in the existing 255 Guidelines. These terms are not included in this proposed rule because either the proposed technical requirement associated with the term sufficiently conveys its meaning (*i.e.,* ''accessible,'' ''readily achievable,'' ''alternate formats,'' ''manufacturer,'' and ''telecommunications equipment''), or the term is not used in the proposed 255 Guidelines (*i.e.,* ''agency,'' ''alternate methods,'' ''peripheral devices,'' and ''product'').

255 Chapter 2: Scoping Requirements

This chapter proposes scoping for requirements applicable to telecommunications equipment manufacturers in the design, development, or fabrication of covered ICT that is newly released, upgraded, or substantially changed from an earlier version or model—that is, the types of ICT that would be required to conform to the proposed functional performance criteria and technical requirements in the 255 Guidelines, as well as the conditions under which these provisions would apply.

Proposed 255 Chapter 2 would differ substantially from its counterpart chapter in the proposed 508 Standards due to the exclusion of several provisions that are inapplicable in the context of Section 255. 255 Chapter 2 also simplifies and reorganizes provisions in existing 255 Guidelines §§ 1193.21, 1193.23, 1193.31, 1193.33, 1193.39 and 1193.41. All scoping provisions would now be located in this chapter.

C201 Application

This is an introductory section.

C201.1 Scope

This section proposes that telecommunications equipment and customer premises equipment, as well as related software, would be required to comply with applicable 255 Guidelines when newly released, upgraded, or substantially modified from an earlier version or model.

C201.2 Readily Achievable

The section proposes that, when a telecommunications equipment manufacturer determines that conformance to one or more requirements in Chapter 4 (Hardware) or Chapter 5 (Software) would not be readily achievable, it shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to the extent readily achievable. This section mirrors § 1193.21 of the existing 255 Guidelines.

C201.3 Access to Functionality

This section proposes that telecommunications equipment manufacturers ensure that ICT is accessible to, and usable by, individuals with disabilities by providing direct

access to all functionality of ICT where readily achievable. This provision is consistent with existing 255 Guidelines § 1193.31.

C201.4 Prohibited Reduction of Accessibility, Usability and Compatibility

This section proposes to prohibit changes in covered ICT that decreases, or has the effect of decreasing, its net accessibility, usability, or compatibility. This provision largely mirrors existing 255 Guidelines § 1193.39. Proposed C201.4 is intended to ensure that accessibility features in existing technology would not be compromised by later alterations in product design. An exception allows for the discontinuation of a product. This provision was proposed in the 2010 ANPRM, but inadvertently omitted from the 2011 ANPRM.

C201.5 Design, Development and Fabrication

This section proposes a general requirement that telecommunications equipment manufacturers evaluate the accessibility, usability, and interoperability of covered ICT during its design, development, and fabrication. This provision is largely based on § 1193.23(a) of the existing 255 Guidelines. We have not, however, retained § 1193.23(b) of the existing 255 Guidelines, which requires telecommunications equipment manufacturers to consider involving people with disabilities in various aspects of product design and development. We do not include this provision in the proposed 255 Guidelines because it is non-mandatory, advisory material only.

C202 Functional Performance Criteria

This is an introductory section.

C202.1 General

This section proposes that when the technical provisions of Chapter 4 and 5 do not address one or more features of covered ICT, the features not addressed must conform to the Functional Performance Criteria specified in Chapter 3. This proposed section is consistent with 255 Guidelines § 1193.41. For a more complete discussion of this section, see Section V.C (Major Issues—Relationship between Functional Performance Criteria and Technical Provisions).

C203 Electronic Content

This is an introductory section.

C203.1 General

The section proposes to require content integral to the use of covered ICT to conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 or ISO 14289–1(PDF/UA–1), both of which are incorporated by reference in 255 Chapter 1. The meaning and application of this provision is discussed in greater detail in Sections V.A (Major Issues—Covered Electronic Content). A similar provision was proposed in the 2011 ANPRM. We received no adverse comments.

C204 Hardware

This is an introductory section.

C204.1 General

This section proposes that, where covered ICT hardware transmits information or has a user interface, such hardware must conform to the applicable provisions in Chapter 4 (Hardware). Two of the main covered hardware components—real-time text and assistive technology—are discussed above in the Major Issues section. See Section V.D (Major Issues—Real-Time Text), and Section V.E (Major Issues—Assistive Technology).

While the requirements applicable to Section 255-covered hardware are generally the same as those applied in the 508 Standards, proposed C204.1 provides one exception, which in turn, excepts Section 255-covered ICT from conforming to five specific requirements. These exceptions are proposed due to considerations unique to telecommunications equipment. Features associated with these proposed exceptions are not typically found on hand-held portable devices subject to the 255 Guidelines, such as mobile phones. The five excepted requirements for which we are proposing relief, along with the underlying rationale, are listed below:

402 Closed Functionality. If applied to ICT covered by the 255 Guidelines, proposed 402 would require all products with displays to be speech enabled. It would be unreasonable to apply this requirement to consumer products that are less technologically advanced, and, moreover, doing so would likely eliminate less expensive telephony from the marketplace.

407.11 Keys, Tickets and Fare Cards and 409 Transactional Outputs. Keys, tickets, and fare cards are not typically used to operate ICT subject only to the 255 Guidelines. Similarly, these types of products do not typically provide transactional outputs covered by proposed 409.

407.12 Reach Height and 408 Display Screens. The technical requirements specified for reach ranges (proposed 407.12) and display screens (408) are only intended to apply to stationary ICT. It would thus be inappropriate to apply these requirements to mobile telecommunications equipment subject to the 255 Guidelines (*e.g.,* mobile phones, cable modems).

When these five provisions are applicable in the proposed 508 Standards, the exception for commercial non-availability would apply (under proposed E202.6.2), thereby requiring a federal agency to provide a user with disabilities access to, and use of, information by an alternative means that meets his or her identified needs.

Question 16. Is telecommunications equipment covered by Section 255 sufficiently unique to warrant exemption from the five hardware-related accessibility requirements listed in proposed C204.1? Should exceptions from other hardware requirements be added, or, conversely, should any of these five proposed exceptions be removed?

C205 Software

This is an introductory section.

C205.1 General

This section proposes that, where components of ICT transmit information or have a user interface, they must conform to the applicable provisions in Chapter 5 (Software).

C205.2 WCAG Conformance

This section proposes that specified components of covered ICT—namely, user interface components, platform content, and application content—must conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0, which is incorporated by reference in Chapter 1. This requirement is new to the 255 Guidelines. In the Major Issues section above, the Board discusses the benefits of, and issues attendant to, incorporation of WCAG 2.0 into the 255 Guidelines and 508 Standards. See Section V.B (Major Issues—WCAG 2.0 Incorporation by Reference).

C206 Support Documentation and Services

This is an introductory section.

C206.1 General

This section proposes to require that where support documentation or services are provided, they must conform to the proposed provisions of

Chapter 6. This proposed requirement is from the existing 255 Guidelines § 1193.33.

D. Functional Performance Criteria and Technical Requirements

Appendix C sets forth proposed functional performance criteria (Chapter 3) and technical requirements (Chapters 4 through 6) that are referenced by, and applied in, the Application and Scoping provisions in the 508 Standards (Appendix A) and 255 Guidelines (Appendix B). The proposed requirements in Appendix C are based on recommendations from the Advisory Committee unless otherwise noted.

Chapter 3: Functional Performance Criteria

Chapter 3 contains proposed functional performance criteria, which are outcome-based provisions that apply when applicable technical requirements (*i.e.,* Chapters 4 and 5) do not address one or more features of ICT. All sections of this chapter are referenced by scoping provisions in 508 Chapter 2 and in 255 Chapter 2. These functional performance criteria would also be used to determine equivalent facilitation under both the proposed 508 Standards and 255 Guidelines. Accordingly, they are referenced by the equivalent facilitation provisions in 508 Chapter 1 and 255 Chapter 1.

301 General

This is an introductory section.

301.1 Scope

This section proposes that the functional performance criteria in Chapter 3 be applied where either (a) required by 508 Chapter 2 or 255 Chapter 2, or (b) where referenced by other requirements.

302.1 Without Vision

This section proposes to revise the criterion for users who are blind. This provision would clarify the requirements in existing 508 Standards § 1194.31(a) and 255 Guidelines § 1193.41(a) by specifying that provision of a mode of operation without vision is required when the ICT otherwise provides a visual mode of operation.

302.2 With Limited Vision

This section proposes to revise the functional performance criterion for users with limited vision so that, where a visual mode of operation is provided, one mode of operation that magnifies, one mode that reduces the field of vision, and one mode that allows user control of contrast would be required. This provision contains significant changes from the functional performance criteria in the existing 508 Standards § 1194.31(b) and existing 255 Guidelines § 1193.41(b). Existing 508 Standards § 1194.31(b) requires at least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 to be provided in both audio and enlarged print output working together or independently. Existing 255 Guidelines § 1193.41(b) is similar, except that it defines users with limited vision as users possessing visual acuity that ranges between 20/70 and 20/200. For a further discussion of the history of these proposed changes, see Section IV.E.6 (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues—Modifications to the Functional Performance Criteria for Limited Vision).

Question 17. Some commenters raised concerns with proposed 302.2 With Limited Vision. They recommended that the Board establish thresholds for how much magnification, reduction, or contrast is sufficient to meet the provision. Should proposed 302.2 be more specific, and if so, what should the thresholds be? Please cite a scientific basis for threshold recommendations.

302.3 Without Perception of Color

This section proposes to add a new functional performance criterion for users with color blindness to better map to technical specifications in the 508 Standards and 255 Guidelines. Section 302.3 would require at least one mode of operation that does not require user perception of color where a visual mode of operation is provided. The technical provisions in existing 508 Standards §§ 1194.25(g) and 1194.21(i), existing 255 Guidelines § 1193.41(c), as well as proposed 407.7, prohibit color coding from being the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

302.4 Without Hearing

This section proposes to revise the criterion for users who are deaf. This provision would clarify the requirements in existing 508 Standards § 1194.31(c) and existing 255 Guidelines § 1193.41(d) by specifying that provision of a mode of operation without hearing is required when the ICT otherwise provides an auditory mode of operation.

302.5 With Limited Hearing

This section proposes to revise the criterion for users with limited hearing. The existing 508 Standards require at least one mode of operation and information retrieval to be provided in an enhanced auditory fashion. The existing 255 Guidelines require that input, control, and mechanical functions be operable with limited or no hearing. Proposed 302.5 is more specific, and would require at least one mode of operation that improves clarity, one mode that reduces background noise, and one mode that allows user control of volume, when an auditory mode of speech is provided.

302.6 Without Speech

This proposed section would clarify the requirements in existing 508 Standards § 1194.31(e) and existing 255 Guidelines § 1193.41(h) by specifying that provision of a mode of operation without speech is only required when the ICT provides a spoken mode of operation. This section is primarily intended to address the needs of users who are unable to speak.

302.7 With Limited Manipulation

In this section, the Board proposes to address the functional performance criterion for users with limited manipulation. The provision would require that, when ICT provides a manual mode of operation, it must also provide at least one mode of operation that does not require fine motor control or operation of more than one control at the same time. The existing 508 Standards address the needs of users with limited manipulation and users with limited reach or strength in the same criterion (see § 1194.31(f)). By contrast, the existing 255 Guidelines address the needs of users with limited manual dexterity and users with limited reach or strength in different provisions (see §§ 1193.41(e) and (f)). Because these conditions do not necessarily exist together, their respective accessibility solutions are best presented separately. The criterion for users with limited reach or strength is set forth in proposed 302.8.

302.8 With Limited Reach and Strength

In this section, the Board proposes to address the functional performance criterion for users with limited reach or strength. The existing 508 Standards address the needs of users with limited manipulation and users with limited reach or strength in the same criterion (see § 1194.31(f)). By contrast, the existing 255 Guidelines address the needs of users with limited manual dexterity and users with limited reach or strength in different criteria (see §§ 1193.41(e) and (f)). Because these conditions do not necessarily exist together, their respective accessibility solutions are best presented separately.

The criterion for users with limited manipulation is set forth in proposed 302.7.

Chapter 4: Hardware

Chapter 4 contains proposed requirements for hardware that transmits information or has a user interface. Examples of such hardware include computers, information kiosks, and multi-function copy machines. This chapter draws substantively from existing 508 Standards, as well as the technical requirements for automatic teller machines and fare machines in the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191, Appendix D, section 707. The requirements in this chapter apply under both the proposed 508 Standards and 255 Guidelines absent an express exception.

Most of the proposed hardware requirements are new to the 255 Guidelines. This is because the existing 255 Guidelines parallel only existing 508 Standards §§ 1194.23 Telecommunications products, 1194.31 Functional performance criteria, and 1194.41 Information, documentation, and support. The existing 255 Guidelines do not currently address the other 508 requirements in Subpart B Technical Standards, namely 508 Standards §§ 1194.21 Software applications and operating systems, 1194.22 Web-based intranet and Internet information and applications, 1194.24 Video and multimedia products, 1194.25 Self-contained, closed products, and 1194.26 Desktop and portable computers. A major objective of this rulemaking is to harmonize the 255 Guidelines and 508 Standards.

Yet, while new to the 255 Guidelines, these proposed hardware rules are generally not expected to have a significant cost impact. Due to convergent technologies, a telecommunications product that previously stood alone may now be part of a more complex system. For example VoIP telephone systems may include a web interface used to operate the telephone. While these products have long been required under existing guidelines to be accessible, see, *e.g.,* 255 Guidelines § 1193.41(a) (requiring telecommunications products be operable without vision), the product-by-product based structure of the guidelines results in a multiplicity of accessibility requirements. This proposed rule aims to address this problem by taking a functional approach across technologies, as well as by adding clarity and detail as to what accessible means. For these reasons, the proposed rule is not expected to impose material new costs on manufacturers of telecommunications equipment and customer premises equipment.

With respect to an increasingly ubiquitous type of ICT hardware—self-service transaction machines—the Board has worked collaboratively with the Departments of Justice (DOJ) and Transportation (DOT) to develop a common set of technical requirements that could be referenced and scoped by these agencies in their respective rulemaking initiatives. While each agency has different regulatory authority, self-service transaction machines can be found in a variety of settings, and the accessibility barriers are generally common across these settings. In late 2013, DOT published a final rule implementing the Air Carrier Access Act that addresses accessibility standards for airline Web sites and automated kiosks located at domestic airports. See 78 FR 67882 (Nov. 12, 2013). The DOT requirements for automated kiosks are consistent with existing 508 Standards for self-contained, closed products. In 2010, DOJ published an ANPRM to solicit public comment on accessibility requirements under the Americans with Disabilities Act for furniture and equipment. See 75 FR 43452 (July 26, 2010). Such requirements would cover, among other things, kiosks, interactive transaction machines, and point-of-sale devices. In a future rulemaking, the Board may update the ADA and ABA Accessibility Guidelines to harmonize those guidelines with the proposed 508 Standards and the 255 Guidelines, once finalized.

401 General

This is an introductory section.

401.1 Scope

This section proposes that the technical requirements for hardware in Chapter 4 be applied where (a) required by 508 Chapter 2 or 255 Chapter 2, or (b) where referenced by other requirements. Assistive technology hardware would be excepted from conformance with this chapter. This exception is proposed in response to public comments to the 2010 and 2011 ANPRMs that sought clarification on this point. Commenters expressed the concern that, should this scoping section be read as obligating assistive technology hardware to meet the requirements of this chapter, some assistive technology would not be able to serve its function. For example, people with very low muscle tone might use a specialized membrane keyboard that is completely flat, with no tactilely discernible separation between the keys, because it is the most optimal input device for them. This type of specialized keyboard, however, would not be permitted under proposed 407.3, which addresses tactilely discernible input controls. In light of the specialized nature of assistive technology, the Board proposes it be excepted from the technical requirements in this chapter.

402 Closed Functionality

This is an introductory section.

402.1 General

This section proposes to require ICT with closed functionality to be operable without requiring the user to attach or install assistive technology, with the exception of personal headsets or other audio couplers. This provision is needed because, when ICT has closed functionality, the end user typically does not have the option of installing or attaching assistive technology. Closed functionality can also apply to the platform user interface. This is sometimes referred to as ''firmware'' because it has a software aspect, but is not alterable by the end-user and the user interface is necessarily tied to the hardware platform. The proposed technical requirements for software (Chapter 5) do not specifically address closed functionality, except for the interoperability of software and assistive technology.

Components of ICT subject to the 255 Guidelines would be excepted from the requirements of this section (see C204.1 Exception) because such telecommunications equipment typically has closed functionality. For example, it is often impossible to attach or install assistive technology, such as a specialized keyboard.

Variable message signs (VMS) frequently are installed in federal buildings and facilities to provide information about ongoing events. Some VMS also convey information relevant to emergencies. VMS with closed functionality would be covered by this section. The Board is currently unaware of any VMS technology that provides audible output. However, there is one voluntary consensus standard addressing accessibility of VMS with respect to the needs of persons with low vision. The most recent edition of the International Code Council (ICC)'s ''Accessible and Usable Buildings and Facilities'' (ICC A117.1–2009) contains specifications for making high-resolution and low-resolution VMS more accessible to people with low vision. For low-resolution signs, these requirements address signage characters (*e.g.,* case, style, height, width, stroke width, and spacing), as well as other characteristics relating to height above

the floor, finish, contrast, protective coverings, brightness, and rate of change. High-resolution VMS need only comply with the provisions for character case (uppercase), protective coverings, brightness, and rate of change since they typically meet or exceed the other specifications. In addition, section 1110.4 of the 2012 edition of the International Building Code requires VMS in transportation facilities and in emergency shelters to comply with ICC A117.1 unless equivalent information is provided audibly. The IBC, however, does not require the VMS, itself, to provide the audible message. For example, in a transportation facility, information equivalent to the VMS display can be provided through a public address system.

Question 18. In the final rule, the Board is considering incorporating by reference the requirements for VMS in ICC A117.1–2009—or its successor ICC A117.1–2015, if the standard has been finalized by that time—in order to make such signs more accessible to individuals who are blind or have low vision. The Board seeks comment on the advisability of incorporating by reference the requirements in ICC A117.1–2009 (or its successor) for variable message signs. Are there technologies that would allow a user to receive an audible message generated by the VMS sign? If so, the Board requests that commenters provide information regarding this technology. Until VMS can be made directly accessible to persons who are blind, we recognize that VMS would have to be paired with audible public address announcements. If VMS cannot be speech enabled, should the Board require VMS to, at least, be accessible to people with low vision?

402.2 Speech-Output Enabled

This section proposes to require ICT with closed functionality that has a display screen to be speech-output enabled. This means that operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information necessary for full use, would have to be accessible to and usable by individuals with vision impairments. In actual practice, for all but the simplest ICT (*e.g.,* hardware without display screens), this means ensuring that the ICT has built-in speech output. This explicit requirement would be new to the 508 Standards. That is, while the requirement in existing 508 Standards § 1194.25(a) has been interpreted as requiring ICT with closed functionality to provide speech output since that is the only means of making such products ''usable by people with disabilities without requiring an end-user to attach assistive technology,'' there is currently no express mandate for speech output. This proposed section contains two exceptions, which exempt specific types of information from speech output requirements, as discussed below.

Exception 1 to 402.2 Speech-Output Enabled

This section proposes to exclude from the requirement for speech output any user inputted content that is not displayed as entered for security purposes, such as when asterisks are shown on-screen instead of personal identification numbers. Excluded material may be delivered as audible tones, rather than as speech.

Exception 2 to 402.2 Speech-Output Enabled

This section proposes to permit visible output that is not necessary for the transaction being conducted—such as advertisements and similar material—from the requirement for audible output.

402.2.1 User Control

This section proposes requirements for user control of speech-enabled output concerning interruption upon selection of a transaction, as well as repeat and pause capabilities. This section is similar to § 1194.25(e) of the existing 508 Standards.

402.2.2 Braille Instructions

This section proposes that, where displays for ICT with closed functionality are required to have speech output, instructions for initiating the speech mode be provided in braille. Braille instructions would be required to conform to specifications for braille in the ADA and ABA Accessibility Guidelines. See ADA and ABA Accessibility Guidelines, 36 CFR part 1191, Appendix D, section 703.3. This requirement would be new to the 508 Standards. For telecommunications equipment and customer premises equipment subject to Section 255, this requirement is inapplicable; an exception to proposed C204.1 expressly exempts such ICT from this hardware requirement. This proposal was included in the 2011 ANPRM, and the Board received no comments.

402.3 Volume

This section proposes to require two alternate standards for volume control and output amplification on ICT with closed functionality that delivers sound, depending on whether such sound is being conveyed for private or non-private listening. An exception also provides that ICT conforming to 410.2, which addresses volume gain for ICT with two-way voice communication, would be exempted from complying with this section.

402.3.1 Private Listening

This section proposes to require that, where ICT subject to 402.3 provides a mechanism for private listening—such as a handset or headphone jack—it must have a mode of operation for controlling the volume, and provide a means for effective magnetic wireless coupling to hearing technologies. This proposed requirement would be new to the 508 Standards.

402.3.2 Non-private Listening

This section proposes to require that, where ICT subject to 402.3 provides non-private listening, incremental volume control must be provided with output amplification up to a level of at least 65 dB. In addition, where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level would be required and must be user selectable. This provision would require a function to be provided to automatically reset the volume to the default level after every use. This section closely corresponds to § 1194.25(f) in the existing 508 Standards.

402.4 Characters

This section proposes to require that at least one mode of characters displayed on a screen be in sans serif font. In addition, where ICT does not provide a screen enlargement feature, characters would be required to have a minimum height requirement of 3/16 inch based on the uppercase letter ''I.'' This section would also require that characters contrast with their background with either light characters on a dark background or dark characters on a light background. This section would be new to the 508 Standards.

403 Biometrics

This is an introductory section.

403.1 General

This section proposes to prohibit biometrics from being the only means for user identification or control unless at least two different biometric options using different biological characteristics are provided. This new exception was recommended by the Advisory Committee. Without the added exception, the language in this section is substantially unchanged from

§ 1194.25(d) of the 508 Standards, but would be new to the 255 Guidelines.

404 Preservation of Information Provided for Accessibility

This is an introductory section.

404.1 General

This section proposes to prohibit ICT that transmits or converts information or communication from removing non-proprietary information provided for accessibility or, if the non-proprietary information or communication is removed, this section would require that it be restored upon delivery. For example, a video or multimedia presentation with closed captioning would be required to retain the caption encoding, or, if removed in transmission, then restore such encoding upon delivery. This provision closely models §§ 1194.23(j) and 1193.37 of the 508 Standards and 255 Guidelines, respectively.

405 Flashing

This is an introductory section.

405.1 General

This section proposes that, where ICT emits lights in flashes, there can be no more than three flashes in any one-second period. An exception would allow small flashes not exceeding the general flash and red flash thresholds defined in Success Criterion 2.3.1 of WCAG 2.0 because such flashes do not pose seizure risks to users. This requirement is based on recommendations from the Advisory Committee. This proposed section closely corresponds to existing 508 Standards §§ 1194.21(k), 1194.22(j), and 1194.25(i), and is similar to § 1193.43(f) of the existing 255 Guidelines. The flash rate specification in this section is supported by scientific studies on seizures and photosensitivity.[9]

406 Standard Connections

This is an introductory section.

406.1 General

This section proposes that, where ICT provides data connections used for input and output, at least one of each type of data connection conform to industry standard non-proprietary formats, *e.g.,* jacks and plugs. This proposed section closely corresponds to § 1194.26(d) of the existing 508 Standards and § 1193.51(a) of the existing 255 Guidelines. The intent of this provision is to support compatibility with assistive technology hardware.

407 Operable Parts

This is an introductory section.

407.1 General

This section addresses accessibility features of operable parts—such as keys and controls—when part of the user interface is hardware. This section proposes to require operable parts of ICT to conform to the technical requirements in proposed 407.2, 407.3, and 407.4. This section is consistent with requirements in existing 508 Standards §§ 1194.21 and 1194.25, along with § 1193.41(f) of the existing 255 Guidelines.

407.2 Contrast

This section proposes that keys and controls, where provided, contrast visually from background surfaces. Characters and symbols would have to provide this contrast with either light characters or symbols on a dark background or dark characters or symbols on a light background. The goal of this section is to make operable parts of hardware on ICT more usable for persons with low vision. A contrast requirement for hardware was recommended by the Advisory Committee. It would be new to the 508 Standards and 255 Guidelines.

407.3 Tactilely Discernible

This section proposes to require that at least one tactilely discernible input control conforming to the requirements of this section be provided for each function. ICT containing touchscreens is widely used in the marketplace. Touchscreens currently are not generally tactilely discernible. This requirement would not prohibit use of touchscreens, membrane keys, or gesture input, provided there is at least one alternative method of input that is tactilely discernible. The intent of this proposed section is to address the difficulty certain people with visual and dexterity impairments often have when using touchscreens. This section, which contains subsections for three types of functions (*i.e.,* identification, alphabetic keys, and numeric keys) is new to the 255 Guidelines, but is consistent with existing 508 Standards §§ 1194.23(k)(1)–(k)(4), with some changes as discussed below.

The Board is also proposing an exception to the requirement for tactile discernibility for touchscreen-based devices in today's marketplace that have proven to be accessible to—and popular with—people with visual disabilities. Specifically, the proposed exception would exempt devices for personal use offering input controls that (a) are audibly discernible without activation, and (b) operable by touch. Examples of currently available devices without tactilely discernible keyboards that are still navigable and usable by individuals with visual disabilities include devices offered by Apple with the iOS-based VoiceOver feature, such as the iPhone® and iPad®. Technology has evolved to the point where touch screens can be made navigable by blind users. Keyboards are an optional design feature. This proposed exception would be a significant departure from the 508 Standards and 255 Guidelines, but more accurately reflects the state of current technology. We welcome comment on this proposed approach.

In addition, the Board is considering adding to the final rule a requirement that at least one type of input technology on ICT with touch screens be compatible with a prosthetic, similar to the requirement in existing 255 Guidelines § 1193.51(c).

Question 19. Does the proposed exception to the requirement for tactilely discernible input controls strike the appropriate balance so that it permits innovative accessibility approaches for individuals with visual impairments without being overbroad? Should there be additional requirements for touchscreens? For example, should the Board require touchscreens to be compatible with prosthetic devices?

407.3.1 Identification

This section proposes to require input controls to be tactilely discernible without activation, as well as operable by touch. It also would require key surfaces outside active areas of display screens to be raised above their surrounding surfaces. The Board notes that, by requiring raised key surfaces, it does not thereby intend to prohibit contouring of keys. Users with limited manual dexterity may prefer concave keys. Contoured keys would be permitted under proposed 407.3.1, for example, by providing keys with raised edges and concave centers, as is often used on computer keyboards and landline telephone keypads. This section is new to the 255 Guidelines, but is similar to existing 508 Standards §§ 1194.23(k)(1), 1194.25(c), and

[9] See, *e.g.,* Graham Harding, et al., Photic- and Pattern-Induced Seizures: Expert Consensus of the Epilepsy Foundation of America Working Group, 46 *Epilepsia* 1426 (2005); Arnold Wilkins, et al., Characterizing the Patterned Images That Precipitate Seizures and Optimizing Guidelines to Prevent Them, 46 *Epilepsia* 1212 (2005); see also Ofcom, Guidance Notes Section 2: Harm & Offence for Licensees on Flashing Images and Regular Patterns in Television (Issue Ten: July 2012), available at *http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf*; Information about Photosensitive Seizure Disorders, Trace Research & Development Center (June 2009), *http://trace. wisc. edu/peat/photosensitive.php.*

1194.26(b). It is also consistent with the requirements for input controls in the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191, Appendix D, section 707. This is not a material change from the existing standards, and therefore, imposes no new costs.

Question 20. Some industry commenters to the 2011 ANPRM suggested that the Board permit concave—as well as raised—key surfaces. What would be the impact on accessibility if proposed 407.3.1 instead prohibited key surfaces outside the active area of the display screen from being flush with surrounding surfaces?

407.3.2 Alphabetic Keys

This section proposes to require alphabetic keys, where provided, to be arranged in a traditional QWERTY layout, with tactilely distinct letter ''F'' and ''J'' keys. The requirement for tactilely discernible home row keys derives from existing 508 Standards § 1194.23(k)(1), but would be a new requirement for the 508 Standards and 255 Guidelines. The intent of this section is to address identification and orientation when alphabetic key entry is used. This section was added to the proposed rule at the request of commenters to the 2011 ANPRM, who suggested that a requirement for alphabetic keys was needed to complement the proposed requirement for numeric key layout (proposed 407.3.3). Where a numeric keypad with an alphabetic overlay is provided (such as on a telephone keypad), the relationships between letters and digits would be required to conform to ITU–T Recommendation E.161, as incorporated by reference in 508 Chapter 1 and 255 Chapter 1.

This requirement for a QWERTY layout in keyboards and conformance to ITU–T Recommendation E.161, while new to the 508 Standards and 255 Guidelines, represents current design practice. Accordingly, there should be no additional cost associated with this provision.

407.3.3 Numeric Keys

This section proposes to require numeric keys, where provided, to be arranged in a 12-key ascending or descending keyboard layout, with a tactilely distinct number ''5'' key. The requirement for a tactilely discernible ''5'' key derives from existing 508 Standards § 1194.23(k)(1), but would be a new requirement for the 508 Standards and 255 Guidelines. The intent of this section is to address identification and orientation when numeric data entry is used.

407.4 Key Repeat

This section proposes to require that, where a keyboard with a key repeat feature is provided, the delay before activation of the key repeat feature must be fixed at, or adjustable to, 2 seconds minimum. The intent of this section is to address the unintentional activation of keys by people with dexterity impairments. The proposed requirement closely corresponds to existing 508 Standards §§ 1194.23(k)(3), 1194.25(c), and 1194.26(b), but is new to the 255 Guidelines. Because telecommunications products generally do not have a key repeat feature, the Board expects the impact of this provision on telecommunications equipment manufacturers to be negligible.

407.5 Timed Response

This section proposes to require that where a timed response is required, ICT would have to alert the user visually, as well as by touch or sound. It would also have to provide the user an opportunity to indicate that more time is needed. The intent of this section is to afford people with certain disabilities—namely, those relating to manual dexterity, cognitive disabilities, or otherwise affecting response time—additional time to complete a task, if needed. The proposed requirement is consistent with existing 255 Guidelines § 1193.41(g), and closely corresponds to existing 508 Standards §§ 1194.25(b) and 1194.22(p).

407.6 Status Indicators

This section would require status indicators, including all locking or toggle controls or keys, such as ''Caps Lock'' and ''Num Lock,'' to be discernible visually and by either touch or sound. The intent is to ensure that users who are blind can determine the status of locking or toggle keys audibly or by touch, and that users who are deaf can make this determination visually. This proposed provision closely corresponds to existing 508 Standards §§ 1194.23(k)(4), 1194.25(c), and 1194.26(b), but would be new to the 255 Guidelines. While new to the 255 Guidelines, status indicators for Caps Lock and Num Lock controls represent current design practice. Accordingly, there should be no additional cost associated with this provision.

407.7 Color

This section proposes to prohibit color-coding from being the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element. The proposed section is the same as existing 508 Standards § 1195.25(g), and is consistent with 255 Guidelines § 1193.41(c). The use of color is also addressed in existing 508 Standards § 1194.22(c), which requires that Web pages ''be designed so that all information conveyed with color is also available without color, for example from context or mark up.'' The intent of the proposed section is to address the needs of people who are color blind or have low vision. The proposed prohibition on color-coding represents current practice in the design of electronic content and, therefore, should not result in any additional cost.

407.8 Audio Signaling

This section proposes to prohibit audio signaling from being the only means of conveying information, indicating an action, or prompting a response. For example, when a landline telephones provides a stutter tone to indicate a voice mail message, such a tone is typically accompanied by an activated light on the phone. This proposal closely parallels the prohibition in existing 508 Standards § 1194.25(g) against use of color as the only means of conveying information. The section is intended to address the needs of individuals with hearing impairments in the same way that proposed 407.7 addresses the needs of persons who have color blindness. Although an express prohibition on audio signaling would be new to the 508 Standards and 255 Guidelines, such a prohibition is implied by the existing functional performance criteria (508 Standards § 1194.31(c)), and represents current industry practice. This proposed provision should not, therefore, result in any significant cost increase.

407.9 Operation

This section would require ICT with operable parts to provide at least one mode of operation that is operable with one hand, and prohibits operable parts requiring tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts would be limited to 5 lbs. (22.2 N) maximum. The proposed requirement closely corresponds to existing 508 Standards §§ 1194.23(k)(2), 1194.25(c), and 1194.26(b), and is consistent with existing 255 Guidelines §§ 1193.41(e) and (f). This section is aimed at addressing the needs of people with manual dexterity impairments when using operable parts.

407.10 Privacy

This proposed section would require the same degree of privacy of input and output for all individuals. For example,

individuals using a speech output mode must be afforded the same degree of privacy as those using a display screen. The proposed requirement would be new to both the 508 Standards and 255 Guidelines. ATMs and Fare Vending Machines, as addressed in the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, section 707.4), typically support compliance with this requirement by providing a handset or audio jack. Additionally, this proposed section would prohibit screens from automatically going blank when the speech function is engaged. Many people with low vision use speech output to supplement or reinforce on-screen prompts. Consequently, automatically blanking the screen would render the ICT less accessible to these users. Provision of an option for users to blank the screen, however, may be helpful to individuals who desire greater privacy.

407.11 Keys, Tickets, and Fare Cards

This section would require that, when kiosks or other ICT provide a key, ticket, or fare card, those objects have a tactilely discernible orientation, if orientation is important to the object's further use. This requirement would be new to the 508 Standards and 255 Guidelines, and is intended to address the needs of individuals with visual impairments. This section is identical to the recently issued final rule by the Department of Transportation concerning the accessibility of tickets and boarding passes issued by shared-use automated kiosks at airport facilities. See Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web sites and Automated Kiosks at U.S. Airports, 78 FR 67882 (Nov. 12, 2013) (to be codified at 49 CFR part 27). ICT subject to the 255 Guidelines would be expressly exempted from the requirements of this section (by proposed C204.1 Exception) because telecommunications equipment does not typically issue keys, tickets, or fare cards.

407.12 Reach Height

This section proposes requirements for the height of side and forward reaches that would enable persons using wheelchairs or other mobility aids to reach and operate at least one of each type of operable part. This proposed section would apply only to ICT that is stationary. By ''stationary,'' the Board means that the ICT, once put in place, is not intended to be relocated for routine use. Proposed 407.12 parallels existing 508 Standards § 1194.25(j), which applies side reach requirements to ICT that is ''freestanding, non-portable, and intended to be used in one location.'' We are proposing to use the term ''stationary'' to address concerns that the word ''freestanding'' implies an independent supporting structure that may not always be in place, such as with a multifunction printer specifically designed for table-top or desk-top use.

Specifically, this section would establish requirements for position (*i.e.,* vertical reference plane), forward reach, and side reach. This section proposes maximum and minimum reach heights for either forward (over the lap) or side reaches to stationary ICT. Existing 508 Standards § 1194.25(j) only provides specifications for side reaches to operable parts of ICT. This section would provide greater design flexibility by permitting controls to be configured for either forward reach (407.12.3) or side reach (407.12.2). This flexibility would allow manufacturers to assess conformance prior to sale and independent of factors outside their control. For example, a manufacturer cannot control the installation location once ICT is purchased. However, because controls are designed to be within reach, the purchaser can then ensure that the ICT is located so that at least one of each type of control is accessible to individuals with disabilities. ICT subject to the 255 Guidelines would be expressly exempted from the requirements of this section (by proposed C204.1 Exception) because it is not typically stationary.

Question 21. Should the requirements for reach height in proposed 407.12 apply to ICT subject to the 255 Guidelines, such as, for example, routers attached to racks? The Board asks that telecommunications equipment manufacturers provide information on the costs of such a requirement. Are there alternative ways of making these components accessible? We welcome comments on suggested approaches.

407.12.1 Vertical Reference Plane

This section proposes that the positioning of operable parts for side reaches and forward reaches be determined with respect to a vertical reference plane, with the location and length of the plane dependent on the type of reach. The provisions for a side reach in existing 508 Standards § 1194.25(j)(1) contain references to this same vertical reference plane.

407.12.1.1 Vertical Plane for Side Reach

This section proposes that, where a side approach is provided, the vertical reference plane must have a minimum length of 48 inches. The 48-inch dimension is based on the length of a stationary occupied wheelchair. This side reach requirement mirrors existing 508 Standards § 1194.25(j)(1) and Figure 1.

407.12.1.2 Vertical Plane for Forward Reach

This section proposes that, where a forward reach is provided, the vertical reference plane must be, at a minimum, 30 inches long. The 30-inch dimension is based on the width of a stationary occupied wheelchair. This dimension is consistent with the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, section 305.5).

407.12.2 Side Reach

This section specifies proposed requirements for operable parts providing unobstructed or obstructed side reaches. It proposes to limit the height of the portion of the ICT over which a person must reach to access controls to 34 inches maximum in height. Although the existing 508 Standards do not include a maximum height for the portion of the ICT over which a person must reach, the proposed 34 inches maximum height is consistent with ICC A117.1–2009, as well as the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, section 308). Without such a height limitation, controls at 48 inches could be out of reach if an obstruction blocked a user's arm and impeded his or her reach to the controls.

407.12.2.1 Unobstructed Side Reach

This section proposes that, where the operable part is located 10 inches or less behind the vertical reference plane, the operable part must be 48 inches high maximum and 15 inches high minimum above the floor. Although existing 508 Standards § 1194.25(j)(2) permits a maximum reach height of 54 inches, it contains the same minimum height (15 inches) and 10-inch reach depth. The proposed lowering of the maximum height for unobstructed side reach (*i.e.,* from 54 inches in the existing 508 Standards to 48 inches in this proposed rule) reflects a similar change in 2004 to the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191, Appendix D, section 308.3. This proposed maximum height is also consistent with accessible reaches specified in the 1998 edition, as well as two subsequent editions, of the ICC A117.1.

407.12.2.2 Obstructed Side Reach

This section proposes that, where the operable part is located more than 10 inches, but not more than 24 inches,

behind the vertical reference plane, the height of the operable part must be 46 inches maximum and 15 inches minimum above the floor. In addition, the operable part would not be permitted to be located more than 24 inches behind the vertical reference plane. Although it is editorially revised, this section is the same as existing 508 Standards §§ 1194.25(j)(3) and 1194.25(j)(4).

407.12.3 Forward Reach

This section contains proposed requirements for operable parts providing either an unobstructed or obstructed forward reach. This section proposes to limit the height of an obstruction that must be reached over to operate the control to 34 inches in height. The 34-inch height restriction is consistent with the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191, Appendix D, section 308. The proposed provision would also require the vertical reference plane to be centered on, and intersect with, the operable part.

As noted previously, the existing 508 Standards do not provide specifications for forward reaches. While this requirement (and its subsections) would thus be new to the existing 508 Standards, it nonetheless would provide greater design flexibility by permitting controls to be configured for forward reach (or, alternatively, side reach), at the manufacturer's discretion.

407.12.3.1 Unobstructed Forward Reach

This section proposes that, where an unobstructed forward reach is provided, the operable part must be located 48 inches high maximum and 15 inches high minimum above the floor. An unobstructed forward reach, for purposes of this section, occurs when the operable part is located at the leading edge of the maximum protrusion within the length of the vertical reference plane of the ICT. These dimensions and their resulting geometry are consistent with the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, sections 306 and 308).

407.12.3.2 Obstructed Forward Reach

This section proposes that, where an obstructed forward reach is provided, the maximum allowable forward reach to an operable part would be 25 inches. An obstructed forward reach, for purposes of this section, occurs when the operable part is located behind the leading edge of the maximum protrusion within the length of the vertical reference plane of the ICT. In addition, this proposed section also contains subsections, as discussed below, establishing maximum heights for operable parts with obstructed forward reaches, as well as dimensions for knee and toe spaces. These dimensions and their resulting geometry are consistent with the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, sections 306 and 308).

407.12.3.2.1 Height

This section, presented in tabular form (Table 407.12.3.2.1), proposes alternative maximum heights for operable parts with obstructed forward reaches depending on reach depth. As specified in this table, if the reach depth of the operable part is less than 20 inches, then the operable part must be no higher than 48 inches. If the reach depth of the operable part is 20 inches to 25 inches, then the operable part must be no higher than 44 inches. These dimensions and their resulting geometry are consistent with the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, sections 306 and 308).

407.12.3.2.2 Knee and Toe Space

This section proposes dimensions for knee and toe space under ICT when an obstructed forward reach is provided. The dimensions necessary to accommodate the full knee and toe space under ICT would be 27 inches high minimum, 25 inches deep maximum, and 30 inches wide minimum. This knee and toe space would also have to be clear of obstructions. These dimensions and their resulting geometry are consistent with the ADA and ABA Accessibility Guidelines (36 CFR part 1191, Appendix D, sections 306 and 308).

There are two proposed exceptions to this knee and toe space requirement. First, toe space with a reduced clear height of 9 inches (rather than 27 inches) would be permitted for a depth of no more than 6 inches. Building on this exception, the second exception would allow further reduction in the height of the space along the profile of the knee to the toe sloping at 6:1 toward the maximum protrusion of the ICT. This means that, for every 6 inches of height, the line can move toward the maximum protrusion of the ICT up to 1 inch or, put another way, 6 inches of rise to 1 inch of run. These two exceptions allow ICT to provide space beneath operable controls for ICT for knees and toes, or a portion of knees and toes, depending on the location of the controls.

408 Display Screens

This is an introductory section.

408.1 General

This section proposes to require that, where stationary ICT provides one or more display screens, at least one of each type of screen must be visible from a point located 40 inches above the floor space where the display screen is to be viewed. The word ''stationary'' in this proposed section would have the same meaning as in proposed 407.12. The intent of this provision is to ensure that display screens are viewable by individuals who use wheelchairs or other mobility aids. This would be a new requirement for the 508 Standards. ICT subject to the 255 Guidelines would be expressly exempted from the requirements of this section (by proposed C204.1 Exception) because such equipment is not typically stationary.

Question 22. The visibility requirements for display screens in section 408.1 apply only to stationary ICT (*i.e.,* ICT that is not intended to be moved once put in place), and, consequently, would not generally apply to telecommunications equipment subject to the 255 Guidelines—such as cable modems and routers. Should the requirements for display screens apply to ICT subject to the 255 Guidelines?

In addition to the proposed requirements above, the Board is considering establishing a requirement for the angle of the display screen to be adjustable, so that a person using a wheelchair or other mobility aid could see the entire viewable area of the display screen and minimize the effect of glare.

Question 23. Should the Board add a requirement that the viewing angle of display screens be adjustable to permit wheelchair users or persons of small stature to see the entire viewable area of such screens and minimize glare? Are there other characteristics of display screens that would make them more viewable to persons who use wheelchairs or other mobility aids?

409 Transactional Outputs

This is an introductory section.

409.1 General

This section proposes that, where transactional outputs—such as tickets and receipts—are provided by ICT with speech output, the speech output must contain all information necessary to complete or verify a transaction. As applied to ICT with closed functionality and display screens required to be speech-output enabled under proposed 402.2, this section would require all

information necessary to complete or verify a transaction, including information printed on receipts or tickets, to be provided audibly.

This proposed requirement in 409.1 would be new to the 508 Standards. ICT subject to the 255 Guidelines would be expressly exempted from the requirements of this section (by proposed C204.1 Exception) because telecommunications equipment generally does not provide transactional outputs. For ICT covered by the 508 Standards, there would be exceptions for three specific types of transactional outputs: Information unrelated to the substance of particular transactions (*e.g.,* machine location and identifier, time of transaction); information already presented audibly during the same transaction; and, lastly, itineraries, maps, and other visual images. Each of these exceptions is discussed below.

Question 24. Do the three proposed exceptions to 409.1 adequately cover the types of information that should be exempted from the requirement for audible presentation of transactional outputs? Are there other types of information typically provided on transaction outputs that should be exempted? Should the Board limit the types of transactional outputs required to be presented audibly to certain types of outputs, *e.g.,* tickets or sales receipts?

Exception 1 to 409.1

Proposed Exception 1 would exempt information regarding the machine location, date and time of transaction, customer account number, and the machine identifier from the proposed requirement for audible transaction output. Although this information may be on printed receipts and other transactional outputs, it is not typically consulted by the user during, or immediately following, a transaction. This proposed exception is based on an exception to the requirements for speech output at Automated Teller Machines and Fare Vending Machines in the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191, Appendix D, section 707.5.2 Exception 1.

Exception 2 to 409.1

Proposed Exception 2 would exempt all information that is part of a transactional output from the proposed requirement if it has already been presented audibly at another point during the same transaction. For example, if a user purchasing stamps on a self-service U.S. Post Office machine selected a particular commemorative stamp and the selected stamp name was presented in an audible format previously in that same transaction, it need not be repeated when the machine issues the stamp.

Exception 3 to 409.1

Proposed Exception 3 would exempt itineraries, maps, or other visual images that are provided on ticketing machines from being required to be presented in an audible format. This exception is proposed in recognition of the technical challenges posed by audible presentation of visual images.

Question 25. Are there requirements in proposed Exception 3 to 409.1 sufficiently clear?

410 ICT With Two-Way Voice Communication

This is an introductory section.

410.1 General

This section addresses the accessibility of telecommunications equipment that offers two- way voice communication (*i.e.,* an interactive, multi-party voice communication occurring in real time), including both older technologies (such as landline telephones and two-way pagers) and more modern ICT (such as mobile wireless devices). It would also apply to two-way video communication when the video also transmits voice communication. Proposed 410.1 would require ICT with two-way voice communication functionality to conform to the technical requirements in proposed 410.2 through 410.8, which cover, among other things: Volume gain magnetic coupling, minimization of interference, real-time text functionality, and video communication.

410.2 Volume Gain

This section proposes to require ICT with two-way communication to provide volume gain conforming to the FCC's current regulation at 47 CFR 68.317, which establishes technical standards for volume control on analog and digital telephones to facilitate hearing aid compatibility. The proposed section would replace existing 508 Standards § 1194.23(f) and existing 255 Guidelines § 1193.43(e). The Advisory Committee recommended that the Board adopt the FCC's volume gain requirements for landline ICT with two-way voice communication.

In July 2013, the FCC issued a request for comment on a petition for rulemaking filed by a telecommunications industry group requesting that the agency revise its hearing aid compatibility volume control gain requirements for analog and digital telephones.[10] The Telecommunications Industry Association (TIA) petition urged the Commission to issue a notice of proposed rulemaking to, among other things, update its Part 68 rule to incorporate the most recent TIA standard for hearing aid compatibility volume control on telephones: ANSI/TIA–4965, Receive Volume Control Requirements for Digital and Analog Wireline Handset Terminals (2012). 28 FCC Rcd. at 10338–39. At present, the Commission's regulation at § 68.317 sets forth separate requirements for analog and digital telephones based on speech amplification metrics known as ''Receive Objective Loudness Rating'' (ROLR). ANSI/TIA–4965, on the other hand, uses a new amplification metric—referred to as ''conversational gain''—to establish requirements for both analog and digital telephones.

While the ''conversational gain'' method of measuring amplification for wireline phones in ANSI/TIA–4965 may hold promise, it would be premature for the Board to reference this standard unless and until it is adopted by the FCC. As the lead regulatory agency on hearing aid compatibility standards for wireline telephones, the FCC is in the best position to assess the technical merits, as well as costs and benefits, of referencing this new TIA standard in any subsequent revisions to its existing regulation in Part 68.

Question 26. The Board proposes to adopt 47 CFR 68.317, which is the FCC's current regulatory standard addressing volume control for analog and digital telephones. In the future, should the FCC revise its regulation and incorporate by reference ANSI/TIA–4965 (or any other consensus standard) for wireline phones, the Board plans to update its regulations—as needed—to reflect revisions by the Commission. We seek comment on this proposed course of action.

410.3 Magnetic Coupling

This section proposes to require that, where ICT with two-way voice communication delivers output by an audio transducer that is typically held up to the ear, it provide a means for effective magnetic wireless coupling to hearing technologies, such as hearing aids, cochlear implants, and assistive listening devices. This section is equivalent to §§ 1194.23(h) and

[10] See Request for Comment on Petition for Rulemaking filed by the Telecommunications Industry Association Regarding Hearing Aid Compatibility Volume Control Requirements, 28 FCC Rcd. 10338 (July 19, 2013) (TIA Petition). The comment period on this petition closed in September 2013. Id.

1193.43(i) of the existing 508 Standards and 255 Guidelines, respectively.

410.4 Minimize Interference

This proposed section would require wireless handsets and digital wireless devices to reduce interference with hearing technologies to the lowest possible level, with interference specifications set forth in proposed subsections 410.4.1 (wireless handsets) and 410.4.2 (digital wireline). This section closely corresponds to existing 508 Standards § 1194.23(i) and 255 Guidelines § 1193.43(h), but also incorporates by references consensus standards developed since the 508 Standards and 255 Guidelines were published.

The proposed subsections 410.4.1 and 410.4.2 refer to industry-accepted standards for performance requirements for mobile and landline telephones.

410.4.1 Wireless Handsets

This section proposes that ICT in the form of wireless handsets—that is, cellular telephones—would be required to conform to ANSI/IEEE C63.19–2011, as incorporated by reference in 508 Chapter 1 and 255 Chapter 1.

410.4.2 Digital Wireline

This section proposes that ICT in the form of digital wireline devices (such as VoIP-based office desk telephones) would be required to conform to TIA 1083, as incorporated by reference in 508 Chapter 1 and 255 Chapter 1.

410.5 Digital Encoding of Speech

This section proposes to require ICT with two-way voice communication to transmit and receive digitally encoded speech in the manner specified by ITU–T Recommendation G.722, a consensus standard for encoding and storing digital audio information that is incorporated by reference in 508 Chapter 1 and 255 Chapter 1. An exception for closed systems would exempt such systems from conformance to ITU–T Recommendation G.722 provided that they conform to another standard that ensures equivalent or better acoustic performance and support conversion to ITU–T Recommendation G.722 at their borders. This provision was recommended by the Advisory Committee to help improve auditory clarity for persons with hearing impairments. It is new to both the 508 Standards and 255 Guidelines.

410.6 Real-Time Text Functionality

This proposed section establishes requirements for RTT functionality for ICT that provides real-time voice communication. As noted previously, both the Advisory Committee and the Board believe that RTT represents an important technological advance that provides an equivalent alternative to voice communications for persons who are deaf, as well as those with limited hearing or speech impairments. RTT delivers a more interactive, conversational communication experience compared to standard text messaging. It also provides superior speed and reliability in emergency situations. Furthermore, RTT permits the user to communicate using mainstream devices—such as mobile phones—rather than having to use specialized and expensive devices (such as TTYs). See discussion above in Section IV.E.4 (Rulemaking History—2010 and 2011 ANPRMs: Significant Issues—Coverage of Real-Time Text), and Section V.D (Major Issues—Real-Time Text).

Proposed 410.6 would require that, where ICT supports real-time voice communication, it must also support RTT functionality. Subsections of this proposed provision would, in turn, establish technical requirements for display, text generation, and interoperability. Importantly, proposed 410.6 would not mandate that all ICT provide RTT functionality. Rather, only those ICT that already have real-time voice communication capabilities would be required to support RTT functions. In this way, the Board's approach to requirements for RTT in the proposed rule mirrors the approach taken in the existing 508 Standards and 255 Guidelines toward TTY compatibility. Neither the existing standards and guidelines nor the proposed rule establish an across-the-board command that telecommunications equipment or devices ''build in'' text capability. Instead, both sets of rules simply require that, when such equipment or devices offer voice communication functions, they must also ensure compatibility with certain types of text communication (*i.e.,* TTY and RTT) by supporting use of specified cross-manufacturer, non-proprietary signals. See 36 CFR 1193.51((e), 1194.23(b).

410.6.1 Display of Real-Time Text

This proposed section is new to the 508 Standards and 255 Guidelines and would require that, wherever ICT provides real-time voice communication and includes a multi-line screen, the ICT must also support the display of real-time text. This provision would not apply to telecommunications devices that either do not have display screens, or only have display screens capable of showing one line of text at a time.

410.6.2 Text Generation

This proposed section is new to the 508 Standards and 255 Guidelines and would require that, wherever ICT provides real-time voice communication and includes a keyboard, the ICT must also support the generation of real-time text.

410.6.3 Interoperability

This section proposes that, where ICT with real-time two-way voice communication operates outside of a closed network or connects to another system, such ICT must ensure real-time text interoperability by using one of two cross-manufacturer, non-proprietary consensus standards depending on the nature of the system with which it is exchanging information—namely, a traditional telephone network or Internet-based telephony.

410.6.3.1 PSTN

This section proposes that, where ICT with real-time two-way voice communication interoperates with the publicly switched telephone network (PSTN), real-time text conform to TIA 825–A (incorporated by reference in 508 Chapter 1 and 255 Chapter 1). This is the current industry standard for TTY signals (also known as Baudot) at the PSTN interface.

410.6.3.2 VoIP Using SIP

This section proposes that, where ICT with real-time two-way voice communication interoperates with ''Voice over Internet Protocol'' (VoIP) products or systems that use Session Initiated Protocol (SIP), real-time text conform to RFC 4103 (incorporated by reference in 508 Chapter 1 and 255 Chapter 1). In Question 8 above, see Section V.D., the Board seeks comment regarding the potential benefits, costs, and drawbacks associated with referencing other standards in addition to RFC 4103.

410.6.4 Voice Mail, Auto-Attendant, and IVR Compatibility

This section proposes that, where ICT provides real-time two-way voice communication, any associated voice mail, auto-attendant, and interactive voice response systems must be compatible with real-time text functionality. This section derives from existing 508 Standards §§ 1194.23(c)–(e), as well as existing 255 Guidelines §§ 1193.51(d)–(e).

410.6.5 HCO and VCO Support

This section proposes that, where ICT provides real-time two-way voice communication, it must permit users to intermix speech with the use of real-

time text. Such ICT would also be required to support modes that are compatible with Hearing Carry Over (HCO) and Voice Carry Over (VCO). This provision is collectively derived from existing 508 Standards § 1194.23(a) and 255 Guidelines § 1193.51(d), and is consistent with changes in technology over time from TTYs to real-time text functionality. It is particularly significant in preserving the use of HCO/VCO with evolving technology.

410.7 Caller ID

This section proposes that, where ICT provides two-way voice communication, any associated caller identification or similar telecommunications functions must be presented in both visual (*e.g.,* text) and auditory formats. This requirement would be new to the 255 Guidelines, but corresponds to a similar requirement in § 1194.23(e) of the existing 508 Standards. This proposed requirement could be met, for example, by having the system provide Caller ID in an auditory format, or by ensuring that Caller ID is available to assistive technology. Presentation of Caller ID in both visible and auditory forms ensures that individuals with visual impairments, hearing loss, or both, could use Caller ID and similar services, when provided.

410.8 Video Communication

This section proposes that ICT with real-time video functionality must ensure that the quality of the video is sufficient to support communication through sign language. This proposed section would be new to both the 508 Standards and 255 Guidelines. The Advisory Committee recommended that the Board include a provision requiring ICT used to transmit video communications in real-time to meet certain specifications for video quality and fluidity (*i.e.,* speed, data stream, and latency). See TEITAC Report, Part 6. Subpt. C, Rec. 6–E.

The Board's proposals relating to the requisite quality of real-time video communications have received mixed reviews from commenters. In the 2010 ANPRM, the Board proposed specifications for the quality of real-time video communication that largely mirrored the Advisory Committee's recommendation. Many commenters expressed support for the general concept of a video quality requirement as important for ensuring the accessibility of a means of communication, which, for persons who are deaf or hard of hearing, is the functional equivalent of voice communication. Some commenters, on the other hand, were critical of the Board's proposed technical specifications as overly prescriptive or unsupported by research. In light of such concerns, in the 2011 ANPRM, the Board simply proposed—as here in this proposed rule—that the quality of video must be sufficient to support sign language communication. Commenters to the 2011 ANPRM, while again generally supportive of the effort to ensure real-time video communications were usable by persons with hearing impairments, largely took issue with the proposal's lack of testable measures.

While the Board is mindful of commenters' criticisms to the 2011 ANPRM's performance-based standard for video quality of real-time video functionality, the Board has nonetheless retained this standard in this proposed rule. This provision would cover video communication via the web on dedicated videophones, as well as commonly used ICT such as smartphones. We are not aware of standards or specifications for video quality that would provide testable and achievable metrics to assess the quality and transmission of real-time video communications. However, technologies—as well as standards development—have progressed greatly in recent years. We welcome public comment on technological improvements or useful metrics relating to real-time video communication developed since the 2011 ANPRM.

Question 27. Does the performance-based standard in proposed 410.8 ensure that video quality would be sufficient to support a real-time video conversation in which one or more parties use sign language? If not, are there standards for video quality or transmission that would better implement the accessibility goal of this proposed requirement? Would it be readily achievable for manufacturers of telecommunications equipment to comply with section 410.8?

411 Closed Caption Processing Technologies

This is an introductory section.

411.1 General

This section addresses the accessibility of audio-visual technologies—including analog and digital televisions, tuners, personal video display devices, converter boxes, and computer equipment—by requiring such technologies to support closed and open captions. Captioning is critical for persons with hearing impairments to use and understand information presented in a video format. Specifically, proposed 411.1 provides that, where audio-visual players and displays process video with synchronized audio, they must either decode closed caption data and display open captions, or pass-through the closed captioning data stream in an accessible format. This proposal largely corresponds to existing 508 Standards §§ 1194.23(j) and 1194.24(a), and existing 255 Guidelines § 1193.37, though it differs in a few notable respects. Due to advances in technology, this proposed section neither distinguishes between analog and digital televisions, nor conditions the requirement for closed caption decoder circuitry on screen size. Additionally, the proposal substitutes the term ''synchronized audio information'' for ''multimedia'' because it is more precise and consistent with current terminology.

Question 28. Would compliance with section 411 be readily achievable for manufacturers of mobile telecommunications equipment?

411.1.1 Decoding of Closed Captions

This section proposes that, where audio-visual players and displays process video with synchronized audio, they must decode closed caption data and support display of open captions.

411.1.2 Pass-Through of Closed Caption Data

This section proposes that, where audio-visual players and displays process video with synchronized audio, cabling and ancillary equipment would be required to pass through caption data. High-definition multimedia cables (HDMI) carry audio and video signals, and are technically capable of passing through caption data; typically, however, caption data is not included with the audio-visual stream.

412 Audio Description Processing Technology

This is an introductory section.

412.1 General

This proposed section would require that, where ICT displays or processes video with synchronized audio, ICT must provide a mode of operation that plays associated audio description. This requirement draws from the audio description requirement in existing 508 Standards § 1194.24(b), but would include a specification for digital television tuners. This would be a new requirement to the 255 Guidelines.

Question 29. Would compliance with section 412 be readily achievable for manufacturers of mobile telecommunications equipment?

412.1.1 Digital Television Tuners

This section proposes that, where audio description is played through a digital television tuner, that such tuner conform to Part 5 of the ATSC A/53 Digital Television Standard (incorporated by reference in 508 Chapter 1 and 255 Chapter 1). The provision then goes on to require that tuners provide processing for audio description when encoded as a Visually Impaired (VI) associated audio service. This is the industry-wide accepted method for delivery of audio description content and the means to identify audio as a VI associated audio service.

413 User Controls for Captions and Audio Description

This is an introductory section.

413.1 General

This proposed section addresses the accessibility of controls for captioning and audio description on devices used to watch video programming, including analog and digital televisions, tuners, personal video display devices, converter boxes, and computer equipment. Specifically, this provision would require hardware displaying video with synchronized audio to locate user controls for closed captions and audio description in specified locations of equal prominence to common user controls (*i.e.,* volume and program selection), as set forth in two accompanying subsections (proposed 413.1.1 and 413.1.2). An exception would be provided for devices for personal use when closed captions and audio description can be enabled through system-wide platform settings. This exception is proposed in recognition of the fact that the small size of most mobile devices would make compliance particularly challenging.

The requirements in proposed 413.1 would be new to the 508 Standards and the 255 Guidelines. The Advisory Committee recommended inclusion of this provision to ensure that persons with hearing- and vision-related disabilities can find—and use—captioning and audio description controls. See TEITAC Report, Part 6, Subpt. C, Rec. 4–C. (Complimentary provisions governing software-based on-screen controls for captions and audio description are addressed in proposed 503.4.)

This proposed requirement, albeit with slightly different wording, was included in the 2010 and 2011 ANPRMs. Comments from organizations representing persons with disabilities lauded this proposed requirement as a significant step toward improving the accessibility of captioning and audio description controls. These organizations characterized consumers with disabilities as having long struggled with varying methods among manufacturers for accessing such controls, describing them as typically more complex and less ''user friendly'' compared to the control of other core functions. They also noted that difficulties locating and using caption and audio description controls is of particular concern for persons with disabilities when in unfamiliar locations (*e.g.,* television in hotel room), or an emergency situation when accessing captioned or audio described information could be life-saving.

Commenters with connections to the ICT industry, on the other hand, expressed concern with the broad scope of the proposed provision. These commenters noted that the proposed requirement governing location of controls for captions and audio description would apply not only to televisions and remote controls, but also a wide range of ''general purpose'' devices—such as desktop computers, laptops, and other mobile devices—for which multimedia output is an incidental function. They suggested that either the scoping of the requirement be modified, or ''general purpose'' devices be exempted from providing physical buttons for closed captions and audio description. Others simply noted more generally that providing caption controls with equal prominence to volume controls could be problematic for some types of hardware-based ICT.

In late 2013, the FCC issued a final rule addressing, among other things, the accessibility of user interfaces on digital devices and software used to view video programming, including closed captioning and audio description (which, in the Commission's rule, is referred to as ''video description'').[11] To implement the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260 (2010) (codified in scattered sections of 47 U.S.C.), the FCC, in pertinent part, promulgated rules requiring ''digital apparatus'' designed to receive or play back video programming to provide access to closed captioning and video description through a mechanism that is reasonably comparable to a button, key or icon.[12] ''Navigation devices''—which include digital cable ready televisions, set-top boxes, computers with CableCARD slots, and cable modems—are required to provide similar access to closed captioning (but not, at this juncture, video description) for on-screen menus and guides. The Commission declined, however, to adopt technical standards, performance objectives, or other specific metrics to evaluate accessibility. Establishment of such standards, the Commission determined, was beyond its statutory authority, and would, in any event, potentially stifle innovative approaches.

Proposed 413.1, in the Board's view, complements the approach taken by the FCC in its final rule on accessibility of user interfaces. As with the FCC's rule, the Board proposes to require that ICT with the capability of displaying video with synchronized audio ensure that controls for closed captions and audio description are accessible to persons with disabilities. Unlike the FCC, however, the Board does propose technical standards—namely, placement of caption and audio description controls—that govern how accessibility must be achieved. This is consistent with the Board's statutory mandate under both the Rehabilitation Act and Communications Act. See 29 U.S.C. 794d(2)(A)(ii), 794d(B); 47 U.S.C. 255(e). Thus, while the FCC may have been statutorily constrained by the CVAA with respect to technical standards for user interfaces, the Board is not. Indeed, one of Board's core missions is the establishment of technical standards. In this way, proposed 413.1 may be seen as complimenting the FCC's recent final rule. Both agencies establish an accessibility mandate for user interfaces on certain ICT that displays video with synchronized audio, but the Board, in this proposed rule, goes one step further by establishing a metric to assess accessibility—namely, placement of user controls for closed captions and audio description in locations of equal prominence to other core functions (*i.e.,* volume control and program selection).

[11] See Accessibility of User Interfaces, and Programming Guides, 78 FR 77210 (Dec. 20, 2013); Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 12–108, 28 FCC Rcd. 17330 (Oct. 31, 2013) (to be codified at 47 CFR pt. 79) (hereafter, FCC User Interface Accessibility Order).

[12] ''Digital apparatus,'' as defined by the FCC, encompasses devices or software designed to receive or play back video programming that does not have built-in capacity to access cable programming or services. This term includes: Televisions and computers that are not designed to be cable ready; removable media players; mobile devices (such as tablets and smartphones) without pre-installed applications to access cable; and, ''video players and user interfaces of video applications, such as Netflix, Hulu, and Amazon, when such applications are pre-installed . . . by the manufacturer.'' FCC User Interface Accessibility Order at ¶¶ 2, 39.

Question 30. Does proposed 413.1 strike an appropriate balance between ensuring users with hearing or vision impairments can readily find and use controls for closed captioning and audio description, while also affording device manufacturers sufficient design flexibility? Should the requirement for a captioning button be limited to devices that have both up/down volume controls and a mute button? Or, more generally, should the provision of caption controls be limited to certain types of hardware?

413.1.1 Caption Controls

This proposed section would require that, where video-capable hardware provides physical volume adjustment controls, such ICT must also have a control for closed captioning in at least one location of comparable prominence to the volume adjustment controls. So, for example, if a television had physical volume controls on the display panel, as well as its accompanying remote control, this proposed requirement would be satisfied so long as a user control for captions was located either, at the manufacturer's discretion, on the display or remote control in an equally prominent location to the volume control. (If this television also had a feature to adjust volume by way of an on-screen tool or menu, caption control requirements for this on-screen control would be governed by the software-based requirements in proposed 503.4.)

Question 31. While the Board believes that proposed 413.1.1 would greatly benefit persons who are deaf or hard of hearing, we did not monetize the benefits or costs of providing caption controls on covered hardware. The Board seeks data and other information from the public in order to estimate the monetized costs and benefits of this proposal. For commenters who do not view this proposed requirement as beneficial, how should the accessibility barriers faced by individuals with hearing impairments who seek to locate and operate closed caption features be addressed? Commenters should provide concrete suggestions for improving proposed 413.1.1.

413.1.2 Audio Description Controls

This proposed section would require that, where video-capable hardware provides controls for program selection, such ICT must have user controls for audio description in at least one location of comparable prominence to the program selection controls. This requirement would be new to the 508 Standards. Locating audio description controls in a prominent location is not currently a common design practice, though the Board does not anticipate that it will add substantial cost. In practice, this would require one extra button on a remote control. While not as common as products featuring controls for captioning, there are already products commercially available that feature user controls for audio description.

Question 32. While the Board believes that proposed 413.1.2 would greatly benefit consumers who are blind or have low vision, we did not monetize the benefits or costs of providing audio description controls on covered hardware. The Board seeks data and other information in order to estimate the monetized costs and benefits of this proposal. For commenters who do not view this proposed requirement as beneficial, how should the accessibility barriers faced by individuals with vision impairments who seek to locate and operate audio description features be addressed? Commenters should provide concrete suggestions for improving proposed 413.1.2.

Chapter 5: Software

Chapter 5 contains proposed technical requirements for software, applications, platforms, and software tools. The requirements in this chapter, along with the scoping provisions in proposed E207 and C205, collectively form the ''suite'' of accessibility requirements for these types of ICT. This chapter is largely drawn from existing 508 Standards § 1194.21, but with updating to harmonize with WCAG 2.0.

501 General

This is an introductory section.

501.1 Scope

This section proposes that the technical requirements for software in this chapter be applied where either (a) required by 508 Chapter 2 or 255 Chapter 2, or (b) where otherwise referenced in any other chapters. There are two exceptions. Exception 1, as proposed, provides that Web applications conforming to all Level A and AA Success Criteria and all Conformance Requirements in WCAG 2.0 need not conform to proposed 502 (Interoperability with Assistive Technology) or 503 (Applications). This exception is provided because software that conforms to WCAG 2.0 AA is already accessible. The value of promoting a single harmonized standard outweighs any small benefit that might be achieved by conforming to overlapping, but separate, standards.

Exception 2 proposes that software that (1) is assistive technology and (2) supports the accessibility services of the platform for which it is designed need not conform with the provisions of this chapter. This exception is included because assistive technology frequently needs flexibility in order to perform well for end-users with disabilities. For example, a switch-activated on-screen keyboard might not have a mode that makes it usable by someone who is blind. This exception is also deliberately limited to software that follows platform specifications because it is important that assistive technology be compatible with other assistive technology.

502 Interoperability With Assistive Technology

This is an introductory section.

502.1 General

This section proposes that platforms, software tools provided by platform developers, and applications must conform to the requirements in the accompanying subsections related to documented accessibility features (502.2), accessibility services (502.3), and platform accessibility services (502.4). An exception is provided for platforms and applications that have closed functionality.

This section has implications for both platform developers and federal procurement officials. Agencies would have to ensure that all operating systems they purchase have an associated set of documented accessibility services. Software developers would have to provide accessibility services when creating platforms and their software tools.

502.2 Documented Accessibility Features

This section addresses the compatibility of software and assistive technology. Specifically, under proposed 502.2, platform features that are defined in the platform documentation as accessibility features would be required to conform to requirements in accompanying subsections related to user control (502.2.1) and non-disruption (502.2.2) of accessibility features.

502.2.1 User Control of Accessibility Features

This section proposes that platforms must provide user control over platform features when such features are defined in platform documentation as serving an accessibility purpose. This provision would be new to the 508 Standards and 255 Guidelines, though it draws on the prohibition in § 1194.21(b) of the existing 508 Standards against disrupting or disabling accessibility

features. The Advisory Committee recommended that the Board include an express provision ensuring that persons with disabilities are able to activate and use features or settings—such as font size, or color—that preclude network or system-wide configurations from ''locking down'' needed accessibility features. See TEITAC Report, Part 6, Subpt. C, Rec. 2–C. This proposal was included in the 2010 and 2011 ANPRMs, and the only comments received related to minor editorial changes.

502.2.2 No Disruption of Accessibility Features

This section proposes that, where accessibility features are defined in platform documentation, applications must not disrupt them. This provision mirrors existing 508 Standards § 1194.21(b). The Advisory Committee strongly recommended that the Board include this requirement in the proposed rule not only to ensure accessibility, but also to avoid platform developers from being responsible for incompatibilities that derived from undocumented platform services or hidden requirements of assistive technology. See TEITAC Report, Part 6, Subpt. C, Rec. 3–Q. This proposal was included in the 2010 and 2011 ANPRMs and received no adverse comments.

502.3 Accessibility Services

This section proposes that platforms (such as operating systems) and software tools provided by the platform developer furnish a documented set of accessibility services—usually referred to as Application Programming Interfaces (APIs)—in order to enable applications running on the platform to interoperate with assistive technology. Additionally, applications that are themselves platforms would be required to expose underlying platform accessibility services or implement other document accessibility services.

This proposal does not have an analog in the existing 508 Standards because, at the time the standards were issued in 2000, mainstream operating systems had a well-established track record of providing APIs. Since then, some platforms, particularly those used by first generation mobile devices, stopped providing these requisite components of baseline accessibility. This proposed provision would not represent a significant change from widespread industry practice, since all major platforms have well-developed APIs that incorporate accessibility. Consequently, it is important to expressly require APIs. A documented set of accessibility services is important to end-users because, without them, developers are likely to provide inconsistent access to assistive technology, thereby leaving end-users with disabilities without access to needed features. Well-documented accessibility services are especially important for developers new to accessibility, and can serve to alert all developers to the importance of the accessibility features of platforms.

502.3.1 Object Information

This section proposes that particular programming elements—namely object role, state, boundary, name, and description—must be programmatically determinable. Moreover, user-adjustable states would be required to be set programmatically, including through assistive technology. This proposal, along with proposed 502.3.3, corresponds to WCAG 2.0 Success Criteria 4.1.2 Name, Role, and Value. It is also consistent with existing 508 Standards § 1194.21(d), but more explicitly provides for the user to be able to change data values, not just read them. Making the specified states programmatically determinable is already a widespread industry practice and is a standard feature provided in software designed to be accessible. Nonetheless, it is important to address this issue in the proposed rule because, on occasion, users of assistive technology find that they can read data in fields, but cannot make changes.

502.3.2 Row, Column, and Headers

This section proposes that, where a programming object is in a table, occupied rows and columns (*i.e.,* those populated with data), as well as any headers associated with such rows or columns, must be programmatically determinable. This provision corresponds to §§ 1194.22(g) and 1194.22(h) of the existing 508 Standards. A similar requirement is set forth in WCAG 2.0 Success Criteria 1.3.1 Info and Relationships. See W3C, Understanding SC 1.3.1, Understanding WCAG 2.0 (Sept. 16, 2014), *http://www.w3.org/TR/UNDERSTANDING-WCAG20/content-structure-separation-programmatic.html*.

502.3.3 Values

This section proposes that current values, as well as any set or range of allowable values associated with a programming object, must be programmatically determinable. This proposal would also require values that can be set by the user to be capable of being set programmatically, including through assistive technology. This proposal, along with proposed 502.3.1, corresponds to WCAG 2.0 Success Criteria 4.1.2 Name, Role, and Value. An express requirement for values to be set programmatically would be new to the 508 Standards. However, existing industry practice in response to existing standards (*i.e.,* 508 Standards § 1194.21(d)) is to permit values to be set programmatically.

502.3.4 Label Relationships

This section proposes that relationships between components must be programmatically exposed to assistive technology where a component labels, or is labeled by, another component. This provision corresponds to §§ 1194.21(l) and 1194.22(n) in the existing 508 Standards, though it is broader in scope since, unlike these current requirements, its coverage extends beyond forms. A similar requirement is set forth in WCAG 2.0 Success Criteria 1.3.1 Info and Relationships. See W3C, Understanding SC 1.3.1, Understanding WCAG 2.0 (Sept. 16, 2014), *http://www.w3.org/TR/UNDERSTANDING-WCAG20/content-structure-separation-programmatic.html*.

502.3.5 Hierarchical Relationships

This section proposes that any hierarchical (parent-child) relationship between components be programmatically exposed to assistive technology. This is important for individuals who use assistive technology so they can understand the relationships or interdependencies between menu options, database entries, or other software elements that have parent-child relationships. For example, word processing and email software commonly use one or more sub-menus that cascade from a ''main'' menu item, which permit the user to perform desired actions such as saving a file in a specific format or altering font styles. Requiring components to expose (*i.e.,* provide) hierarchical relationships to assistive technology ensures that an individual using a screen reader, for example, could understand these relationships and, thereby, perform the desired function or action. This provision corresponds to existing 508 Standards §§ 1194.21(l) and 1194.22(n). In addition, in response to existing 508 Standards § 1194.21(d), current industry practice is to ensure that any parent-child relationship that components have to other components is programmatically exposed to assistive technology. This requirement closely parallels Success Criterion 1.3.1 in WCAG 2.0, but has greater specificity because software is more structured than Web content.

502.3.6 Text

This section proposes that the content of text objects, text attributes, and on-screen text boundaries be programmatically determinable. Additionally, text that can be set by the user would have to be capable of being set programmatically, including through assistive technology. This provision would be useful for a screen-reader user, for example, when filling in a field on a form. It would be quite frustrating to be able to navigate to a form field, and perhaps even read placeholder text in that field, but then not be able to enter text as needed. This provision corresponds to § 1194.21(f) in the existing 508 Standards.

502.3.7 Actions

This section proposes that a list of all actions that can be executed on an object must be programmatically determinable. An example of an ''object'' is a drop-down menu of states and U.S. territories in an online form. Applications would also be required to allow assistive technology to programmatically execute available actions on objects. While this requirement is new to the 508 Standards, it represents widespread industry practice. It is also already a feature provided by software designed to be accessible. This proposed requirement is important because, on occasion, developers new to accessibility overlook this need.

502.3.8 Focus Cursor

This section proposes that software be required to expose information and mechanisms necessary to programmatically track and modify keyboard focus, text insertion point, and selection attributes of user interface components. An example of ''focus cursor'' is a database, which, as the user hits the tab key, displays a visible box outlining the various fields. This provision corresponds to § 1194.21(c) in the existing 508 Standards.

502.3.9 Event Notification

This section proposes that programmatic notification of events relevant to user interactions—including changes in a component's state, value, name, description, or boundary—must be available to assistive technologies. This proposal complements existing 508 Standards § 1194.21(d), but more explicitly requires that changes to on-screen user interfaces be done in a way that such changes, otherwise known as events, are exposed to assistive technology. Such event notification is already a widespread industry practice, and, moreover, a feature provided by software designed to be accessible. This proposed requirement is important to address this issue in these proposed requirements because, on occasion, developers new to accessibility overlook this need.

502.4 Platform Accessibility Features

This section addresses specifications for capabilities that users with disabilities have come to expect as core accessibility features when using today's platforms and operating systems, such as allowing adjustment of delay before key acceptance and displaying provided captions. These features include: sticky keys; bounce keys; delay keys; show sounds; the ability to produce synthesized speech; and, the capability to display captions included in content. Specifically, this proposal would require platforms and platform software to conform to seven specific sections in ANSI/HFES 200.2, Human Factors Engineering of Software User Interfaces (incorporated by reference in 508 Chapter 1 and 255 Chapter 1). While this proposed requirement (and accompanying incorporation by reference of ANSI/HFES 200.2) is new to the 508 Standards and 255 Guidelines, it does not represent a material change from current industry practice. The seven enumerated features were first available as an add-on for the IBM DOS 3.3 operating system (which was publicly released in the mid-1980s), and have been incorporated into every release of the Microsoft Windows® operating system since then.

Question 33. The Board is requesting information from covered entities and other stakeholders on the potential costs or benefits from incorporation of ANSI/HFES 200.2, Human Factors Engineering of Software User Interfaces—Part 2: Accessibility (2008). Are there suggestions for other standards that would result in the same level of accessibility?

503 Applications

This is an introductory section.

503.1 General

This section addresses specifications for non-Web software—that is, programs with a user interface that are executed on a computing platform—related to certain user preferences, interfaces, and controls. The proposed requirements in this section are separate from, and in addition to, any required conformance to WCAG 2.0 success criteria that may be otherwise required under the proposed 508 Standards (under E207) or the 255 Guidelines (under C205).

503.2 User Preferences

This section proposes that applications must permit user preferences to carry over from platform settings for text color, contrast, font type, font size, and focus cursor. This closely corresponds to § 1194.21(g) in the existing 508 Standards.

An exception is provided that would exempt software designed to be isolated from the underlying operating system. Lightweight applications (often called ''applets'') using the Adobe® Flash® Platform, Oracle® Java Platform, W3C HTML 5 platform, and similar technologies, are commonly isolated in this way for security reasons. Accordingly, it would be a fundamental alteration to require such applications to carry over platform settings.

503.3 Alternative User Interfaces

This section proposes to require that, when applications provide alternative user interfaces that function as assistive technology, such applications must use platform accessibility services (*i.e.,* APIs). Examples of alternative user interfaces include on-screen keyboards for a single switch user, and screen reading software for a person who is blind. This proposed requirement would be new to the 508 Standards and 255 Guidelines. It is included in this proposed rule to address the accessibility gap that would occur should developers of novel interfaces not consider their products to be assistive technology and, consequently, conclude they may ignore the requirements for interoperability with assistive technology (proposed 502). By clarifying that alternative user interfaces functioning as assistive technology need to satisfy interoperability requirements, the section aims to forestall the rare, but problematic, situation where there is a question about whether a product should be treated as assistive technology or another type of software.

503.4 User Controls for Captions and Audio Description

This proposed section addresses the accessibility of on-screen controls for captioning and audio description. Specifically, this provision would require software displaying video with synchronized audio to locate user controls for closed captions and audio description at the same menu level as common user controls (*i.e.,* volume, program selection), as set forth in two accompanying subsections (proposed 503.4.1 and 503.4.2).

These proposed requirements for accessibility of software-based on-screen controls for captions and audio

description serve as a complement to the near-identical requirements for hardware-related controls in Chapter 4. See discussion above in Section VI.C (Section-by-Section Analysis—section 413 User Controls for Captions and Audio Description). These proposed requirements would be new to the 508 Standards and 255 Guidelines. The Advisory Committee recommended inclusion of these provisions to ensure that persons with hearing- and vision-related disabilities can find—and use—captioning and audio description controls. See TEITAC Report, Rec. 4–C.

503.4.1 Caption Controls

This proposed section would require that, where video-capable software provides on-screen volume adjustment controls, such ICT must also have a control for closed captioning at the same menu level as the volume adjustment controls.

503.4.2 Audio Description Controls

This proposed section would require that, where video-capable software provides on-screen controls for program selection, such software must have user controls for audio description at the same menu level as the volume or program selection controls.

504 Authoring Tools

This is an introductory section.

504.1 General

This section proposes requirements for software used to create or edit electronic content—which is generally referred to as authoring tools—to ensure the accessibility of this content. Specifically, authoring tools would be required to conform to accessibility requirements related to content creation and editing (504.2), prompts (504.3), and templates (504.4) to the extent supported by the destination format. Authoring tools include applications that allow users to develop new Web pages, edit video, or create electronic documents. Authoring tools can also be used to create and publish content for use with telecommunications products or services. One example of a telecommunications equipment-based authoring tool is an interactive voice response system (IVR) that uses software capable of creating content used to populate menu choices.

These proposed requirements for authoring tools are new to the 508 Standards and 255 Guidelines. The Advisory Committee discussed authoring tools and offered recommendations on certain provisions, but did not achieve consensus on others. See TEITAC Report, Part 7, Subpt. C, Rec. 7. Industry is already trending toward providing mainstream document creation tools that facilitate accessible output. For example, two mainstream authoring tools that support accessible document creation and accessibility checking tools are Adobe Acrobat® XI Pro and Microsoft® Office software products. Any cost increases for this requirement should be quite modest for products that already support accessibility. It is not uncommon for developers of niche products to first learn about Section 508 because their product exports reports to PDF, and government customers are likely to encounter end-user complaints when such reports are inaccessible. In this way, while a particular authoring tool may be used only by a small number of people, its outputs—such as government reports—may be widely distributed to the public.

Benefits of accessible content created or edited with authoring tools conforming to proposed 504.1 would accrue to a wide range of disabilities, and the costs associated with making such tools capable of producing accessible output are likely to be minimal. Developers already understand how to make electronic documents accessible in commonly used formats (*i.e.,* HTML, PDF, MS-Word), and it is typically much less expensive to ''build in'' accessibility when an authoring tool is first developed as opposed to remediating after a product has been developed.

504.2 Content Creation or Editing

This section proposes to require authoring tools to include at least one mode of operation for creating or editing content that conforms to WCAG 2.0 Success Criteria for all features and formats supported by the authoring tool. Additionally, authoring tools must provide users with the option of overriding information required for accessibility to provide flexibility during the authoring process. A proposed exception would exempt authoring tools from compliance when authoring tools are used to directly edit plain text source code (*e.g.,* Emacs and Windows Notepad). This exception is needed because plain text is fundamentally limited in its ability to encode accessibility features.

504.2.1 Preservation of Accessibility Information in Format Conversion

This section proposes that authoring tools, when converting content or saving content in multiple formats, must preserve information required for accessibility to the extent supported by the destination format. This proposed requirement is similar to § 1194.23(j) in the existing 508 Standards. Because not all authoring tools support different file formats, this provision would only apply when such a tool provides a file conversion feature.

504.3 Prompts

This proposed section would require authoring tools to proactively support the creation of accessible content by providing a mode of operation that prompts users—either during initial content creation or when content is saved—to create accessible content that conforms to all applicable Level A and AA Success Criteria in WCAG 2.0. This requirement is intended to ensure that users have access to accessibility features supported by their authoring tools.

504.4 Templates

This proposed section would require that, where authoring tools provide templates, templates that facilitate the creation of accessible content conforming to all applicable WCAG 2.0 Level A and Level AA Success Criteria must be provided for a range of template uses. It is much easier to start with an accessible template as compared to adding accessibility features to otherwise finished content. Remediating accessibility problems after content development increases the cost and time necessary to produce accessible content.

Chapter 6: Support Documentation and Services

Chapter 6 covers accessibility requirements for ICT support documentation and services. This section also would require support services such as help desks, call centers, training services, and automated self-service technical support systems that provide documentation to make available (in accessible formats) the documentation regarding accessibility and compatibility features. Support services would also be required to accommodate the communication needs of individuals with disabilities.

The proposed requirements in this chapter are largely consistent with existing 508 Standards § 1194.41 and existing 255 Guidelines § 1193.33, but would enhance specifications, as discussed below, for certain types of support documentation and services. The Advisory Committee recommended inclusion of provisions on support documentation and services in the proposed rule. See TEITAC Report, Part 6, Subpt. D, Rec. 1.

601 General

This is an introductory section.

601.1 Scope

This section proposes that the technical requirements for support documentation and services in this chapter be applied where either (a) required by 508 Chapter 2 or 255 Chapter 2, or (b) where otherwise referenced in any other chapters.

602 Support Documentation

This is an introductory section.

602.1 General

This section proposes to require documentation supporting the use of ICT to conform to the requirements in the accompanying subsections concerning identification of accessibility and compatibility features (602.2), electronic support documentation (602.3), and alternate formats for non-electronic support documentation (602.4). These proposals for accessible support documentation are derived from §§ 1194.41 and 1193.33 of the existing 508 Standards and 255 Guidelines respectively, but the requirement that electronic documentation comply with WCAG 2.0 or PDF/UA–1 would be new to both the standards and the guidelines. Requiring that comprehensive product information be available to users with disabilities is important because product installation and configuration can often impact its accessibility.

602.2 Accessibility and Compatibility Features

This section provides specifications for ICT documentation in terms of accessibility and compatibility features that assist users with disabilities. Such documentation includes installation guides, user guides, online support, and manuals that describe features of a product and how it is used. All formats of documentation are covered, including printed and electronic documents, and Web-based product support pages.

Proposed 602.2 would require documentation to identify, as well as explain how to use, accessibility features that are required by the 508 Standards or 255 Guidelines. The requirements of this section derive from §§ 1194.41(b) and 1193.33 of the existing 508 Standards and 255 Guidelines, respectively, and are essentially unchanged.

This provision is proposed because some users with disabilities have complained about a lack of information available to help them understand the accessibility and compatibility features of some ICT. Documentation of accessibility features may include, for example, instructions on use of the voice guidance system of a multifunction office machine, or guidance on using software designed for compatibility with commonly used assistive technologies (such as screen readers, refreshable braille displays, and voice recognition software).

602.3 Electronic Support Documentation

This section proposes to require documentation in electronic formats—including Web-based self-service support and electronic documents—to conform to all Level A and AA Success Criteria and Conformance Requirements in WCAG 2.0 or ISO 14289–1 (PDF/UA–1), which are each incorporated by reference in 508 Chapter 1 and 255 Chapter 1. This proposal for accessible electronic support documentation is derived from §§ 1194.41 and 1193.33 of the existing 508 Standards and 255 Guidelines respectively, but the requirement that electronic documentation comply with WCAG 2.0 or PDF/UA–1 would be new to both the standards and the guidelines. The purpose of this requirement is to ensure that support documentation is held to the same accessibility requirements as other types of covered content. The Board included similar provisions in the 2010 and 2011 ANPRMs, and received no adverse comments objecting to this approach.

Question 34. The Board requests that telecommunications equipment manufacturers provide information on the costs associated with producing documentation on the accessible features of products in a format consistent with the WCAG 2.0 Success Criteria. Is it readily achievable to provide this information in an accessible format? If not, how would it be provided?

602.4 Alternate Formats for Non-Electronic Support Documentation

This section proposes that, where documentation is provided in written (*i.e.,* hard copy) format, such documentation must also be made available, upon request, in alternate formats usable by individuals who are blind or have low vision. This proposed requirement is taken from §§ 1194.41(a) and 1193.33(a)(2) of the existing 508 Standards and 255 Guidelines, respectively, with minor editorial changes.

603 Support Services

This is an introductory section.

603.1 General

This section addresses the accessibility of ICT support services, such as help desks, call centers, training centers, and automated self-service technical support. Such support services would be required to conform to the requirements concerning information on accessibility and compatibility features (603.2), as well as accommodation for the communication needs of persons with disabilities (603.3). These proposed requirements for accessible support services are drawn from §§ 1194.41 and 1193.93 of the existing 508 Standards and 255 Guidelines respectively, but have been revised—as supported by the Advisory Committee—to specify methods of delivery for support services. See TEITAC Report, Pt. 6, Subpt. D, Recs. 1.1–A & 1.2–A.

603.2 Information on Accessibility and Compatibility Features

This proposed section complements the product documentation requirements in section 602 by proposing that ICT support services include information on the accessibility and compatibility features for which documentation is required under proposed 602.2.

603.3 Accommodation of Communication Needs

This proposed section would permit compliant support services to be delivered through either of two methods: Directly to the user or through referral to a point of contact. This section also would require ICT support services to accommodate the communication needs of individuals with disabilities. The portion of this proposal relating to two specific methods for delivery of support services is based on existing 255 Guidelines §§ 1193.33(a)(3) and 1193.33(b), and would be new to the 508 Standards. The portion of the proposal relating to accommodation of communication needs derives from §§ 1194.41(c) and 1193.33 of the 508 Standards and 255 Guidelines, respectively.

VII. Effective Date

The Board is considering making the 508 Standards effective six months after publication of the final rule in the **Federal Register**, with one exception: Federal procurement of ICT products or services. A six-month delay in the effective date of the Access Board's final rule will provide federal agencies with an opportunity to more fully understand the updated 508 Standards. This action is consistent with the legislative intent underlying section 508 which provides a six-month period between publication of the Board's standard and the incorporation of such standard in the Federal Acquisition Regulations. By

making the revised 508 Standards effective six months after publication in the **Federal Register**, they would go into effect at the same time as the FAR Council revisions to the Federal Acquisition Regulations.

With respect to federal ICT contracts, the Board proposes deferring to the FAR Council for establishment of the date on which the revised 508 Standards apply to new ICT-related contracts awarded after publication of the Council's final rule, as well as existing ICT contracts with award dates that precede that final rule.

Question 35. The Board seeks comment on its proposed approach to making its revised 508 Standards effective six months after publication in the **Federal Register**, with the exception of federal ICT-related procurements. The Board also seeks comment on deferring to the FAR Council to establish the effective date for application of the revised 508 Standards to ''new'' ICT contracts (*i.e.,* contracts awarded after publication the FAR Council's final rule), as well as existing ICT contracts.

With respect to Section 255, application of the Board's final revised 255 Guidelines to new telecommunications products and customer premises equipment designed, developed, and fabricated after their publication is a matter for the FCC to determine since the FCC has exclusive responsibility for enforcement of Section 255 and issuance of implementing regulations. Nonetheless, in keeping with the Board's past practice in promulgating the existing 255 Guidelines, see 63 FR 5608 (Feb. 3, 1998), the Board proposes making the final revised 255 Guidelines effective 30 days after publication in the **Federal Register**. Manufacturers of Section 255-covered telecommunications equipment and customer premises equipment need not comply with the Board's revised 255 Guidelines until incorporated into revised FCC regulations.

VIII. Regulatory Process Matters

A. Preliminary Regulatory Impact Analysis (Executive Order 12866)

Executive Orders 13563 and 12866 direct agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Important goals of regulatory analysis are to (1) establish whether federal regulation is necessary and justified to achieve a market failure or other social goal and (2) demonstrate that a range of reasonably feasible regulatory alternatives have been considered and that the most efficient and effective alternative has been selected. Executive Order 13563 also recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Board contracted with an economic consulting firm, Econometrica, Inc. (Econometrica), to assess, among other things, whether the impact of the proposed rule would likely be economically ''significant.'' Economic significance is defined as any regulatory action that is likely to result in ''an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safely, or State, local, or tribal governments or communities.''

Econometrica prepared a preliminary regulatory impact analysis (Preliminary RIA). This Preliminary RIA determined, among other things, that the proposed rule is economically significant within the meaning of Executive Order 12866. Below we provide a summary of the preliminary RIA's methodology and results. A complete copy of this regulatory assessment is available on the Access Board's Web site (*www.access-board.gov*), as well the federal government's online rulemaking portal (*www.regulations.gov*). Interested parties are encouraged to review the full Preliminary RIA, and to provide data and other information responsive to requests for comment posed separately in that document. Moreover, while the Board welcomes comments on any aspect of the Preliminary RIA, several areas on which the Board particularly seeks input are identified at the end of this section.

1. Summary of Results

The focus of the Preliminary RIA is to define and, where possible, quantify and monetize the potential economic benefits and costs of the proposed Section 508 Standards and 255 Guidelines. On the benefits side, the Preliminary RIA monetizes incremental benefits under the proposed 508 Standards attributable to: (a) Increased productivity of federal employees with certain disabilities who are expected to benefit from improved ICT accessibility; (b) time saved by members of the public with vision disabilities when using more accessible federal Web sites; and (c) reduced phone calls to federal agencies as members of the public with certain disabilities shift their inquiries and transactions online due to improved accessibility of federal Web sites. The Preliminary RIA, for analytical purposes, defines the beneficiary population as persons with vision, hearing, and speech disabilities, as well as those with manipulation, reach, or strength limitations. The Preliminary RIA does not formally quantify or monetize benefits accruing from the proposed 255 Guidelines due to insufficient data and methodological constraints.

From the cost perspective, the Preliminary RIA monetizes likely incremental compliance costs under both the proposed 508 Standards and 255 Guidelines. Monetizable costs under the 508 Standards are expected to be incurred by federal agencies, contractors, and vendors in five broad areas: policy development; employee training; development of accessible ICT; evaluation of ICT; and, development of accessible electronic content. With respect to the 255 Guidelines, the Preliminary RIA monetizes the likely costs to telecommunications equipment manufacturers of ensuring that their respective Web sites and electronic support documentation conform to accessibility requirements. Insufficient data were available to assess incremental costs related to other new requirements in the proposed 255 Guidelines, including support for real-time text (RTT) functionality.

Table 4 below summarizes the results from the Preliminary RIA with respect to the likely monetized benefits and costs, on an annualized basis, from the proposed 508 Standards and 255 Guidelines. All monetized benefits and costs are incremental to the applicable baseline, and were estimated for a 10-year time horizon using discount rates of 7 and 3 percent.

TABLE 4—ANNUALIZED VALUE OF MONETIZED BENEFITS AND COSTS UNDER THE PROPOSED 508 STANDARDS AND 255 GUIDELINES, 2015–2024

[In 2015 dollars]

	7-Percent discount rate (in millions)	3-Percent discount rate (in millions)
Monetized Incremental Benefits		
Benefits to federal agencies from increased productivity by federal employees with addressable disabilities	$46.6	$45.3
Benefits to individuals with vision disabilities from improved federal website accessibility	2.4	2.3
Benefits to federal agencies from reduced call volumes	20.1	19.8
TOTAL Monetized Incremental Benefits*	69.1	67.5
Monetized Incremental Costs		
Costs to federal agencies, contractors, and vendors:	155.0	146.8
(a) In-house	80.6	76.3
(b) Procured ICT	74.4	70.5
Costs to telecommunications equipment manufacturers for accessible support	10.6	9.8
TOTAL Incremental Costs*	165.6	156.6

(* **Note:** Totals may not sum due to rounding.)

It is also important to note that some potentially significant benefits and costs from the proposed 508 Standards and 255 Guidelines are not evaluated in the Preliminary RIA, either because they could not be quantified or monetized (due to lack of data or for other methodological reasons) or are inherently qualitative. These unquantified benefits and costs are described qualitatively below.

Evaluation of the economic impact of the proposed Section 508 and 255 requirements is, moreover, complicated by the rapid evolution of ICT devices, platforms, applications, and consensus standards. The benefits and costs of the proposed standards and guidelines ultimately depend not only on technologies that are currently available to achieve compliance, but also on emerging technologies that may provide more cost-effective ways in the future to ensure equal access to ICT for people with disabilities.

2. General Framework of Assessment

Some of the main components of the Preliminary RIA's methodology are as follows:

Estimating the beneficiary population: To estimate the number of federal employees and members of the public with disabilities who could potentially benefit from updated and improved ICT accessibility standards, the Preliminary RIA primarily draws from two data sources. Public data on federal workers with disabilities was obtained from the Office of Personnel Management. Data on the prevalence of various disabilities within the U.S population were obtained from the U.S. Census Bureau's Survey of Income and Program Participation (SIPP) data set, which provides statistics on the non-institutionalized U.S. population.

Identifying incremental changes in the proposed rule: To assess the potential incremental impact of the proposed rule, the Preliminary RIA identifies provisions in the proposed standards and guidelines that would likely increase compliance costs for covered entities (*e.g.,* federal agencies, federal contractors, and manufacturers of telecommunications equipment), as well as provisions that could be expected to reduce the amount of time and effort required for compliance relative to existing requirements.

Developing baseline compliance costs: Estimates of ''baseline'' compliance costs to covered entities under the existing 508 Standards and 255 Guidelines are drawn from current spending levels for relevant ICT-related products, services, and personnel. For federal agencies, baseline compliance costs under Section 508 include both in-house ICT (*e.g.,* policy development, employee training, development and remediation of Web sites and electronic documents to ensure accessibility under current standards), and procured ICT (*e.g.,* procurement of Section 508-compliant hardware, software, services from federal contractors and vendors). For telecommunications equipment manufacturers, baseline costs under the existing 255 Guidelines are based on the monetized value of the estimated time manufacturers currently spend making support documentation accessible using estimates developed by the Access Board for the Paperwork Reduction Act. See Section VIII.F (Regulatory Process Matters—Paperwork Reduction Act).

Monetizing expected incremental benefits and costs of the proposed 508 Standards: The Preliminary RIA quantifies and monetizes the expected incremental benefits to federal agencies and members of the public with vision disabilities likely to benefit from the proposed standards. For persons with vision disabilities, benefit calculations are based on the value of time saved due to improved accessibility of federal Web sites. Benefits to federal agencies are assessed based on the monetized value of reduced call volumes and increased productivity of employees with disabilities owing to ICT accessibility improvements. Compliance costs for federal agencies are classified as either one-time or annual, and are assessed based on various fixed percentages of baseline costs depending on the nature of the cost component at issue (*e.g.,* Web site remediation, employee training, development of accessible electronic content). Incremental costs and benefits are calculated relative to the applicable baseline over a 10-year analysis period from 2015 through 2024.

Monetizing expected incremental costs of the proposed 255 Guidelines: The Preliminary RIA quantifies and monetizes the expected incremental costs to manufacturers of telecommunications equipment and customer premises equipment (CPE) of complying with new requirements in the proposed guidelines related to accessible electronic support documentation. Benefits attributable to new or updated requirements in the proposed 255 Guidelines—such as the

value of improved accessibility for persons with disabilities or cost savings to telecommunications equipment manufacturers— were not evaluated due to insufficient data and the methodological complexity of ''mapping'' proposed new requirements to particular cost elements in a dynamic and evolving telecommunications marketplace. Compliance costs to telecommunications equipment manufacturers and CPE are classified as either one-time or annual, and are assessed based on various fixed percentages of baseline costs for development of accessible support documentation depending on firm size. Incremental costs are calculated relative to the baseline over a 10-year analysis period from 2015 through 2024.

Describing unquantifiable costs and benefits: For benefits and costs that could be neither quantified nor monetized, the Preliminary RIA qualitatively describes, and assesses the significance of, such costs and benefits.

3. Baseline Compliance Costs

The total costs that federal agencies, vendors, and contractors incur to comply with the current 508 Standards are estimated at $2.0 billion annually. This amount represents about 2 percent of annual ICT spending, which is estimated at $80 billion to $120 billion, depending on which products and services are included in the total. Baseline costs for telecommunications equipment manufacturers to conform to the current 255 Guidelines related to product documentation and user support are estimated at $114 million annually. Taken all together, the overall baseline compliance costs are therefore estimated at $2.1 billion annually.

4. Benefits of the Proposed Rule

Overall, results from the Preliminary RIA demonstrate that the proposed 508 Standards will likely have substantial monetizable benefits to federal agencies and persons with disabilities. As shown in Table 4 above, the annualized value of monetized benefits from these proposed standards is estimated to be $69.1 million over the 10-year analysis period (assuming a 7 percent discount rate). In calculating these monetized benefits, the Preliminary RIA makes the following assumptions: (a) One-half of the recurring annual benefits derived from accessible ICT would be realized in the first year of implementation; and (b) the number of individuals with disabilities who visit federal agency Web sites will increase every year, but a constant proportion of those individuals will visit such Web sites every year.

It is also important to note that the proposed rule is expected to generate significant benefits that were not evaluated in the Preliminary RIA, either because they could not be quantified or monetized (due to lack of data or for other methodological reasons) or are inherently qualitative. Estimating the economic impact of a civil rights-based regulatory initiative in an area—and marketplace—as dynamic as ICT is a complex and difficult task. Some of these unquantified (or inherently unquantifiable) benefits of the proposed 508 Standards are listed in Table 5 below. The fact that these benefits could not be formally assessed in this Preliminary RIA should not diminish their importance or value.

TABLE 5—UNQUANTIFIED BENEFITS OF THE PROPOSED RULE

Time savings by people with hearing, cognitive, speech, and manual dexterity or motor impairments from improved federal Web sites.
Improved accessibility of electronic documents on federal Web sites for persons with addressable disabilities, particularly PDFs and videos.
Increased employment of individuals with disabilities.
Increased ability of individuals with disabilities to obtain information on federal agency Web sites and conduct transactions electronically.
Greater independence for individuals with disabilities to access information and services on federal agency Web sites without assistance.
More civic engagement by individuals with disabilities due to improved access to information and services on federal agency Web sites.
Increased ability of persons with hearing impairments to have faster and more natural conversation with real-time text than is possible with current text-messaging systems.
Increased ability of individuals with disabilities to evaluate, purchase, and make full use of telecommunications products due to increased accessibility of support documentation and services.
Increased ability of individuals without disabilities to access information and conduct their business electronically when they face situational limitations (in a noisy place, in a low-bandwidth environment, or in bright sunlight).
Potential cost savings to federal agencies due to reduced levels of in-person visits and mail correspondence.
Larger pool of ICT developers and content creators with accessibility knowledge and skills, providing more choice to federal agencies due to use of internationally recognized, industry-driven standards.
Potential cost savings to manufacturers of telecommunications and CPE, state and local governments, and non-profit entities, as internationally harmonized standards reduce costs for ICT manufacturers and allow them to sell a single line of accessible products and services across all types of markets.
Intrinsic existence value that individuals both with and without disabilities derive from the non-discrimination and equity values served by Sections 508 and 255.

5. Costs of the Proposed Rule

The Preliminary RIA shows that the proposed standards and guidelines will likely increase compliance costs substantially when first implemented, but will thereafter result in only a small percentage increase in recurring annual costs in later years. Overall, the Preliminary RIA estimates that the total incremental cost of the proposed 508 Standards and 255 Guidelines is expected to be $165.6 million on an annualized basis over the 10-year analysis period, based on a 7 percent discount rate (see Table 4 above).

The Preliminary RIA does not, however, quantify and monetize all potential compliance costs arising from the proposed rule—due primarily to insufficient data or for other methodological limitations. The impact of the proposed 255 Guidelines on telecommunications equipment manufacturers is, as the Preliminary RIA notes, particularly difficult to quantify. (Information on the impact of the proposed guidelines was solicited unsuccessfully in both the 2010 and 2011 ANPRMs.) Some of these unquantified costs of the proposed 508 Standards and 255 Guidelines are listed in Table 6 below.

TABLE 6—UNQUANTIFIED COSTS OF THE PROPOSED RULE

Possible increase in federal government expenditures to provide accommodations if the government hires more people with addressable disabilities.
Possible decrease in the amount or variety of electronic content produced, as government seeks to reduce Section 508 compliance costs.
Potential costs to state and local governments and non-profit organizations that may be required to make electronic content accessible in order to do businesses with federal agencies.
Costs to ICT manufacturers of developing and producing hardware and telecommunications products that comply with proposed requirements.
Costs to telecommunications firms to implement and support real-time text on telecommunications devices with text display capabilities.

In addition, incremental cost estimates in the Preliminary RIA do not reflect other potentially influential factors that may occur over time—such as future changes in the fiscal environment and its effect on ICT budgets, the impact of recent government-wide initiatives to manage ICT more strategically, efforts to harmonize standards for a global ICT market, and trends in technological innovation.

6. Conclusion

While the Preliminary RIA estimates that incremental costs, as assessed and monetized in the assessment, exceed the monetized benefits of the proposed rule, this finding represents only a piece of the regulatory story. Today, though ICT is now woven into the very fabric of everyday life, millions of Americans with disabilities often find themselves unable to use—or use effectively—computers, mobile devices, federal agency Web sites, or electronic content. The Board's existing standards and guidelines are greatly in need of a ''refresh'' to keep up with technological changes over the past fifteen years. The Board expects this proposed rule to be a major step toward ensuring that ICT is more accessible to and usable by individuals with disabilities—both in the federal workplace and society generally. Indeed, much—if not most—of the benefits expected to accrue from the proposed rule are difficult if not impossible to quantify or monetize, including: greater social equality, human dignity, and fairness. These are all values that, under Executive Order 13563,[13] may properly be considered in the benefit-cost calculus.

Moreover, American companies that manufacture telecommunications equipment and ICT-related products would likely derive significant benefits from the harmonized accessibility standards. Given the relative lack of existing national and globally-recognized standards for accessibility of mobile technologies, telecommunications equipment manufacturers would greatly benefit from harmonization of the 255 Guidelines with consensus standards. Similar benefits would likely accrue more generally to all ICT-related products as a result of harmonization. These manufacturers would earn return on investments in accessibility technology, remain competitive in the global marketplace, and achieve economies of scale created by wider use of nationally and internationally recognized technical standards.

Accordingly, when considering all unquantified benefits and costs, the Access Board, along with its consulting economic firm (Econometrica), jointly conclude that the benefits of the proposed update of the 508 Standards and 255 Guidelines justify its costs.

The Access Board welcomes comments on any aspect of the Preliminary RIA to improve the assumptions, methodology, and estimates of the incremental benefits and costs (baseline and incremental) of the proposed rule. The full Preliminary RIA sets forth numerous regulatory assessment-related questions or areas for public comment. In addition, the Board provides below several additional questions on which it seeks input:

Question 36. The Board requests information from telecommunications equipment manufacturers concerning expected one-time and ongoing costs associated with implementation of the proposed technical requirements related to support for real-time text (RTT) functionality. Please be as specific as possible. The Board is also interested in hearing from other stakeholders—particularly persons with disabilities—about the nature and scope of benefits provided by RTT in emergency and non-emergency settings. How might the Board quantify or monetize such benefits?

Question 37. The Board requests information from telecommunications equipment manufacturers concerning potential benefits that would accrue from harmonization of technical requirements in the proposed rule with national and international consensus standards? Both cost savings data and qualitative information are requested.

Question 38. The proposed rule would, among other things, require federal agency Web sites and electronic content to conform to WCAG 2.0 or PDF/UA–1. Do federal agencies believe that the Preliminary RIA adequately captures their potential costs to comply with these requirements? If not, how might the analysis be improved? Are there significant cost elements missing from the Preliminary RIA? Please be as specific as possible.

Question 39. The Preliminary RIA does not monetize benefits for persons with non-vision disabilities due to a lack of data on which to base estimated time savings. The Board requests data and other information on the likely time savings for persons with hearing, motor or dexterity, speech, or cognitive disabilities from using accessible Web sites as compared to Web sites with low accessibility. Are there empirical research studies from which time savings estimates may be derived?

Question 40. The Board also seeks information from persons with disabilities who would benefit from improved accessibility of federal agency Web sites. How frequently do they visit federal agency Web sites, and for what duration and purposes? Are there other suggested methods of quantifying benefits accruing from accessible agency Web sites other than (or in addition to) monetizing time savings? To the extent that benefits from accessible agency Web sites cannot be quantified, the Board welcomes examples of personal or anecdotal experience that illustrate the value of improved accessibility of federal Web sites.

Question 41. In addition to the questions for public comment posed in the Preliminary RIA and elsewhere in this NPRM, the Board is interested in hearing from the public more generally with information that would aid analysis of the costs and benefits of individual requirements in the 508 Standards and 255 Guidelines at the final rule stage. Is there a better way than the methodology used in the Preliminary RIA to ''map'' the incremental costs and benefits of particular technical and functional

[13] See also Office of Management and Budget, Circular A–4 (2003); Office of Management and Budget, Regulatory Impact Analysis: A Primer 3 (2011), available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf.*

requirements to various stakeholders? If so, how might the analysis be improved? Are there other suggested sources for unit cost data other than those cited in the Preliminary RIA?

7. Alternatives

We considered two alternative approaches to updating the existing 508 Standards and 255 Guidelines:

- In the 2010 ANPRM, the Board proposed a set of requirements that were based on, but not identical to, the WCAG 2.0 standards and other voluntary consensus standards. Comments received from the public indicated that this approach was potentially confusing, as federal agencies, contractors, and vendors would have to make specific compliance determinations in cases where the language used in the proposed 508 Standards differed from that in the referenced standard.
- The Board also considered requiring ICT to comply with the full set of functional performance criteria, which state in general terms the features of ICT that ensure its accessibility to people with one or more of different types of disabilities. Comments indicated that this approach would make it difficult for ICT producers to be able to determine whether or not their products and services were compliant with the proposed 508 Standards.

Based on the public feedback on the two policy alternatives, we determined that the clearest and most cost-effective way to set out the proposed accessibility requirements was to identify and reference existing, voluntary consensus standards directly, wherever possible.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612) requires agencies to evaluate the potential effects of their rulemakings on small entities.[14] Section 603 of the RFA requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of proposed rules on small entities. Because the proposed 255 Guidelines regulate non-federal entities (*e.g.,* telecommunications equipment manufacturers), these guidelines fall within the purview of the RFA. The proposed 508 Standards, on the other hand, directly regulate only federal entities that are not covered by the RFA. Accordingly, the Access Board evaluates here only the impact of the proposed 255 Guidelines on small entities. The Board provides below an initial regulatory flexibility analysis (Initial RFA) for these proposed guidelines.

Description of the reasons why the Access Board is considering regulatory action. Section 255 of the Communications Act of 1934 (47 U.S.C. 255), as amended, requires telecommunication equipment to be accessible to and usable by individuals with disabilities, where readily achievable. The Access Board is statutorily responsible for developing accessibility guidelines for telecommunications equipment and customer premises equipment (CPE). The Access Board is also required to review and update the guidelines periodically. The Federal Communications Commission (FCC), however, is solely responsible for issuing implementing regulations and enforcing Section 255. The FCC is not bound to adopt the Access Board's guidelines as its own or to use them as minimum standards.

In 1998, the Board issued the existing 255 Guidelines (36 CFR part 1193). Since then, telecommunications technology and commercial markets have changed dramatically, along with the usage of telecommunications equipment. Given these tremendous changes, the Board is proposing to update the 255 Guidelines.

Objectives of, and legal basis for, the proposed rule. The Board's proposed 255 Guidelines would provide a much-needed ''refresh'' of the existing 255 Guidelines, and, thereby, better support the access needs of individuals with disabilities, while also taking into account incremental compliance costs to covered manufacturers of CPE and telecommunications equipment. The proposed guidelines would be applicable only to new products to the extent that compliance is readily achievable; they would not require retrofitting of existing equipment or retooling. Manufacturers may consider costs and available resources when determining whether, and the extent to which, compliance is required.

Description and estimate of the number of small entities to which the proposed rule will apply. The proposed 255 Guidelines cover manufacturers of telecommunications equipment and CPE, as well as the manufacturers of equipment that functions as telecommunications and CPE.[15] The Board used publicly available data from the Office of Advocacy of the Small Business Administration (SBA) to estimate the number of small businesses that may be affected by the proposed guidelines. The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments.[16]

To determine the number of small businesses potentially subject to the proposed 255 Guidelines, the Board reviewed NAICS industry classifications and SBA small business size standards. The Board determined that three NAICS-based industry classifications may be subject to the proposed 255 Guidelines. These industry categories and their accompanying six-digit NAICS codes are: (a) NAICS Code 334210—Telephone Apparatus Manufacturing; (b) NACIS Code 334220—Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; and (c) NACIS Code 334111—Electronic and Computer Manufacturing. The Board then matched these three NAICS classifications with SBA small business size standards (based on number of employees) to determine the number of small business within each of the respective classifications.[17]

Table 7 below provides the potential number of small businesses, based on SBA size standards, for each of the three types of equipment manufacturers (by NACIS code) that may be affected by the proposed 255 Guidelines.

[14] See also Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 857 (codified at 5 U.S.C. 601 *et seq.*); E.O. 13272, 67 FR 53,461 (Aug. 16, 2012).

[15] Examples of CPE include wireline and wireless telephones or computers when employed on the premises of a person to originate, route, or terminate telecommunications (*e.g.,* Internet telephony, interconnected VoIP). Only a computer with a modem can function as telecommunications equipment and only the modem functions are associated with telecommunications. Therefore, the requirements of the proposed rule apply only to the modem functions and incidental functions required for turning the computer on and launching the telecommunications programs. All other functions of the computer not related to telecommunications would not be covered, such as word processing or file searching or video conferencing.

[16] The U.S. Census Bureau provides detailed information on the National Industry Classification System on the agency's Web site. See U.S. Census Bureau, Introduction to NAICS, *http://www.census.gov/eos/www/naics/.*

[17] SBA provides, on its Web site, small business size standards for each NAICS code, as well as firm size information based on census data. See, *e.g.,* U.S. Small Business Administration, Table of Small Business Size Standards, *https://www.sba.gov/content/small-business-size-standards* (last accessed Dec. 15, 2014); Office of Advocacy, SBA, Firm Size Data, *https://www.sba.gov/advocacy/firm-size-data* (last accessed Dec. 15, 2014).

TABLE 7—SMALL BUSINESSES POTENTIALLY AFFECTED BY THE PROPOSED 255 GUIDELINES

NAICS code	Industry title	SBA size standard	Number of firms	Number of small firms
334210	Telephone Apparatus Manufacturing.	1,000 or fewer employees	263	242
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	750 or fewer employees	730	675
334111	Electronic Computer Manufacturing	1,000 or fewer employees	391	374
TOTAL			1,384	1,291

A few notes are in order about the foregoing estimates of the number of small firms potentially affected by the 255 Guidelines. First, because all telephone equipment is covered by Section 255, all entities included in the telephone apparatus manufacturing category (334210) are necessarily subject to the guidelines. However, not all entities in the remaining two industry categories (334220 and 334111) are covered by the proposed guidelines because many of these entities may manufacture only equipment that falls outside the scope of Section 255. For example, only radio and broadcasting equipment that meets the statutory definition of telecommunications (that is, ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received''), is covered by the proposed guidelines. Also, computers lacking modems or Internet telephony software are not covered by the proposed guidelines. However, the Board lacks quantitative information to differentiate regulated from non-regulated manufacturing firms within these two NAICS categories, as well as to determine how many of the ''small businesses'' in each NAICS category are subject to the proposed guidelines. The number of small entities listed in Table 7 that may be affected by the proposed 255 Guidelines should, therefore, be considered an upper-bound estimate.

Second, given that manufacturers of telecommunications equipment and CPE must comply with Section 255 only to the extent such compliance is ''readily achievable'' (*i.e.,* easily accomplishable and able to be carried out without much difficulty or expense), there will likely be some small firms for which compliance with the proposed guidelines will prove too difficult or expensive. This is not a new proposition. Under both the existing guidelines and current FCC regulations, compliance for manufacturing firms of all sizes is limited by the readily achievable exception, though such exception necessarily applies with greater frequency to smaller entities. (See 36 CFR 1193.21; 47 CFR 6.3(g)). The Board also understands that many small firms in the three NAICS categories listed above serve as partners or suppliers to larger firms that provide a full range of products and services. For these reasons, the Board assumes that many small firms identified in Table 7—particularly those with fewer than 20 employees—likely would not incur new costs under the proposed 255 Guidelines. Accordingly, the mid-point estimate for the number of small businesses that may be affected by the proposed 255 Guidelines is assumed to be small firms that meet the SBA size standards and employ twenty or more workers.

Description of the projected reporting, recordkeeping, and other compliance requirements for small entities. As discussed above, the proposed 255 Guidelines contain many requirements that are similar to the existing guidelines. There are, however, two new proposed requirements that would apply to manufacturers of telecommunications equipment and CPE: 410.6 (real-time text functionality) and 602.3 (electronic support documentation). These two new requirements would potentially impose new costs on small manufacturing firms.

Regarding real time text (RTT) requirements under proposed 410.6, the Board lacks quantitative cost information. We requested information on RTT costs in the 2010 and 2011 ANPRMs, but did not receive specific cost data. Accordingly, we cannot, at this time, quantify or monetize the potential cost impact of the proposed RTT requirements in the 255 Guidelines. The Board does, however, seek comment on how to estimate the cost impact of the RTT requirements on small businesses subject to the 255 Guidelines so that we may use such information to prepare, as needed, a final regulatory flexibility analysis.

With respect to the new obligation in proposed 602.3 for Section 255-covered manufacturers to ensure the accessibility of electronic support documentation (such as web-based self-service support and electronic manuals), the Preliminary RIA develops estimated incremental costs, heavily relying on the cost methodology used by the Department of Transportation (DOT) in the regulatory assessment of its recent final rule requiring, among other things, airlines to make their Web sites accessible to persons with disabilities.[18] (See Section VIII.A—Regulatory Process Matters—Preliminary Regulatory Impact Analysis).

Based on the methodology and estimates used in the Preliminary RIA, the Board's Initial RFA assesses potential compliance costs for small manufacturers of telecommunications equipment and CPE based on estimated (a) one-time costs to create accessible electronic support documentation and Web sites, and (2) recurring, annual maintenance costs. One-time costs are assumed to be spread equally over the first two years (*i.e.,* half of covered firms realizing costs in the first year, and the other half in year two), with annual maintenance costs incurred thereafter for the remainder of the 10-year regulatory horizon. Estimated compliance costs are based on firm size. For small businesses with 100 or more employees, average one-time costs are assumed to be $125,000 for bringing their respective support documentation and Web sites into compliance with the proposed 255 Guidelines. For firms with fewer than 100 employees, average per-firm one-time costs under the proposed guidelines are assumed to be $25,000. Annual recurring maintenance costs are

[18] Dept. of Transportation, Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web sites and Automated Kiosks at U.S. Airports, 78 FR 67882 (Nov. 12, 2013); Econometrica, Inc., Final Regulatory Analysis on the Final Rule on Accessible Kiosks and Web sites (Oct. 23, 2013), available at: *http://www.regulations.gov/#!documentDetail;D=DOT-OST-2011-0177-0108*; see also Preliminary RIA, Sections 6.3, 8.11.

estimated as twenty percent of one-time costs regardless of firm size.

Using these cost assumptions, the Initial RFA evaluates the monetary impact of the proposed 255 Guidelines from three perspectives. The first scenario uses the upper-bound estimate for small businesses that may be affected by the proposed guidelines (*i.e.,* all small firms meeting SBA size standards) to assess total one-time and annual maintenance costs across all affected industry categories. These costs, which should be considered an upper-bound estimate, are reflected below:

TABLE 8—ESTIMATED INCREMENTAL COSTS FOR SMALL MANUFACTURING FIRMS SUBJECT TO THE PROPOSED 255 GUIDELINES

[Scenario 1—all firms]

Firm size	Firms meeting SBA size standards	Average one-time cost per firm	Total one-time costs	Average annual maintenance cost per firm	Total annual maintenance costs
100 or more employees	124	$125,000	$15,500,000	$25,000	$3,100,000
99 or fewer employees	1,167	25,000	29,175,000	5,000	5,835,000
Total	1,291		44,675,000		8,935,000

Second, to reflect the reality that compliance may not be readily achievable for the smallest firms (and, as well, the fact that such firms often serve as suppliers to larger firms and thus may not be covered by Section 255), the second scenario uses the mid-point estimate for small businesses that may be affected by the proposed guidelines (*i.e.,* small firms that meet the SBA size standards and have twenty or more employees) to assess total one-time and annual maintenance costs across all industry categories. These costs, which should be considered a mid-point estimate, are reflected below:

TABLE 9—ESTIMATED INCREMENTAL COSTS FOR SMALL MANUFACTURING FIRMS SUBJECT TO THE PROPOSED 255 GUIDELINES

[Scenario 2—firms with 20 or more employees]

Firm size	Firms meeting SBA size standards	Average one-time cost per firm	Total one-time costs	Average annual maintenance cost per firm	Total annual maintenance costs
100 or more employees	124	$125,000	$15,500,000	$25,000	$3,100,000
20–99 employees	278	25,000	6,950,000	5,000	1,390,000
Total	402		22,450,000		4,490,000

Third, to assess the magnitude of potential compliance costs for small businesses under the proposed 255 Guidelines relative to annual receipts, the third scenario evaluates the ratio of average annualized costs per-firm to average receipts per firm for each of the three NAICS codes. Average annualized costs represent the per-firm stream of estimated one-time and recurring annual costs over the 10-year regulatory horizon at a 7 percent discount rate. Annualized costs are assumed to be consistent across the three NAICS codes for each of the two studied small firm sizes (*i.e.,* more or less than 100 employees) because the Board does not have NAICS code-based data differentiating receipts by firm size. Annual estimated average per-firm receipts for each NAICS code, in turn, are derived from publicly-available SBA data. The ratio of average per-firm annualized costs and annual per-firm receipts is then calculated for each NACIS code and firm size, with the resulting percentage serving as a metric to evaluate the relative economic significance of compliance costs to small businesses under the proposed 255 Guidelines.

The results are presented below in two separate tables by the size (in terms of number of employees) of small firms covered by Section 255.

TABLE 10—RATIO OF ANNUALIZED PER-FIRM COSTS TO RECEIPTS FOR SMALL FIRMS WITH 100 OR MORE EMPLOYEES

[By NAICS code]

NAICS code	Industry title	Average annualized costs per small firm (7% discount rate)	Average estimated per-firm annual receipts	Ratio of average annualized per-firm costs/ per-firm eceipts (percent)
334210	Telephone Apparatus Manufacturing	$28,782	$58,969,940	.049
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	28,782	46,860,776	.060

TABLE 10—RATIO OF ANNUALIZED PER-FIRM COSTS TO RECEIPTS FOR SMALL FIRMS WITH 100 OR MORE EMPLOYEES—Continued

[By NAICS code]

NAICS code	Industry title	Average annualized costs per small firm (7% discount rate)	Average estimated per-firm annual receipts	Ratio of average annualized per-firm costs/ per-firm eceipts (percent)
334111	Electronic Computer Manufacturing	28,782	75,919,848	.038

*Annual receipts based on data from the Small Business Administration, U.S. Small Business Administration, Firm Size Data—Statistics of U.S. Businesses (SUSB), *https://www.sba.gov/advocacy/firm-size-data* (last accessed Dec. 15, 2014). SUSB employer data is collected and produced by the U.S Census and contains, for each NAICS code such information as the number of firms, employment figures, estimated annual receipts, and annual payroll.

TABLE 11—RATIO OF ANNUALIZED PER-FIRM COSTS TO RECEIPTS FOR SMALL FIRMS WITH LESS THAN 100 EMPLOYEES

[By NAICS code]

NAICS code	Industry title	Average annualized costs per small firm (7% discount rate)	Average estimated per-firm annual receipts	Ratio of average annualized per-firm costs/ per-firm receipts (percent)
334210	Telephone Apparatus Manufacturing	$5,756	$58,969,940	.010
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	5,756	46,860,776	.010
334111	Electronic Computer Manufacturing	5,756	75,919,848	.008

*Annual receipts based on data from the Small Business Administration, U.S. Small Business Administration, Firm Size Data—Statistics of U.S. Businesses (SUSB), *https://www.sba.gov/advocacy/firm-size-data* (last accessed Dec. 15, 2014). SUSB employer data is collected and produced by the U.S Census and contains, for each NAICS code such information as the number of firms, employment figures, estimated annual receipts, and annual payroll.

The results of these average cost/receipt analyses demonstrate that incremental costs of the proposed 255 Guidelines for small businesses—whether larger or smaller than 100 employees—are expected to be minimal relative to firm receipts. In no case would this ratio exceed about one-half of a percent, with ratios ranging from a low of 0.008 to a high of 0.049. Accordingly, based on the foregoing analysis, the Board does not believe that the proposed 255 Guidelines are likely to have a significant economic impact on a substantial number of small entities.

Question 42. The Board requests input from manufacturers of telecommunications equipment and customer premises equipment, as well as other interested parties, on the small business cost estimation methodology and assumptions used in this Initial RFA. The Board will use relevant information provided in public comments to determine whether or how to revise our estimates for the final regulatory flexibility analysis.

Duplication with other federal rules. To the Board's knowledge, there are no relevant federal rules that duplicate, overlap, or conflict with the proposed 255 Guidelines.

Description of significant alternatives to the proposed 255 Guidelines. In the Board's view, there are no alternatives to the proposed guidelines that would accomplish the goal of meeting the access needs of individuals with disabilities, while taking into account compliance costs of manufacturers of telecommunications equipment and CPE.

C. Executive Order 13132: Federalism

The proposed rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The proposed 508 Standards apply to the development, procurement, maintenance, or use of ICT by federal agencies. The proposed 255 Guidelines apply to manufacturers of telecommunications equipment and customer premises equipment and require that equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if it is readily achievable to do so. As such, the Board has determined that the proposed rule does not have federalism implications within the meaning of Executive Order 13132.

D. Executive Order 13609: Promoting International Regulatory Cooperation

Executive Order 13609 serves to promote international regulatory cooperation and harmonization. The Access Board has tried to promote the principles of the executive order by making concerted efforts with a number of foreign governments throughout the development of the proposed 508 Standards and 255 Guidelines. For example, the Board and the European Commission have made every effort to coordinate development of their respective ICT standards. This cooperation began with the 2005 EU–US Economic Initiative (*http://trade.ec.europa.eu/doclib/docs/2006/june/tradoc_127643.pdf*) and continued through the work of the Access Board with representatives from the European Commission, Canada, Australia, and Japan serving on the Telecommunications and Electronic and Information Technology Advisory Committee which informed the proposed 508 Standards and 255 Guidelines. In our view, the proposed 508 Standards and 255 Guidelines are the product of the Board's coordination with international regulatory partners,

which will ultimately help American companies better compete globally.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. The proposed 508 Standards are issued pursuant to the Rehabilitation Act. When federal agencies develop, procure, maintain, or use electronic and information technology, they are required to ensure that the electronic and information technology allows federal employees with disabilities to have access to and use of information and data that is comparable to the access enjoyed by federal employees without disabilities, unless doing so would impose an undue burden on the agency. The statute also requires that members of the public with disabilities seeking information or services from a federal agency have access to and use of information and data that is comparable to that provided to other members of the public unless doing so would impose an undue burden on the agency. We have issued the proposed 255 Guidelines pursuant to Section 255 of the Communications Act of 1934 which requires manufacturers of telecommunications equipment and customer premises equipment to ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if it is readily achievable to do so. Accordingly, an assessment of the effect of the proposed 508 Standards and 255 Guidelines on state, local, and tribal governments is not required by the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) requires federal agencies to obtain approval from the Office of Management and Budget (OMB) before requesting or requiring a ''collection of information'' from the public. As part of the PRA process, agencies are generally required to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information to solicit, among other things, comment on the necessity of the information collection and its estimated burden. 44 U.S.C. 3506(c)(2)(A). To comply with this requirement, the Board publishes here a notice of proposed collection of information in the proposed 255 Guidelines.

Proposed C206, along with several provisions in Chapter 6 (Support Documentation and Services), collectively obligate manufacturers of telecommunications equipment and customer premises equipment to provide accessible support documentation and services, which constitute ''collection of information'' under the PRA. More specifically, the proposed rule requires covered manufacturers, when providing support documentation and services, to ensure accessibility for individuals with disabilities with respect to four categories of information as follows: (1) Support documentation must list and explain how to use accessibility and compatibility features of telecommunications products (602.2); (2) electronic support documentation must conform to WCAG 2.0 or PDF/UA–1 (602.3); (3) non-electronic support documentation in alternate formats (*e.g.,* braille, large print), which is available upon request, must be usable by users with vision impairments (602.4); and (4) support services (*e.g.,* help desks, call centers) must offer information on accessibility and compatibility features, as well as ensure a contact method that accommodates the communication needs of individuals with disabilities (603.2 and 603.3).

These four proposed information collection requirements are generally similar to those under existing 255 Guidelines § 1193.33, which were previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the PRA (OMB Control Number 3014–0010), though compliance with WCAG 2.0 (or PDF/UA–1) is new. The newly proposed information collection is the requirement that telecommunications equipment manufacturers ensure that any electronic documentation (such as web-based self-service support or PDF user guides) provided to end users must meet specified accessibility standards (602.3).

The Board estimates the annual burden on manufacturers of telecommunications equipment and customer premises equipment for the four categories of information collection under the proposed rule as follows:

TABLE 12—ESTIMATED ANNUAL RECORDKEEPING AND DOCUMENTATION BURDEN

Section of proposed rule	Number of respondents	Annual number of responses per respondent	Average response time (hours)	Estimated annual burden (hours)
Section 602.2	1,384	6	1.5	12,456
Section 602.3	1,384	95% of 6	300	2,366,640
Section 602.4	1,384	5% of 6	25	10,375
Section 603	1,384	6	.5	4,152
Total				2,393,623

These estimates are based on the Board's experience with the current information collection requirements under the existing 255 Guidelines, as well as public comment received in response to the 2010 and 2011 ANPRMs. Highlighted below are the key assumptions used in the burden estimation calculus.

Number of respondents. The number of manufacturers of telecommunications equipment and customer premises equipment (1,384) is based on the number of firms assumed to be affected by the proposed rule using the North American Industry Classification System (NAICS). See Section IV.B (Regulatory Process Matters—Regulatory Flexibility Act).

Number of responses annually per manufacturer. The number of annual responses for each manufacturer (6) is based on the estimated number of new products released in 2013 according to the Consumer Electronic Association.

Average response time.

- *Section 602.2:* The estimated response time assumes that documenting the accessibility and compatibility features will take 1.5 hours for each new product.
- *Section 602.3:* The estimated response time assumes that development of accessible electronic support documentation will take 300

hours for each new product. This estimate, in turn, is based on the assumption that each product will have, on average, 200 pages of electronic documentation, and that each page will require 1.5 hours of formatting and editing to comply with WCAG 2.0 or PDF/UA–1, as applicable. With respect to the annual number of responses for each manufacturer, it is assumed that support documentation for nearly all new products will be provided in an electronic format given current trends in the telecommunications industry. Specifically, it is estimated that 95 percent of the six new products introduced annually by each manufacturer (7,889 products) will have electronic support documentation that must conform to proposed 602.3.

• *Section 602.4:* The estimated response time assumes that development of accessible non-electronic support documentation in alternate formats (*e.g.,* braille, large print) will take 25 hours for each new product. With respect to the annual number of responses for each manufacturer, it is assumed that support documentation for only a few new products will have support documentation in a non-electronic format in recognition of the fact that most support documentation is now posted online or otherwise provided in electronic formats. Thus, it is assumed that only 5 percent of the six new products introduced annually by each manufacturer (415 products) will have non-electronic support documentation that must conform to proposed 602.4.

• *Section 603:* The estimated response time assumes that, for each new product in a given year, manufacturers will receive three 10-minute telephone calls to support centers (or emails or chat-based interactions) from individuals with disabilities seeking information on the accessibility and compatibility features of these products.

The Board seeks comment on the methods and assumptions used in estimating the annual burden associated with the information collection requirements in the proposed 255 Guidelines. Organizations and individual desiring to submit comments on this information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Access Board.

The Board requests comments on these proposed collections of information in:

• Evaluating whether the proposed collection of information is necessary for the proper implementation of Section 255, including whether the information will have a practical use;

• Evaluating the accuracy of the Board's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of collection of information of 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).

OMB is required to make a decision concerning the collection of information contained in these proposed guidelines between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Board on the NPRM.

G. Availability of Materials Incorporated by Reference

As noted previously in the Section-by-Section Analysis for proposed E102 and C102, the Access Board is proposing to incorporate by reference ten consensus standards in the 508 Standards and 255 Guidelines. See Section VI.B (Section-by-Section Analysis—508 Standards: Application and Scoping—E102) and Section VI.C (Section-by-Section Analysis—255 Guidelines: Application and Scoping—C102). The Office of the Federal Register recently promulgated a final rule requiring federal agencies to provide additional information to the public in regulatory preambles for materials to be incorporated by reference.[19]

In keeping with these new obligations for materials proposed for incorporation by reference, the Access Board provides below: (a) Information on the public availability of these ten standards (or, alternatively, how Access Board staff attempted to secure the availability of these materials to the public at no cost or reduced cost, if not already publicly available free of charge by the standards development organization); and (b) summaries of the materials to be incorporated by reference. In addition to the information provided below relating to public availability, a copy of each referenced standard is available for inspection at our agency's office, 1331 F Street NW., Suite 1000, Washington, DC 20004.

ANSI/HFES 200.2 (2008) Human Factors Engineering of Software User Interfaces—Part 2: Accessibility (referenced in: E102.2, C102.2, 502.4). This standard provides design specifications for human-system software interfaces to increase accessibility for persons with disabilities. It covers the design of accessible software for people with a wide range of physical, sensory and cognitive abilities, including those with temporary disabilities and older adults. Availability: Copies of this standard may be obtained from Human Factors and Ergonomics Society (HFES), P.O. Box 1369, Santa Monica, CA 90406–1369. This standard is also available for purchase on the HFES Web site (*http://www.hfes.org*). Additionally, HFES has agreed to make a read-only copy of this standard available during the comment period upon request.

ANSI/IEEE C63.19–2011 American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids (see E102.3, C102.3, 410.4.1). This standard provides a uniform method of measurement for compatibility between hearing aids and wireless communications devices. Availability: Copies of this standard may be obtained from the Institute of Electrical and Electronics Engineers (IEEE), 10662 Los Vaqueros Circle, P.O. Box 3014, Los Alamitos, CA 90720–1264. This standard is also available for purchase on the IEEE Web site (*http://www.ieee.org*). IEEE has also agreed to make a read-only version of this standard available on the organization's Web site during the comment period.

A/53 Digital Television Standard, Part 5: 2010 AC–3 Audio System Characteristics (2010) (see E102.4, C102.4, 412.1.1). The standard for digital television provides the system characteristics for advanced television systems. The document and its normative parts provide detailed specification of system parameters. Part 5 provides the audio system characteristics and normative specifications. It includes the Visually Impaired (VI) associated service, which is a complete program mix containing music, effects, dialogue and a narrative description of the picture content. ATSC also publishes a companion technical assistance guide for its television standard. Availability: Copies of this standard may be obtained from the

[19] Office of the Federal Register, Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014) (to be codified at 1 CFR part 51).

Advanced Television Systems Committee (ATSC), 1776 K Street NW., Suite 200, Washington, DC 20006–2304. Free copies of A/53 Digital Television Standard are available online at the organization's Web site: (*http://www.atsc.org/cms/standards/a53/a_53-Part-5-2010.pdf).*

Request for Comment (RFC) 4103, Real-Time Transport Protocol Payload for Text Conversation (2005) (see E102.5, C102.5, 410.6.3.2). This standard establishes specifications for how to carry real-time text (RTT) conversation session contents in Real-time Transport Protocol (RTP) packets. RTT is used alone or in connection with other conversational modalities to form multimedia conversation services. RTT in multimedia conversation sessions is sent character-by-character as soon as it is available, or with a small delay for buffering. Availability: Free copies of this standard are available online at the Internet Engineering Task Force's Web site (*http://www.rfc-base.org/txt/rfc-4103.txt*).

ISO 14289–1 (PDF/UA–1) Document management applications—Electronic document file format enhancement for accessibility—Part 1: Use of ISO 32000–1 (2014) (see E102.6, C102.6, E205.1, 602.3.1). This standard is the consensus international specification for accessible PDF. PDF/UA–1 provides a technical, interoperable standard for the authoring, remediation and validation of PDF content to ensure accessibility for people with disabilities who use assistive technology, such as screen readers, screen magnifiers, joysticks and other technologies used to navigate and read electronic content. Availability: Copies of this standard may be obtained from the International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56—CH–1211 Geneva 20, Switzerland. This standard is also available for purchase on the ISO Web site (*http://www.iso.org*). Access Board staff is in discussion with ISO about making a read-only version of this standard available on the organization's Web site during the comment period. Please consult the Access Board Web site for updates on the availability of this standard during the comment period.

ITU–T Recommendation G.722: Series G: Transmission Systems and Media, Digital Systems and Networks Digital Terminal Equipments [sic]—Coding of voice and audio signals, 7 kHz Audio-Coding within 64 Kbits/s (September 2012) (see E102.7.1, C102.7.1, 410.5). This standard specifies a coder-decoder program that provides 7 kHz wideband audio at data rates from 48, 56, and 64 kbits/s. Availability: This standard may be obtained from the International Telecommunication Union, Telecommunications Standardization Sector (ITU–T), Place des Nations CH–1211, Geneva 20, Switzerland. Free copies of ITU–T Recommendation G.72 are available online at the organization's Web site (*http://www.itu.int/rec/T-REC-G.722-201209-I/en*).

ITU–T Recommendation E.161: Arrangement of digits, letters and symbols on telephones and other devices that can be used for gaining access to a telephone network (February 2001) (see E102.7.2, C107.2, 407.3.2). This standard defines the assignment of the basic 26 Latin letters (A to Z) to the 12-key telephone keypad. Availability: This standard may be obtained from ITU–T, Place des Nations CH–1211, Geneva 20, Switzerland. Free copies of ITU–T Recommendation E.161 are available online at the organization's Web site (*https://www.itu.int/rec/T-REC-E.161-200102-I/en*).

TIA 825–A, A Frequency Shift Keyed Modem for Use on the Public Switched Telephone Network (2003) (see E102.8.1, C102.8.1, 410.6.3.1). This standard is a specification for TTY signals on the public switched telephone network interface. Availability: Copies of this standard, which is published by the Telecommunications Industry Association (TIA), may be obtained from the IHS Standard Store (IHS), 15 Inverness Way East, Englewood, CO 80112. This standard is also available for purchase on the IHS Web site (*https://www.global.ihs.com*). Additionally, TIA has agreed to make a read-only version of this standard available, upon request, through TIA's Web site (*www.tiaonline.org*) during the comment period.

TIA 1083 Telephone Terminal Equipment Handset Magnetic Measurement Procedures and Performance Requirements (2007) (see E102.8.2, C102.8.2, 410.4.2). This standard defines measurement procedures and performance requirements for the handset generated audio band magnetic noise of wire line telephones, including digital cordless telephones. Availability: Copies of this standard, which is published by the Telecommunications Industry Association (TIA), may be obtained from the IHS Standard Store (IHS), 15 Inverness Way East, Englewood, CO 80112. This standard is also available for purchase on the IHS Web site (*https://www.global.ihs.com*). Additionally, TIA has also agreed to make a read-only version of this standard available, upon request, through TIA's Web site (*www.tiaonline.org*) during the comment period.

Web Content Accessibility Guidelines (WCAG) 2.0, W3C Recommendation (December 2008) (see E102.9, C102.9, E205.1, E207.2, 405.1 Exception, 501.1 Exception 1, 504.2, 504.3, 504.4, 602.3.1). WCAG 2.0, published by the W3C Web Accessibility Initiative (W3C), specifies success criteria and requirements to make Web content more accessible to all users, including persons with disabilities. The W3C Web site also provides online technical assistance materials linked to each success criteria and technical requirement. Availability: Copies of this standard may be obtained from the W3C Web Accessibility Initiative, Massachusetts Institute of Technology, 32 Vassar Street, Room 32–G515, Cambridge, MA 02139. Free copies of WCAG 2.0, and its related technical assistance materials, are available online at W3C's Web site (*http://www.w3.org/TR/WCAG20*).

List of Subjects

36 CFR Part 1193

Communications, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

36 CFR Part 1194

Civil rights, Communications, Communications equipment, Computer technology, Electronic products, Government employees, Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

David M. Capozzi,

Executive Director.

For the reasons stated in the preamble, under the authority of 47 U.S.C. 255(e), the Board proposes to amend 36 CFR chapter XI, as follows:

PART 1193 [REMOVED]

■ 1. Remove part 1193.

■ 2. Revise part 1194 to read as follows:

PART 1194—INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) STANDARDS AND GUIDELINES

Sec.

Authority: 29 U.S.C. 794d, 47 U.S.C. 255.

§ 1194.1 Standards for Section 508 of the Rehabilitation Act.

The standards for information and communication technology developed, procured, maintained, or used by federal agencies covered by Section 508 of the Rehabilitation Act are set forth in Appendices A and C to this part.

§ 1194.2 Guidelines for Section 255 of the Communications Act.

The guidelines for telecommunications equipment and customer premises equipment covered by Section 255 of the Communications Act are set forth in Appendices B and C to this part.

Appendix A to Part 1194—Section 508 of the Rehabilitation Act: Application and Scoping Requirements

508 CHAPTER 1: APPLICATION AND ADMINISTRATION

E101 General

E101.1 Purpose. These 508 Standards, which consist of 508 Chapters 1 and 2 (Appendix A), along with Chapters 3 through 6 (Appendix C), contain scoping and technical requirements for information and communication technology (ICT) that is accessible to and usable by individuals with disabilities. Compliance with these standards is mandatory for federal agencies subject to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).

E101.2 Equivalent Facilitation. The use of an alternative design or technology that results in substantially equivalent or greater accessibility and usability by individuals with disabilities than would be provided by conformance to one or more of the requirements in Chapters 4 and 5 of the 508 Standards is permitted. The functional performance criteria in Chapter 3 shall be used to determine whether substantially equivalent or greater accessibility and usability is provided to individuals with disabilities.

E101.3 Conventional Industry Tolerances. Dimensions are subject to conventional industry tolerances except where dimensions are stated as a range.

E101.4 Units of Measurement. Measurements are stated in metric and U.S. customary units. The values stated in each system (metric and U.S. customary units) may not be exact equivalents, and each system shall be used independently of the other.

E102 Referenced Standards

E102.1 Incorporation by Reference. The specific editions of the standards and guidelines listed in E102 are incorporated by reference in the 508 Standards and are part of the requirements to the prescribed extent of each such reference. Where conflicts occur between the 508 Standards and the referenced standards, these standards apply. The Director of the Office of the Federal Register has approved the standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Access Board's office, 1331 F Street NW., Suite 1000, Washington, DC 20004.

E102.2 American National Standards Institute/Human Factors and Ergonomics Society (ANSI/HFES). Copies of the referenced standard may be obtained from Human Factors and Ergonomics Society, P.O. Box 1369, Santa Monica, CA 90406–1369 (*http://www.hfes.org/Publications/ProductDetail.aspx?Id=76*).

ANSI/HFES 200.2 Human Factors Engineering of Software User Interfaces — Part 2: Accessibility, (2008), IBR proposed for Section 502.4.

E102.3 American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE). Copies of the referenced standard may be obtained from the Institute of Electrical and Electronics Engineers, 10662 Los Vaqueros Circle, P.O. Box 3014, Los Alamitos, CA 90720–1264 (*http://www.ieee.org*).

ANSI/IEEE C63.19–2011 American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, Committee C63—Electromagnetic Compatibility, May 27, 2011, IBR proposed for Section 410.4.1.

E102.4 Advanced Television Systems Committee (ATSC). Copies of the referenced standard may be obtained from the Advanced Television Systems Committee, 1776 K Street NW., Suite 200, Washington, DC 20006–2304 (*http://www.atsc.org*).

A/53 Digital Television Standard, Part 5: AC–3 Audio System Characteristics, (2010), IBR proposed for Section 412.1.1.

E102.5 Internet Engineering Task Force (IETF). Copies of the referenced standard may be obtained from the Internet Engineering Task Force (*http://www.ietf.org*).

Request for Comments (RFC) 4103, Real-time Transport Protocol (RTP) Payload for Text Conversation (2005), G. Hellstrom, Omnitor AB, and P. Jones, Cisco Systems, IBR proposed for Section 410.6.3.2.

E102.6 International Standards Organization (ISO). Copies of the referenced standards may be obtained from International Organization for Standardization, ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56—CH–1211 Geneva 20, Switzerland (*http://www.iso.org/iso/catalogue_detail.htm?csnumber=54564*).

ISO 14289–1 Document management applications—Electronic document file format enhancement for accessibility—Part 1: Use of ISO 32000–1 (PDF/UA–1), Technical Committee ISO/TC 171, Document Management Applications, Subcommittee SC 2, Application Issues, (2014), IBR proposed for Sections E205.1 and 602.3.1.

E102.7 International Telecommunications Union Telecommunications Standardization Sector (ITU–T). Copies of the referenced standards may be obtained from the International Telecommunication Union, Telecommunications Standardization Sector, Place des Nations CH–1211, Geneva 20, Switzerland (*http://www.itu.int/en/ITU-T*).

E102.7.1 ITU–T Recommendation G.722: General Aspects of Digital Transmission Systems, Terminal Components, 7 kHz Audio-Coding within 64 Kbits/s, (September 2012), IBR proposed for Section 410.5.

E102.7.2 ITU–T Recommendation E.161: Arrangement of digits, letters and symbols on telephones and other devices that can be used for gaining access to a telephone network, ITU–T Study Group 2, (February 2001), IBR proposed for Section 407.3.2.

E102.8 Telecommunications Industry Association (TIA). Copies of the referenced standards, published by the Telecommunications Industry Association, may be obtained from IHS, 15 Inverness Way East, Englewood, CO 80112 (*http://global.ihs.com*).

E102.8.1 TIA 825–A A Frequency Shift Keyed Modem for Use on the Public Switched Telephone Network, (2003), IBR proposed for Section 410.6.3.1.

E102.8.2 TIA 1083 Telephone Terminal Equipment Handset Magnetic Measurement Procedures and Performance Requirements, (March 2007), IBR proposed for Section 410.4.2.

E102.9 Worldwide Web Consortium (W3C). Copies of the referenced guidelines may be obtained from the W3C Web Accessibility Initiative, Massachusetts Institute of Technology, 32 Vassar Street, Room 32–G515, Cambridge, MA 02139 (*http://www.w3.org/TR/WCAG20*).

Web Content Accessibility Guidelines (WCAG) 2.0, W3C Recommendation, December 2008, IBR proposed for Sections E205.1, E207.2, 405.1 Exception, 501.1 Exception 1, 504.2, 504.3, 504.4, and 602.3.1.

E103 Definitions

E103.1 Terms Defined in Referenced Standards. Terms defined in referenced standards and not defined in E103.4 shall have the meaning as defined in the referenced standards.

E103.2 Undefined Terms. Any term not defined in E103.4 or in referenced standards shall be given its ordinarily accepted meaning in the sense that the context implies.

E103.3 Interchangeability. Words, terms, and phrases used in the singular include the plural and those used in the plural include the singular.

E103.4 Defined Terms. For the purpose of the 508 Standards, the terms defined in E103.4 have the indicated meaning.

508 Standards. The standards for ICT developed, procured, maintained, or used by agencies subject to Section 508 of the Rehabilitation Act as set forth in 508 Chapters 1 and 2 (36 CFR part 1194, Appendix A), and Chapters 3 through 6 (36 CFR part 1194, Appendix C).

Agency. Any agency or department of the United States as defined in 44 U.S.C. 3502, and the United States Postal Service.

Application. Software designed to perform, or to help the user to perform, a specific task or tasks.

Assistive Technology (AT). Any item, piece of equipment, or product system, whether

acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Audio Description. Narration added to the soundtrack to describe important visual details that cannot be understood from the main soundtrack alone. Audio description is a means to inform individuals who are blind or who have low vision about visual content essential for comprehension. Audio description of video provides information about actions, characters, scene changes, on-screen text, and other visual content. Audio description supplements the regular audio track of a program. Audio description is usually added during existing pauses in dialogue. Audio description is also called ''video description'' and ''descriptive narration''.

Authoring Tool. Any software, or collection of software components, that can be used by authors, alone or collaboratively, to create or modify content for use by others, including other authors.

Closed Functionality. Characteristics that limit functionality or prevent a user from attaching or installing assistive technology. Examples of ICT with closed functionality are self-service machines, information kiosks, set-top boxes, fax machines, calculators, and computers that are locked down so that users may not adjust settings due to a policy such as Desktop Core Configuration.

Content. Electronic information and data, as well as the encoding that defines its structure, presentation, and interactions.

Hardware. A tangible device, equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

Information technology. Shall have the same meaning as the term ''information technology'' set forth in 40 U.S.C. 11101(6).

Information and Communication Technology (ICT). Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents.

Keyboard. A set of systematically arranged alphanumeric keys or a control that generates alphanumeric input by which a machine or device is operated. A keyboard includes tactilely discernible keys used in conjunction with the alphanumeric keys if their function maps to keys on the keyboard interfaces.

Label. Text, or a component with a text alternative, that is presented to a user to identify content. A label is presented to all users, whereas a name may be hidden and only exposed by assistive technology. In many cases, the name and the label are the same.

Menu. A set of selectable options.

Name. Text by which software can identify a component to the user. A name may be hidden and only exposed by assistive technology, whereas a label is presented to all users. In many cases, the label and the name are the same. Name is unrelated to the name attribute in HTML.

Operable Part. A component of ICT used to activate, deactivate, or adjust the ICT.

Platform Accessibility Services. Services provided by a platform enabling interoperability with assistive technology. Examples are Application Programming Interfaces (API) and the Document Object Model (DOM).

Platform Software. Software that interacts with hardware, or provides services for other software. Platform software may run or host other software, and may isolate them from underlying software or hardware layers. A single software component may have both platform and non-platform aspects. Examples of platforms are: Desktop operating systems; embedded operating systems, including mobile systems; Web browsers; plug-ins to Web browsers that render a particular media or format; and sets of components that allow other applications to execute, such as applications which support macros or scripting.

Programmatically Determinable. Ability to be determined by software from author-supplied data that is provided in a way that different user agents, including assistive technologies, can extract and present the information to users in different modalities.

Public Facing. Content made available by an agency to members of the general public. Examples include, but are not limited to, an agency Web site, blog post, or social media pages.

Real-Time Text (RTT). Communications using the transmission of text by which characters are transmitted by a terminal as they are typed. Real-time text is used for conversational purposes. Real-time text also may be used in voicemail, interactive voice response systems, and other similar applications.

Software. Programs, procedures, rules and related data and documentation that direct the use and operation of ICT and instruct it to perform a given task or function.

Telecommunications. The signal transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Terminal. Device or software with which the end user directly interacts and that provides the user interface. For some systems, the software that provides the user interface may reside on more than one device such as a telephone and a server.

Text. A sequence of characters that can be programmatically determined and that expresses something in human language.

TTY. Equipment that enables interactive text based communications through the transmission of frequency-shift-keying audio tones across the public switched telephone network. TTYs include devices for real-time text communications and voice and text intermixed communications. Examples of intermixed communications are voice carry over and hearing carry over. One example of a TTY is a computer with TTY emulating software and modem.

Voice over Internet Protocol (VoIP). A technology that provides real-time voice communications. VoIP requires a broadband connection from the user's location and customer premises equipment compatible with Internet protocol.

508 Chapter 2: Scoping Requirements

E201 Application

E201.1 Scope. ICT that is procured, developed, maintained, or used by agencies shall conform to the 508 Standards.

E202 General Exceptions

E202.1 General. ICT shall be exempt from compliance with the 508 Standards to the extent specified by E202.

E202.2 National Security Systems. The 508 standards do not apply to ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a).

E202.3 Federal Contracts. ICT acquired by a contractor incidental to a contract shall not be required to conform to the 508 Standards.

E202.4 ICT Functions Located in Maintenance or Monitoring Spaces. Where status indicators and operable parts for ICT functions are located in spaces that are frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment, such status indicators and operable parts shall not be required to conform to the 508 Standards.

E202.5 Undue Burden or Fundamental Alteration. Where an agency determines in accordance with E202.5 that conformance to requirements in the 508 Standards would impose an undue burden or would result in a fundamental alteration in the nature of the ICT, conformance shall be required only to the extent that it does not impose an undue burden or result in a fundamental alteration in the nature of the ICT.

E202.5.1 Basis for a Determination of Undue Burden. In determining whether conformance to requirements in the 508 Standards would impose an undue burden on the agency, the agency shall consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT is to be procured, developed, maintained, or used.

E202.5.2 Required Documentation. The responsible agency official shall document in writing the basis for determining that conformance to requirements in the 508 Standards constitute an undue burden on the agency, or would result in a fundamental alteration in the nature of the ICT. The documentation shall include an explanation of why and to what extent compliance with applicable requirements would create an undue burden or result in a fundamental alteration in the nature of the ICT.

E202.5.3 Alternative Means. Where conformance to one or more requirements in the 508 Standards imposes an undue burden or a fundamental alteration in the nature of the ICT, the agency shall provide individuals with disabilities access to and use of information and data by an alternative means that meets identified needs.

E202.6 Best Meets. Where ICT conforming to one or more requirements in

the 508 Standards is not commercially available, the agency shall procure the product that best meets the 508 Standards consistent with the agency's business needs.

E202.6.1 Required Documentation. The responsible agency official shall document in writing: (a) The nonavailability of conforming ICT, including a description of market research performed and which provisions cannot be met, and (b) the basis for determining that the ICT to be procured best meets the requirements in the 508 Standards consistent with the agency's business needs.

E202.6.2 Alternative Means. Where ICT that fully conforms to the 508 Standards is not commercially available, the agency shall provide individuals with disabilities access to and use of information and data by an alternative means that meets identified needs.

E203 Access to Functionality

E203.1 General. Agencies shall ensure that all functionality of ICT is accessible to and usable by individuals with disabilities, either directly or by supporting the use of assistive technology, and shall comply with E203. In providing access to all functionality of ICT, agencies shall ensure the following:

a. That federal employees with disabilities have access to and use of information and data that is comparable to the access and use by federal employees who are not individuals with disabilities; and

b. That members of the public with disabilities who are seeking information or data from a federal agency have access to and use of information and data that is comparable to that provided to members of the public who are not individuals with disabilities.

E203.2 Agency Business Needs. When agencies procure, develop, maintain or use ICT they shall identify the business needs of users with disabilities affecting vision, hearing, color perception, speech, dexterity, strength, or reach to determine:

a. How users with disabilities will perform the functions supported by the ICT; and

b. How the ICT will be installed, configured, and maintained to support users with disabilities.

E204 Functional Performance Criteria

E204.1 General. Where the requirements in Chapters 4 and 5 do not address one or more features of ICT, the features not addressed shall conform to the Functional Performance Criteria specified in Chapter 3.

E205 Content

E205.1 General. Content shall comply with E205.

E205.2 Public Facing. Content that is public facing shall conform to the accessibility requirements specified in E205.4.

E205.3 Agency Official Communication. Content that is not public facing shall conform to the accessibility requirements specified in E205.4 when such content constitutes official business, and is communicated by an agency through one or more of the following:

1. An emergency notification;

2. An initial or final decision adjudicating an administrative claim or proceeding;

3. An internal or external program or policy announcement;

4. A notice of benefits, program eligibility, employment opportunity, or personnel action;

5. A formal acknowledgement or receipt;

6. A questionnaire or survey;

7. A template or form; or

8. Educational or training materials.

EXCEPTION: Records maintained by the National Archives and Records Administration (NARA) pursuant to federal recordkeeping statutes shall not be required to conform to the 508 Standards unless public facing.

E205.4 Accessibility Standards. Content shall conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 (incorporated by reference in Chapter 1) or, where applicable, ISO 14289–1 (PDF/UA–1) (incorporated by reference in Chapter 1).

E206 Hardware

E206.1 General. Where components of ICT are hardware and transmit information or have a user interface, such components shall conform to applicable requirements in Chapter 4.

E207 Software

E207.1 General. Where components of ICT are software and transmit information or have a user interface, such components shall conform to E207 and applicable requirements in Chapter 5.

E207.2 WCAG Conformance. User interface components, as well as the content of platforms and applications, shall conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 (incorporated by reference in Chapter 1).

E208 Support Documentation and Services

E208.1 General. Where an agency provides support documentation or services for ICT, such documentation and services shall conform to the requirements in Chapter 6.

Appendix B to Part 1194—Section 255 of the Communications Act: Application and Scoping Requirements

255 Chapter 1: Application and Administration

C101 General

C101.1 Purpose. These 255 Guidelines, which consist of 255 Chapters 1 and 2 (Appendix B), along with Chapters 3 through 6 (Appendix C), contain scoping and technical requirements for the design, development, and fabrication of telecommunications equipment and customer premises equipment, and related software, content, and support documentation and services, to ensure their accessibility to and usability by individuals with disabilities. These 255 Guidelines are to be applied to the extent required by regulations issued by the Federal Communications Commission under Section 255 of the Communications Act of 1934, as amended (47 U.S.C. 255).

C101.2 Equivalent Facilitation. The use of an alternative design or technology that results in substantially equivalent or greater accessibility and usability by individuals with disabilities than would be provided by conformance to one or more of the requirements in Chapters 4 and 5 of the 255 Guidelines is permitted. The functional performance criteria in Chapter 3 shall be used to determine whether substantially equivalent or greater accessibility and usability is provided to individuals with disabilities.

C101.3 Conventional Industry Tolerances. Dimensions are subject to conventional industry tolerances except where dimensions are stated as a range.

C101.4 Units of Measurement. Measurements are stated in metric and U.S. customary units. The values stated in each system (metric and U.S. customary units) may not be exact equivalents, and each system shall be used independently of the other.

C102 Referenced Standards

C102.1 Incorporation by Reference. The specific editions of the standards and guidelines listed in C102 are incorporated by reference in the 255 Guidelines and are part of the requirements to the prescribed extent of each such reference. Where conflicts occur between the 255 Guidelines and the referenced standards, these guidelines apply. The Director of the Office of **Federal Register** has approved the standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Access Board's office, 1331 F Street NW., Suite 1000, Washington, DC 20004.

C102.2 American National Standards Institute/Human Factors and Ergonomics Society (ANSI/HFES). Copies of the referenced standard may be obtained from Human Factors and Ergonomics Society, P.O. Box 1369, Santa Monica, CA 90406–1369 (*http://www.hfes.org/Publications/ProductDetail.aspx?Id=76*).

ANSI/HFES 200.2 Human Factors Engineering of Software User Interfaces—Part 2: Accessibility, (2008), IBR proposed for Section 502.4.

C102.3 American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE). Copies of the referenced standard may be obtained from the Institute of Electrical and Electronics Engineers, 10662 Los Vaqueros Circle, P.O. Box 3014, Los Alamitos, CA 90720–1264 (*http://www.ieee.org*).

ANSI/IEEE C63.19–2011 American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, Committee C63—Electromagnetic Compatibility, May 27, 2011, IBR proposed for Section 410.4.1.

C102.4 Advanced Television Systems Committee (ATSC). Copies of the referenced standard may be obtained from the Advanced Television Systems Committee, 1776 K Street NW., Suite 200, Washington, DC 20006–2304 (*http://www.atsc.org*).

A/53 Digital Television Standard, Part 5: AC–3 Audio System Characteristics, (2010), IBR proposed for Section 412.1.1.

C102.5 IETF.—Internet Engineering Task Force (IETF). Copies of the referenced standard may be obtained from the Internet Engineering Task Force (*http://www.ietf.org*).

Request for Comments (RFC) 4103, Real-time Transport Protocol (RTP) Payload for Text Conversation (2005), G. Hellstrom, Omnitor AB, and P. Jones, Cisco Systems, IBR proposed for Section 410.6.3.2.

C102.6 International Standards Organization (ISO). Copies of the referenced standards, may be obtained from International Organization for Standardization, ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56—CH–1211 Geneva 20, Switzerland (*http://www.iso.org/iso/catalogue_detail.htm?csnumber=54564*).

ISO 14289–1 Document management applications—Electronic document file format enhancement for accessibility—Part 1: Use of ISO 32000–1 (PDF/UA–1), Technical Committee ISO/TC 171, Document Management Applications, Subcommittee SC 2, Application Issues, (2014), IBR proposed for Sections E205.1 and 602.3.1.

C102.7 International Telecommunications Union Telecommunications Standardization Sector (ITU–T). Copies of the referenced standards may be obtained from the International Telecommunication Union, Telecommunications Standardization Sector, Place des Nations CH–1211, Geneva 20, Switzerland (*http://www.itu.int/en/ITU-T*).

C102.7.1 ITU–T—Recommendation G.722: General Aspects of Digital Transmission Systems, Terminal Components, 7 kHz Audio-Coding within 64 Kbits/s, (September 2012), IBR proposed for Section 410.5.

C102.7.2 ITU–T—Recommendation E.161: Arrangement of digits, letters and symbols on telephones and other devices that can be used for gaining access to a telephone network, ITU–T Study Group 2, (February 2001), IBR proposed for Section 407.3.2.

C102.8 Telecommunications Industry Association (TIA). Copies of the referenced standards, published by the Telecommunications Industry Association, may be obtained from IHS, 15 Inverness Way East, Englewood, CO 80112 (*http://global.ihs.com*).

C102.8.1 TIA 825–A—A Frequency Shift Keyed Modem for Use on the Public Switched Telephone Network, (2003), IBR proposed for Section 410.6.3.1.

C102.8.2 TIA 1083—Telephone Terminal Equipment Handset Magnetic Measurement Procedures and Performance Requirements, (March 2007), IBR proposed for Section 410.4.2.

C102.9 Worldwide Web Consortium (W3C). Copies of the referenced guidelines may be obtained from the W3C Web Accessibility Initiative, Massachusetts Institute of Technology, 32 Vassar Street, Room 32–G515, Cambridge, MA 02139 (*http://www.w3.org/TR/WCAG20*).

Web Content Accessibility Guidelines (WCAG) 2.0, W3C Recommendation, December 2008, IBR proposed for Sections E205.1, E207.2, 405.1 Exception, 501.1 Exception 1, 504.2, 504.3, 504.4, and 602.3.1.

C103 Definitions

C103.1 Terms Defined in Referenced Standards. Terms defined in referenced standards and not defined in C103.4 shall have the meaning as defined in the referenced standards.

C103.2 Undefined Terms. Any term not defined in C103.4 or in referenced standards shall be given its ordinarily accepted meaning in the sense that the context implies.

C103.3 Interchangeability. Words, terms, and phrases used in the singular include the plural and those used in the plural include the singular.

C103.4 Defined Terms. For the purpose of the 255 Guidelines, the terms defined in C103.4 have the indicated meaning.

255 Guidelines. The guidelines for telecommunications equipment and customer premises equipment covered by Section 255 of the Communications Act as set forth in 255 Chapters 1 and 2 (36 CFR part 1194, Appendix B), and Chapters 3 through 6 (36 CFR part 1193, Appendix C).

Application. Software designed to perform, or to help the user perform, a specific task or tasks.

Assistive Technology (AT). Any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Audio Description. Narration added to the soundtrack to describe important visual details that cannot be understood from the main soundtrack alone. Audio description is a means to inform individuals who are blind or who have low vision about visual content essential for comprehension. Audio description of video provides information about actions, characters, scene changes, on-screen text, and other visual content. Audio description supplements the regular audio track of a program. Audio description is usually added during existing pauses in dialogue. Audio description is also called ''video description'' and ''descriptive narration.''

Authoring Tool. Any software, or collection of software components, that can be used by authors, alone or collaboratively, to create or modify content for use by others, including other authors.

Closed Functionality. Characteristics that limit functionality or prevent a user from attaching or installing assistive technology. Examples of ICT with closed functionality are self-service machines, information kiosks, set-top boxes, fax machines, calculators, and computers that are locked down so that users may not adjust settings due to a policy such as Desktop Core Configuration.

Content. Electronic information and data, as well as the encoding that defines its structure, presentation, and interactions.

Customer Premises Equipment (CPE). Equipment used on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications or interconnected VoIP service. Examples of CPE are telephones, routers, switches, residential gateways, set-top boxes, fixed mobile convergence products, home networking adaptors and Internet access gateways which enable consumers to access communications service providers' services and distribute them around their house via a Local Access Network (LAN).

Hardware. A tangible device, equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

Information and Communication Technology (ICT). Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents.

Keyboard. A set of systematically arranged alphanumeric keys or a control that generates alphanumeric input by which a machine or device is operated. A keyboard includes tactilely discernible keys used in conjunction with the alphanumeric keys if their function maps to keys on the keyboard interfaces.

Label. Text, or a component with a text alternative, that is presented to a user to identify content. A label is presented to all users, whereas a name may be hidden and only exposed by assistive technology. In many cases, the name and the label are the same.

Menu. A set of selectable options.

Name. Text by which software can identify a component to the user. A name may be hidden and only exposed by assistive technology, whereas a label is presented to all users. In many cases, the label and the name are the same. Name is unrelated to the name attribute in HTML.

Operable Part. A component of ICT used to activate, deactivate, or adjust the ICT.

Platform Accessibility Services. Services provided by a platform enabling interoperability with assistive technology. Examples are Application Programming Interfaces (API) and the Document Object Model (DOM).

Platform Software. Software that interacts with hardware, or provides services for other software. Platform software may run or host other software, and may isolate them from underlying software or hardware layers. A single software component may have both platform and non-platform aspects. Examples of platforms are: Desktop operating systems; embedded operating systems, including mobile systems; Web browsers; plug-ins to Web browsers that render a particular media or format; and sets of components that allow other applications to execute, such as applications which support macros or scripting.

Programmatically Determinable. Ability to be determined by software from author-supplied data that is provided in a way that different user agents, including assistive technologies, can extract and present the information to users in different modalities.

Real-Time Text (RTT). Communications using the transmission of text by which

characters are transmitted by a terminal as they are typed. Real-time text is used for conversational purposes. Real-time text also may be used in voicemail, interactive voice response systems, and other similar applications.

Software. Programs, procedures, rules and related data and documentation that direct the use and operation of ICT and instruct it to perform a given task or function.

Specialized Customer Premises Equipment. Assistive technology used by individuals with disabilities to originate, route, or terminate telecommunications or interconnected VoIP service. Examples are TTYs and amplified telephones.

Telecommunications. The signal transmission between or among points specified by the user of information and of the user's choosing without change in the form or content of the information as sent and received.

Telecommunications Equipment. Equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

Telecommunications Equipment Manufacturer. A manufacturer of ICT that is telecommunications equipment or customer premises equipment.

Terminal. Device or software with which the end user directly interacts and that provides the user interface. For some systems, the software that provides the user interface may reside on more than one device such as a telephone and a server.

Text. A sequence of characters that can be programmatically determined and that expresses something in human language.

TTY. Equipment that enables interactive text based communications through the transmission of frequency-shift-keying audio tones across the public switched telephone network. TTYs include devices for real-time text communications and voice and text intermixed communications. Examples of intermixed communications are voice carry over and hearing carry over. One example of a TTY is a computer with TTY emulating software and modem.

Voice over Internet Protocol (VoIP). A technology that provides real-time voice communications. VoIP requires a broadband connection from the user's location and customer premises equipment compatible with Internet protocol.

255 Chapter 2: Scoping Requirements

C201 Application

C201.1 Scope. Manufacturers of telecommunications equipment shall comply with the requirements in the 255 Guidelines applicable to such equipment when newly released, upgraded, or substantially changed from an earlier version or model. Manufacturers of telecommunications equipment shall also conform to the requirements in the 255 Guidelines for software, content, and support documentation and services where associated with the use of such equipment.

C201.2 Readily Achievable. When a telecommunications equipment manufacturer determines that conformance to one or more requirements in Chapter 4 (Hardware) or Chapter 5 (Software) would not be readily achievable, it shall ensure that the equipment or software is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to the extent readily achievable.

C201.3 Access to Functionality. Telecommunications equipment manufacturers shall ensure that ICT is accessible to and usable by individuals with disabilities by providing direct access to all functionality of ICT. Where telecommunications equipment manufacturers can demonstrate that it is not readily achievable for ICT to provide direct access to all functionality, ICT shall support the use of assistive technology and specialized customer premises equipment where readily achievable.

C201.4 Prohibited Reduction of Accessibility, Usability, and Compatibility. No change shall be undertaken that decreases, or has the effect of decreasing, the net accessibility, usability, or compatibility of ICT.

EXCEPTION: Discontinuation of a product shall not be prohibited.

C201.5 Design, Development, and Fabrication. Telecommunications equipment manufacturers shall evaluate the accessibility, usability, and interoperability of ICT during its product design, development, and fabrication.

C202 Functional Performance Criteria

C202.1 General. Where the requirements in Chapters 4 and 5 do not address one or more features of ICT, the features not addressed shall conform to the Functional Performance Criteria specified in Chapter 3.

C203 Electronic Content

C203.1 General. Regardless of the medium or the method of transmission and storage, electronic content integral to the use of ICT shall conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 (incorporated by reference in Chapter 1) or ISO 14289–1 (PDF/UA–1) (incorporated by reference in Chapter 1).

C204 Hardware

C204.1 General. Where components of ICT are hardware, and transmit information or have a user interface, those components shall conform to applicable requirements in Chapter 4.

EXCEPTION: Components of ICT shall not be required to conform to 402, 407.11, 407.12, 408, and 409.

C205 Software

C205.1 General. Where components of ICT are software and transmit information or have a user interface, those components shall conform to C205 and applicable requirements in Chapter 5.

C205.2 WCAG Conformance. User interface components and content of platforms and applications shall conform to Level A and Level AA Success Criteria and Conformance Requirements specified for Web pages in WCAG 2.0 (incorporated by reference in Chapter 1).

C206 Support Documentation and Services

C206.1 General. Where support documentation and services are provided for ICT, telecommunications equipment manufacturers shall provide such documentation and services in conformance with Chapter 6, upon request and at no additional charge.

Appendix C to Part 1194—Functional Performance Criteria and Technical Requirements

Chapter 3: Functional Performance Criteria

301 General

301.1 Scope. The requirements of Chapter 3 shall apply to ICT where required by 508 Chapter 2 (Scoping Requirements), 255 Chapter 2 (Scoping Requirements), and where otherwise referenced in any other chapter of the 508 Standards or 255 Guidelines.

302 Functional Performance Criteria

302.1 Without Vision. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that does not require user vision.

302.2 With Limited Vision. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that magnifies, one mode that reduces the field of vision required, and one mode that allows user control of contrast.

302.3 Without Perception of Color. Where a visual mode of operation is provided, ICT shall provide at least one mode of operation that does not require user perception of color.

302.4 Without Hearing. Where an auditory mode of operation is provided, ICT shall provide at least one mode of operation that does not require user hearing.

302.5 With Limited Hearing. Where an auditory mode of operation is provided, ICT shall provide at least one mode of operation that improves clarity, one mode that reduces background noise, and one mode that allows user control of volume.

302.6 Without Speech. Where a spoken mode of operation is provided, ICT shall provide at least one mode of operation that does not require user speech.

302.7 With Limited Manipulation. Where a manual mode of operation is provided, ICT shall provide at least one mode of operation that does not require fine motor control or operation of more than one control at the same time.

302.8 With Limited Reach and Strength. Where a manual mode of operation is provided, ICT shall provide at least one mode of operation that is operable with limited reach and limited strength.

Chapter 4: Hardware

401 General

401.1 Scope. The requirements of Chapter 4 shall apply to ICT that is hardware where required by 508 Chapter 2 (Scoping Requirements), 255 Chapter 2 (Scoping Requirements), and where otherwise referenced in any other chapter of the 508 Standards or 255 Guidelines.

EXCEPTION: Hardware that is assistive technology shall not be required to conform to the requirements of this chapter.

402 Closed Functionality

402.1 General. Except for personal headsets and other audio couplers, closed functionality of ICT shall be operable without requiring the user to attach or install assistive technology and shall conform to 402.

402.2 Speech-Output Enabled. ICT with a display screen shall be speech-output enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to, and independently usable by, individuals with vision impairments. Speech output shall be delivered through a mechanism that is readily available to all users, including, but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized. Speech output shall be coordinated with information displayed on the screen.

EXCEPTIONS: 1. Audible tones shall be permitted instead of speech where the content of user input is not displayed as entered for security purposes, including, but not limited to, asterisks representing personal identification numbers. 2. Advertisements and other similar information shall not be required to be audible unless conveying information necessary for the transaction being conducted.

402.2.1 User Control. Speech output for any single function shall be automatically interrupted when a transaction is selected. Speech output shall be capable of being repeated and paused.

402.2.2 Braille Instructions. Where speech output is required by 402.2, braille instructions for initiating the speech mode of operation shall be provided. Braille shall conform to 36 CFR part 1191, Appendix D, Section 703.3.

402.3 Volume. ICT that delivers sound, including speech required by 402.2, shall provide volume control and output amplification conforming to 402.3.

EXCEPTION: ICT conforming to 410.2 shall not be required to conform to 402.3.

402.3.1 Private Listening. Where ICT provides private listening, it shall provide a mode of operation for controlling the volume and a means for effective magnetic wireless coupling to hearing technologies.

402.3.2 Non-private Listening. Where ICT provides non-private listening, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

402.4 Characters. At least one mode of characters displayed on the screen shall be in a sans serif font. Where ICT does not provide a screen enlargement feature, characters shall be 3/16 inch (4.8 mm) high minimum based on the uppercase letter ''I''. Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

403 Biometrics

403.1 General. Biometrics shall not be the only means for user identification or control.

EXCEPTION: Where at least two biometric options that use different biological characteristics are provided, ICT shall be permitted to use biometrics as the only means for user identification or control.

404 Preservation of Information Provided for Accessibility

404.1 General. ICT that transmits or converts information or communication shall not remove non-proprietary information provided for accessibility or shall restore it upon delivery.

405 Flashing

405.1 General. Where ICT emits lights in flashes, there shall be no more than three flashes in any one-second period.

EXCEPTION: Flashes that do not exceed the general flash and red flash thresholds defined in WCAG 2.0 (incorporated by reference in Chapter 1) are not required to conform to 405.

406 Standard Connections

406.1 General. Where data connections used for input and output are provided, at least one of each type of connection shall conform to industry standard non-proprietary formats.

407 Operable Parts

407.1 General. Where provided, operable parts of ICT shall conform to 407.

407.2 Contrast. Where provided, keys and controls shall contrast visually from background surfaces. Characters and symbols shall contrast visually from background surfaces with either light characters or symbols on a dark background or dark characters or symbols on a light background.

407.3 Tactilely Discernible. At least one tactilely discernible input control shall be provided for each function and shall conform to 407.3.

EXCEPTION: Devices for personal use with input controls that are audibly discernable without activation and operable by touch shall not be required to be tactilely discernible.

407.3.1 Identification. Input controls shall be tactilely discernible without activation and operable by touch. Where provided, key surfaces outside active areas of the display screen shall be raised above surrounding surfaces.

407.3.2 Alphabetic Keys. Where provided, individual alphabetic keys shall be arranged in a QWERTY keyboard layout and the ''F'' and ''J'' keys shall be tactilely distinct from the other keys. Where the ICT provides an alphabetic overlay on numeric keys, the relationships between letters and digits shall conform to ITU–T Recommendation E.161 (incorporated by reference in Chapter 1).

407.3.3 Numeric Keys. Where provided, numeric keys shall be arranged in a 12-key ascending or descending keypad layout. The number five key shall be tactilely distinct from the other keys.

407.4 Key Repeat. Where a keyboard with key repeat is provided, the delay before the key repeat feature is activated shall be fixed at, or adjustable to, 2 seconds minimum.

407.5 Timed Response. Where a timed response is required, the user shall be alerted visually, as well as by touch or sound, and shall be given the opportunity to indicate that more time is needed.

407.6 Status Indicators. Status indicators, including all locking or toggle controls or keys (*e.g.,* Caps Lock and Num Lock keys), shall be discernible visually and by touch or sound.

407.7 Color. Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

407.8 Audio Signaling. Audio signaling shall not be used as the only means of conveying information, indicating an action, or prompting a response.

407.9 Operation. At least one mode of operation shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds (22.2 N) maximum.

407.10 Privacy. The same degree of privacy of input and output shall be provided to all individuals. When speech output required by 402.2 is enabled, the screen shall not blank automatically.

407.11 Keys, Tickets, and Fare Cards. Where keys, tickets, or fare cards are provided, keys, tickets, and fare cards shall have an orientation that is tactilely discernible if orientation is important to further use of the key, ticket, or fare card.

407.12 Reach Height. At least one of each type of operable part of stationary ICT shall be at a height conforming to 407.12.2 or 407.12.3 according to its position established in 407.12.1 for a side reach or a forward reach.

407.12.1 Vertical Reference Plane. Operable parts shall be positioned for a side reach or a forward reach determined with respect to a vertical reference plane. The vertical reference plane shall be located in conformance to 407.12.2 or 407.12.3.

407.12.1.1 Vertical Plane for Side Reach. Where a side reach is provided, the vertical reference plane shall be 48 inches (1220 mm) long minimum.

407.12.1.2 Vertical Plane for Forward Reach. Where a forward reach is provided, the vertical reference plane shall be 30 inches (760 mm) long minimum.

407.12.2 Side Reach. Operable parts of ICT providing a side reach shall conform to 407.12.2.1 or 407.12.2.2. The vertical reference plane shall be centered on the operable part and placed at the leading edge of the maximum protrusion of the ICT within the length of the vertical reference plane. Where a side reach requires a reach over a portion of the ICT, the height of that portion of the ICT shall be 34 inches (865 mm) maximum.

407.12.2.1 Unobstructed Side Reach. Where the operable part is located 10 inches (255 mm) or less beyond the vertical reference plane, the operable part shall be 48 inches (1220 mm) high maximum and 15 inches (380 mm) high minimum above the floor.

407.12.2.2 Obstructed Side Reach. Where the operable part is located more than 10 inches (255 mm), but not more than 24 inches (610 mm), beyond the vertical

reference plane, the height of the operable part shall be 46 inches (1170 mm) high maximum and 15 inches (380 mm) high minimum above the floor. The operable part shall not be located more than 24 inches (610 mm) beyond the vertical reference plane.

407.12.3 Forward Reach. Operable parts of ICT providing a forward reach shall conform to 407.12.3.1 or 407.12.3.2. The vertical reference plane shall be centered, and intersect with, the operable part. Where a forward reach allows a reach over a portion of the ICT, the height of that portion of the ICT shall be 34 inches (865 mm) maximum.

407.12.3.1 Unobstructed Forward Reach. Where the operable part is located at the leading edge of the maximum protrusion within the length of the vertical reference plane of the ICT, the operable part shall be 48 inches (1220 mm) high maximum and 15 inches (380 mm) high minimum above the floor.

407.12.3.2 Obstructed Forward Reach. Where the operable part is located beyond the leading edge of the maximum protrusion within the length of the vertical reference plane, the operable part shall conform to 407.12.3.2. The maximum allowable forward reach to an operable part shall be 25 inches (635 mm).

407.12.3.2.1 Height. The height of the operable part shall conform to Table 407.12.3.2.1.

TABLE 407.12.3.2.1—OPERABLE PART HEIGHT

Reach depth	Operable part height
Less than 20 inches (510 mm).	48 inches (1220 mm) maximum
20 inches (510 mm) to 25 inches (635 mm).	44 inches (1120 mm) maximum

407.12.3.2.2 Knee and Toe Space. Knee and toe space under ICT shall be 27 inches (685 mm) high minimum, 25 inches (635 mm) deep maximum, and 30 inches (760 mm) wide minimum and shall be clear of obstructions.

EXCEPTIONS: 1. Toe space shall be permitted to provide a clear height of 9 inches (230 mm) minimum above the floor and a clear depth of 6 inches (150 mm) maximum from the vertical reference plane toward the leading edge of the ICT. 2. At a depth of 6 inches (150 mm) maximum from the vertical reference plane toward the leading edge of the ICT, space between 9 inches (230 mm) and 27 inches (685 mm) minimum above the floor shall be permitted to reduce at a rate of 1 inch (25 mm) in depth for every 6 inches (150 mm) in height.

408 Display Screens

408.1 General. Where stationary ICT provides one or more display screens, at least one of each type of display screen shall be visible from a point located 40 inches (1015 mm) above the floor space where the display screen is viewed.

409 Transactional Outputs

409.1 General. Where transactional outputs are provided by ICT with speech output, the speech output shall audibly provide all information necessary to complete or verify a transaction.

EXCEPTIONS: 1. Machine location, date and time of transaction, customer account number, and the machine identifier shall not be required to be audible. 2. Duplicative information shall not be required to be repeated where such information has already been presented audibly. 3. Itineraries, maps, checks, and other visual images shall not be required to be audible.

410 ICT With Two-Way Voice Communication

410.1 General. ICT that provides two-way voice communication shall conform to 410.

410.2 Volume Gain. Volume gain shall be provided and shall conform to 47 CFR 68.317.

410.3 Magnetic Coupling. Where ICT delivers output by an audio transducer that is typically held up to the ear, ICT shall provide a means for effective magnetic wireless coupling to hearing technologies, such as hearing aids, cochlear implants, and assistive listening devices.

410.4 Minimize Interference. ICT shall reduce interference with hearing technologies to the lowest possible level and shall conform to 410.4.

410.4.1 Wireless Handsets. ICT in the form of wireless handsets shall conform to ANSI/IEEE C63.19–2011 (incorporated by reference in Chapter 1).

410.4.2 Digital Wireline. ICT in the form of digital wireline devices shall conform to TIA 1083 (incorporated by reference in Chapter 1).

410.5 Digital Encoding of Speech. ICT shall transmit and receive speech that is digitally encoded in the manner specified by ITU–T Recommendation G.722 (incorporated by reference in Chapter 1) for encoding and storing audio information.

EXCEPTION: Where ICT is a closed system, conformance to standards other than ITU–T Recommendation G.722 shall be permitted where equivalent or better acoustic performance is provided and where conversion to ITU–T Recommendation G.722 at the borders of the closed system is supported.

410.6 Real-Time Text Functionality. Where ICT provides real-time voice communication, ICT shall support real-time text functionality and shall conform to 410.6.

410.6.1 Display of Real-Time Text. Where provided, multi-line displays shall be compatible with real-time text systems used on the network.

410.6.2 Text Generation. Where provided, features capable of text generation shall be compatible with real-time text systems used on the network.

410.6.3 Interoperability. Where ICT interoperates outside of a closed system of which it is a part, or where ICT connects to other systems, ICT shall conform to 410.6.3.1 or 410.6.3.2.

410.6.3.1 PSTN. Where ICT interoperates with the Public Switched Telephone Network (PSTN), real-time text shall conform to TIA 825–A (incorporated by reference in Chapter 1).

410.6.3.2 VoIP Using SIP. Where ICT interoperates with Voice over Internet Protocol (VoIP) products or systems using Session Initiation Protocol (SIP), real-time text shall conform to RFC 4103 (incorporated by reference in Chapter 1).

410.6.4 Voice Mail, Auto-Attendant, and IVR Compatibility. Where provided, voice mail, auto-attendant, and interactive voice response telecommunications systems shall be compatible with real-time text that conforms to 410.6.3.

410.6.5 HCO and VCO Support. Real-time voice communication shall permit users to intermix speech with the use of real-time text and shall support modes that are compatible with Hearing Carry Over (HCO) and Voice Carry Over (VCO).

410.7 Caller ID. Where provided, caller identification and similar telecommunications functions shall be visible and audible.

410.8 Video Communication. Where ICT provides real-time video functionality, the quality of the video shall be sufficient to support communication using sign language.

411 Closed Caption Processing Technologies

411.1 General. Where ICT displays or processes video with synchronized audio, ICT shall conform to 411.1.1 or 411.1.2.

411.1.1 Decoding of Closed Captions. Players and displays shall decode closed caption data and support display of captions.

411.1.2 Pass-Through of Closed Caption Data. Cabling and ancillary equipment shall pass through caption data.

412 Audio Description Processing Technology

412.1 General. Where ICT displays or processes video with synchronized audio, ICT shall provide a mode of operation that plays associated audio description.

412.1.1 Digital Television Tuners. Where audio description is played through digital television tuners, the tuners shall conform to ATSC A/53 Digital Television Standard, Part 5 (2010) (incorporated by reference in Chapter 1). Digital television tuners shall provide processing of audio description when encoded as a Visually Impaired (VI) associated audio service that is provided as a complete program mix containing audio description according to the ATSC A/53 standard.

413 User Controls for Captions and Audio Description

413.1 General. Where ICT displays video with synchronized audio, ICT shall provide user controls for closed captions and audio description conforming to 413.1.

EXCEPTION: Devices for personal use where closed captions and audio description can be enabled through system-wide platform settings shall not be required to conform to 413.1.

413.1.1 Caption Controls. ICT shall provide user controls for the selection of captions in at least one location that is comparable in prominence to the location of the user controls for volume.

413.1.2 Audio Description Controls. ICT shall provide user controls for the selection of audio description in at least one location that is comparable in prominence to the

location of the user controls for program selection.

Chapter 5: Software

501 General

501.1 Scope. The requirements of Chapter 5 shall apply to ICT software and applications where required by 508 Chapter 2 (Scoping Requirements), 255 Chapter 2 (Scoping Requirements), and where otherwise referenced in any other chapter of the 508 Standards or 255 Guidelines.

EXCEPTIONS: 1. Web applications that conform to all Level A and Level AA Success Criteria and all Conformance Requirements in WCAG 2.0 (incorporated by reference in Chapter 1) shall not be required to conform to 502 and 503. 2. Software that is assistive technology and that supports the accessibility services of the platform shall not be required to conform to the requirements in this chapter.

502 Interoperability With Assistive Technology

502.1 General. Platforms, software tools provided by the platform developer, and applications, shall conform to 502.

EXCEPTION: Platforms and applications that have closed functionality and that conform to 402 shall not be required to conform to 502.

502.2 Documented Accessibility Features. Platforms and applications shall conform to 502.2.

502.2.1 User Control of Accessibility Features. Platforms shall provide user control over platform features that are defined in the platform documentation as accessibility features.

502.2.2 No Disruption of Accessibility Features. Applications shall not disrupt platform features that are defined in the platform documentation as accessibility features.

502.3 Accessibility Services. Platforms and software tools provided by the platform developer shall provide a documented set of accessibility services that support applications running on the platform to interoperate with assistive technology and shall conform to 502.3. Applications that are also platforms shall expose the underlying platform accessibility services or implement other documented accessibility services.

502.3.1 Object Information. The object role, state(s), boundary, name, and description shall be programmatically determinable. States that can be set by the user shall be capable of being set programmatically, including through assistive technology.

502.3.2 Row, Column, and Headers. If an object is in a table, the occupied rows and columns, and any headers associated with those rows or columns, shall be programmatically determinable.

502.3.3 Values. Any current value(s), and any set or range of allowable values associated with an object, shall be programmatically determinable. Values that can be set by the user shall be capable of being set programmatically, including through assistive technology.

502.3.4 Label Relationships. Any relationship that a component has as a label for another component, or of being labeled by another component, shall be programmatically determinable.

502.3.5 Hierarchical Relationships. Any hierarchical (parent-child) relationship that a component has as a container for, or being contained by, another component shall be programmatically determinable.

502.3.6 Text. The content of text objects, text attributes, and the boundary of text rendered to the screen, shall be programmatically determinable. Text that can be set by the user shall be capable of being set programmatically, including through assistive technology.

502.3.7 Actions. A list of all actions that can be executed on an object shall be programmatically determinable. Applications shall allow assistive technology to programmatically execute available actions on objects.

502.3.8 Focus Cursor. Applications shall expose information and mechanisms necessary to track and modify focus, text insertion point, and selection attributes of user interface components.

502.3.9 Event Notification. Notification of events relevant to user interactions, including but not limited to, changes in the component's state(s), value, name, description, or boundary, shall be available to assistive technology.

502.4 Platform Accessibility Features. Platforms and platform software shall conform to the requirements in ANSI/HFES 200.2, Human Factors Engineering of Software User Interfaces—Part 2: Accessibility (incorporated by reference in Chapter 1) listed below:

1. Section 9.3.3 Enable sequential entry of multiple (chorded) keystrokes.

2. Section 9.3.4 Provide adjustment of delay before key acceptance.

3. Section 9.3.5 Provide adjustment of same-key double-strike acceptance.

4. Section 10.6.7 Allow users to choose visual alternative for audio output.

5. Section 10.6.8 Synchronize audio equivalents for visual events.

6. Section 10.6.9 Provide speech output services.

7. Section 10.7.1 Display any captions provided.

503 Applications

503.1 General. Applications shall conform to 503.

503.2 User Preferences. Applications shall permit user preferences from platform settings for color, contrast, font type, font size, and focus cursor.

EXCEPTION: Applications that are designed to be isolated from their underlying platforms, including Web applications, shall not be required to conform to 503.2.

503.3 Alternative User Interfaces. Where an application provides an alternative user interface that functions as assistive technology, the application shall use platform and other industry standard accessibility services.

503.4 User Controls for Captions and Audio Description. Where ICT displays video with synchronized audio, ICT shall provide user controls for closed captions and audio description conforming to 503.4.

503.4.1 Caption Controls. Where user controls are provided for volume adjustment, ICT shall provide user controls for the selection of captions at the same menu level as the user controls for volume or program selection.

503.4.2 Audio Description Controls. Where user controls are provided for program selection, ICT shall provide user controls for the selection of audio description at the same menu level as the user controls for volume or program selection.

504 Authoring Tools

504.1 General. Where an application is an authoring tool, the application shall conform to 504 to the extent that information required for accessibility is supported by the destination format.

504.2 Content Creation or Editing. Authoring tools shall provide a mode of operation to create or edit content that conforms to all Level A and Level AA Success Criteria and all Conformance Requirements in WCAG 2.0 (incorporated by reference in Chapter 1) for all features and formats supported by the authoring tool. Authoring tools shall permit authors the option of overriding information required for accessibility.

EXCEPTION: Authoring tools shall not be required to conform to 504.2 when used to directly edit plain text source code.

504.2.1 Preservation of Information Provided for Accessibility in Format Conversion. Authoring tools shall, when converting content from one format to another or saving content in multiple formats, preserve the information required for accessibility to the extent that the information is supported by the destination format.

504.3 Prompts. Authoring tools shall provide a mode of operation that prompts authors to create content that conforms to all Level A and Level AA Success Criteria and all Conformance Requirements in WCAG 2.0 (incorporated by reference in Chapter 1). Authoring tools shall provide the option for prompts during initial content creation or when the content is saved.

504.4 Templates. Where templates are provided, templates allowing content creation that conforms to all Level A and Level AA Success Criteria and all Conformance Requirements in WCAG 2.0 (incorporated by reference in Chapter 1) shall be provided for a range of template uses.

Chapter 6: Support Documentation and Services

601 General

601.1 Scope. The technical requirements in Chapter 6 shall apply to ICT support documentation and services where required by 508 Chapter 2 (Scoping Requirements), 255 Chapter 2 (Scoping Requirements), and where otherwise referenced in any other chapter of the 508 Standards or 255 Guidelines.

602 Support Documentation

602.1 General. Documentation that supports the use of ICT shall conform to 602.

602.2 Accessibility and Compatibility Features. Documentation shall list and

explain how to use the accessibility and compatibility features required by Chapters 4 and 5. Documentation shall include accessibility features that are built-in and accessibility features that provide compatibility with assistive technology.

602.3 Electronic Support Documentation. Documentation in electronic format, including Web-based self-service support, shall conform to all Level A and Level AA Success Criteria and all Conformance Requirements in WCAG 2.0 (incorporated by reference in Chapter 1), or ISO 14289–1 (PDF/UA–1) (incorporated by reference in Chapter 1).

602.4 Alternate Formats for Non-electronic Support Documentation. Alternate formats usable by individuals who are blind or have low vision shall be provided upon request for support documentation in non-electronic formats.

603 Support Services

603.1 General. ICT support services including, but not limited to, help desks, call centers, training services, and automated self-service technical support, shall conform to 603.

603.2 Information on Accessibility and Compatibility Features. ICT support services shall include information on the accessibility and compatibility features required by 602.2.

603.3 Accommodation of Communication Needs. Support services shall be provided directly to the user or through a referral to a point of contact. Such ICT support services shall accommodate the communication needs of individuals with disabilities.

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Part IV

Department of Transportation

Federal Railroad Administration
49 CFR Part 271
Risk Reduction Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 271

[Docket No. FRA–2009–0038, Notice No. 1]

RIN 2130–AC11

Risk Reduction Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Rail Safety Improvement Act of 2008 requires the development and implementation of railroad safety risk reduction programs. This NPRM proposes to implement this mandate by requiring each Class I railroad and each railroad with inadequate safety performance to develop and implement a Risk Reduction Program (RRP) to improve the safety of their operations. RRP is a comprehensive, system-oriented approach to safety that determines an operation's level of risk by identifying and analyzing applicable hazards and involves developing plans to mitigate, if not eliminate, that risk. Each RRP would be statutorily required to include a risk analysis and a technology implementation plan. An RRP would be implemented by a written RRP plan that has been submitted to FRA for review and approval. A railroad would be required to conduct an annual internal assessment of its RRP, and a railroad's RRP processes and procedures would be externally audited by FRA.

DATES: Written comments must be received by April 28, 2015. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to March 30, 2015, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0038, Notice No. 1, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC11). Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Miriam Kloeppel, Staff Director, Risk Reduction Program Division, U.S. Department of Transportation, Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6224), *Miriam.Kloeppel@dot.gov*; or Elizabeth Gross, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–1342), *Elizabeth.Gross@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Introduction

A. Executive Summary

The proposed rulemaking would add to FRA's regulations a new part, which would require each Class I railroad and each railroad with inadequate safety performance to develop and implement a Risk Reduction Program (RRP). An RRP is a structured program with proactive processes and procedures developed and implemented by a railroad to identify hazards and to mitigate, if not eliminate, the risks associated with those hazards on its system. An RRP encourages a railroad and its employees to work together to proactively identify hazards and to jointly determine what action to take to mitigate or eliminate the associated risks.

FRA understands that each railroad that would be subject to the RRP rule would have a unique operating system, and that not all railroads have the same amount of resources. Best practices for implementing an RRP would therefore differ from railroad to railroad. Accordingly, the proposed RRP rule does not establish prescriptive requirements that may be appropriate for one railroad but unworkable for another. Instead, the rule proposes only general, performance-based requirements. This approach would

provide each railroad a substantial amount of flexibility to tailor those requirements to its specific operations.

FRA is proposing this RRP rule as part of its efforts to continually improve rail safety and to satisfy the statutory mandate contained in sec. 103 and sec. 109 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A, 122 Stat. 4848 *et seq.,* codified at 49 U.S.C. 20156, and 20118–20119. The proposed RRP rule is a performance-based rule, and FRA seeks comments on all aspects of the proposed rule.

Section 103 of the RSIA directs the Secretary of Transportation (Secretary) to issue a regulation requiring Class I railroads, railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads), and railroads with inadequate safety performance to develop, submit to the Secretary for review and approval, and implement a railroad safety risk reduction program. The proposed rule would implement this mandate for Class I freight railroads and railroads with inadequate safety performance. A railroad not otherwise required to comply with the proposed rule would also be permitted to voluntarily submit an RRP plan for FRA review and approval. A separate system safety program (SSP) rulemaking would similarly implement this mandate for passenger railroads, and an SSP NPRM was published by FRA on September 7, 2012, 77 FR 55372.

Section 109 of the RSIA specifies that certain risk reduction records obtained by the Secretary are exempt from the public disclosure requirements of the Freedom of Information Act (FOIA). This exemption is subject to two exceptions for disclosure necessary to enforce or carry out any Federal law and disclosure when a record is comprised of facts otherwise available to the public and FRA has determined that disclosure would be consistent with the confidentiality needed for RRPs. *See* 49 U.S.C. 20118. FRA therefore believes that railroad risk reduction records in its possession would generally be exempted from mandatory disclosure under FOIA. Unless one of the two exceptions provided by the RSIA would apply, FRA would withhold disclosing any such records in response to a FOIA request. *See* 5 U.S.C. 552(b)(3) and 49 CFR 7.13(c)(3).

Section 109 of the RSIA also authorizes the Secretary to issue a regulation protecting from discovery and admissibility into evidence in litigation certain information generated for the purpose of developing, implementing, or evaluating an RRP. Currently, the proposed rule would implement sec. 109 with respect to RRPs covered by this proposed part. If an SSP final rule is published before an RRP final rule, however, the information protection provisions contained in the SSP final rule would specifically apply to information generated for an RRP as well.

The Secretary has delegated the responsibility to carry out his responsibilities under both sec. 103 and sec. 109 of RSIA, as well as the general responsibility to conduct rail safety rulemakings, codified at 49 U.S.C. 20103, to the Administrator of FRA. *See* 49 CFR 1.89(m) and (oo).

The primary component of an RRP would be an ongoing risk-based hazard management program (risk-based HMP), supported by a risk-based hazard analysis. A properly implemented risk-based HMP would identify hazards and the associated risks on the railroad's system, compare and prioritize the identified risks for mitigation purposes, and develop mitigation strategies to address the risks. An RRP would also be required to contain the following additional components: a safety performance evaluation; a safety outreach component; and a technology analysis and technology implementation plan (which would consider various technologies that may mitigate or eliminate identified hazards and the associated risks). A railroad would also be required to provide RRP training to employees who have significant responsibility for implementing and supporting the railroad's RRP.

Implementation of an RRP would be supported by a written risk reduction program plan (RRP plan) describing the railroad's processes and procedures for implementing the requirements for an RRP. An RRP plan would not be required to contain the results of a railroad's risk-based hazard analysis or to describe specific mitigation strategies. An RRP plan would also be required to contain certain elements that support the development of an RRP, such as a policy statement, a statement of the railroad's RRP goals, a description of the railroad's system, and an RRP implementation plan.

An RRP could be successful only if a railroad engaged in a robust assessment of the hazards and associated risks on its system. However, a railroad may be reluctant to reveal such hazards and risks if there is the possibility that such information may be used against it in a court proceeding for damages. In sec. 109 of the RSIA, Congress directed FRA to conduct a study to determine if it was in the public interest to withhold certain information, including the railroad's assessment of its safety risks and its statement of mitigation measures, from discovery and admission into evidence in proceedings for damages involving personal injury and wrongful death. *See* 49 U.S.C. 20119. FRA contracted with an outside organization to conduct this study, and the study concluded that it was in the public interest to withhold this type of information from these types of proceedings. *See* ''Study of Existing Legal Protections for Safety-Related Information and Analysis of Considerations for and Against Protecting Railroad Safety Risk Reduction Program Information,'' FRA, docket no. FRA–2011–0025–0031, Oct. 21, 2011. Furthermore, Congress authorized FRA, by delegation from the Secretary, to prescribe a rule, subject to notice and comment, to address the results of the study. *See* 49 U.S.C. 20119(b). The proposed rule would address the study's results and set forth protections of certain information from discovery, admission into evidence, or use for other purposes in a proceeding for damages.

An RRP could affect almost all facets of a railroad's operations. To ensure that all employees directly affected by an RRP have an opportunity to provide input on the development, implementation, and evaluation of a railroad's RRP, a railroad would be required to consult in good faith and use its best efforts to reach agreement with all of its directly affected employees on the contents of the RRP plan and any amendments to the plan. Guidance regarding what constitutes ''good faith'' and ''best efforts'' would be included in proposed Appendix B.

FRA anticipates that a final RRP rule would become effective 60 days after the date of publication. However, by statute, the protection of certain information from discovery, admission into evidence, or use for other purposes in a proceeding for damages would not become applicable until one year after the publication of the final rule. Assuming that an SSP final rule could be published before an RRP final rule, FRA would make the SSP information protection provisions applicable to RRP programs as well. This approach would permit a railroad subject to the RRP rule to obtain information protection as soon as possible. A Class I railroad would be required to submit its RRP plan to FRA for review no later than 545 days after the publication date of the final rule. This deadline for submission accounts for the time that must pass before an information protection provision could become applicable. Similarly, railroads with inadequate safety performance or

railroads either reclassified or newly classified by the Surface Transportation Board (STB) as Class I railroads after the effective date of the final rule would not be required to submit RRP plans before the information protection provisions go into effect. These railroads would be required to submit an RRP plan either no later than 90 days after they have either received notification from FRA that they have been determined to have an inadequate safety performance or after the effective date of the STB classification or reclassification, or no later than 545 days after the publication date of the final rule, whichever is later. If an SSP final rule is published before an RRP final rule, permitting the information protection provision of SSP to apply to RRP information, an RRP final rule may require railroads to submit an RRP plan sooner than 545 days after the publication date of the final rule.

Within 90 days of receipt of a railroad's RRP plan, FRA would review the plan and determine whether it meets all the process and procedure requirements set forth in the regulation. FRA will not be reviewing a railroad's risk-based hazard analysis or selection of particular mitigation strategies as part of its RRP plan. If, during the review, FRA determines that the railroad's RRP plan does not comply with the requirements, FRA would notify the railroad of the specific points in which the plan is deficient. The railroad would then have 60 days to correct these deficient points and resubmit the plan to FRA. Whenever a railroad decides to amend its RRP, it would be required to submit an amended RRP plan to FRA for approval and provide a cover letter describing the amendments. A similar approval process and timeline would apply whenever a railroad amends its RRP plan. A railroad should not begin implementing an RRP plan before obtaining FRA approval, as the information protection provisions proposed in this NPRM would not apply to any risk reduction information that was not compiled or collected pursuant to an FRA-approved RRP plan.

The costs for this proposed regulation basically stem from the requirements for each railroad to which this rule would be applicable to have a fully developed and implemented RRP that is supported by an RRP plan. The primary costs come from the development of an ongoing risk-based HMP, the ongoing evaluation of safety performance, and the safety outreach component of the RRP. In addition, there are costs for the development of a technology implementation plan, the consultation process, and internal assessments.

The total cost for this proposed regulation is $18.6 million, undiscounted. The discounted costs over 10 years are $12.7 million, using a 7 percent discount rate, and $15.7 million, using a 3 percent discount rate.

The proposed rule is expected to improve railroad safety on Class I freight railroads by ensuring that railroad accidents/incidents, associated casualties, other railroad-related incidents and workplace injuries decrease through the process of identifying hazards, mitigating the risks associated with those hazards, and decreasing unsafe work practices. Decreases in unsafe behaviors or hazards create a decrease in railroad-related incidents and casualties. The sections of the proposed RRP regulation that contribute most to the potential benefits include improved or more robust safety cultures, hazard identification and risk-based hazard management, allying technology with risk reduction, systemic evaluation of program and mitigation strategy effectiveness, and the protection of information provision in § 271.11.

FRA has performed a break-even analysis for this proposed rule. In this break-even analysis, FRA has estimated the amount of investment (capital expenditure) savings or the decreases in costs stemming from railroad-related incidents (and their associated casualties) for Class I railroads that the proposed rule would need to break even. FRA has found that only a very small improvement in either safety or investment is sufficient to make the proposed rule break-even. The proposed rule would break even if railroad investments improve by less than .006% (6 thousandths of a percent). FRA believes that such an improvement would quite likely result from the adoption and implementation of RRPs by Class I railroads, which would lead to reductions in the (1) number of railroad accidents/incidents and employee injuries; (2) other railroad incidents and related casualties; (3) employee absenteeism; and (4) employee discipline actions.

B. Abbreviations

The following abbreviations are used in this preamble and are collected here for the convenience of the reader:

CFR Code of Federal Regulations
DOT United States Department of Transportation
FMP Fatigue Management Plan
FOIA Freedom of Information Act
FR Federal Register
FRA Federal Railroad Administration
HMP Hazard Management Program
NPRM Notice of Proposed Rulemaking
OST Office of the Secretary, United States Department of Transportation
PTC Positive Train Control
Pub. L. Public Law
RRP Risk Reduction Program
RSAC Railroad Safety Advisory Committee
RSIA Railroad Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848
Secretary Secretary of Transportation
SSP System Safety Program
U.S.C. United States Code

II. Background and History

A. What is a risk reduction program?

Risk reduction is a comprehensive, system-oriented approach to improving safety by which an organization formally identifies and analyzes applicable hazards and takes action to mitigate, if not eliminate, the risks associated with those hazards. It provides a railroad with a set of decision making processes and procedures that can help it plan, organize, direct, and control its business activities in a way that enhances safety and promotes compliance with regulatory standards. As such, risk reduction is a form of safety management system, which is a term generally referring to a comprehensive, process-oriented approach to managing safety throughout an organization.

The principles and processes of risk reduction are based on those of safety management systems developed to assure high safety performance in various industries, including aviation, passenger railroads, the nuclear industry, and other industries with the potential for catastrophic accidents. Safety management systems have evolved through experience to include a multitude of equally important elements without which the organization's safety does not reliably improve. For ease of understanding, these elements are typically grouped into larger descriptive categories. For safety management systems, these descriptive categories include: (1) An organization-wide safety policy; (2) formal methods for identifying hazards, and for prioritizing and mitigating risks associated with those hazards; (3) data collection, data analysis, and evaluation processes to determine the effectiveness of mitigation strategies and to identify emerging hazards; and (4) outreach, education, and promotion of an improved safety culture within the organization.

The requirements of the proposed RRP rule provide a framework for reducing safety risk. While each railroad subject to the proposed rule would be required to develop all required components, the scope and complexity

of those components would vary from one railroad to the next, because of the railroads' differing safety needs, capabilities, and available resources. Because risk reduction is inherently scalable, the burdens imposed by the proposed rule would depend upon the size of a railroad, the type of operations the railroad provides, and the strategies for mitigating risk that the railroad decides to use.

B. Passenger Railroads and System Safety Programs

Risk reduction, as a type of safety management system, is not a new concept to FRA. Specifically, FRA has previously worked with passenger railroads to implement system safety programs (SSP), and has published a separate SSP NPRM for passenger railroads. *See* System Safety Program, 77 FR 55372 (proposed Sep. 7, 2012) (to be codified at 49 CFR part 270). FRA anticipates that an SSP final rule will be published before an RRP final rule.

In 1996, FRA issued Emergency Order No. 20, Notice No. 1 (EO 20), which required, among other things, commuter and intercity passenger railroads to promptly develop interim system safety plans addressing the safety of operations that permit passengers to occupy the leading car in a train.[1] *See* 61 FR 6876, Feb. 22, 1996. Subsequently, in 1997 APTA and the commuter railroads, in conjunction with FRA and the U.S. DOT, developed the ''Manual for the Development of System Safety Program Plans for Commuter Railroads,'' to more comprehensively address the safety of these railroad systems. Pursuant to APTA's manual, the existing commuter railroads developed system safety plans, and a triennial audit process for these plans began in early 1998 with FRA's participation. A majority of commuter railroads still participate in APTA's program.

FRA has also developed a ''Collision Hazard Analysis Guide'' to assist passenger rail operators in conducting collision hazard assessments.[2] *See* ''Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service'' (2007), FRA, available at *http://www.fra.dot.gov/eLib/Details/L03191.* The ''Collision Hazard Analysis Guide'' is based both on MIL–STD–882, discussed below, and the hazard identification/resolution processes described in APTA's ''Manual for the Development of System Safety Program Plans for Commuter Railroads.'' The ''Collision Hazard Analysis Guide'' provides a ''step-by-step procedure on how to perform hazard analysis and how to develop effective mitigation strategies that will improve passenger rail safety.'' *See id.* at 5. Although the ''Collision Hazard Analysis Guide'' focuses on passenger rail collisions, the techniques described in the guide are also valid for evaluating other hazards or safety issues related to any type of operating system. *See id.* A railroad subject to the requirements of a final RRP rule could use the ''Collision Hazard Analysis Guide'' as guidance on how to perform a an acceptable hazard analysis.

From its experience with the APTA program and the ''Collision Hazard Analysis Guide,'' FRA has gained substantial knowledge regarding the best methods for developing, implementing, and evaluating SSPs for passenger railroads. This experience is reflected in a recently-published NPRM, developed with the assistance of the Railroad Safety Advisory Committee (RSAC), that would require passenger railroads to develop and implement FRA-approved SSPs.

C. Other Federal Safety Management System Programs

Several Federal agencies have established or proposed safety management system requirements or guidance for regulated entities. For example, the Federal Transit Administration (FTA) has established regulations at 49 CFR part 659 (Rail Fixed Guideway Systems; State Safety Oversight) that implement a Congressional mandate for a program requiring State-conducted oversight of the safety and security of rail fixed guideway systems that are not regulated by FRA. *See* Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, sec. 3029, also codified at 49 U.S.C. 5330; and 60 FR 67034, Dec. 27, 1995.[3]

The Federal Aviation Administration (FAA) has also published an NPRM proposing to require each certificate holder operating under 14 CFR part 121 to develop and implement a safety management system (SMS). *See* 75 FR 68224, Nov. 5, 2010; and 76 FR 5296, Jan. 31, 2011. An SMS ''is a comprehensive, process-oriented approach to managing safety throughout the organization.'' 75 FR 68224, Nov. 5, 2010. An SMS includes: ''an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk; and promotion of safety culture.'' *Id.* Under FAA's proposed rule, an SMS would have four components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. *Id.* at 68225. In addition, the United States Coast Guard has published an NPRM proposing an SMS regulation for towing vessels. *See* 76 FR 49976, Aug. 11, 2011. Components similar to those included in both the FAA's SMS regulation as well as the Coast Guard's regulation are found in this RRP rule proposed by FRA.

The U.S. Department of Defense (DoD) has also set forth guidelines for a system safety program. In July 1969, DoD published ''System Safety Program Plan Requirements'' (MIL–STD–882). MIL–STD–882 is DoD's standard practice for system safety, with the most recent version, MIL–STD–882E, published on May 11, 2012. DoD, MIL–STD–882E, ''Department of Defense Standard Practice System Safety'' (May 11, 2012). MIL–STD–882 is used by many industries in the U.S., and internationally, and could be useful to a railroad (particularly a smaller railroad with inadequate safety performance) when trying to determine which methods to use to comply with this RRP rule. In fact, MIL–STD–882 is cited in FRA's safety regulations for railroad passenger equipment, 49 CFR part 238, as an example of a formal safety methodology to use in complying with certain analysis requirements in that rule. *See* 49 CFR 238.103 and 238.603. Part 238 defines MIL–STD–882 as a standard issued by DoD ''to provide uniform requirements for developing and implementing a system safety plan and program to identify and then eliminate the hazards of a system or reduce the associated risk to an acceptable.''

D. Risk Reducing FRA Programs

FRA also has established two voluntary, independent programs that exemplify the philosophy of risk reduction: The Confidential Close Call Reporting System (C3RS) and the Clear Signal for Action (CSA) program. FRA has developed these programs in the

[1] FRA issued EO 20 in response to New Jersey Transit (NJT) and Maryland Rail Commuter accidents in early 1996.

[2] FRA developed the ''Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service'' following a January 2005 accident in Glendale, CA, in which a Southern California Regional Rail Authority (Metrolink) commuter train derailed after striking an abandoned vehicle left on the tracks. The derailment caused the Metrolink train to collide with trains on both sides of it, a Union Pacific Railroad Company (UP) freight train and another Metrolink train, and resulted in the death of 11 people.

[3] FTA's part 659 program applies only to rapid transit systems or portions thereof not subject to FRA's regulations. *See* 49 CFR 659.3 and 659.5. FTA amended 49 CFR part 659 in April 2005 to incorporate the experience and insight it had gained regarding the benefits of and recommended practices for implementing State safety oversight requirements. *See* 70 FR 22562, Apr. 29, 2005.

belief that, in addition to process and technology innovations, human factors-based solutions can make a significant contribution to improving safety in the railroad industry.

The FRA C3RS program includes: (1) Voluntary confidential reporting of close-call events by employees; (2) root-cause-analysis problem solving by a Peer Review Team composed of labor, management, and FRA; (3) identification and implementation of corrective actions; (4) tracking the results of change; and (5) reporting the results of change to employees. Confidential reporting and joint labor-management-FRA root-cause problem solving are the most innovative of these characteristics for the railroad industry. Demonstration pilot sites for FRA C3RS are at the Union Pacific Railroad Company (UP), New Jersey Transit, Strasburg Railroad, and the National Railroad Passenger Corporation (Amtrak). An evaluation of one of these demonstration pilot sites indicated that a C3RS program demonstrably resulted in increased safety.[4] *See* Ranney, J. and Raslear, T., ''Derailments decrease at a C3RS site at midterm,'' FRA Research Results: RR12–04, April 2012, available at *http://www.fra.dot.gov/eLib/details/L01321.*

FRA has also implemented the CSA program, another human factors-based solution shown to improve safety. The CSA Program includes: (1) Voluntary peer-to-peer feedback in the work environment on both safe and risky behaviors and conditions (data associated with the program are owned by labor and not disclosed to management); (2) labor Steering Committee root cause analysis and the development of behavior and condition-related corrective actions; (3) Steering Committee implementation of behavior-related corrective actions; (4) joint labor-management Barrier Removal Team refining condition-related corrective actions and implementation; (5) tracking the results of the change; and (6) reporting the results of change to employees. Peer-to-peer feedback on safe and risky behaviors and conditions, root cause analysis, and cooperation between labor and management in corrective actions are the most innovative of these characteristics for the railroad industry. FRA considers the CSA program ready for broad implementation across the industry, as the completion of three demonstration pilots has demonstrated its applicability in diverse railroad work settings. One demonstration pilot covered Amtrak baggage handlers; a second covered UP yard crews; and a third covered UP road crews. *See* Coplen, M. Ranney, J. & Zuschlag, M., ''Promising Evidence of Impact on Road Safety by Changing At-risk Behavior Process at Union Pacific,'' FRA Research Results: RR08–08, June 2008, available at *http://www.fra.dot.gov/eLib/details/L03483;* Coplen, M. Ranney, J., Wu, S. & Zuschlag, M., ''Safe Practices, Operating Rule Compliance and Derailment Rates Improve at Union Pacific Yards with STEEL Process—A Risk Reduction Approach to Safety,'' FRA Research Results: RR09–08, May 2009, available at *http://www.fra.dot.gov/eLib/details/L04248.* After the completion of these pilot projects, BNSF Railway Company (BNSF) elected to participate in a peer-to-peer pilot project, and UP elected to develop and implement a system-wide peer-to-peer program modeled in part on the CSA demonstration pilots. Currently, FRA is funding the development of low cost program materials to aid in its distribution starting with passenger rail.

The C3RS and CSA programs embody many of the concepts and principles found in an RRP: Proactive identification of hazards and risks; analysis of those hazards and risks; and implementation of appropriate action to eliminate or mitigate the hazards and risks. While FRA does not intend to require any railroad to implement a C3RS or CSA program as part of its RRP, FRA believes that these types of programs would be useful for a railroad developing an RRP, and encourages railroads to include such programs as part of their RRPs. FRA seeks comment on the extent to which these programs might be useful in the development of an RRP or as a component of an RRP.

III. Statutory Background

A. Rail Safety Improvement Act of 2008

In sec. 103 of the RSIA, Congress directed the Secretary to issue a regulation requiring certain railroads to develop, submit to the Secretary for review and approval, and implement a railroad safety risk reduction program. *See* 49 U.S.C. 20156. The Secretary has delegated this responsibility to the FRA Administrator. *See* 49 CFR 1.89(oo) (74 FR 26981, Jun. 5, 2009); *see also* 49 U.S.C. 103(g). The railroads required to comply with such a regulation include:

(1) Class I railroads;

(2) Railroad carriers with inadequate safety performance, as determined by the Secretary; and

(3) Railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads).

The proposed rule would implement this railroad safety risk reduction mandate for Class I freight railroads and railroads with inadequate safety performance. *See* 49 U.S.C. 20156(a)(1). Generally, these railroads would be required to assess and manage risk and develop proactive risk mitigation strategies to promote safety improvement. The proposed rule would also implement the Congressional mandate permitting a railroad not required to develop and implement an RRP to voluntarily submit an RRP plan meeting the requirements of any final RRP rule to FRA for review and approval. *See* 49 U.S.C. 20156(a)(4). As proposed, a railroad voluntarily submitting an RRP plan for FRA approval would be required to implement the plan in accordance with FRA's requirements and could be subject to civil penalties for noncompliance. The proposed rule would also implement other specific safety risk reduction program requirements found in sec. 103, such as the requirement that a railroad consult with, employ good faith and use its best efforts to reach agreement with all of its directly affected employees (including any non-profit employee labor organization representing a class or craft of directly affected employees) on the contents of the railroad's RRP plan.

The proposed rule would also respond to sec. 109 of the RSIA, which addresses the protection of information in railroad safety risk analyses. *See* 49 U.S.C. 20118. In sec. 109, Congress specified that certain risk reduction records obtained by the Secretary are exempt from the public disclosure requirements of the Freedom of Information Act (FOIA). *See* 49 U.S.C. 20118. Section 109 also directed FRA to complete a study evaluating whether it is in the public interest (including public safety and the legal rights of persons injured in railroad accidents) to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a railroad certain risk reduction information, including a railroad's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks. *See* 49 U.S.C. 20119(a). Based upon authority granted by Congress in sec. 109, the proposed rule contains provisions responding to the results of this study, which found that it is in the public interest to protect certain risk reduction information from discovery or admission into evidence in a Federal or

[4] Additional evaluations will be performed for other demonstration pilot sites as sufficient data become available.

State court proceeding for damages. *See* 49 U.S.C. 20119(b). The study and its results will be discussed in greater depth later in this preamble.

B. Related System Safety Rulemaking

A separate SSP rulemaking, as discussed above, would implement the sec. 103 and sec. 109 RSIA mandates for passenger railroads. *See* 49 U.S.C. 20156(a). On September 7, 2012, FRA published an NPRM proposing an SSP rule in the **Federal Register**. *See* 77 FR 55372. Establishing separate safety risk reduction rules for passenger railroads and the Class I freight railroads [5] would allow these rules to account for significant differences between passenger and freight operations. For example, freight railroads may generate risks uniquely associated with the transportation of hazardous materials. The proposed RRP rule can be specifically tailored to these types of risks, which are not independently generated by passenger railroads.

Some overlap would exist between certain components of the proposed SSP and RRP rules. Most significantly, the RRP and SSP rules would contain essentially identical provisions implementing the consultation requirements of sec. 103(g) and responding to the information protection study mandated under sec. 109 of the RSIA. There was significant discussion during the RRP and SSP RSAC processes on how to implement these provisions of the RSIA. FRA worked with the General Passenger Safety Task Force's System Safety Task Group and the RRP Working Group to receive input regarding how information protection and the consultation process should be addressed, with the understanding that the same language would be included in both the SSP and RRP NPRMs for review and comment. The consultation and information protection provisions proposed in this NPRM, therefore, are essentially identical to those proposed in the 2012 SSP NPRM.

In response to the SSP NPRM, FRA has received a number of comments addressing the proposed consultation and information protection provisions. While FRA intends to discuss these comments further as part of the ongoing RRP and SSP RSAC processes, FRA has decided not to respond to the SSP comments on the consultation and information protection provisions in this NPRM. Any comments submitted to the SSP NPRM regarding these provisions, however, will be considered applicable to the RRP NPRM as well and will be considered before publication of an RRP final rule. Ultimately, FRA anticipates that the consultation and information protection provisions of the SSP and RRP rules will be essentially identical.

Furthermore, FRA intends to make any information protection provision in a final SSP rule applicable to any railroad safety risk reduction program required under chapter II of subtitle B of title 49, Code of Federal Regulations, such as an RRP. When Congress granted FRA authority to issue a rule based upon the results of the study, it also specified that any such rule could not become effective until one year after its adoption. *See* 49 U.S.C. 20119(b). Making an SSP information protection provision applicable to any RRP program would allow RRP information to be protected from use in certain litigation sooner. This would allow a railroad subject to the proposed RRP rule to begin developing its RRP earlier, without having to wait an entire year for the information protection provisions to become effective.

In addition to the proposed consultation and information protection sections, some overlap would exist between various other RRP and SSP provisions (*e.g.,* certain definitions, the process for amending plans, etc.). The requirements in this proposed NPRM generally follow those in the SSP NPRM, and do not reflect any comments FRA has received in response to the SSP NPRM. FRA recognizes that drafting proposals on related topics simultaneously can give the appearance of overlapping or duplicative requirements. As these rulemakings progress, we will work to minimize any overlapping or duplicative requirements.

C. Related Fatigue Management Plans Rulemaking

Section 103(f) of the RSIA states that an RRP must include a fatigue management plan meeting certain requirements. *See* 49 U.S.C. 20156(d)(2) and 20156(f). This proposed RRP rulemaking does not address this mandate, however, because it is currently being considered by a separate rulemaking process.

On December 8, 2011, the RSAC voted to establish a Fatigue Management Plans Working Group (FMP Working Group). The purpose of the FMP Working Group is to provide ''advice regarding the development of implementing regulations for Fatigue Management Plans and their deployment under the Rail Safety Improvement Act of 2008.'' ''Railroad Safety Advisory Committee Task Statement: Fatigue Management Plans,'' Task No.: 11–03, Dec. 8, 2011. (A copy of this statement will be placed in the public docket for this RRP rulemaking.) Specifically, the FMP Working Group is tasked to: ''review the mandates and objectives of the [RSIA] related to the development of Fatigue Management Plans, determine how medical conditions that affect alertness and fatigue will be incorporated into Fatigue Management Plans, review available data on existing alertness strategies, consider the role of innovative scheduling practices in the reduction of employee fatigue, and review the existing data on fatigue countermeasures.'' *Id.*

FRA notes that the RRP Working Group recommended including a placeholder in the proposed RRP rule text that would require a railroad, as part of its RRP, to develop a fatigue management plan no later than three years after the effective date of the final rule, or three years after commencing operations, whichever is later. This placeholder did not contain any additional substantive requirements, however, and was intended merely to be an acknowledgement of the RSIA fatigue management plan mandate. FRA has elected to not include this placeholder; however, because it may create confusion regarding the separate FMP Working Group process and the ongoing fatigue management plans rulemaking. Rather, FRA will address the substantive requirements of the fatigue management plan mandate in the separate rulemaking that FRA has initiated. FRA would approve an RRP plan without the fatigue management plan component prior to the issuance of fatigue management final rule, provided the plan met all other applicable RRP requirements. Until the fatigue management plan final rule is effective, a railroad could use the processes and procedures in its RRP to address fatigue-related issues.

IV. Proceedings to Date

A. Advance Notice of Proposed Rulemaking (ANPRM)

On December 8, 2010, FRA published an ANPRM soliciting public comment on how FRA could best develop and implement a risk reduction regulation based upon the requirements of the RSIA. *See* 75 FR 76345–76351.

[5] There is only one Class I railroad that also qualifies as a passenger railroad: Amtrak. Amtrak would be required to comply with the proposed requirements of the SSP rule. So long as Amtrak remains in compliance with the requirements of an SSP rule, Amtrak would be deemed to be in compliance with an RRP rule. This same approach will be taken for any passenger railroad that also becomes designated as a Class I railroad.

Comments were due by February 7, 2011.

FRA received 11 written comments in response to the ANPRM from a variety of entities, including railroads, industry organizations, non-profit employee labor organizations, a consulting firm, and a private citizen.[6] Many of the questions and issues raised by commenters were subsequently discussed in depth during the RSAC process. This NPRM, therefore, will contain only a very brief overview of the comments. Written comments submitted in response to the ANPRM are in the public docket for this proceeding and can be viewed and downloaded at *www.regulations.gov.*

Many of the ANPRM commenters identified similar issues or questions. Two commenters recommended that FRA develop a performance-based risk reduction rule, in order to encourage railroads to find flexible and creative solutions to safety risks. These commenters also stressed the importance of protecting risk reduction information from disclosure and use in litigation. Other commenters requested clarification on the relationship between risk reduction and system safety, or expressed concerns related to how a risk reduction rule would address issues such as contractors or training requirements. Commenters also provided recommendations on how FRA should identify railroads with inadequate safety performance. Several labor organizations also submitted a joint comment strongly emphasizing the importance of the sec. 103(g) consultation requirements. Issues such as the above were subsequently discussed at length with both industry and labor organization representatives during the RSAC process.

B. Public Hearings

Following publication of the ANPRM and close of the comment period, FRA also held two public hearings that provided interested persons an opportunity to discuss the development of a risk reduction regulation in response to the ANPRM. Interested persons were invited to present oral statements and to proffer information and views at the hearings. The first public hearing was held on July 19, 2011 in Chicago, IL, and the second public hearing was held on July 21, 2011 in Washington, DC. *See* 76 FR 40320, July 8, 2011. During the hearings, testimony was given by representatives of the AAR, ASLRRA, Rail World, Inc., and the Teamsters Rail Conference (the BLET/IBT and BMWED/IBT). As with the comments in response to the ANPRM, the hearing testimony focused almost exclusively on topics that continued to be discussed during the RSAC process. Significant topics of discussion included the following: The identification of railroads with inadequate safety performance; the consultation requirements of sec. 103(g); the role of contractors within a railroad's RRP; the information protection study mandated by sec. 109; retention of RRP records; and FRA review of a railroad's RRP. Transcripts of the public hearings are in the public docket for this proceeding and can be viewed and downloaded at *www.regulations.gov.*

C. Railroad Safety Advisory Committee (RSAC)

Following the close of the ANPRM comment period and the public hearings, FRA decided that additional input regarding the development of a risk reduction regulation would be beneficial. FRA therefore placed the risk reduction rulemaking into a modified RSAC process, which discussed many of the questions and concerns that appeared in the ANPRM and in responses thereto.

1. Risk Reduction Program (RRP) Working Group

FRA proposed Task No. 11–04 to the RSAC on December 8, 2011. The RSAC accepted the task, and formed the Risk Reduction Program (RRP) Working Group (Working Group) for the purpose of developing and implementing RRP under the RSIA. The Working Group is comprised of members from the following organizations:

- AAR;[7]
- Amtrak;
- APTA;
- ASLRRA;
- BLET;
- BMWED;
- BRS;
- FRA;
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- National Association of Railroad Passengers (NARP);
- National Railroad Construction and Maintenance Association;
- National Transportation Safety Board (NTSB);
- SEPTA;
- TRA; and
- UTU.

The Working Group completed its work after four in-person meetings and several conference calls. The first meeting of the Working Group took place on January 31 and February 1, 2012, in Cambridge, Massachusetts. At that meeting the group discussed the appropriate scope of a risk reduction regulation and heard several presentations from stakeholders regarding the requirements of the RSIA and current risk reduction practices on railroads. Subsequent meetings were held in Washington, DC on April 10, 2012; May 16, 2012; and June 13, 2012.

At the April, May, and June meetings, the group discussed a document entitled ''Recommendations to the Administrator,'' which provided FRA advice to consider in developing a risk reduction rule. The document was updated after each meeting to reflect the Working Group's discussions.

2. Working Group Tentative Agreement Vote

At the conclusion of the Working Group's last meeting on June 13, 2012, the Working Group obtained tentative agreement on the ''Recommendations to the Administrator'' document. This document did not include advice regarding railroads with inadequate safety performance, as this was developed further during subsequent conference calls. The document was also not put before the full RSAC for vote, and therefore does not represent formal RSAC consensus. FRA utilized the comments and documents from the Working Group when developing the proposed rule text, although it has streamlined and reorganized suggestions from the Working Group in order to make the rule's requirements as clear as possible. FRA has also attempted to note in this NPRM areas in which the proposed rule text substantively differs from the Working Group's suggestions. Ultimately, however, language contained in this proposed rule reflects

[6] The following 18 entities were signatories to comments in response to the ANPRM: Amtrak; Association of American Railroads (AAR); Association of Railways Museums, Inc. (ARM); American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRA); American Train Dispatchers Association (ATDA); Behavioral Science Technology (BST); Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT); Brotherhood of Maintenance of Way Employees Division (BMWED/IBT); Brotherhood of Railroad Signalmen (BRS); Metrolink; New York State Metropolitan Transportation Authority (NYSMTA); Patrick J. Coyle (Chemical Facility Security News); Southern Pennsylvania Transportation Authority (SEPTA); Transport Workers Union of America (TWU); Transportation Communications Union (TCU); Trinity Railway Express; Tourist Railway Association (TRA); and United Transportation Union (UTU).

[7] The AAR is comprised of members including the following entities: BNSF Railway Company (BNSF); Canadian National Railway Company (CN); Canadian Pacific Railway (CP); CSX Transportation, Inc. (CSXT); Iowa Interstate Railroad, Ltd. (IAIS); Kansas City Southern (KCS); Metra Electric District; Norfolk Southern Corporation (NS); and UP.

the RSIA statutory requirements and the Working Group's tentative agreement on how the requirements should be applied.

V. Railroads With Inadequate Safety Performance

As previously discussed, sec. 103 of the RSIA directs FRA to require railroads with inadequate safety performance (as determined by FRA) to develop and implement an RRP. FRA discussed potential definitions of inadequate safety performance during the April, May, and June 2012 RSAC Working Group meetings, and also conducted several conference calls discussing the issue after the final June 2012 Working Group meeting. These meetings and conference calls developed and refined a general approach to determining inadequate safety performance, and discussed several specific concerns of the ASLRRA, whose member railroads are those most likely to be affected by FRA's approach. For example, participants in the conference calls expressed concerns regarding the need for consistent nationwide application of FRA's approach to determining inadequate safety performance. FRA achieved tentative agreement on the proposed approach, but did not seek consensus.

As a result of these discussions and tentative agreement, FRA developed an annual process, involving two phases, for determining whether a railroad's safety performance may be inadequate. This process would only evaluate railroads that were not already complying with an SSP or RRP rule, including voluntarily-compliant railroads. In the first phase, FRA would conduct a statistical quantitative analysis to determine a railroad's safety performance index, using the three most recent full calendar years' historical data maintained by FRA. The quantitative analysis would utilize the following four factors: (1) Fatalities; (2) FRA reportable injury/illness rate; (3) FRA reportable accident/incident rate; and (4) FRA violation rate. Railroads that had either a fatality, or that were at or above the 95th percentile in at least two of the three other factors (FRA reportable injury/illness, FRA reportable accident/incident, or FRA violation rate), would be further examined in a qualitative assessment. FRA would notify the railroads identified for further examination in a qualitative assessment, and would give them an opportunity to comment and provide evidence explaining why they should or should not be required to develop an RRP. A railroad would also be required to inform its employees that it had received the notification from FRA and that employees could submit confidential comments on the matter directly to FRA. For the second phase of its analysis, FRA would consider the comments from the railroads, and any comments from the railroad's employees, as well as any other pertinent evidence, in a qualitative review of the railroad's safety performance. Following the qualitative review, FRA would notify the affected railroads regarding whether or not they must develop an RRP.

Based on Working Group input and results from the C3RS and CSA projects, FRA also determined appropriate timeframes for compliance, and deadlines for various notices and submissions. A railroad with inadequate safety performance would have to comply with this part 271 for a period of at least five years, after which it could petition FRA for removal from the program. These provisions are discussed further in the section-by-section analysis.

During discussions, the RSAC Working Group advised FRA to allow a railroad with inadequate safety performance to choose to establish either an RRP in compliance with this proposed part 271 or an SSP in compliance with proposed part 270. For reasons discussed further in the section-by-section analysis for § 271.13, FRA has not included this suggestion in the NPRM, but could ultimately include it in a final rule.

VI. Risk Reduction Information Protection

Section 109 of the RSIA (codified at 49 U.S.C. 20118–20119) authorizes FRA to issue a rule protecting risk analysis information generated by railroads. These provisions would apply to information generated by passenger railroads pursuant to the proposed system safety rulemaking and to any railroad safety risk reduction programs required by FRA for Class I railroads and railroads with inadequate safety performance.

As previously discussed, the information protection provisions proposed in this NPRM are essentially identical to provisions in the proposed SSP rule, as there was significant discussion during the SSP and RRP RSAC processes on how to implement this provision of the RSIA. FRA worked with the System Safety Task Group and the Risk Reduction Program Working Group to receive input regarding how information protection should be addressed, with the understanding that the same language would be included in both the SSP and RRP NPRMs for review and comment. While the language proposed in this NPRM does not respond to comments already received in response to the SSP NPRM, FRA will consider comments submitted to both the SSP and RRP NPRMs regarding the information protection provisions when developing an RRP final rule.

A. Exemption From Freedom of Information Act Disclosure

In sec. 109 of the RSIA (codified at 49 U.S.C. 20118–20119), Congress determined that for risk reduction programs to be effective, the risk analyses must be shielded from production in response to Freedom of Information Act (FOIA) requests. *See* 49 U.S.C. 20118. FOIA is a Federal statute establishing certain requirements for the public disclosure of records held by Federal agencies. *See* 5 U.S.C. 552. Formal rules for making FOIA requests to DOT agencies are set forth in 49 CFR part 7. Generally, FOIA requires a Federal agency to make most records available upon request, unless a record is protected from mandatory disclosure by one of nine exemptions. One of those exemptions, known as Exemption 3, applies to records that are specifically exempted from disclosure by statute, if the statute requires that matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld. *See* 5 U.S.C. 552(b)(3) and 49 CFR 7.13(c)(3).[8]

Section 109(a) of the RSIA specifically provides that a record obtained by FRA pursuant to a provision, regulation, or order related to a risk reduction program or pilot program is exempt from disclosure under FOIA. The term ''record'' includes, but is not limited to, ''a railroad carrier's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks.'' *Id.* This FOIA exemption would also apply to records made available to FRA for inspection or copying pursuant to a risk reduction program or pilot program. Section 109(c) also gives FRA the discretion to prohibit the public disclosure of risk analyses or risk mitigation analyses obtained under other FRA regulations if FRA determines that the prohibition of

[8] In 2009, Congress amended 5 U.S.C. 552(b)(3) to require Exemption 3 statutes to specifically cite to sec. 552(b)(3). *See* OPEN FOIA Act of 2009, Public Law 111–83, 123 Stat. 2142, 2184 (Oct. 28, 2009). Because this requirement applies only to statutes enacted after October 29, 2009, however, it does not apply to section 109 of the RSIA, which was enacted in October of 2008.

public disclosure is necessary to promote public safety.

FRA believes that sec. 109 of the RSIA qualifies as an Exemption 3 statute under FOIA. FRA therefore believes that railroad risk reduction records in its possession would generally be exempted from mandatory disclosure under FOIA, unless one of two exceptions provided by the RSIA would apply. *See* 49 U.S.C. 20118(a)–(b). The first exception permits disclosure when it is necessary to enforce or carry out any Federal law. The second exception permits disclosure when a record is comprised of facts otherwise available to the public and when FRA, in its discretion, has determined that disclosure would be consistent with the confidentiality needed for a risk reduction program or pilot program.

B. Discovery and Other Use of Risk Analysis Information in Litigation

1. The RSIA Mandate

The RSIA also addressed the disclosure and use of risk analysis information in litigation. Section 109 directed FRA to conduct a study to determine whether it was in the public interest to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any information (including a railroad's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) compiled or collected for the purpose of evaluating, planning, or implementing a risk reduction program. *See* 49 U.S.C. 20119(a). In conducting this study, the RSIA required FRA to solicit input from railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public. *See id.* The RSIA also states that upon completion of the study, if in the public interest, FRA may prescribe a rule to address the results of the study (*i.e.,* a rule to protect risk analysis information from disclosure during litigation). *See* 49 U.S.C. 20119(b). The RSIA prohibits any such rule from becoming effective until one year after its adoption. *See id.*

2. The Study and Its Conclusions

FRA contracted with a law firm, Baker Botts L.L.P., to conduct the study on FRA's behalf. Various documents related to the study are available for review in public docket number FRA–2011–0025, which can be accessed online at *www.regulations.gov.* As a first step, the contracted law firm prepared a comprehensive report identifying and evaluating other Federal safety programs that protect risk reduction information from use in litigation. *See* ''Report on Federal Safety Programs and Legal Protections for Safety-Related Information,'' FRA, docket no. FRA–2011–0025–0002, April 14, 2011. Next, as required by sec. 109 of the RSIA, FRA published a **Federal Register** notice seeking public comment on the issue of whether it would be in the public interest to protect certain railroad risk reduction information from use in litigation. *See* 76 FR 26682, May 9, 2011. Comments received in response to this notice may be viewed in the public docket.

On October 21, 2011, the contracted law firm produced a final report on the study. *See* ''Study of Existing Legal Protections for Safety-Related Information and Analysis of Considerations For and Against Protecting Railroad Safety Risk Reduction Program Information'' (Study), FRA, docket no. FRA–2011–0025–0031, Oct. 21, 2011. The final report contained analyses of other Federal programs that protect similar risk reduction data, the public comments submitted to the docket, and whether it would be in the public interest, including the interests of public safety and the legal rights of persons injured in railroad accidents, to protect railroad risk reduction information from disclosure during litigation. The final report concluded that it would be within FRA's authority and in the public interest for FRA to promulgate a regulation protecting certain risk analysis information held by the railroads from discovery and use in litigation and makes recommendations for the drafting and structuring of such a regulation. *See id.* at 63–64.

3. FRA's Proposal

In response to the final study report, this NPRM is proposing to protect any information compiled or collected solely for the purpose of developing, implementing or evaluating an RRP from discovery, admission into evidence, or consideration for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, and property damage. The information protected would include a railroad's identification of its safety hazards, analysis of its safety risks, and its statement of the mitigation measures with which it would address those risks and could be in the following forms or other forms: Plans, reports, documents, surveys, schedules, lists, or data. Additional specifics regarding this proposal will be discussed in the section-by-section analysis of this NPRM.

VII. RRP Plan Consultation Requirements

Section 103(g)(1) of the RSIA states that a railroad required to establish a safety risk reduction program must ''consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.'' 49 U.S.C. 20156(g)(1). Section 103(g)(2) of the RSIA further provides that if a ''railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organizations may file a statement with the Secretary explaining their views on the plan on which consensus was not reached.'' 49 U.S.C. 20156(g)(2). The RSIA requires FRA to consider these views during review and approval of a railroad's RRP plan.

FRA is proposing to implement this mandate by requiring each railroad required to establish an RRP to consult with its directly affected employees (using good faith and best efforts) on the contents of its RRP plan. A railroad would have to include a consultation statement in its submitted plan describing how it consulted with its employees. If a railroad and its employees were not able to reach consensus, directly affected employees could file a statement with FRA describing their views on the plan. Additional specifics regarding this proposal are discussed in the section-by-section analysis of this NPRM for proposed §§ 271.207 and 271.209.

As with this NPRM's information protection provisions, the proposed language is essentially identical to provisions proposed in the 2012 SSP NPRM, since there was significant discussion during the SSP and RRP RSAC processes on how to implement this provision of the RSIA. FRA worked with the System Safety Task Group to receive input regarding how the consultation process should be addressed, with the understanding that the same language would be included in both the SSP and RRP NPRMs for review and comment. While the language proposed in this NPRM does not respond to comments already

received in response to the SSP NPRM, FRA will consider comments submitted to both the SSP and RRP NPRMs regarding consultation requirements when developing an RRP final rule.

VIII. Section-by-Section Analysis

FRA proposes to add a new part 271 to chapter 49 of the CFR. Part 271 would satisfy the RSIA requirements regarding safety risk reduction programs for Class I railroads and railroads with inadequate safety performance. *See* 49 U.S.C. 20156(a)(1). Part 271 would also protect certain information compiled or collected pursuant to a safety risk reduction program from admission into evidence or discovery during court proceedings for damages. *See* 49 U.S.C. 20119.

The proposed rule would require a risk reduction program that is a somewhat streamlined version of a safety management system. To adhere as closely as possible to the requirements of the RSIA, FRA has not proposed to include a number of program and plan components that are common to many safety management systems. For example, FRA is not proposing to include a requirement for a description of the railroad management and organizational structure (including charts or other visual representations), but instead asks for a less specific system description. The RRP plan is also not required to contain a description of the processes and procedures used for maintenance and repair of infrastructure and equipment, rules compliance and procedures review, workplace safety, workplace safety assurance, or public safety outreach. FRA is also not proposing to require an RRP to establish processes ensuring that safety concerns are addressed during the procurement process. As additional examples, a full safety management system would also require: (1) Development and implementation of processes to manage emergencies; (2) processes and procedures for the railroad to manage changes that have a significant effect on railroad safety; (3) processes and permissions for making configuration changes to the railroad; and (4) safety certification prior to initiation of operations or implementation of major projects. The proposed RRP rule does not currently include such requirements. FRA is specifically seeking public comments regarding whether any or all of these elements should be considered essential in order for RRP to function effectively, and requirements for such additional elements may be included in the final rule.

The proposed rule contains various filing and communication requirements. FRA is generally requesting public comment on whether any provision imposing a filing or communication requirement should permit a railroad to comply with that requirement electronically.

Subpart A—General

Subpart A of the proposed rule would contain general provisions, including a formal statement of the rule's purpose and scope, and provisions limiting the discovery and admissibility of certain RRP information.

Section 271.1—Purpose and Scope

Proposed § 271.1 would set forth the purpose and scope of the proposed rule. Paragraph (a) would state that the purpose of this part is to improve railroad safety through structured, proactive processes and procedures developed and implemented by railroads. The proposed rule would require each affected railroad to establish an RRP that systematically evaluates railroad safety hazards on its system and manages the risks generated by those hazards in order to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. The proposed rule would not require an RRP to address every safety hazard on a railroad's system. For example, rather than identifying every safety hazard on its system, a large railroad could take a more focused and project-specific view of safety hazard identification.

Paragraph (b) would state that the proposed rule prescribes minimum Federal safety standards for the preparation, adoption, and implementation of RRPs. A railroad would not be restricted from adopting and enforcing additional or more stringent requirements that are not inconsistent with a rule arising from this proposed rule.

Paragraph (c) would state that the proposed rule protects information generated solely for the purpose of developing, implementing, or evaluating an RRP. FRA may decide not to include this provision in the final rule if an SSP final rule is published significantly before an RRP final rule, so that the SSP information protection provision could be made applicable to RRPs.

Paragraph (d) would contain a clarifying statement indicating that RRPs are not intended to address certain areas of employee safety. While FRA is always concerned with the safety of railroad employees performing their duties, employee safety in maintenance and servicing areas generally falls within the jurisdiction of the United States Department of Labor's Occupational Safety and Health Administration (OSHA). It is not FRA's intent in this rule to displace OSHA's jurisdiction with regard to the safety of employees while performing inspections, tests, and maintenance, except where FRA has already addressed workplace safety issues, such as blue signal protection in 49 CFR part 218. Similar provisions are found in other rules, clarifying that FRA does not intend to displace OSHA's jurisdiction over certain subject matters. *See, e.g.,* 49 CFR 238.107(c). FRA requests public comment on whether this statement clearly indicates the relationship between RRPs and OSHA's jurisdiction.

Similarly, while FRA is concerned with environmental damage that could result from the violation of Federal railroad safety laws and regulations, FRA does not intend this rule to address environmental hazards and risks that are unrelated to railroad safety and that would fall within the jurisdiction of the Environmental Protection Agency (EPA). For example, FRA would not expect a railroad's RRP to address environmental hazards regarding particulate emissions from locomotives that otherwise comply with FRA's safety regulations. FRA seeks public comment on whether it is necessary for this section to contain a clarifying statement regarding any such subject matter that this proposed part may affect, whether potentially implicating the jurisdiction of OSHA, EPA, or another agency of the Federal government.

Section 271.3—Application

The RSIA directs FRA to require each Class I railroad, railroad carrier that has inadequate safety performance, and railroad that provides intercity rail passenger or commuter rail passenger transportation to establish a railroad safety risk reduction program. *See* 49 U.S.C. 20156(a)(1). This proposed rule sets forth requirements related to a railroad safety risk reduction program for Class I freight railroads and railroads with inadequate safety performance. Safety risk reduction programs for railroads that provide intercity rail passenger or commuter rail passenger transportation are being addressed in a separate SSP rulemaking.

Paragraph (a) would state that, except as provided in paragraph (b) of this section, this part applies to Class I railroads, railroads determined to have inadequate safety performance pursuant to proposed § 271.13, and railroads that voluntarily comply with the part 271 requirements pursuant to § 271.15 (voluntarily-compliant railroads).

FRA proposes to exempt certain railroads from the proposed rule's applicability. The applicability exemptions proposed in paragraphs (b)(1) through (4) are general exemptions found in many FRA regulations. The first exemption, proposed in paragraph (b)(1), would apply to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Paragraph (b)(1) is intended merely to clarify the circumstances under which rapid transit operations would not be subject to FRA jurisdiction under the proposed rule. It should be noted, however, that some rapid transit type operations, given their links to the general system, are within FRA's jurisdiction, and FRA would specifically intend for part 271 to apply to those rapid transit type operations.

Paragraph (b)(2) proposes an exemption for operations commonly described as tourist, scenic, historic, or excursion service, whether on or off the general railroad system of transportation. Tourist, scenic, historic, or excursion rail operations are defined by proposed § 271.5, and this exemption is consistent with other FRA regulations. *See* 49 CFR 227.3(b)(4), 232.3(c)(5), 238.3(c)(3) and 239.3(b)(3). FRA has also proposed to exempt tourist operations, whether on or off the general railroad system of transportation, from the proposed SSP rule. It should be noted, however, that this exemption would not cover any freight operations conducted by a railroad that also performed tourist operations. A railroad with both freight and tourist operations may be required to establish an RRP covering the freight operations if the railroad is determined to have inadequate safety performance. The railroad's tourist operations would also have to be addressed by the RRP to the extent that they created hazards affecting the freight operations. If the tourist operations are conducted by a separate entity, they would have to be addressed by a railroad's RRP as required by proposed § 271.101(d), which would require a railroad to ensure that any persons utilizing or providing safety-sensitive services support and participate in the railroad's RRP. FRA specifically requests public comment on this exemption and how an RRP final rule should address tourist operations that may create hazards for freight operations.

Paragraph (b)(3) would clarify that the requirements of the proposed rule do not apply to the operation of private passenger train cars, including business or office cars and circus train cars. While FRA believes that a private passenger car operation should be held to the same basic level of safety as other passenger train operations, such operations were not specifically identified in the RSIA mandate, and FRA is taking into account the potential burden that would be imposed by requiring private passenger car owners and operators to conform to the requirements of this part. FRA is also proposing to exempt private passenger train cars from the SSP rule, which would implement the RSIA mandate for passenger railroads.

Paragraph (b)(4) proposes an exemption for railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 271.5). Plant railroads are typified by operations such as those in steel mills that do not go beyond the plant's boundaries and that do not involve the switching of rail cars for entities other than themselves. Generally, safety issues on a plant railroad are factually unique, limited to a single operation, and can be addressed with targeted safety measures. An RRP is designed to address systemic safety issues on a railroad's operations through proactive processes and procedures. Due to the difference in the type of safety issues plant railroads typically encounter and the complexity of safety issues an RRP is designed to address, plant railroads are exempt from implementing an RRP.

Paragraph (b)(5) would exempt from the proposed RRP rule any commuter or intercity passenger railroad that is already subject to an FRA SSP rule. As RRP and SSP rules would both implement the RSIA mandate for railroad safety risk reduction programs, FRA believes that requiring a commuter or intercity passenger railroad to maintain two separate safety risk reduction programs would be an unnecessary and duplicative burden. FRA is therefore proposing to exempt commuter or intercity passenger railroads required to comply with the SSP rule from the RRP rule's requirements. Railroads should note that this proposal would not exempt freight operations conducted by another railroad on the same track as a commuter or intercity passenger railroad. A railroad with both freight and passenger operations would be required to account for its freight operations in its SSP. FRA is specifically requesting public comment on this proposal and may elect in the final rule to require railroads with both freight and passenger operations to implement both an RRP and SSP, or to implement an RRP accounting for passenger operations.

Section 271.5—Definitions

Proposed § 271.5 would contain a set of definitions clarifying the meaning of important terms used in the proposed rule. The proposed definitions are carefully worded in an attempt to minimize potential misinterpretation of the regulations. FRA requests public comment regarding the terms defined in this section and whether other terms should also be defined.

''Accident/incident'' means (1) any impact between railroad on-track equipment and a highway user (including automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation motorized and un-motorized, at a highway-rail grade crossing); (2) any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold identified in 49 CFR part 225 to railroad on-track equipment, signals, track, track structures, and roadbed; and (3) each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in 49 CFR 225.19(d)(1) through (6) if any event or exposure arising from the operation of a railroad is a discernible cause of a significant aggravation to a pre-existing injury or illness. Regarding item (3), the event or exposure arising from the operation of a railroad need only be one of the discernible causes; it need not be the sole or predominant cause. The proposed definition is identical to the definition for ''accident/incident'' contained in FRA's accident/incident reporting regulations at 49 CFR part 225.

''Administrator'' means the Administrator of the Federal Railroad Administration or his or her delegate.

''FRA'' means the Federal Railroad Administration.

''FRA Associate Administrator'' means the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, or the Associate Administrator's delegate.

''Fully implemented'' means that all RRP elements, as described in an RRP plan, have been established and applied to the safety management of the railroad.

''Hazard'' means any real or potential condition that can cause injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment. Because the proposed definition would be limited to hazards

identified in a railroad's risk-based hazard analysis, discussed in proposed § 271.103, this would include hazards related to ''infrastructure; equipment; employee levels and work schedules; operating rules and practices; management structure; employee training; and other areas impacting railroad safety that are not covered by railroad safety laws or regulations or other Federal laws or regulations.'' FRA does not intend this definition to include hazards that are completely unrelated to railroad safety and that would fall exclusively under the jurisdiction of either OSHA or the EPA. The proposed definition is identical to the SSP NPRM's proposed definition for ''hazard'' and is based on an existing definition of the term found in 49 CFR part 659, which contains FTA's regulations regarding system safety program plans. *See* 49 CFR 659.5. The RSAC RRP Working Group advised FRA to specify that the ''system'' referenced by the definition of ''hazard'' was a ''safety system.'' FRA decided not to follow this suggestion, however, in order to maintain consistency between the proposed RRP and SSP rules. FRA also believes that the descriptor ''safety'' would improperly limit the scope of the proposed definition. An RRP should address hazards that could result in damage or loss to any system related to the railroad's operations, and not merely safety systems.

''Inadequate safety performance'' means safety performance that FRA has determined to be inadequate based on the analysis described in proposed § 271.13.

''Mitigation strategy'' means an action or program to reduce or eliminate the risk generated by a hazard.

''Person'' means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor or subcontractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

''Pilot project'' means a limited scope project used to determine whether quantitative proof suggests that a particular system or mitigation strategy has potential to succeed on a full-scale basis.

''Plant railroad'' means a type of operation that has traditionally been excluded from the application of FRA regulations because it is not part of the general railroad system of transportation. Under § 271.3, FRA has chosen to exempt plant railroads, as defined in this proposed section, from the proposed rule. In the past, FRA has not defined the term ''plant railroad'' in other regulations that it has issued because FRA assumed that its ''Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, The Extent and Exercise of FRA's Safety Jurisdiction'', 49 CFR part 209, Appendix A (FRA's Policy Statement or the Policy Statement), provided sufficient clarification as to the definition of that term. However, it has come to FRA's attention that certain rail operations believed that they met the characteristics of a plant railroad, as set forth in the Policy Statement, when, in fact, their rail operations were part of the general railroad system of transportation (general system) and therefore did not meet the definition of a plant railroad. FRA would like to avoid any confusion as to what types of rail operations qualify as plant railroads. FRA would also like to save interested persons the time and effort needed to cross-reference and review FRA's Policy Statement to determine whether a certain operation qualifies as a plant railroad. Consequently, FRA has decided to define the term ''plant railroad'' in this part 271.

The proposed definition would clarify that when an entity operates a locomotive to move rail cars in service for other entities, rather than solely for its own purposes or industrial processes, the services become public in nature. Such public services represent the interchange of goods, which characterizes operation on the general system. As a result, even if a plant railroad moves rail cars for entities other than itself *solely on its property,* the rail operations will likely be subject to FRA's safety jurisdiction because those rail operations bring plant trackage into the general system.

The proposed definition of the term ''plant railroad'' is consistent with FRA's longstanding policy that it will exercise its safety jurisdiction over a rail operation that moves rail cars for entities other than itself because those movements bring the track over which the entity is operating into the general system. *See* 49 CFR part 209, Appendix A. Indeed, FRA's Policy Statement provides that ''operations by the plant railroad indicating it [i]s moving cars on . . . trackage for other than its own purposes (*e.g.,* moving cars to neighboring industries for hire)'' brings plant track into the general system and thereby subjects it to FRA's safety jurisdiction. 49 CFR part 209, Appendix A. Additionally, this interpretation of the term ''plant railroad'' has been upheld in litigation before the U.S. Court of Appeals for the Fifth Circuit. *See Port of Shreveport-Bossier* v. *Federal Railroad Administration,* No. 10–60324 (5th Cir. 2011) (unpublished per curium opinion).

''Positive train control'' means a system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, as described in subpart I of 49 CFR part 236.

''Railroad'' means: (1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation; and

(2) A person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

The definition of ''railroad'' is based upon 49 U.S.C. 20102(1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of non-highway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

''Risk'' means the combination of the probability (or frequency of occurrence) and the consequence (or severity) of a hazard.

''Risk-based HMP'' means a risk-based hazard management program.

''Risk reduction'' means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk mitigation strategies. It includes systematic procedures, practices, and policies for the management of safety risk.

''RRP'' means a Risk Reduction Program.

''RRP plan'' means a Risk Reduction Program plan.

''Safety culture'' means the shared values, actions, and behaviors that demonstrate a commitment to safety over competing goals and demands. FRA is proposing this definition because the RSIA requires a railroad's RRP to address safety culture. *See* 49 U.S.C. 20156(c). Because there was significant discussion in the RRP Working Group as to whether this definition was needed, however, FRA specifically requests public comment on the necessity and content of the proposed definition.

The proposed ''safety culture'' definition was discussed in the section-by-section analysis of the SSP NPRM. *See* 77 FR 55382. This definition is based on a research paper published by the DOT Safety Council. *See* U.S. Dep't of Transp., Safety Council, ''Safety Culture: A Significant Driver Affecting Safety in Transportation 2'' (2011), available at *http://safetycouncil.dot.gov/publications/safety-research-paper.pdf.* The DOT Safety Council developed this definition after extensive review of definitions used in a wide range of industries and organizations over the past two decades.

FRA acknowledges that this proposed definition is different than the one recommended by the RRP Working Group, and that railroads may have a different understanding of what constitutes safety culture. During RRP Working Group discussions, for example, some participants expressed the concern that the language ''over competing goals and demands'' would require a railroad to make safety the ultimate priority to the exclusion of all other concerns, without providing flexibility for a railroad to balance the concerns of profit and efficiency. FRA believes it is important, however, to utilize in this rule a definition that has been formulated by the DOT Safety Council. Furthermore, the proposed definition would not require a railroad to always prioritize safety concerns over competing goals and demands (*i.e.,* it would not require a railroad to have a perfect safety culture). Rather, the definition merely expresses how a safety culture can be evaluated by measuring the extent to which a railroad emphasizes safety over competing goals and demands, without imposing any such requirement.

''Safety performance'' means a realized or actual safety accomplishment relative to stated safety objectives.

''Safety outreach'' means the communication of safety information to support the implementation of an RRP throughout a railroad.

''Senior management'' means personnel at the highest level of a railroad's management who are responsible for making major policy decisions and long-term business plans regarding the operation of the railroad.

''STB'' means the Surface Transportation Board of the United States.

''Tourist, scenic, historic, or excursion operations'' means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations. This definition is consistent with FRA's other regulations. *See* 49 CFR 238.5 and 239.5.

The RSAC RRP Working Group recommended including definitions for the following terms: safety performance index and safety performance threshold. FRA determined that these definitions did not provide any additional clarity and were unnecessary. FRA requests public comment regarding whether any of these definitions or any other definitions should be added to the final rule.

Section 271.7—Waivers

Proposed § 271.7 would explain the process for requesting a waiver from a provision of the rule. FRA has historically entertained waiver petitions from parties affected by an FRA regulation. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general regulatory criteria is in the public interest and can be made without compromising or diminishing railroad safety.

The rules governing the FRA waiver process are found in 49 CFR part 211. In general, these rules state that after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. After reviewing information from the petitioning party and others, FRA would grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest, or both.

Section 271.9—Penalties and Responsibility for Compliance

Proposed § 271.9 would contain provisions regarding the proposed penalties for failure to comply with the proposed rule and the responsibility for compliance.

Paragraph (a) would identify the civil penalties that FRA may impose upon any person that violates or causes a violation of any requirement of the proposed rule. These penalties would be authorized by 49 U.S.C. 20156(h), 21301, 21302, and 21304. The proposed penalty provision parallels penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person that violates any requirement of the rule arising from this rulemaking or causes the violation of any such requirement would be subject to a civil penalty of at least $650 and not more than $25,000 per violation. Civil penalties would be assessed against individuals only for willful violations. Where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to individuals, or causes death or injury, a penalty not to exceed $105,000 per violation could be assessed. In addition, each day a violation continues would constitute a separate offense. Maximum penalties of $25,000 and $105,000 are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461, note, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373 (April 26, 1996), which requires each agency to regularly adjust certain civil monetary penalties in an effort to maintain their remedial impact and promote compliance with the law. Furthermore, a person could be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for the failure to comply with the regulations is important in ensuring that compliance is achieved. The proposed rule does not include a schedule of civil penalties, but a final rule would contain such a schedule.

Proposed paragraph (b) would clarify that any person, including but not limited to a railroad, contractor, or subcontractor for a railroad, or a local or state governmental entity that performs any function covered by the proposed rule, must perform that function in accordance with the requirements of part 271.

Section 271.11—Discovery and Admission as Evidence of Certain Information

As discussed in section VI of the preamble, above, an RSIA-mandated study by FRA concluded that it is in the public interest to protect certain information generated by railroads from discovery or admission into evidence in litigation. Section 109 of the RSIA provides FRA with the authority to promulgate a regulation if FRA determines that it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to prescribe a rule that addresses the results of the study.

Following the issuance of the study, the RSAC met and reached consensus on recommendations regarding the discovery and admissibility of information for the proposed SSP rule, with the understanding that an identical provision would be included in a proposed RRP rule. RSAC recommended that FRA issue a rule that would protect documents generated solely for the purpose of developing, implementing, or evaluating an RRP from: (1) Discovery, or admissibility into evidence, or considered for other purposes in a Federal or State court proceeding for damages involving property damage, personal injury, or wrongful death; and (2) State discovery rules and sunshine laws that could be used to require the disclosure of such information. As previously discussed in section III.B of the preamble, FRA published an SSP NPRM on September 7, 2012, and the information protection language contained in this RRP NPRM is essentially identical to that proposed by the SSP NPRM. *See* 77 FR 55390–55392. While this RRP NPRM does not respond to comments already received in response to the SSP NPRM, FRA will consider comments submitted to both the SSP and RRP NPRMs regarding the information protection provisions when developing an RRP final rule.

Also, sec. 109 of the RSIA mandates that the effective date of a rule prescribed pursuant to that section must be one year after the publication of that rule. FRA believes that the public interest considerations for the protections in § 271.11 are the same for the SSP rule for passenger railroads. Therefore, assuming that an SSP final rule might be published before an RRP final rule, FRA would likely make the SSP information protection provisions applicable to RRP programs as well. The effect of this proposal is that the information protection for RRP would become applicable one year after publication of an SSP final rule, permitting a railroad subject to the RRP rule to obtain information protection as soon as possible. FRA requests public comment regarding this approach.

In this § 271.11, FRA proposes discovery and admissibility protections that are based on the study's results and the RSAC recommendations. FRA modeled this proposed section after 23 U.S.C. 409. In sec. 409, Congress enacted statutory protections for certain information compiled or collected pursuant to Federal highway safety or construction programs. *See* 23 U.S.C. 409. Section 409 protects both data compilations and raw data. A litigant may rely on sec. 409 to withhold certain documents from a discovery request, in seeking a protective order, or as the basis to object to a line of questioning during a trial or deposition. Section 409 extends protection to information that may never have been in any Federal entity's possession.

Section 409 was enacted by Congress in response to concerns raised by the States that compliance with the Federal road hazard reporting requirements could reveal certain information that would increase the States' risk of liability. Without confidentiality protections, States feared that their ''efforts to identify roads eligible for aid under the Program would increase the risk of liability for accidents that took place at hazardous locations before improvements could be made.'' *Pierce County* v. *Guillen,* 537 U.S. 129, 133–34 (2003) (citing H.R. Doc. No. 94–366, p. 36 (1976)).

In *Guillen,* the Court considered the application of sec. 409 to documents created pursuant to the Hazard Elimination Program, which is a Federal highway program that provides funding to State and local governments to improve the most dangerous sections of their roads. *Id.* at 133. To be eligible for the program, the State or local government must (1) maintain a systematic engineering survey of all roads, with descriptions of all obstacles, hazards, and other dangerous conditions; and (2) create a prioritized plan for improving those conditions. *Id.*

The Court held that sec. 409 protects information actually compiled or collected by any government entity for the purpose of participating in a Federal highway program, but does not protect information that was originally compiled or collected for purposes unrelated to the Federal highway program, even if the information was at some point used for the Federal highway program. *Guillen* at 144. The Court took into consideration Congress's desire to make clear that the Hazard Elimination Program ''was not intended to be an effort-free tool in litigation against state and local governments.'' *Id.* at 146. However, the Court also noted that the text of sec. 409 ''evinces no intent to make plaintiffs worse off than they would have been had section 152 [Hazard Management Program] funding never existed.'' *Id.* The Court also held that sec. 409 was a valid exercise of Congress's powers under the Commerce Clause because sec. 409 ''can be viewed as legislation aimed at improving safety in the channels of commerce and increasing protection for the instrumentalities of interstate commerce.'' *Id.*

A comparison of the text of sec. 409 with sec. 109, which was added to the U.S. Code by the RSIA, shows that Congress used similar language in both provisions. Given the similar language and concept of the two statutes, and the Supreme Court's expressed acknowledgement of the constitutionality of sec. 409, FRA views sec. 409 as an appropriate model for proposed § 271.11.

FRA proposes that under certain circumstances, information (including plans, reports, documents, surveys, schedules, lists, or data) would not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding for damages. This information may not be used in such litigation for any purpose when it is compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP, including the railroad's analysis of its safety risks conducted pursuant to proposed § 271.103(b) and any identification of the mitigation measures with which it would address those risks pursuant to proposed § 271.103(c). Proposed § 271.11(a) applies to information that may not be in the Federal government's possession; rather, it may be information the railroad has as part of its RRP but would not be required to provide to the Federal government under this part.

The RSIA identifies reports, surveys, schedules, lists, and data as the forms of information that should be included as part of FRA's Study. *See* 49 U.S.C. 20119(a). However, FRA does not necessarily view this as an exclusive list. In the statute, Congress directed FRA to consider the need for protecting information that includes a railroad's analysis of its safety risks and its statement of the mitigation measures with which it would address those risks. Therefore, FRA deems it necessary to include ''documents'' and ''plans'' in this proposed provision to effectuate Congress' directive in sec. 109 of the

RSIA. Notwithstanding, FRA does not propose protecting all documents and plans that are part of an RRP. Rather, as proposed in § 271.11(a), the document has to be ''compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP under this part.'' The meaning of ''compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP under this part'' is discussed below.

As discussed previously, the proposed regulation would require a railroad to implement its RRP through an RRP plan. While the railroad will not provide in the RRP plan that it submits to FRA the results of the risk-based hazard analysis and the specific mitigation strategies it will be implementing, its own RRP plan may contain this information while it is in the possession of the railroad. Therefore, to adequately protect this type of information, the term ''plan'' is added to cover a railroad's RRP plan and any hazard elimination or mitigation plans.

It is important to note that these proposed protections will only extend to information (including plans, reports, documents, surveys, schedules, lists, or data) that is ''compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP.'' The term ''compiled and collected'' is taken directly from the RSIA. FRA recognizes that railroads may be reluctant to compile or collect extensive and detailed information regarding the safety hazards and associated risks on their system if this information could potentially be used against them in litigation. The term ''compiles'' refers to information that is generated by the railroad for the purposes of an RRP; whereas the term ''collected'' refers to information that is not necessarily generated for the purposes of the RRP, but is assembled in a collection for use by the RRP. It is important to note that the collection is protected; however, each separate piece of information that is not originally compiled for use by the RRP remains subject to discovery and admission into evidence subject to any other applicable provision of law or regulation.

The information has to be compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP. The use of the term ''solely'' means that the original purpose of compiling or collecting the information is exclusively for the railroad's RRP. A railroad cannot compile or collect the information for one purpose and then try to use proposed paragraph (a) to protect that information simply because it also uses that information for its RRP. The railroad's original and primary purpose of compiling or collecting the information must be for developing, implementing, or evaluating its RRP in order for the protections to be extended to that information.

Information a railroad had previously compiled or collected for non-RRP purposes would also not be protected, even if the railroad continued to compile or collect that information as part of its RRP. This is because RSIA limits the protections to information that is compiled or collected pursuant to a risk reduction program required by the statute; therefore, the proposed protections cannot be extended to information that was compiled or collected prior to the proposed rule because that information was not collected pursuant to a risk reduction program required by RSIA. As discussed above, when interpreting section 409, the Supreme Court held that there is no reason to interpret the protections as protecting information plaintiffs would have been free to obtain prior to the enactment of the Hazard Elimination Program. Consistent with the Court's ruling in *Guillen,* the proposed protections would not protect information that plaintiffs would have been free to obtain prior to the enactment of the proposed rule.

Furthermore, a single type of record, plan, document, etc., could contain both information that would be protected under the proposed provision and information that would not be protected. In other words, an entire railroad document or record would not be protected simply because it contained a single piece of information that was protected. For example, if a railroad began collecting a new type of information as part of its accident investigations, and that information was being collected solely for the purpose of developing, implementing, or evaluating its RRP, that specific information would be protected. The information that had been historically collected as part of the railroad's accident investigation program, however, would remain unprotected. FRA stresses that the intent of the proposed provisions is to leave neither railroads nor plaintiffs worse off than before the implementation of an RRP rule.

Additionally, if the railroad is required by another provision of law or regulation to collect the information, the protections of proposed paragraph (a) do not extend to that information because it is not being compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP. For example, information that a railroad must compile pursuant to FRA's accident/incident reporting regulations would not be protected.

The information protections would also not apply to information generated by safety risk reduction programs that do not fully comply with all the requirements of a final RRP rule. Section 109 extends protection to information generated by a safety risk reduction program that includes all the required elements of an RRP; a program that includes one or more, but not all, of the required elements of an RRP would not satisfy these statutory requirements. For example, FRA supports the development of the Short Line Safety Institute (*see http://www.fra.dot.gov/eLib/details/L15890*) to promote the safety of short line and regional railroad operations, information generated by such an institute as part of a short line or regional railroad's risk reduction program would only be protected if: (1) The railroad uses the information generated by the institute in a fully-implemented RRP, and (2) that information meets the other requirements in § 109 to receive protection. It is important to note, however, that RRP is scalable by design. Full compliance with the RRP regulation by a short line or regional railroad is therefore not likely to be as complex and comprehensive as it would be for a larger railroad, and a short line or regional railroad that voluntarily complies with an RRP final rule will receive information protection. FRA therefore believes it would be both unnecessary and not authorized by the RSIA to extend the proposed information protection provisions to safety risk reduction programs that did not fully comply with a final RRP rule. FRA invites public comment on this approach.

The information must be compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP. These three terms are taken directly from the RSIA. They cover the necessary uses of the information compiled or collected solely for the RRP. To develop an RRP, a railroad will need to conduct a risk-based hazard analysis to evaluate and identify the safety hazards and associated risks on its system. This type of information is essential and is information that a railroad does not necessarily already have. In order for the railroad to conduct a robust risk-based hazard analysis to develop its RRP, the protections from discovery and admissibility are extended to the RRP development stage. Based on the information generated by the risk-based

hazard analysis, the railroad would implement measures to mitigate or eliminate the risks identified. To properly implement these measures, the railroad will need the information regarding the hazards and risks on the railroad's system identified during the development stage. Therefore, the protection of this information is extended to the implementation stage. Finally, the railroad would be required to evaluate whether the measures it implements to mitigate or eliminate the hazards and risks identified by the risk-based hazard analysis are effective. To do so, it will need to review the information developed by the risk-based hazard analysis and the methods it has used to implement the elimination/mitigation measures. The use of this information in the evaluation of the railroad's RRP is protected.

The proposed protections would not apply to the fact that a railroad ultimately implemented a particular mitigation strategy, although the protections would apply to the information informing the railroad's decision as part of its RRP. For example, a railroad may elect to implement a new type of technology, such as new track inspection vehicles, as part of its technology implementation plan. Once the railroad is using these new track inspection vehicles, the fact that the railroad is using them is not protected by the proposed provision, as the track inspection vehicles are now serving a purpose other the development, implementation, or evaluation of the railroad's RRP (*i.e.,* they are being used for railroad operational purposes). The manner in which the railroad is using these track inspection vehicles would also not necessarily be protected (*e.g.,* is the railroad operating the track inspection vehicles properly?). Information from the technology analysis and technology implementation plan regarding the adopted track inspection vehicles, however, would remain protected. For example, an analysis of the track inspection vehicles' likely effectiveness in mitigating an identified hazard, as opposed to other mitigation strategies, would remain protected, as would any analyses regarding investment decisions related to the vehicles as opposed to alternative mitigations. Information regarding other technologies that had been analyzed but were not selected as mitigation strategies would also be protected. Information regarding the track inspection vehicles' ultimate effectiveness in addressing the identified hazard and risk would also be protected. FRA specifically requests public comment on this discussion.

The information covered by this proposed section shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding that involves a claim for damages involving personal injury, wrongful death, or property damage. The protections apply to discovery, admission into evidence, or consideration for others purposes. The first two situations come directly from the RSIA; however, FRA determined that for the protections to be effective they must also apply to any other situation where a litigant might try to use the information in a Federal or State court proceeding that involves a claim for damages involving personal injury, wrongful death, or property damage. For example, under proposed § 271.11, a litigant would be prohibited from admitting into evidence a railroad's risk-based hazard analysis. However, without the additional language, the railroad's risk-based hazard analysis could be used by a party for the purpose of refreshing the recollection of a witness or by an expert witness to support an opinion. The additional language, ''or considered for other purposes,'' ensures that the protected information remains out of a proceeding completely. The protections would be useless if a litigant is able to use the information in the proceeding for another purpose. To encourage railroads to perform the necessary vigorous risk analysis and to implement truly effective hazard elimination or mitigation measures, the protections should be extended to any use in a proceeding.

FRA further notes that this proposed section applies to Federal or State court proceedings that involve a claim for damages involving personal injury, wrongful death, or property damage. This means, for example, if a proceeding has a claim for personal injury and a claim for property damage, the protections are extended to that entire proceeding; therefore, a litigant cannot use any of the information protected by this section as it applies to either the personal injury or property damage claim. While sec. 109 of the RSIA only required the study to consider proceedings that involve a claim for damages involving personal injury or wrongful death, the RSAC (which includes both railroad and labor representation) recommended that FRA extend the information protection provisions to proceedings involving claims for property damage as well.

FRA believes it is advisable to follow this RSAC recommendation because extending the proposed information protections to property damage claims is consistent with the goal of encouraging railroads to engage in a robust and candid hazard analysis and to develop meaningful mitigation measures. The typical railroad accident resulting in injury or death also involves some form of property damage. Without protecting proceedings that involve a claim for property damage, a litigant could bring two separate claims arising from the same incident in two separate proceedings, the first for property damages and the second one for personal injury or wrongful death, and be able to conduct discovery regarding the railroad's risk analysis and to introduce this analysis in the property damage proceeding but not in the personal injury or wrongful death proceeding. This means that a railroad's risk analysis could be used against the railroad in a proceeding for damages. If this is the case, a railroad will be hesitant to engage in a robust and candid hazard analysis and develop meaningful mitigation measures. FRA also believes that expanding the information protection provisions to property damage claims would be supported by the same considerations underlying the study's conclusion that protecting risk reduction information from use in civil litigation claims for personal injuries or wrongful death would serve the broader public interest. FRA's proposed approach would also mitigate potential confusion from the application of different discovery and evidential standards for personal injury, wrongful death, and property damage claims all potentially arising from the same event.

Proposed paragraph (b) would ensure that the proposed protections set forth in paragraph (a) do not extend to information compiled or collected for a purpose other than that specifically identified in paragraph (a). This type of information shall continue to be discoverable, admissible into evidence, or considered for other purposes if it was discoverable, admissible, or considered for other purposes prior to the existence of this section. This includes information compiled or collected for a purpose other than that specifically identified in paragraph (a) that either: (1) Existed prior to 365 days after the publication date of a final rule; (2) was compiled or collected prior to 365 days after the publication date of a final rule and continues to be compiled or collected; or (3) is compiled and collected after 365 days after the publication date of a final rule. Proposed paragraph (b) affirms the

intent behind the use of the term ''solely'' in paragraph (a), in that a railroad could not compile or collect information for a different purpose and then expect to use paragraph (a) to protect that information just because the information is also used in its RRP. If the information was originally compiled or collected for a purpose unrelated to the railroad's RRP, then it is unprotected and would continue to be unprotected.

Examples of the types of information that proposed paragraph (b) applies to may be records related to prior incidents/accidents and reports prepared in the normal course of business (such as inspection reports). Generally, this type of information is often discoverable, may be admissible in Federal and State proceedings, or considered for other purposes, and should remain discoverable, admissible, or considered for other purposes where it is relevant and not unduly prejudicial to a party after the implementation of this part. However, FRA recognizes that evidentiary decisions are based on the facts of each particular case; therefore, FRA does not intend this to be a definitive and authoritative list. Rather, FRA merely provides these as examples of the types of information that paragraph (a) is not intended to protect.

Proposed paragraph (c) clarifies that a litigant cannot rely on State discovery rules, evidentiary rules, or sunshine laws that could be used to require the disclosure of information that is protected by paragraph (a). This provision is necessary to ensure the effectiveness of the Federal protections established in paragraph (a) in situations where there is a conflict with State discovery rules or sunshine laws. The concept that Federal law takes precedence where there is a direct conflict between State and Federal law should not be controversial as it derives from the constitutional principal that ''the Laws of the United States . . . shall be the supreme Law of the Land.'' U.S. Const., Art. VI. Additionally, FRA notes that 49 U.S.C. 20106 is applicable to this section, as FRA's study concluded that a rule ''limiting the use of information collected as part of a railroad safety risk reduction program in discovery or litigation'' furthers the public interest by ''ensuring safety through effective railroad safety risk reduction program plans.'' *See* Study at 64. FRA concurs in this conclusion. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to sec. 20106.

Section 271.13—Determination of Inadequate Safety Performance

Proposed § 271.13 would describe FRA's methodology for determining which railroads must comply with this part because they have inadequate safety performance. Overall, this section describes how FRA's analysis would have two phases: A statistically-based quantitative analysis phase followed by a qualitative assessment phase. Only railroads identified as possibly having inadequate safety performance in the quantitative analysis would continue on to the qualitative assessment, as discussed further below.

Proposed paragraph (a) describes FRA's methodology as a two-phase annual analysis, comprised of both a quantitative analysis and a qualitative assessment. This analysis would not include railroads excluded under proposed § 271.3(b) (*e.g.,* commuter or intercity passenger railroads that would be subject to FRA SSP requirements), railroads otherwise required to comply with part 271 (*i.e.,* Class I railroads and railroads previously determined to have inadequate safety performance under this section), railroads that voluntarily comply with this part under proposed § 271.15, and new railroads that have reported accident/incident data to FRA for fewer than three years, except that new railroads formed through an amalgamation of operations (for example, railroads formed through consolidations, mergers, or acquisitions of control) will be included in the analysis using the combined accident/incident data of the pre-amalgamation entities. FRA is requesting public comment on whether and, if so, how, it should also exclude from the analysis railroads formed by splitting off from a larger railroad.

FRA specifically requests comment on whether railroads that comply voluntarily under § 271.15 should be included in FRA's analysis, and FRA's final rule may elect to include voluntarily-compliant railroads in the analysis.

Paragraph (b) would describe the quantitative analysis, which would make a threshold identification of railroads that might have inadequate safety performance. Paragraph (b)(1) would specify that the quantitative analysis would be statistically-based and would include each railroad within the scope of the analysis, using historical safety data maintained by FRA for the three most recent full calendar years. The quantitative analysis would identify four factors regarding a railroad's safety performance: (1) Fatalities; (2) FRA reportable injury/illness rate; (3) FRA reportable accident/incident rate; and (4) FRA violation rate.[9]

The first factor, described in proposed paragraph (b)(1)(i), is a railroad's number of on-duty employee fatalities during the three-year period, determined using Worker on Duty-Railroad Employee (Class A) information reported on FRA Form 6180.55a [10] pursuant to FRA's accident/incident reporting regulations in part 225. FRA is requesting public comment on whether this factor should include fatalities to other classes of persons reported on FRA Form 6180.55a, such as Railroad Employee Not On Duty (Class B), Worker on Duty-Contractor (Class F), Nontrespassers-On Railroad Property (Class D), etc.

The second factor, described in proposed paragraph (b)(1)(ii), is a railroad's FRA on-duty employee injury/illness rate, calculated using ''Worker on Duty-Railroad Employee'' information reported on FRA Form 6180.55a and Form 6180.55 [11] pursuant to FRA's accident/incident reporting regulations in part 225. This rate would be calculated with the following formula:

Injury/Illness Rate = (Total FRA Reportable On-Duty Employee Injuries + Total FRA Reportable On-Duty Employee Occupational Illnesses over a 3-year period) ÷ (Total Employee Hours over a 3-year period/200,000)

This calculation would give the rate of employee injuries and occupational illnesses per 200,000 employee hours calculated over a 3-year period. FRA is requesting public comment on whether this factor should include injuries/illnesses to other classes of persons reported on FRA Form 6180.55a, such as Railroad Employee Not On Duty

[9] During RRP Working Group discussions, the ASLRRA expressed concern that use of FRA violation data to determine safety performance might be inappropriate, because FRA's prosecutorial discretion may result in different railroads receiving more or fewer violations. FRA believes that a railroad identified during the quantitative analysis could raise such a concern during the qualitative assessment, and FRA would consider that concern when making the final determination regarding the railroad's safety performance.

[10] Railroads use Form 6180.55a to report on-duty employee injuries and occupational illnesses.

[11] Railroads use Form 6180.55 to report the number of employee hours.

(Class B), Worker on Duty-Contractor (Class F), Nontrespassers-On Railroad Property (Class D), etc.

The third factor, described in proposed paragraph (b)(1)(iii), is a railroad's FRA reportable rail equipment accident/incident rate, calculated using information reported on FRA Form 6180.54 and Form 6180.55.[12] This rate would be calculated with the following formula:

Rail Equipment Accident/Incident Rate = Total FRA Reportable Rail Equipment Accidents/Incidents over a 3-year period ÷ (Total Train Miles over a 3-year period/ 1,000,000)

This calculation would give the rate of rail equipment accidents/incidents per 1,000,000 train miles calculated over a 3-year period. FRA is not proposing to exclude rail equipment accident/ incidents occurring at highway-rail grade crossings from this calculation, as highway-rail grade crossings present a significant safety issue for many railroads. FRA requests public comment on whether it should consider excluding rail equipment accidents/incidents occurring at highway-rail grade crossings from this calculation.

The fourth factor, described in proposed paragraph (b)(1)(iv), is a railroad's FRA violation rate, calculated using FRA's field inspector data system, which captures the number of violations and is made available to each railroad. The calculation also uses information reported to FRA on Form 6180.55. This rate would be calculated with the following formula:

Violation Rate = Total FRA Violations over a 3-year period ÷ (Total Train Miles over a 3-year period ÷ 1,000,000)

This calculation gives the rate of violations issued by FRA to a railroad per 1,000,000 train miles calculated over a 3-year period.

Proposed paragraph (b)(2) states that the quantitative analysis would identify a railroad as possibly having inadequate safety performance if at least one of two conditions were met. Identified railroads would be examined further in the qualitative assessment, described below.

The first condition would be whether a railroad has had one or more fatalities. FRA considers an on-duty employee fatality a strong indication of inadequate safety performance. If a railroad has at least one fatality within the 3-year period of the quantitative analysis, that railroad will be examined further in the qualitative assessment.

[12] Railroads use Form 6180.54 to report accidents/incidents and Form 6180.55 to report total train miles.

The second condition would be whether a railroad was at or above the 95th percentile in at least two of the three factors described in proposed paragraphs (b)(1)(ii) through (iv) of this section (*e.g.,* a railroad's FRA injury/ illness rate, FRA accident/incident rate, and FRA violation rate). For example, if the scope of data includes a set of 100 railroads, the railroads with the five highest injury/illness rates, accident/ incident rates, or violation rates would be flagged. Those railroads flagged in two or more of these factors would be examined further in the qualitative assessment. Preliminary analyses estimate that FRA's proposed approach would identify approximately 42 railroads over a five year period, which FRA believes is a reasonable pool of potential railroads to examine further in the qualitative analysis. Lowering the threshold to railroads in the 90th percentile would identify approximately 84 railroads, and lowering the threshold further to the 80th percentile would identify approximately about 167 railroads. While FRA believes these lower thresholds would yield a pool too large and unwieldy to address comprehensively in the qualitative analysis, FRA requests public comment on whether it should consider flagging railroads at a threshold either above or below the 95th percentile in two or more of the identified factors.

Proposed paragraph (c) would describe FRA's qualitative assessment of railroads identified in the quantitative analysis as possibly having inadequate safety performance. During the qualitative assessment, FRA would consider input from both a railroad and the railroad's employees, as well as any other pertinent information. FRA believes such input would be helpful in determining whether the quantitative analysis accurately identified a problem with the railroad's safety performance.

Paragraph (c)(1) would state that FRA would provide initial written notification to railroads identified in the threshold quantitative analysis as possibly having inadequate safety performance. Paragraph (c)(1)(i) would further specify that a notified railroad must inform its employees of FRA's notice within 15 days of receiving notification. This employee notification would have to be posted at all locations where a railroad reasonably expects its employees to report for work and have an opportunity to observe the notice. The notice must be continuously displayed until 45 days following FRA's initial notice. A railroad must use other means to notify employees who do not have a regular on-duty point to report for work, consistent with the railroad's standard practice for communicating for employees. Such a notification could take place by email, for example. The notification must inform employees that they may submit confidential comments to FRA regarding the railroad's safety performance, and must contain instructions for doing so. Any such employee comments must be submitted within 45 days of FRA's initial notice.

Likewise, paragraph (c)(1)(ii) would provide railroads 45 days from FRA's initial notice to provide FRA documentation supporting any claim that the railroad does not have inadequate safety performance. For example, if a fatality on railroad property was determined to be due to natural causes (such as cardiac arrest), or an accident/incident due to an act of God, the railroad's chief safety officer could provide a signed letter attesting to the facts, and asserting the railroad's reasons for believing that it should not be found to have inadequate safety performance. A railroad could also submit information regarding any extenuating circumstances of an incident or the severity of an injury (for example, a bee sting may not be as serious a safety concern as a broken bone). FRA will also consider explanations regarding FRA-issued violations, as well as any mitigating action taken by the railroad to remedy the violations.

Paragraph (c)(2) would generally describe the qualitative assessment of railroads identified by the quantitative analysis. During the qualitative assessment, FRA would consider any information provided by a railroad or its employees pursuant to paragraph (c)(1) of this section, as well as any other pertinent information. FRA may communicate with the railroad during the assessment to clarify its understanding of any information the railroad may have submitted. Based upon the qualitative assessment, FRA would make a final determination regarding whether a railroad has inadequate safety performance no later than 90 days following FRA's initial notice to the railroad.

Paragraph (d) would state that FRA will provide a final notification to each railroad given an initial notification pursuant to paragraph (c) of this section, informing the railroad whether or not it has been found to have inadequate safety performance. A railroad with inadequate safety performance must develop and implement an RRP compliant with the proposed rule and must provide FRA an RRP plan no later than 90 days after receiving the final notification, as provided by proposed § 271.301(a).

The RRP Working Group advised FRA to allow a railroad with inadequate safety performance to choose to establish either an RRP in compliance with proposed part 271 or an SSP in compliance with proposed part 270. The Working Group believed that some railroads (particularly smaller railroads more in need of formal structures to help them improve safety) would elect to develop, with FRA assistance, an SSP rather than an RRP. While FRA supports providing additional flexibility to railroads with inadequate safety performance, this provision has not been included in the current rule text because an SSP rule has not yet taken effect. If the SSP rule goes into effect before the publication of an RRP final rule, FRA would review this section and could provide for the choice in the final rule, as advised by the Working Group. FRA is also soliciting additional public comment on such an approach.

Paragraph (e) would state that a railroad with inadequate safety performance would have to comply with the requirements of part 271 for at least five years, running from the date on which FRA approves the railroad's RRP plan. FRA believes a five-year compliance period provides the minimum amount of time necessary for an RRP to have a substantive effect on a railroad's safety performance, particularly if, pursuant to proposed § 271.221, the railroad has taken 36 months (3 years) to fully implement its RRP. An evaluation of an FRA C3RS demonstration site showed the following safety improvements after two and a half years: (1) A 31-percent increase in the number of cars moved between incidents; (2) improved labor-management relationships and employee engagement (*i.e.,* an improved safety culture); and (3) a reduction in discipline cases. FRA believes this evaluation shows that risk-reduction-type programs can successfully yield positive impacts within a period of only a few years. *See* Ranney, J. and Raslear, T., ''Derailments decrease at a C3RS site at midterm,'' FRA Research Results: RR12–04, April 2012, available at *http://www.fra.dot.gov/eLib/details/L01321.* The five-year minimum compliance period should create the time necessary to determine whether safety improvements achieved upon implementation of the RRP are sustainable. Furthermore, the initial development and implementation of an RRP requires the expenditure of resources, and as discussed in the Regulatory Impact Analysis for this proposed rule, FRA does not expect an RRP to create a full level of benefits until the RRP is fully implemented or no later than the fourth year after the implementation of the rule. A minimum five-year compliance period, therefore, provides time for a railroad to begin receiving the full benefits of its RRP investment, although fewer overall benefits could be received if the railroad had elected to take the entire three years provided to fully implement its RRP.

At the end of the five-year period, under proposed paragraph (f), the railroad could petition FRA, according to the procedures for waivers in 49 CFR part 211, for approval to discontinue compliance with part 271. Upon receiving a petition, FRA would evaluate the railroad's safety performance in order to determine whether the railroad's RRP has resulted in significant safety improvements, and whether these measured improvements are likely to be sustainable in the long term. FRA's evaluation would include a quantitative analysis as described in proposed paragraph (b). FRA would also examine qualitative factors and review information from FRA RRP audits and other relevant sources.

Analysis of the railroad's safety performance for purpose of deciding whether its petition should be granted will be driven by the unique characteristics of the railroad and its RRP; for this reason it is not possible to enumerate the types of data that will be examined in the context of a petition to discontinue compliance. In general, FRA would look at information to determine whether real and lasting changes to the operational safety and to the organizational safety culture had been made. The Safety Board will use staff recommendations and other information it deems necessary to make a final determination about whether granting a petition is in the interest of public safety. FRA seeks comment, however, on whether it should specify various factors, criteria, and data that should be considered to determine whether a waiver should be granted. If so, what should those factors, criteria, and data be? FRA may include any such standards in a final rule.

After completing the evaluation, FRA would notify the railroad in writing whether or not it would be required to continue compliance with part 271. FRA specifically requests public comment on whether railroads with inadequate safety performance should be required to comply with part 271 permanently. In general, RRPs are strategies for gradually improving railroad safety over the long-term. If a railroad discontinues an implemented RRP, this could result in the loss of many future safety improvements. Additionally, the development and implementation of an RRP require the expenditure of railroad resources. If an RRP is ended too soon, this might result in a railroad not obtaining the greatest benefit possible from its RRP investment. Requiring permanent compliance for railroads with inadequate safety performance, therefore, could maximize both the safety improvement and benefits of an RRP over the long-term. Furthermore, an inadequate safety performance railroad required to comply with part 271 permanently would also continue to receive the information protections provided for in proposed § 271.11. FRA requests comment on this approach and could elect to require continued compliance for inadequate safety performance railroads in a final rule.

FRA also specifically requests public comment on whether the five-year compliance period in proposed paragraph (e) should run from the date that the railroad's RRP is fully implemented—rather than the date on which FRA approved the railroad's RRP plan—in order to provide more time for the RRP to have a significant effect on the railroad's safety and for FRA to obtain more information in order to determine whether it should consider granting a petition for approval to discontinue compliance with this part. This alternative approach would also provide an incentive for a railroad to implement its RRP quickly, as doing so would then allow the railroad to terminate its RRP sooner as well.

FRA also specifically requests public comment on what should happen when FRA denies an inadequate safety performance railroad's petition to discontinue compliance with part 271. Should the railroad be permitted to submit a new petition as soon as it wishes, or should the regulations impose a new mandatory compliance period upon the railroad? In other words, should FRA permit the railroad to submit a new petition immediately or only after a certain period of time, such as one year or five years?

Railroads should note that § 271.223 proposes to give each affected railroad 36 months, running from the date FRA approves the railroad's RRP plan, to fully implement its RRP. If the final rule ultimately adopts this proposal, FRA anticipates that a petition for approval to discontinue compliance would most likely be unsuccessful if an inadequate safety performance railroad took the entire 36 months to achieve full implementation. In such a scenario, FRA would likely find that a petition could not be granted because it had only two years' worth of data to determine

whether the fully implemented RRP had been successful in improving the railroad's safety performance. FRA would be more likely to grant a petition, however, if the railroad had fully implemented its RRP before the 36-month deadline. FRA anticipates that many inadequate safety performance railroads, with systems significantly smaller than those of Class I railroads, would not require the full 36 months to implement an RRP.

FRA would encourage a railroad with inadequate safety performance to continue its RRP even if FRA grants its petition to discontinue compliance with part 271. If a railroad does continue its RRP, it could be considered a voluntarily-compliant railroad under proposed § 271.15, which would allow proposed § 271.11 to continue to protect information that continues to be compiled or collected pursuant to the railroad's RRP from discovery and admission as evidence in litigation. If a railroad decides not to continue with a part 271-compliant RRP, information that had been compiled or collected pursuant to the part 271-compliant RRP would remain protected under § 271.11. Any information compiled or collected pursuant to a non-compliant RRP, however, would not be protected under § 271.11.

Section 271.15—Voluntary Compliance

The RSIA provides that railroads not required to establish a railroad safety risk reduction program may nevertheless voluntarily submit for FRA approval a plan meeting the requirements of the statute. *See* 49 U.S.C. 20156(a)(4). Proposed § 271.15(a) would implement this language by permitting a railroad not otherwise subject to the proposed rule to voluntarily comply by establishing and fully implementing an RRP that meets the requirements of this part 271. Any such voluntary RRP must be supported by an RRP plan that has been submitted to FRA for approval pursuant to the requirements of proposed subpart D. Paragraph (a) would also clarify that following FRA's approval of the RRP plan for a voluntarily-compliant railroad, the railroad could be subject to civil penalties or other enforcement action if it then failed to comply with the part 271 requirements. It is important to ensure that voluntarily-compliant railroads meet the regulatory requirements because information compiled or collected pursuant to a voluntarily-compliant RRP would be protected from discovery or disclosure in litigation under proposed § 271.11. If the RRP information for a voluntarily-compliant railroad is protected, FRA believes such a railroad should be subject to civil penalties or other enforcement action for failing to comply with part 271. FRA specifically requests public comment on this proposal.

Paragraph (b) would specify that a voluntarily-compliant railroad would be required to comply with this part 271's requirements for a minimum period of five years, running from the date on which FRA approves the railroad's RRP plan. As explained above regarding railroads with inadequate safety performance, FRA believes that a minimum five-year period may provide time for a railroad to realize the safety improvements and benefits associated with its RRP investment. Under proposed paragraph (c), a voluntarily-compliant railroad would be able to petition FRA for approval to discontinue compliance with this part after the end of this five-year period. Any such petition would have to be filed in accordance with the procedures for waivers contained in 49 CFR part 211. This NPRM is not proposing any specific standards for the granting of such petitions other than what are currently found in part 211. FRA requests public comment, however, on whether it should establish such standards and, if so, what those standards should consist of. Furthermore, as with inadequate safety performance railroads, FRA specifically requests public comment on whether the minimum five-year compliance period should run from the date that a railroad's RRP is fully implemented, in order to provide more time for the RRP to have a significant effect on the railroad's safety.

Paragraph (d) would provide that the information protection provisions of proposed § 271.11 (Discovery and admission as evidence of certain information) would not apply to information that was compiled or collected pursuant to a voluntarily-compliant RRP that was not conducted in accordance with the provisions of this part 271. As discussed in the section-by-section analysis for § 271.11, voluntary risk reduction programs (such programs generated as part of a Short Line Safety Institute) would have to fully comply with an RRP final rule in order for the information generated to be protected from discovery and use as evidence in litigation.

During the RSAC process, FRA and the RRP Working Group discussed the possibility of permitting Class II or Class III railroads not otherwise required to comply with this proposed rule to voluntarily comply with an SSP rule instead of an RRP rule. While not proposed in this NPRM, as an SSP rule has not been finalized, FRA is specifically requesting public comment on whether railroads should be permitted to voluntarily comply with an SSP rule. The FRA may elect to either include such an approach in an RRP final rule or to amend an SSP final rule to provide for such.

Subpart B—Risk Reduction Program Requirements

Subpart B would contain the basic elements of an RRP required by the proposed rule. The proposed rule would provide a railroad significant flexibility in developing and implementing an RRP.

Section 271.101—Risk Reduction Programs

Proposed § 271.101 would contain general requirements regarding RRPs. Paragraph (a)(1) would require railroads to establish and fully implement an RRP meeting the requirements of this part 271. As specified by the RSIA, an RRP must systematically evaluate safety hazards on a railroad's system and manage risks associated with those hazards to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. *See* 49 U.S.C. 20156(a)(1)(A). FRA intends for an RRP to be scalable based upon the size of a railroad. For example, a large railroad would not be expected to identify every safety hazard on its system, but could take a more focused and project specific view of safety hazard identification. A railroad with a smaller system (*e.g.,* a Class II or III railroad determined to have inadequate safety performance), however, might be asked to take a closer look at specific safety hazards.

Paragraph (a) also clarifies that an RRP must be an ongoing program that supports continuous safety improvement. A railroad that conducts a one-time risk-based hazard analysis and does nothing further after addressing the results of that analysis will not have established a compliant RRP. Paragraph (a) would also list the necessary components that an RRP must contain, including: (1) A risk-based hazard management program (described in § 271.103); (2) a safety performance evaluation component (described in § 271.105); (3) a safety outreach component (described in § 271.107); (4) a technology analysis and technology implementation plan (described in § 271.109); and (5) RRP implementation and support training (described in § 271.111).

Paragraph (b) would require a railroad's RRP to be supported by an RRP plan, meeting the requirements of

proposed subpart C, that has been approved by FRA.

Paragraph (c) would address railroads subject to the RRP rule that host passenger train service for passenger railroads subject to the requirements of the proposed SSP rule. Under § 270.103(a)(2) of the proposed SSP rule, a passenger railroad must communicate with each host railroad to coordinate the portions of its SSP plan that are applicable to the host railroad. Paragraph (c) would require a host railroad, as part of its RRP, to participate in this communication and coordination with the passenger railroad.

Paragraph (d) would require a railroad to ensure that persons utilizing or performing on its behalf a significant safety-related service support and participate in the railroad's RRP. Such persons would include entities such as host railroads, contract operators, shared track/corridor operators, or other contractors utilizing or performing significant safety-related services, and must be identified by the railroad in its RRP plan pursuant to proposed § 271.205(b).

Section 271.103—Risk-Based Hazard Management Program

This proposed section would contain the requirements for each risk-based hazard management program (HMP). Proposed § 271.103(a)(1) would require a railroad's RRP to include a risk-based HMP that proactively identifies hazards and mitigates the risks associated with those hazards. A risk-based HMP must be integrated, system-wide, and ongoing. The scope of a risk-based HMP would be scalable based upon the size and extent of the railroad's system.

Paragraph (a)(2) proposes that a risk-based HMP must be fully implemented (*i.e.,* activities initiated) within 36 months after FRA approves a railroad's RRP plan. Full implementation means that a railroad should have completed its risk analysis and begun mitigation strategies within 36 months of plan approval. If a railroad elects to test a mitigation strategy in a pilot project (as permitted by proposed § 271.103(c)(2)), ''fully implemented'' means that the pilot project must be fully operational within 36 months.

Paragraph (b) would state that a railroad must conduct a risk-based hazard analysis as part of its risk-based HMP. The types of principles and processes that inform a successful risk-based hazard analysis have already been well-established by programs previously discussed in this preamble, such as MIL–STD–882, APTA's ''Manual for the Development of System Safety Program Plans for Commuter Railroads'', and FRA's ''Collision Hazard Analysis Guide.'' A railroad subject to a final RRP rule could use any of these programs for guidance on how to conduct a risk-based hazard analysis, pursuant to FRA's approval of the processes in the railroad's RRP plan under proposed § 271.211. As described in the ''Collision Hazard Analysis Guide,'' a risk-based hazard analysis is performed to identify hazardous conditions for the purpose of mitigation, and could include several analysis techniques applied throughout the lifetime of an RRP. *See* ''Collision Hazard Analysis Guide'' at 8. A full hazard analysis could consist of various analyses, including a Preliminary Hazard Analysis, Failure Modes and Effects Analysis, Operating Hazard Analysis, and others, although existing operations already designed, built, and operating may not require all these analyses. *Id.* FRA specifically requests public comment regarding what type of additional guidance would help railroads comply with the requirements of this proposed section.

Paragraph (b) specifies that, at a minimum, a risk-based hazard analysis must address the following components of a railroad's system: Infrastructure; equipment; employee levels and work schedules; operating rules and practices; management structure; employee training; and other areas impacting railroad safety that are not covered by railroad safety laws or regulations or other Federal laws or regulations.

While the RSIA directed railroads to address safety culture in their risk-based hazard analyses, FRA chose not to be prescriptive regarding this requirement, as prescribing how risk-based hazard analysis would identify hazards generated by a safety culture would be difficult. FRA would require railroads to measure their safety culture, however, in proposed § 271.105(a), and believes that this proposed approach would adequately address any related safety concerns presented by a railroad's safety culture. With respect to measuring safety culture, the proposed rule would permit railroads to identify the safety culture measurements methods that they find most effective and appropriate to their local conditions. When measuring safety culture, FRA would expect a railroad to use a method that was capable of correlating a railroad's safety culture with actual safety outcomes. For example, such measurement methods could include surveys that assess safety culture using validated scales, or some other method or measurement that accurately identifies aspects of the railroad's safety culture that correlate to safety outcomes. Ultimately, FRA would expect a railroad to demonstrate that improvements in the measured aspects of safety culture would reliably lead to reductions in accidents, injuries, and fatalities. FRA requests public comment on how a railroad should measure its safety culture as part of its RRP.

As further described in paragraph (b), a risk-based hazard analysis must identify hazards by analyzing the following: (1) Various aspects of the railroad's system (including any operational changes, system extensions, or system modifications); and (2) accidents/incidents, injuries, fatalities, and other known indicators of hazards (such as data compiled from a close call reporting program). A railroad must then calculate risk by determining and analyzing the likelihood and severity of potential events associated with the identified hazards. These risks must then be compared and prioritized for the purpose of mitigation.

Paragraph (c)(1) would require a railroad, based on its risk-based HMP, to design and implement mitigation strategies that improve safety by mitigating or eliminating aspects of a railroad's system that increase risks identified in the risk-based hazard analysis and enhancing aspects of a railroad's system that decrease risks identified in the risk-based hazard analysis. As provided in proposed paragraph (c)(2), a railroad could use pilot projects (including those conducted by other railroads) to determine whether quantitative data suggests that a particular mitigation strategy has potential to succeed on a full-scale basis. FRA anticipates that railroads will design and implement mitigation strategies that are either cost-beneficial or cost-neutral. FRA requests public comment on this assumption. FRA is specifically interested in the experience of any railroads that may have already utilized risk reduction strategies, and whether or not such railroads have realized cost benefits from the design and implementation of risk mitigation strategies. In railroads' experiences, how much have mitigation strategies related to risk reduction activities cost?

As discussed above in the analysis of the purpose and scope provisions of proposed § 271.1, FRA does not intend the proposed regulation to address hazards and risks that are completely unrelated to railroad safety and that would fall directly under the jurisdiction of either OSHA or the EPA. FRA would not, therefore, expect a risk-based HMP to address hazards and risks that go beyond the limits of FRA's railroad safety jurisdiction. A risk-based

HMP should, however, include railroad safety hazards and risks that could result in damage to the environment, such as a derailment that could result in a hazardous materials release. In such situations, the underlying hazard or risk would fall within FRA's railroad safety jurisdiction. FRA seeks public comment on whether this section should include a statement clarifying the railroad safety scope of the risk-based HMP.

Additionally, the proposed regulation does not define a level of risk that railroads must target with their risk-based HMPs. FRA's Passenger Equipment Safety Standards require passenger railroads, however, when procuring new passenger cars and locomotives, to ensure that fire safety considerations and features in the design of the equipment reduce the risk of personal injury caused by fire to an acceptable level using a formal safety methodology such as MIL–STD–882. *See* 49 CFR 238.103(c). Passenger railroads operating Tier II passenger equipment are also required to eliminate or reduce risks posed by identified hazards to an acceptable level. *See* 49 CFR 238.603(a)(3). FRA seeks comment on whether a final RRP rule should define levels of risks that a railroad's risk-based HMP must target.

Section 271.105—Safety Performance Evaluation

This section would contain requirements for safety performance evaluations. Safety performance evaluation is a necessary part of a railroad's RRP because it determines whether the RRP is effectively reducing risk. It also monitors the railroad's system to identify emerging or new risks. In this sense, it is essential for ensuring that a railroad's RRP is an ongoing process, and not merely a one-time exercise.

Paragraph (a) would require a railroad to develop and maintain ongoing processes and systems for evaluating the safety performance of a railroad's system. A railroad must also develop and maintain processes and systems for measuring its safety culture. For example, a railroad could measure its safety culture by surveying employees and management to establish an initial baseline safety culture, and then comparing that initial baseline to subsequent surveys. FRA would give a railroad substantial flexibility, however, to decide which safety culture measurement was the best fit for the organization. FRA's primary concern would be that the selected measurement would provide a way to demonstrate that an improvement in the safety culture measurement would reliably lead to a corresponding improvement in safety. Overall, a safety performance evaluation would consist of both a safety monitoring and a safety assessment component.

Paragraph (b) would establish the safety monitoring component by requiring a railroad to monitor the safety performance of its system. At a minimum, a railroad must do so by establishing processes and systems for acquiring safety data and information from the following sources: (1) Continuous monitoring of operational processes and systems (including any operational changes, system extensions, or system modifications); (2) periodic monitoring of the operational environment to detect changes that may generate new hazards; (3) investigations of accidents/incidents, injuries, fatalities, and other known indicators of hazards; (4) investigations of reports regarding potential non-compliance with Federal railroad safety laws or regulations, railroad operating rules and practices, or mitigation strategies established by the railroad; and (5) a reporting system through which employees can report safety concerns (including, but not limited to, hazards, issues, occurrences, and incidents) and propose safety solutions and improvements. The requirement for a reporting system would not require a railroad to establish an extensive program like FRA's Confidential Close Call Reporting System (C3RS). Rather, a railroad would have substantial flexibility to design a reporting system best suited to its own organization (or, if a railroad already has some sort of reporting system, to modify it to meet the needs of the railroad's RRP). For example, a railroad could decide whether or not it wanted its reporting system to be confidential or non-punitive.[13] Or, in the alternative, the reporting system could be something as simple as a suggestion box made available to employees.

Paragraph (c) would establish the safety assessment component, the purpose of which is to assess the need for changes to a railroad's mitigation strategies or overall RRP. To do so, a railroad must establish processes to analyze the data and information collected pursuant to the safety monitoring component of this section, as well as any other relevant data regarding the railroad's operations, products, and services. At a minimum, this safety assessment must: (1) Evaluate the overall effectiveness of the railroad's RRP in reducing the number and rates of railroad accidents/incidents, injuries, and fatalities; (2) evaluate the effectiveness of the railroad's RRP in meeting the goals described in its RRP plan pursuant to proposed § 271.203(c); (3) evaluate the effectiveness of risk mitigations in reducing the risk associated with an identified hazard (any hazards associated with ineffective mitigation strategies would be required to be reevaluated through the railroad's risk-based HMP); and (4) identify new, potential, or previously unknown hazards, which shall then be evaluated by the railroad's risk-based HMP.

Section 271.107—Safety Outreach

This section contains requirements regarding the safety outreach component of an RRP. Under proposed paragraph (a), an RRP must include a safety outreach component that communicates RRP safety information to railroad personnel (including contractors) as that information is relevant to their positions. At a minimum, a safety outreach program must: (1) Convey safety-critical information; (2) explain why RRP-related safety actions are taken; and (3) explain why safety procedures are introduced or changed.

Railroads should note that this section imposes only a general education and communication requirement (similar to a briefing), and not a training curriculum requirement that would require railroads to test and qualify employees on the information conveyed. The focus of this section would be limited to outreach and safety awareness. A limited one-time RRP training requirement for railroad employees who have significant responsibility for implementing and supporting a railroad's RRP is contained in proposed § 271.111, discussed below. Furthermore, this section would only require a railroad to communicate RRP safety information that is relevant to an employee's position. For example, a railroad could be expected to notify railroad employees of a mitigation strategy that is being implemented that requires employee participation (*e.g.,* a close call program). A railroad would also have to communicate safety information to employees who worked

[13] If a railroad elected to use a reporting system that was non-punitive in nature, FRA would expect it to contain certain limitations that would prevent the system from becoming a way for railroad employees to completely avoid culpability for any type of wrongdoing, such as willful misconduct. For example, FRA's C3RS pilot programs do not protect an employee from discipline under certain circumstances, including when: The employee's action or lack of action was intended to damage property, injure individuals, or place others in danger; the employee's action or lack of action involved a criminal defense; and the event resulted in an identifiable release of hazardous materials. FRA would expect any railroad non-punitive reporting system to have similar limitations.

in the implementation and support of the RRP, in addition to providing these employees the implementation and support training proposed in § 271.111. For example, a railroad would be expected to communicate the effect the RRP was having on the railroad's overall safety performance to employees who implemented and supported the railroad's RRP. This section would not, however, require a railroad to train all employees on RRP requirements and principles. This section would also not require a railroad to provide employees any sort of job-specific training.

Paragraph (b) would require a railroad to report the status of risk-based HMP activities to railroad senior management on an ongoing basis. A railroad would have flexibility in its RRP plan to specify what ''ongoing basis'' means.

Section 271.109—Technology Analysis and Technology Implementation Plan

This section would implement the RSIA requirement that an RRP include a technology analysis and a technology implementation plan. *See* 49 U.S.C. 20156(e).

Paragraph (a) would require a Class I railroad to conduct a technology analysis and to develop and adopt a technology implementation plan no later than three years after the publication date of the final rule. A railroad with inadequate safety performance shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after receiving final written notification from FRA that it shall comply with this part, pursuant to § 271.13(e), or no later than three years after the publication date of the final rule, whichever is later. A railroad that the STB reclassifies or newly classifies as a Class I railroad shall conduct a technology analysis and develop or adopt a technology implementation plan no later than three years following the effective date of the classification or reclassification or no later than three years after the effective date of the final rule, whichever is later. A voluntarily-compliant railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after FRA approves the railroad's RRP plan. It is important to note that the technology implementation plan needs to be adopted within three years of the various events described in paragraph (a), not necessarily the actual technology. FRA understands that certain technologies may take longer than three years to properly implement, and the three year timeline in paragraph (a) does not apply to this technology. FRA would, however, expect a railroad to implement technology in a timely manner consistent with its implementation plan. Further, as addressed by paragraph (d), if a railroad implements technology pursuant to 49 CFR part 236, subpart I (Positive Train Control Systems), the railroad is required to comply with the timeline set forth in RSIA.

Under paragraph (b), a technology analysis must evaluate current, new, or novel technologies that may mitigate or eliminate hazards and the resulting risks identified through the risk-based hazard management program. The railroad would analyze the safety impact, feasibility, and costs and benefits of implementing technologies that will mitigate or eliminate hazards and the resulting risks. At a minimum, a technology analysis must consider processor-based technologies, positive train control (PTC) systems, electronically-controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position monitors and indicators, trespasser prevention technology, and highway-rail grade crossing warning and protection technology. FRA specifically requests public comment on whether a technology analysis should be required to consider additional technologies, or whether some of the proposed technologies do not need to be addressed by the technology analysis.

Under paragraph (c), a railroad must develop, and periodically update as necessary, a technology implementation plan that contains a prioritized implementation schedule describing the railroad's plan for development, adoption, implementation, maintenance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified in the railroad's risk-based HMP. A railroad would not be required to include a certain number or type of technology in its plan, as this will depend upon the identified hazards. As proposed, the phrase ''periodically update as necessary'' means that a railroad's plan must be ongoing and continuous, rather than a one-time exercise. When a railroad updates its plan, it would be required to do so in a way that extended the plan 10 years from the date of the update. FRA is specifically requesting public comment on whether the phrase ''as necessary'' should be replaced by a definite requirement for a railroad to update its plan after a specific period of time. If so, how long should this time period be? For example, should a railroad be required to update its technology implementation plan annually?

Paragraph (d) would state that, except as required by 49 CFR part 236, subpart I (Positive Train Control Systems), if a railroad decides to implement a PTC system as part of its technology implementation plan, the railroad shall set forth and comply with a schedule that would implement the system no later than December 31, 2018, as required by the RSIA. *See* 49 U.S.C. 20156(e)(4)(B). However, this paragraph would not, in itself, require a railroad to implement a PTC system. In addition, FRA specifically seeks public comment on whether a railroad electing to implement a PTC system would find it difficult to meet the December 31, 2018 implementation deadline. If so, what measures could be taken to assist a railroad struggling to meet the deadline and achieve the safety purposes of the statute?

Section 271.111—Implementation and Support Training

This proposed section would require a railroad to provide RRP training to each employee who has significant responsibility for implementing and supporting the railroad's RRP. This proposed training requirement would apply to any employee with such responsibility, including an employee of a person identified by a railroad's RRP plan under proposed § 271.205(a)(3) as utilizing or performing significant safety-related services on the railroad's behalf. While railroads will have some flexibility in identifying which employees have significant RRP responsibilities, the following two categories of employees are examples of who should be included: (1) Employees who hold positions of safety leadership (*e.g.,* corporate safety and operations officers); and (2) employees whose job duties primarily relate to developing and implementing an RRP (*e.g.,* employees tasked with conducting the mandatory risk-based hazard analysis or implementing mitigation measures). Railroad operating employees whose jobs are only tangentially related to RRP, such as locomotive engineers or dispatchers, would not be expected to have RRP training. FRA specifically requests public comment regarding which railroad employees should be provided RRP training.

This training would help ensure that personnel with significant RRP responsibilities are familiar with the elements of the railroad's program and have the knowledge and skills needed to fulfill their responsibilities. While this training requirement was not contained in the ''Recommendations to the Administrator'' document voted on by the RSAC RRP Working Group, FRA

believes the requirement is necessary to ensure the effectiveness of a railroad's RRP.[14] A railroad's RRP can be successful only if those who are responsible for implementing and supporting the program understand the requirements and goals of the program. Including an RRP training component in this NPRM is also necessary because such RRP training would not otherwise be required by FRA's training standards rule, published on November 7, 2014. *See* 79 FR 66460. In general, the training standards rule requires a railroad to develop and submit for FRA approval a training program for ''safety-related railroad employees.'' *Id.* Section 243.5 defines a ''safety-related railroad employee'' as follows:

Safety-related railroad employee means an individual who is engaged or compensated by an employer to: (1) Perform work covered under the hours of service laws found at *49 U.S.C. 21101, et seq.;* (2) Perform work as an operating railroad employee who is not subject to the hours of service laws found at *49 U.S.C. 21101, et seq.;* (3) In the application of parts 213 and 214 of this chapter, inspect, install, repair, or maintain track, roadbed, and signal and communication systems, including a roadway worker or railroad bridge worker as defined in § 214.7 of this chapter; (4) Inspect, repair, or maintain locomotives, passenger cars or freight cars; (5) Inspect, repair, or maintain other railroad on-track equipment when such equipment is in a service that constitutes a train movement under part 232 of this chapter; (6) Determine that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition; (7) Directly instruct, mentor, inspect, or test, as a primary duty, any person while that other person is engaged in a safety-related task; or (8) Directly supervise the performance of safety-related duties in connection with periodic oversight in accordance with § 243.205.

Because this definition focuses on railroad operating employees and those who directly train and supervise them, FRA assumes that it would not include the typical railroad employee who has significant responsibility for implementing and supporting a railroad's RRP, as FRA believes it is unlikely that employees with significant RRP responsibilities would also be engaged in performing operational duties or directly training or supervising those who do.[15] Therefore, railroad employees with significant RRP responsibilities are not likely to be covered by the requirements in the training standards final rule.

FRA is specifically requesting public feedback on this proposed RRP implementation and support training requirement. What topics should RRP implementation and support training cover? (For example, should employees with significant RRP responsibilities be trained in the principles and requirements of a final rule?) Also, should periodic or refresher training be provided?

Subpart C—Risk Reduction Program Plan Requirements

Subpart C would contain proposed requirements for RRP plans.

Section 271.201—General

Proposed § 271.201 would require a railroad to adopt and implement its RRP through a written RRP plan meeting the requirements of subpart C. This plan must be approved by FRA according to the requirements of subpart D.

Section 271.203—Policy, Purpose and Scope, and Goals

Proposed § 271.203 would contain requirements for policy, purpose and scope, and goals statements for an RRP plan. Under paragraph (a), an RRP plan must contain a policy statement, signed by the railroad's chief official (*e.g.,* Chief Executive Officer), endorsing the railroad's RRP. This signature endorsement would indicate that the railroad's chief official has reviewed and supports the policy statement, thereby demonstrating the importance of safety to the railroad. The RSAC Working Group recommended that FRA allow the safety policy statement to be signed by the railroad's chief safety officer. Prior experience with effective risk management programs, however, has demonstrated to FRA the importance of the active involvement of the highest officials in improving safety and safety culture. For this reason, FRA has determined that the chief official at the railroad should sign the safety policy. The policy statement should endorse the railroad's RRP and include a commitment to implement and maintain the RRP, as well as a commitment to the management of safety risk and a commitment to continuously seek improvements in the level of safety.

Paragraph (b) would require an RRP plan to include a statement describing the purpose and scope of the railroad's RRP. This statement must describe the railroad's safety philosophy and safety culture. A safety philosophy is what a railroad thinks about safety, while a safety culture is the railroad's practices and behaviors with respect to safety. This statement must also describe how the railroad promotes improvements to its safety culture, the roles and responsibilities of railroad personnel (including management) within the railroad's RRP, and how any person utilizing or performing on a railroad's behalf significant safety-related services (including host railroads, contract operators, shared track/corridor operators, or other contractors) will support and participate in the railroad's RRP.

Under paragraph (c), an RRP plan must contain a statement defining the railroad's goals for an RRP and describing clear strategies for reaching those goals. The central goal of an RRP is to manage or eliminate hazards and the resulting risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities. FRA believes one way to achieve this central goal is for a railroad to set forth goals that are designed in such a way that when the railroad achieves these goals, the central goal is achieved as well. These goals may not be merely vague aspirations towards general safety improvement. Rather, as described further below, the goals must be long-term, meaningful, measurable, and focused on the mitigation of risks associated with identified safety hazards.

- Long-term: Goals must be long-term so that they are relevant to the railroad's RRP. This does not mean that goals cannot have relevance in the short-term. Rather, goals must have significance beyond the short-term and must continue to contribute to the RRP.
- Meaningful: Goals must be meaningful so that they are not so broad

[14] A training component is also included in the SSP NPRM, published September 7, 2012. *See* 77 FR 55386–55387, 55404–55405. While the proposed RRP training requirement shares similarities with the SSP proposal, it has been modified to reflect what FRA believes to be the different training needs of the freight railroad industry.

[15] Furthermore, even if an RRP employee performed duties that fell within the proposed definition of ''safety-related railroad employee,'' the training standards NPRM only proposed to require training for a safety-related railroad employee to the extent that he or she is required to comply with a Federal mandate. *See* 77 FR 6420. For example, a railroad employee who is expected to perform any of the inspections, tests, or maintenance required by 49 CFR part 238 would be required to be trained in accordance with all Federal requirements for that work. *Id.* Because the RRP regulation proposed in this NPRM is performance-based and focuses on process, FRA would not consider it as containing specific mandates for the way in which a railroad employee with significant RRP responsibility has to perform his or her RRP duties. Therefore, even if an RRP employee also qualified as a ''safety-related railroad employee'' under the proposed training standards rule, the proposed training standards rule would not subject the employee to any additional RRP training requirement. FRA believes it would be inconsistent to apply the proposed training standards rule to some RRP employees and not others, based solely upon whether the employee performed safety-related duties that were subject to the training standards rule but otherwise unrelated to RRP.

that they cannot be attributed to specific aspects of the railroad's operations. The desired results must be specific and must have a meaningful impact on safety.

• Measurable: Goals must be measurable so that they are designed in such a way that it is easily determined whether each goal is achieved or at least progress is being made to achieve the goal. A measurable goal is one which is supported by specific measurable objectives, which address activities and outcomes that help achieve the goals.

• The goals must be consistent with the overall goal of the RRP, in that they must be focused on the mitigation of risks arising from identified safety hazards.

For example, a railroad could have goals such as reducing the number of incidents involving run-through switches, reducing the number of injuries due to distraction, increasing the number of days between minor derailments, or identifying and eliminating or mitigating hazardous conditions with a railroad's processes and operations. Such goals must be supported by specific, measurable objectives. For example, the goal of identifying and eliminating or mitigating hazardous conditions with a railroad's processes and operations could be supported by the following objectives: (1) Increase safety hazard reporting by 10 percent over the next year; and (2) initiate mitigation of all unacceptable hazards within a certain numbers of months following the risk-based hazard analysis. Whatever the goal, there should be a specific measurable objective associated with it, and once mitigation has enabled a railroad to reach that goal, resources should be allowed to shift from mitigation to maintenance. This goal specificity is necessary so that a railroad may be able to determine whether its RRP is meeting these goals and effectively improving safety. Furthermore, the statement required by proposed paragraph (c) must describe clear strategies on how the railroad will achieve these goals. These strategies will be the railroad's opportunity to provide its vision on how these particular goals will ultimately reduce the number and rates of railroad accidents, incidents, injuries, and fatalities.

Section 271.205—System Description

This section would require an RRP plan to include a statement describing the characteristics of the railroad system. This section would not, however, require a railroad to describe every facet of its system in minute detail. Rather, the description should be sufficient to support the identification of hazards by establishing a basic understanding of the scope of the railroad's system. For example, the description should contain information such as the general geographic scope of the railroad's system, the total miles of track that the railroad operates, and which track segments the railroad shares with other railroads. More specifically, the statement must describe the following:

• A brief history of the railroad, including when and how the railroad was established and the major milestones in the railroad's history. Safety culture, operating rules, and practices have been affected by railroad mergers and other significant events, and this information will provide background as to the railroad's organizational history and how it may have shaped the way in which the railroad addresses safety risk;

• The railroad's operations (including any host operations), including the roles, responsibilities, and organization of the railroad operating departments;

• The scope of the service the railroad provides, including the number of routes, the major types of freight the railroad transports (including intermodal and hazardous materials), and their respective traffic proportions. The railroad may also provide a system map;

• The physical characteristics of the railroad, including the number of miles of track the railroad operates over, the number and types of grade crossings the railroad operates over, and which track segments the railroad shares with other railroads;

• A brief description of the railroad's maintenance activities and the type of maintenance required by the railroad's operations and facilities;

• Identification of the size and location of the railroad's physical plant, including major physical assets such as maintenance facilities, offices, and large classification yards; and

• Any other aspects of the railroad pertinent to the railroad's operations.

The system description must also identify all persons that utilize or perform on the railroad's behalf significant safety-related services (including entities such as host railroads, contract operations, shared track/corridor operators, or other contractors). FRA would give a railroad significant discretion to identify which persons utilize or provide on its behalf significant safety-related services. In interpreting this proposed provision, emphasis would be placed upon the words ''significant'' and ''safety-related.'' FRA does not expect a railroad to identify every contractor that provides services. For example, a railroad would be expected to identify a signal contractor that routinely performed services on its behalf, but not a contractor hired on a one-time basis to pave a grade crossing. Generally, this section would require identification of those persons whose significant safety-related services or utilization would be affected by the railroad's RRP.

Section 271.207—Consultation Process Description

Section 271.207 would implement section 103(g)(1) of the RSIA, which states that a railroad required to establish an RRP must ''consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.'' 49 U.S.C. 20156(g)(1). This section would also implement section 103(g)(2) of the RSIA, which further provides that if a ''railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organizations may file a statement with the Secretary explaining their views on the plan on which consensus was not reached.'' 49 U.S.C. 20156(g)(2). The RSIA requires FRA to consider these views during review and approval of a railroad's RRP plan.

As discussed above in section III.B of the preamble, the proposed language is essentially identical to that proposed in the separate SSP NPRM, published on September 7, 2012, except that it contains additional language applying specifically to the unique situations of railroads with inadequate safety performance, railroads that have been reclassified or newly classified as Class I railroads by the STB, and voluntarily-compliant railroads. While the RSAC did not provide recommended language for this section, FRA worked with the System Safety Task Group to receive input regarding how the consultation process should be addressed, with the understanding that the language would be provided in both the RRP and SSP NPRMs for review and comment. Therefore, FRA seeks comment on this rule's proposal regarding the consultation requirement set forth in sec. 103(g) of the RSIA. Furthermore,

while this NPRM does not respond to comments already received in response to the already-published SSP NPRM, FRA will consider comments submitted to both the SSP and RRP NPRMs regarding the consultation process requirements when developing an RRP final rule. FRA requests comments on all aspects of the proposed provisions, and is specifically interested in comment regarding the proposed timelines for meeting with directly affected employees.

Paragraph (a)(1) would implement sec. 103(g)(1) of the RSIA by requiring a railroad to consult with its directly affected employees on the contents of its RRP plan, including any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees. As part of that consultation, a railroad must utilize good faith and best efforts to reach agreement with its directly affected employees on the contents of its plan.

Paragraph (a)(2) would specify that a railroad that consults with a non-profit employee labor organization is considered to have consulted with the directly affected employees represented by that organization.

Paragraph (a)(3) would require a Class I railroad to meet with its directly affected employees to discuss the consultation process no later than 240 days after the publication date of the final rule. This meeting will be the Class I railroads' and directly affected employees' opportunity to schedule, plan, and discuss the consultation process. FRA does not expect a Class I railroad to discuss any substantive material until the information protection provisions of § 271.11 become applicable. Rather, this initial meeting should be more administrative in nature so that both parties understand the consultation process as they go forward and so that they may engage in substantive discussions as soon as possible after the applicability date of § 271.11. This will also be an opportunity to educate the directly affected employees on risk reduction and how it may affect them. The Class I railroad will be required to provide notice to the directly affected employees no less than 60 days before the meeting is scheduled.

Paragraph (a)(4) would require a railroad with inadequate safety performance to meet no later than 30 days following FRA's notification with its directly affected employees to discuss the consultation process. The inadequate safety performance railroad would have to notify the employees of this meeting no less than 15 days before it is scheduled. Under paragraph (a)(5), a railroad reclassified or newly classified by the STB would have to meet with its directly affected employees to discuss the consultation process no later than 30 days following the effective date of the classification or reclassification. The reclassified or newly classified Class I railroad would also be required to notify its directly affected employees of the meeting no less than 15 days before it is scheduled. FRA specifically requests public comment on whether this schedule allows railroads with inadequate safety performance or reclassified or newly classified Class I railroads sufficient time to consult with directly affected employees.

Paragraph (a)(6) would clarify that while a voluntarily-compliant railroad must also consult with its directly affected employees using good faith and best efforts, there are no timeline requirements governing when such meetings must take place.

Paragraph (a)(7) would direct readers to proposed appendix B for additional guidance on how a railroad might comply with the consultation requirements of this section. Appendix B is discussed later in this preamble.

Paragraph (b) would require a railroad to submit, together with its RRP plan, a consultation statement. The purpose of this consultation statement would be twofold: (1) To help FRA determine whether the railroad has complied with § 271.207(a) by, in good faith, consulting and using its best efforts to reach agreement with its directly affected employees on the contents of its RRP plan; and (2) to ensure that the directly affected employees with which the railroad has consulted were aware of the railroad's submission of its RRP plan to FRA for review. The consultation statement must contain specific information described in proposed paragraphs (b)(1) through (4) of this section.

Paragraph (b)(1) would require a consultation statement to contain a detailed description of the process the railroad utilized to consult with its directly affected employees. This description should contain information such as (but not limited to) the following: (1) How many meetings the railroad held with its directly affected employees; (2) what materials the railroad provided its directly affected employees regarding the draft RRP plan; and (3) how input from directly affected employees was received and handled during the consultation process.

If the railroad is unable to reach agreement with its directly affected employees on the contents of its RRP plan, paragraph (b)(2) would require that the consultation statement identify any areas of non-agreement and provide the railroad's explanation for why it believed agreement was not reached. A railroad could specify, in this portion of the statement, whether it was able to reach agreement on the contents of its RRP plan with certain directly affected employees, but not others.

If the RRP plan would affect a provision of a collective bargaining agreement between the railroad and a non-profit employee labor organization, paragraph (b)(3) would require the consultation statement to identify any such provision and explain how the railroad's RRP plan would affect it.

Under proposed paragraph (b)(4), the consultation statement must include a service list containing the names and contact information for the international/national president of any non-profit employee labor organization representing directly affected employees and any directly affected employee not represented by a non-profit employee labor organization who significantly participated in the consultation process. If an international/national president did not participate in the consultation process, the service list must also contain the name and contact information for a designated representative who participated on his or her behalf. This paragraph would also require a railroad (at the same time it submits its proposed RRP plan and consultation statement to FRA) to provide individuals identified in the service list a copy of the RRP plan and consultation statement. Railroads could provide the documents to the identified individuals electronically, or using other means of service reasonably calculated to succeed (*e.g.,* sending identified individuals a hyperlink to a copy of the submitted RRP plan). This service list would help FRA determine whether the railroad had complied with the § 271.207(a) requirement to consult with its directly affected employees. Requiring the railroad to provide individuals identified in the service list with a copy of its submitted plan and consultation statement would also notify those individuals that they now have 60 days under § 271.207(c)(2) (discussed below) to submit a statement to FRA if they are not able to come to reach agreement with the railroad on the contents of the RRP plan.

Paragraph (c)(1) would implement sec. 103(g)(2) of the RSIA by providing that, if a railroad and its directly affected employees cannot reach agreement on the proposed contents of an RRP plan, then a directly affected employee may file a statement with the

FRA Associate Administrator for Railroad Safety/Chief Safety Officer explaining his or her views on the plan on which agreement was not reached. *See* 49 U.S.C. 20156(g)(2). The FRA Associate Administrator for Railroad Safety/Chief Safety Officer will consider any such views during the plan review and approval process.

Paragraph (c)(2) would specify, as also provided in § 271.301(a)(1), that a railroad's directly affected employees have 60 days following the railroad's submission of its proposed RRP plan to submit the statement described in paragraph (c)(1) of this section. FRA believes 60 days would provide directly affected employees sufficient time to review a railroad's proposed RRP plan and to draft and submit to FRA a statement if they were not able to come to agreement with the railroad on the contents of that plan. In order to provide directly affected employees the opportunity to submit a statement, FRA would not approve or disapprove a railroad's proposed RRP plan before the conclusion of this 60-day period.

Section 271.209—Consultation on Amendments

This section would describe the consultation requirements for amendments to a railroad's RRP plan. Under this section, an RRP plan would be required to include a description of the process the railroad will use to consult with its directly affected employees on any substantive amendments to the railroad's RRP plan. Examples of substantive amendments could include the following: the addition of new stakeholder groups (or the removal of a stakeholder group); major changes to the processes employed, including changes to the frequency of governing body meetings; or changing the organizational level of the manager responsible for the RRP (*e.g.,* changing from the Chief Safety Officer to someone who reports to the Chief Safety Officer). Non-substantive amendments could include changes that update any names or addresses included in the plan. As with its initial RRP plan, a railroad would be required to use good faith and best efforts to reach agreement with directly affected employees on any substantive amendments to that plan. Requiring a railroad to detail that process in its plan would facilitate the consultation by establishing a known path to be followed. A railroad that did not follow this process when substantively amending its RRP plan could then be subject to penalties for failing to comply with the provisions of its plan. This requirement would not apply to non-substantive amendments (*e.g.,* amendments updating names and addresses of railroad personnel).

Section 271.211—Risk-Based Hazard Management Program Process

This section would require an RRP plan to describe the railroad's process for conducting an HMP. As previously discussed, railroads could look to well-established safety management systems for guidance on how to describe the process for conducting an HMP, such as MIL–STD–882, APTA's *Manual for the Development of System Safety Program Plans for Commuter Railroads,* and FRA's *Collision Hazard Analysis Guide.* While FRA understands that railroads subject to a final RRP rule would likely need to develop processes unique to their own operations, FRA would expect a railroad's HMP process to use techniques similar to those used by these types of current safety management systems. FRA specifically requests public comment on what type(s) of guidance could help a railroad comply with the requirements of this proposed section.

This section also specifies certain information that must be contained in an RRP plan's description of a railroad's HMP process. Under paragraph (a), this description must specify: (1) The railroad's processes for identifying hazards and the risks associated with those hazards; (2) the sources the railroad will use to support the ongoing identification of hazards and the risks associated with those hazards; and (3) the railroad's processes for comparing and prioritizing the identified risks for mitigation purposes.

Paragraph (b) would require an RRP plan to describe the railroad's processes for identifying and selecting mitigation strategies and for monitoring an identified hazard through the mitigation of the risk associated with that hazard.

Section 271.213—Safety Performance Evaluation Process

This section would require an RRP plan to describe the railroad's processes for measuring its safety culture pursuant to § 271.105, monitoring safety performance pursuant to § 271.105(b), and conducting safety assessments pursuant to § 271.105(c). Regarding the requirement for a railroad to describe its processes for measuring safety culture, this would require a railroad's plan to explain its definition of safety culture and how the railroad measures whether that definition is being achieved. For example, a railroad could define the parameters by which it measures its safety culture, and then measure changes to its safety culture relative to that initial baseline. Overall, FRA would give a railroad substantial flexibility in determining what safety culture definition and measurement processes worked best for its organization.

Section 271.215—Safety Outreach Process

This section would require an RRP plan to describe a railroad's process for communicating safety information to railroad personnel and management pursuant to § 271.107.

Section 271.217—Technology Implementation Plan Process

This section would require an RRP plan to describe a railroad's processes for conducting a technology analysis pursuant to § 271.109(b) and for developing a technology implementation plan pursuant to § 271.109(c).

Section 271.219—Implementation and Support Training Plan

Paragraph (a) of this section would require an RRP plan to contain a training plan describing the railroad's processes for training, pursuant to § 271.111, employees with significant responsibility for implementing and supporting the RRP (including employees of a person identified pursuant to § 271.205(a)(3) as utilizing or performing significant safety-related services on the railroad's behalf who have significant responsibility for implementing and supporting the railroad's RRP).

Paragraph (b) would require the training plan to specifically describe the frequency and content of the RRP training for each position or job function identified pursuant to § 271.223(b)(3) as having significant responsibilities for implementing the RRP.

Section 271.221—Internal Assessment Process

Paragraph (a) of this section would require an RRP plan to describe a railroad's processes for conducting an internal assessment of its RRP pursuant to proposed subpart E. At a minimum, this description must contain the railroad's processes for: (1) Conducting an internal RRP assessment; (2) internally reporting the results of its internal assessment to railroad senior management; and (3) developing improvement plans, including developing and monitoring recommended improvements (including any necessary revisions or updates to its RRP plan) for fully implementing its RRP, complying with the implemented elements of the RRP plan, or achieving the goals identified in the railroad's RRP

plan pursuant to § 271.203(c). Paragraph (b) would be reserved.

Section 271.223—RRP Implementation Plan

Paragraph (a) of this section would require an RRP plan to describe how the railroad would implement its RRP. A railroad may implement its RRP in stages, so long as the RRP is fully implemented within 36 months of FRA's approval of the plan. Under paragraph (b), this implementation plan must cover the entire implementation period and contain a timeline (beginning with the date FRA approved the railroad's RRP plan) describing when certain specific and measurable implementation milestones will be achieved. The implementation plan must also describe the roles and responsibilities of each position or job function with significant responsibility for implementing the railroad's RRP or any changes to the railroad's RRP (including any such positions or job functions held by an entity or contractor that utilizes or performs on the railroad's behalf significant safety-related services). An implementation plan must also describe how significant changes to the railroad's RRP will be made.

Subpart D—Review, Approval, and Retention of Risk Reduction Program Plans

The RSIA requires a railroad to submit its RRP, including any of the required plans, to the Administrator (as delegate of the Secretary) for review and approval. *See* 49 U.S.C. 20156(a)(1)(B). Subpart D, Review, Approval, and Retention of System Safety Program Plans, would contain requirements addressing this mandate.

Section 271.301—Filing and Approval

This section would contain requirements for the filing of an RRP plan and FRA's approval process.

Paragraph (a) would require a Class I railroad to submit one copy of its RRP plan to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer no later than 545 days after the publication date of the RRP final rule. A railroad with inadequate safety performance would be required to submit its RRP plan no later than 90 days after it receives final written notification from FRA that it is required to comply with the RRP rule pursuant to proposed § 271.13(e), or no later than 545 days after the publication date of the RRP final rule, whichever is later. A railroad that the STB reclassifies or newly classifies as a Class I railroad shall submits its RRP plan no later than 90 days following the effective date of the classification or reclassification, or no later than 545 days after the publication date of the RRP final rule, whichever is later. A voluntarily-compliant railroad could submit an RRP plan at any time. FRA specifically requests public comment on whether electronic submission of an RRP plan should be permitted and, if so, what type of process FRA should use to accept such submissions.

A railroad would be required to provide certain additional information as part of its submission. Under paragraph (a)(1), a submitted RRP plan would be required to include the signature, name, title, address, and telephone number of the chief official responsible for safety and who bears the primary managerial authority for implementing the submitting railroad's safety policy. By signing, the chief official responsible for safety is certifying that the contents of the RRP plan are accurate and that the railroad will implement the contents of the program as approved by FRA.

Paragraph (a)(2) would require a submitted RRP plan to contain the contact information for the primary person responsible for managing the RRP for the railroad. This person may be the same person as the chief official responsible for safety and who bears the primary managerial authority for implementing the submitting railroad's safety policy. If it is not the same person, however, the contact information for both must be provided. The contact information for the primary person managing the RRP is necessary so that FRA knows who to contact regarding any issues with the railroad's RRP.

Under paragraph (a)(3), the submitted RRP plan would have to contain the contact information for the senior representatives of the persons that the railroad has determined utilize or provide significant safety-related services (including entities such as host railroads, contract operators, shared track/corridor operators, and other contractors). This contact information is necessary so that FRA is aware of which persons will be involved in implementing and supporting the railroad's RRP.

Finally, paragraph (a)(4) would reference proposed § 271.207(b) and require a railroad to submit the consultation statement describing how it consulted with its directly affected employees on the contents of the RRP plan. When the railroad provides the consultation statement to FRA, proposed § 271.207(b)(4) would also require the railroad to provide a copy of the statement to directly affected employees identified in a service list. Directly affected employees could then file a statement within 60 days after the railroad filed its consultation statement, as discussed in proposed § 271.207(c).

Paragraph (b) would describe FRA's process for approving a railroad's RRP plan. Within 90 days of receipt of an RRP plan, or within 90 days of receipt of each RRP plan submitted prior to the commencement of railroad operations, FRA would review the proposed RRP plan to determine if the elements required by part 271 are sufficiently addressed, and whether the processes and resources described by the plan are sufficient to support effective implementation of the required RRP elements. This review would also consider any statement submitted by directly affected employees pursuant to proposed § 271.207(c). This process would involve continuous communication between FRA and the railroad, and FRA intends to work with a railroad when reviewing its plan and to keep directly affected employees informed of this process. If this communication process results in substantively significant changes to the railroad's submitted RRP plan, FRA may direct the railroad to consult further with its directly affected employees before FRA approves the plan.

Railroads should note the FRA will not be approving specific mitigation measures as part of a railroad's RRP plan. Rather, a railroad's RRP plan should only describe the processes and procedures the railroad will use to develop and implement its RRP, including the processes and procedures that will be used to identify and mitigate or eliminate hazards and risks. FRA does not expect railroads to have already identified and analyzed hazards and risks, and to have developed specific mitigation strategies, at the time FRA approves the railroad's RRP plan.

Once FRA determines whether a railroad's RRP plan complies with the requirements of part 271, FRA would provide the railroad's primary contact person written notification of whether the railroad's RRP plan is approved or not. If FRA does not approve a plan, it would inform the railroad of the specific points in which the plan is deficient. FRA would also provide written notification to each individual identified in the service list accompanying the consultation statement required under proposed § 271.207(b)(4). If a railroad receives notification that the plan is not approved (including notification of the specific points in which the plan is deficient), the railroad would have 60

days to correct all of the deficiencies and resubmit the plan to FRA. If these corrections are substantively significant, FRA will inform the railroad that it must consult further with its directly affected employees about the corrections and submit an updated consultation statement with its corrected RRP plan. Directly affected employees would also be afforded the opportunity to submit a statement in response to the substantively significant corrections. Directly affected employees would not be given a second opportunity, however, to address plan provisions that were unrelated to the substantively significant corrections.

Paragraph (c) would specify that all documents required to be submitted to FRA under this part may be submitted electronically pursuant to the procedures in proposed appendix C to this part.

Section 271.303—Amendments

This section would address the process a railroad must follow whenever it amends its FRA-approved RRP plan, regardless of whether the amendments are substantive or non-substantive. If a railroad makes substantive amendments, however, it would be required to follow the process described in its RRP plan (pursuant to § 271.209) for consulting with its directly affected employees. A railroad must submit the amended RRP plan to FRA not less than 60 days prior to the proposed effective date of the amendment(s). Along with the amended RRP plan, the railroad must also file a cover letter outlining the proposed change(s) to the original, approved RRP plan. The cover letter should provide enough information so that FRA knows what is being added or removed from the original approved RRP. These requirements would not apply if the proposed amendment is limited to adding or changing a name, title, address, or telephone number of a person, although the railroad would still be required to file the amended RRP plan with FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. Such amendments would be implemented by the railroad upon filing with FRA.

FRA would review the proposed amended RRP plan within 45 days of receipt. FRA would then notify the railroad's primary contact person whether the amended plan has been approved. If the amended plan is not approved, FRA would inform the railroad of the specific points in which the proposed amendment is deficient. In some instances, FRA may not be able to complete its review in 45 days. In these cases, if FRA fails to timely notify the railroad, the railroad may implement the amendment(s) to the plan, which may be subject to change once FRA completes its review. Within 60 days of receiving notification from FRA that a proposed amendment has not been approved, a railroad must provide FRA either a corrected copy of the amendment, addressing all deficiencies noted by FRA, or notice that the railroad is retracting the amendment. (Railroads should note that a retracted amendment would be covered by the information protections provisions of proposed § 271.11, as the amendment would have been information compiled for the sole purpose of developing an RRP.) Through its general oversight, FRA may also determine that amendments to the RRP plan are necessary. In these cases, the FRA would follow the process set forth in proposed § 271.305.

This section does not propose a provision for amendments that a railroad may deem safety-critical. Because a railroad's RRP plan would only explain the processes and procedures for the program, FRA is uncertain whether a railroad would ever need to amend the plan in order to address a specific safety-critical concern. Rather, FRA believes that any such safety-critical concern would require changes in the way the RRP is implemented and maintained, rather than changes in the processes and procedures outlined in the plan. FRA is specifically requesting public comment, however, on whether an RRP plan would ever need to be amended in a way that is safety-critical, so that it would be impractical for a railroad to submit the amendment 60 days before its proposed effective date. If so, FRA would likely include in a final rule a provision stating that a railroad must provide FRA a safety-critical amendment as soon as possible, instead of 60 days before its proposed effective date.

Section 271.305—Reopened Review

Proposed § 271.305 would provide that, for cause stated, FRA could reopen consideration of an RRP plan or amendment (in whole or in part) after approval of the plan or amendment. For example, FRA could reopen review if it determines that the railroad has not been complying with its plan/amendment or if information has been made available that was not available when FRA originally approved the plan or amendment. The determination of whether to reopen consideration would be solely within FRA's discretion and made on a case-by-case basis.

Section 271.307—Retention of RRP Plans

Proposed § 271.307 would contain requirements related to a railroad's retention of its RRP plan. A railroad would be required to retain at its system and various division headquarters a copy of its RRP plan and a copy of any amendments to the plan. A railroad may comply with this requirement by making an electronic copy available. The railroad must make the plan and any amendments available to representatives of FRA or States participating under part 212 of this chapter for inspection and copying during normal business hours.

In its tentative agreement document, the RSAC Working Group advised FRA to permit only specific RRP-trained FRA representatives to have the authority to request access to a railroad's RRP plan. FRA is not including this suggestion in the proposed rule, however, because it has concerns regarding how it could be implemented. For example, how could a railroad know whether or not an FRA representative has been trained in RRP? FRA also believes that rule text may not be the appropriate place for such a distinction, as the question of which inspectors have authority to conduct inspections is an internal FRA matter. FRA nevertheless is specifically requesting public comment on both the proposed rule text and the Working Group's suggestion, and the final rule may contain the Working Group's suggestion. FRA would also be interested in any suggested alternate approaches that may be included in the final rule.

Subpart E—Internal Assessments

In order to help ensure that an RRP is properly implemented and effective, a railroad would need to evaluate its program on an annual basis. Subpart E would contain provisions requiring a railroad to conduct an internal assessment of its RRP.

Section 271.401—Annual Internal Assessments

This section would describe the processes a railroad must use to evaluate its RRP. Because this evaluation is an internal assessment, a railroad could tailor the processes to its specific operations, and FRA would work with the railroad to determine the best method to internally measure the implementation and effectiveness of the railroad's RRP.

Paragraph (a) would require a railroad to conduct an annual (once every calendar year) internal assessment of its RRP. If desired, a railroad could audit

its program more than once a year. This internal assessment must begin in the first calendar year after the calendar year in which FRA approves the railroad's RRP plan. The internal assessment would determine the extent to which the railroad has: (1) Achieved the implementation milestones described in its RRP plan pursuant to proposed § 271.223(b); (2) complied with the elements of its approved RRP plan that have already been implemented; (3) achieved the goals described in its RRP plan pursuant to proposed § 271.203(c); (4) implemented previous internal assessment improvement plans pursuant to proposed § 271.403; and (5) implemented previous external audit improvement plans pursuant to § 271.503. A properly executed internal assessment would provide the railroad with detailed knowledge of the status of its program implementation and the degree to which the program is effectively reducing risk. The railroad would be required to ensure that the results of the assessment of these various elements are internally reported to the railroad's senior management.

Section 271.403—Internal Assessment Improvement Plans

Paragraph (a) of this section would require a railroad, within 30 days of completing its internal assessment, to develop an improvement plan addressing the results of its internal assessment. Paragraph (b) would require the improvement plan to have at least four elements. First, the improvement plan must describe the recommended improvements that address the findings of the internal assessment for fully implementing the railroad's RRP, complying with the elements of the RRP that are already implemented, or achieving the goals identified in the RRP plan pursuant to § 271.203(c). These improvements would include any necessary revisions or updates to the RRP plan, which would have to be made pursuant to the amendment process in proposed § 271.303. Second, the improvement plan must identify by position title the individual who is responsible for carrying out the recommended improvements. Third, the improvement plan must set forth a timeline that establishes when specific and measurable milestones for implementing the recommended improvements would be achieved. Finally, the improvement plan must specify the process for monitoring and evaluating the effectiveness of the recommended improvements. FRA believes that if a railroad's internal assessment improvement plan contains these four elements, the railroad would effectively identify any areas in which the RRP is either improperly implemented or ineffective at reducing risk, and could adequately address those deficiencies.

Section 271.405—Internal Assessment Reports

Paragraph (a) of this section would require a railroad to submit a copy of its internal assessment report to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer. The railroad must submit this report within 60 days of completing its internal assessment. Under paragraph (b), the report must be signed by the railroad's chief official responsible for safety who bears primary managerial authority for implementing that railroad's safety policy and contain at least four elements. First, the report must describe the railroad's internal assessment, including a description of how the railroad satisfied the requirements set forth in proposed § 271.401(b)(1) through (3). Second, the report must describe the findings of the internal assessment. Third, the report must specifically describe the recommended improvements set forth in the railroad's improvement plan pursuant to proposed § 271.403. Fourth, the report must describe the status of the recommended improvements that were set forth in the railroad's recent internal assessment improvement plan and any outstanding recommended improvements from previous internal assessment improvement plans.

Subpart F—External Audits

This subpart would address FRA's process for conducting audits of the railroad's RRP and establish requirements regarding the actions a railroad must take in response to FRA's audits. FRA's audits would focus on reviewing the railroad's RRP process and ensuring that the railroad is following the processes and procedures described in its FRA-approved RRP plan.

Section 271.501—External Audits

As described in this section, FRA would conduct (or cause to be conducted) external audits of a railroad's RRP. These audits would focus on RRP process, evaluating the railroad's compliance with the RRP elements required by this part, as supported by the railroad's approved RRP plan. Because the railroad's RRP plan and any amendments would have already been approved by FRA, this section would permit FRA to focus on the extent to which the railroad is complying with the processes and procedures in its own plan.

Similar to the review process for RRP plans, FRA would not audit a railroad's RRP in a vacuum. Rather, FRA would communicate with the railroad during the audit and attempt to resolve any issues before its completion. Once the audit is completed, FRA would provide the railroad with written notification of the audit results. For example, these results would identify any areas where the railroad was not properly complying with its RRP plan, any areas that needed to be addressed by the railroad's RRP but were not, or any other areas in which FRA found that the railroad and its program were not in compliance with this part.

Section 271.503—External Audit Improvement Plans

This section would establish requirements for railroad improvement plans responding to the results of FRA's external audit. If the results of the audit require the railroad to take any corrective action, paragraph (a) would provide the railroad 60 days to submit for FRA approval an improvement plan addressing any such instances of deficiency or non-compliance. At a minimum, paragraph (b) would require the improvement plan to: (1) Describe the improvements the railroad would implement to address the audit findings; (2) identify by position title the individual who would be responsible for carrying out the improvements necessary to address the audit findings; and (3) contain a timeline describing when specific and measurable milestones for implementing the recommended improvements would be achieved. Specification of milestones is important because it would allow the railroad to determine the appropriate progress of the improvements, while also allowing FRA to gauge the railroad's compliance with its improvement plan.

Under paragraph (c), if FRA does not approve a railroad's improvement plan, FRA would notify the railroad of the plan's specific deficiencies. The railroad would then have no more than 30 days to amend the improvement plan to correct the deficiencies identified by FRA and provide FRA a copy of the amended improvement plan. Paragraph (d) would require a railroad to provide FRA for review, upon the request of the FRA Associate Administrator for Railroad Safety/Chief Safety Office, a status report on the implementation of the improvements contained in the improvement plan.

Appendix A to Part 271—Schedule of Civil Penalties

Appendix A to part 271 would contain a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Appendix B to Part 271—Federal Railroad Administration Guidance on the Risk Reduction Program Consultation Process

Appendix B would contain guidance on how a railroad could comply with § 271.207, which states that a railroad must in good faith consult with and use its best efforts to reach agreement with all of its directly affected employees on the contents of the RRP plan. The appendix begins with a general discussion of the terms ''good faith'' and ''best efforts,'' explaining that they are separate terms and that each has a specific and distinct meaning. For example, the good faith obligation is concerned with a railroad's state of mind during the consultation process, and the best efforts obligation is concerned with the specific efforts made by the railroad in an attempt to reach agreement with its directly affected employees. The appendix also explains that FRA will determine a railroad's compliance with the § 271.207 requirements on a case-by-case basis and outlines the potential consequences for a railroad that fails to consult with its directly affected employees in good faith and using best efforts.

The appendix also contains specific guidance on the process a railroad may use to consult with its directly affected employees. This guidance would not establish prescriptive requirements with which a railroad must comply, but would provide a road map for how a railroad may conduct the consultation process. The guidance also distinguishes between employees who are represented by a non-profit employee labor organization and employees who are not, as the processes a railroad may use to consult with represented and non-represented employees could differ significantly. Overall, however, the appendix stresses that there are many compliant ways in which a railroad may choose to consult with its directly affected employees and that FRA believes, therefore, that it is important to maintain a flexible approach to the § 271.207 consultation requirements, so a railroad and its directly affected employees may consult in the manner best suited to their specific circumstances.

Appendix C to Part 271—Procedures for Submission of Railroad Risk Reduction Program Plans and Statements From Directly Affected Employees

Proposed Appendix C would provide railroads and directly affected employees the option to file RRP plans or consultation statements electronically. FRA intends to create a secure document submission site and would need basic information from railroads or directly affected employees before setting up a user's account. In order to provide secure access, information regarding the points of contact would be required. It is anticipated that FRA would be able to approve or disapprove all or part of a program and generate automated notifications by email to a railroad's points of contact. Thus, FRA would want each point of contact to understand that by providing any email addresses, the railroad would be consenting to receive approval and disapproval notices from FRA by email. Railroads that allow notice from FRA by email would gain the benefit of receiving such notices quickly and efficiently. FRA specifically requests public comment on whether to allow electronic submission, and on what electronic formats might be practical and acceptable.

While the proposed appendix would request the names and contact information for two individuals who would be the railroad's or directly affected employees' points of contact and who would be the only individuals allowed access to FRA's document submission site, FRA specifically requests public comment on whether this is a sufficient number of points of contact, or whether more would be necessary, particularly for railroads with multiple non-profit labor organizations.

Those railroads that would choose to submit printed materials to FRA would be required to deliver them directly to the specified address. Some railroads may choose to deliver a CD, DVD, or other electronic storage format to FRA rather than requesting access to upload the documents directly to the secure electronic database. Although that would be an acceptable method of submission, FRA would encourage each railroad to utilize the electronic submission capabilities of the system. Of course, if FRA does not have the capability to read the type of electronic storage format sent, FRA would be able to reject the submission.

FRA may be able to develop a secure document submission site so that confidential materials would be identified and not shared with the general public. However, FRA does not expect the information in an RRP plan to be of such a confidential or proprietary nature, particularly since each railroad is required to share the submitted RRP plan with individuals identified in the service list pursuant to § 271.107(b)(4). RRP records in FRA's possession are also exempted from disclosure under the Freedom of Information Act pursuant to sec. 109(a) of the RSIA, and FRA is proposing in § 271.11 of this NPRM to protect any information compiled or collected solely for the purpose of developing, implementing, or evaluating an RRP from discovery, admission into evidence, or consideration for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, and property damage. Accordingly, FRA does not at this time believe it is necessary to develop a document submission system which addresses confidential materials at this time.

IX. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This NPRM has been evaluated in accordance with existing policies and procedures, and determined to be significant under Executive Order 12866, Executive Order 13563, and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this NPRM.

This NPRM directly responds to the Congressional mandate of sec. 103 of the RSIA, which states that FRA shall require each Class I railroad and railroads with inadequate safety performance to establish a railroad safety risk reduction program. *See* 49 U.S.C. 20156(a)(1). This NPRM proposes to implement this mandate by requiring each Class I railroad and railroad with inadequate safety performance to develop and implement a RRP to improve the safety of their operations. FRA believes that all of the requirements of the NPRM are directly or implicitly required by the RSIA.

The costs for this proposed regulation basically stem from the requirements to have a fully developed and implemented RRP that is supported by an RRP plan. The primary costs come from the development of an ongoing risk-based HMP, the ongoing evaluation of safety performance, and the safety outreach component of the RRP. In addition, there are costs for the development of a technology implementation plan, the consultation process, and internal assessments.

In analyzing this proposed rule, FRA has applied DOT's updated ''Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,'' published in March 2013. This policy updated the Value of a Statistical Life (VSL) from $6.2 million to $9.1 million and revised guidance used to compute benefits based on injury and fatality avoidance in each year of the analysis based on forecasts from the Congressional Budget Office of a 1.07 percent annual growth rate in median real wages over a 30 year period (2013–2043). FRA also adjusted wage based labor costs in each year of the analysis accordingly. Real wages represent the purchasing power of nominal wages. Non-wage inputs are not impacted. The primary cost and benefit drivers for this analysis are labor costs and avoided injuries and fatalities, both of which in turn depend on wage rates.

The total cost for this proposed regulation is $18.6 million, undiscounted. The discounted costs over 10 years are $12.7 million, using a 7 percent discount rate, and $15.7 million, using a 3 percent discount rate. The annualized costs are $1.81 million at a 7% discount rate and $1.84 million at a 3% discount rate.

TABLE 1—COSTS (10 YEARS)

RRP NPRM				
Costs	Class I railroads	Railroads with inadequate safety performance	Total for all railroads	Annualized
Subpart A: General	$0	$10,194	$10,194	
Subpart B: RR Programs	14,352,029	2,008,553	16,360,582	
Subpart C: RRP Plans	791,776	743,231	1,535,007	
Subpart D: Review and Approval of Plans	2,387	6,362	8,750	
Subpart E: Internal Assessments	253,369	388,140	641,509	
Subpart F: External Audits	42,647	25,690	68,337	
Total Cost	15,442,208	3,182,169	18,624,377	$1,862,438
(PV 7)	10,699,013	2,039,639	12,738,652	1,813,698
(PV 3)	13,095,827	2,610,750	15,706,578	1,841,290

RRPs create benefits through several mechanisms. RRPs identify potential hazards at an early stage, so that expenditures can be made with a view to avoiding the hazards, making expenditures more effective. Because of these characteristics RRPs identify a wide array of potential safety issues, and potential solutions, so that railroads can use their available resources where the effect will be most beneficial per dollar spent. In addition, RRPs help maintain safety gains over time. When railroads adopt countermeasures to safety problems, they may over time lose the focus that made those countermeasures effective. With RRP plans, those safety gains are likely to continue for longer time periods. Because of these characteristics of RRP, safety is improved, while at the same time costs of countermeasures are reduced. RRPs can also be instrumental in addressing hazards that are not well-addressed through conventional safety programs, such as minor injuries and incidents, or risks that occur because safety equipment is not used correctly or continuously.

It is difficult, if not impossible, to segregate totally railroad expenses that go to enhance safety from other railroad expenses. Track, vehicle, and signal maintenance expenses all contribute to safety on a railroad. Every operational and maintenance employee, as well as track or signal inspector, performs duties with few functions that do not work to enhance safety. Every capital expenditure is likely to have a safety component, whether for equipment, right-of-way, signal, or facility. RRPs can increase the safety return on any investment related to the operation and maintenance of the railroad. FRA believes a very conservative estimate of investment expenditures by all Class I railroads is $42.7 billion per year. For purposes of this analysis, FRA assumes that RRPs will not create benefits until they are fully implemented by the railroad, after the third year, and so cannot improve the effectiveness of investments until Year 4, after which they will affect investments through Year 10. Improved effectiveness of investment benefits can reasonably be expected to impact between $188 billion (discounted at 7 percent) and $244 billion (discounted at 3 percent) over the next ten years.

Another way to look at the benefits that might accrue from RRPs is to look at total Class I freight operation-related accident/incident costs. For the time-period 2001–2010 the total number of accidents/incidents (excluding grade crossing incidents and platform accidents/incidents) involving Class I freight railroads was 66,116, which resulted in 6,956 fatalities and 42,289 injuries. For purposes of this NPRM's RIA, FRA used the averages from 2008–2010 which had 5,325 incidents, 602 fatalities and 3,428 injuries. Of course, these accidents/incidents also caused damage to other property, delays on both railroads and highways, response costs, and many other costs. Applying the same methodology used in other analyses, FRA has found that the total societal cost of a serious accident/incident is at least 1.97 times the fatality costs.[16] Societal accident costs include fatality costs, injury costs, delay costs, response costs, damage to equipment, damage to track and structures, and equipment clearing, although there may

[16] *See* DOT/FRA—''Positive Train Control Systems, Final Rule, Regulatory Impact Analysis,'' Document FRA 2008–0132–0060, available at *http://www.regulations.gov/#!documentDetail;D=FRA-2008-0132-0060*. The RIA for FRA's Positive Train Control System final rule originally found that the total societal cost of serious accidents and incidents is at least 2.33 times the fatality costs. Due to the revised approach for assessing VSL over time in accordance with DOT's Guidance, discussed above, this number has been revised to 1.97 times the fatality costs.

be other societal costs not accounted for. Those accidents/incidents that are serious enough to result in fatalities can result in broader societal costs, as noted above. Further, some accidents/incidents, such as grade crossing accidents, can be quite severe, resulting in very serious injuries but not a fatality, resulting in costs per fatality of grade crossing accidents being more than the costs of those accidents that result only in fatalities. FRA believes multiplying societal costs of fatalities times a factor of 1.97 to derive total societal cost of serious accidents/incidents is conservative. In this case, if the fatality costs are $9.1 million per fatality, and the average number of fatalities per year is 602, then the societal cost of fatalities is $5.5 billion per year, and the total societal cost of freight operation related serious accidents/incidents is $10.8 billion for the base year of 2012. According to the DOT Guidance issued in March 2013, the VSL is expected to increase annually based on an expected 1.07 percent annual growth rate in median real wages. As noted above, for purposes of this analysis, FRA assumes that RRP implementation will not result in benefits until railroads are required to fully implement their RRPs, after the third year, and so cannot reduce accidents until Year 4, and then will affect accidents through Year 10. Total ten-year accident safety costs total between $77.7 billion (discounted at 7 percent) and $102.3 billion (discounted at 3 percent).

FRA analyzed what percentage of the potential accident reduction benefit pools would have to be saved in order for the NPRM to have accident reduction benefits at least equal to costs that apply to existing Class I railroads. The results are presented in Table 2 below, which shows the percentage of the total benefit pools that would need to be saved in order for the rule to break even. FRA believes that such savings are more than attainable. Please note that the rule would break even if it met either percentage by itself, and that the rule would not need to meet both percentages.

TABLE 2—TEN-YEAR COSTS AS PERCENT OF BENEFIT POOLS FOR CLASS I FREIGHT RAILROADS

Benefit pool	Current dollar value	Discounted value 7%	Discounted value 3%
Railroad Investment	0.0062	0.0068	0.0065
Railroad Incidents	0.0146	0.0164	0.0154

With the new VSL policy, DOT also recommends a sensitivity analysis be considered using a VSL of $5.2 million and $12.9 million. Using a VSL of $5.2 million, FRA estimates the break-even point is less than 3 hundredths of a percent, and using a VSL of $12.9 million the break-even point is approximately 1.1 hundredths of a percent.

In conclusion, FRA is confident that the accident reduction and cost effectiveness benefits together would justify the $12.7 million (discounted at 7 percent) to $15.7 million (discounted at 3 percent) implementation cost over the first ten years of the rule as proposed.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities in the final rule.

For the railroad industry over a 10-year period, FRA estimates that the total cost for the proposed rule will be $18.6 million, undiscounted; $12.7 million, discounted at 7 percent; or $15.7 million, discounted at 3 percent.[17] Based on information currently available, FRA estimates that less than 17 percent of the total railroad costs associated with implementing the proposed rule would be borne by small entities.

A Class II or III railroad may be brought under FRA's proposed RRP regulation if FRA determines that the railroad has inadequate safety performance. This determination would be made according to proposed § 271.13. Based on an initial review and evaluation, FRA estimates that approximately 10 railroads that are considered small entities for the purpose of this analysis would be found to have inadequate safety performance in the initial year of the rule, and would therefore be required to comply with FRA's RRP requirements. On average, FRA estimates that five additional Class III railroads with inadequate safety performance would be added incrementally per annum after the first full year of implementation, and that the number of railroads with inadequate safety performance would reach a maximum of 40 to 45 railroads around the tenth year of the rule. Together, these railroads do not compose a substantial number of the 629 Class III railroads, which potentially fall under this proposed rule and would be evaluated for inadequate safety performance, and a minor percentage of the railroad operations impacted directly by this proposed regulation, as measured by total employees. Thus, a very few number of small entities in this sector would be impacted. In order to get a better understanding of the total costs for the entire freight railroad industry (which forms the basis for the estimates in this IRFA), or for more cost detail on any specific requirement, please see the Regulatory Impact Analysis (RIA) that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

1. A description of the reasons why action by the agency is being considered.

2. A succinct statement of the objectives of, and the legal basis for, the proposed rule.

3. A description—and, where feasible, an estimate of the number—of small

[17] FRA's estimates follow Office of Management and Budget (OMB) guidance in OMB Circular A–94 to use real discount rates of 7 and 3 percent for regulatory analysis.

entities to which the proposed rule will apply.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

FRA has proposed this part 271 in order to comply with sec. 103 and sec. 109 of the RSIA. The RSIA states, in part, that FRA shall require each Class I railroad and railroad with ''inadequate safety performance'' to establish a railroad safety risk reduction program.[18] *See* 49 U.S.C. 20156, 20118, and 20119. This proposed rule sets forth RRP requirements for Class I freight railroads and railroads with inadequate safety performance.

2. The Proposed Rule: Objectives and Legal Basis

The purpose of this proposed rule is to improve railroad safety through structured, proactive processes and procedures developed and implemented by railroad operators. The proposed rule would require a railroad to establish an RRP that systematically evaluates railroad safety hazards on its system and manages those risks in order to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities.

The proposed rule would prescribe minimum Federal safety standards for the preparation, adoption, and implementation of RRPs. The proposed rule does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this proposed rule.

The Secretary has delegated the responsibility to carry out his responsibilities under both sec. 103 and sec. 109 of RSIA, as well as the general responsibility to conduct rail safety rulemakings, codified at 49 U.S.C. 20103, to the Administrator of FRA. *See* 49 CFR 1.89(m) and (oo).

The proposed rulemaking would add to FRA's regulations a new part 271. Part 271 would satisfy the RSIA mandate that FRA require safety risk reduction programs for Class I freight railroads and railroads with inadequate safety performance. *See* 49 U.S.C. 20156(a)(1). It would also include protection from admission or discovery of certain information compiled or collected pursuant to a safety RRP. *See* 49 U.S.C. 20119.

3. Descriptions and Estimates of Small Entities to Which the Proposed Rule Would Apply

The universe of the entities considered in an IRFA generally includes only those small entities that can reasonably expect to be directly regulated by the proposed action. Small railroads are the types of small entities potentially affected by this proposed rule.

A ''small entity'' is defined in 5 U.S.C. 601(3) as having the same meaning as ''small business concern'' under sec. 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Title 49 U.S.C. 601(4) likewise includes within the definition of small entities non-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a ''for-profit'' railroad business firm may be, and still be classified as a small entity, is 1,500 employees for ''line haul operating railroads'' and 500 employees for ''switching and terminal establishments.'' Additionally, 5 U.S.C. 601(5) defines as small entities governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final Statement of Agency Policy that formally establishes small entities or small businesses as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003 (codified as appendix C to 49 CFR part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. This definition is what FRA is proposing to use for the rulemaking.

Railroads

Class I freight railroads and railroads with inadequate safety performance would have to comply with all of the proposed provisions of part 271. However, the amount of effort to comply with the proposed rule is commensurate with the size of the entity.

In the universe of railroads for potential compliance under this proposed rule, there are 7 Class I railroads, 10 Class II railroads (1 of which is classified as a passenger railroad that would be excepted from the proposed rule), and 629 Class III freight railroads. Railroads with tourist operations are excluded, and these comprise approximately 90 of the total 719 Class III railroads.

To identify the non-Class I railroads that must comply with the proposed rule, FRA will annually conduct a two-phase analysis to determine which railroads have inadequate safety performance. This is accomplished by the following: (1) A statistically-based quantitative analysis of fatalities, FRA-reportable injuries/illnesses, FRA-reportable accidents/incidents, and FRA safety violations; and (2) a qualitative assessment that includes input from affected railroads and their employees. (*See* § 271.13 of the proposed rule for a full description of the process used to determine inadequate safety performance.)

As FRA's initial inadequate safety performance analysis would occur at least one year after an RRP final rule goes into effect, it is impossible to tell how many railroads with inadequate safety performance would be required to comply with the RRP regulation, and consequently how many of those might be small businesses. However, using a recent 3-year rolling average of safety data to test the selection analytical process, and accounting for those that might seek relief through the qualitative review process, FRA would expect between 7 and 13 Class III railroads to qualify initially for the program, or a simple average of 10; and between 3 and 7, incrementally, per annum thereafter, or a simple average of 5. FRA expects the number of inadequate safety performance railroads to grow each year by 4 or 5 to a maximum of 40 to 45 by year 9 or 10, at which point it should flatten out or actually decline. This declining involvement is due to several factors: (1) Safety performance will improve; (2) after 7 years, some railroads will seek and receive relief

[18] As discussed elsewhere in this NPRM, the RSIA mandate to require safety risk reduction programs for passenger railroads is being addressed in a separate SSP rulemaking.

from being in the program; (3) the size of the railroad pool being examined for inadequate safety performance would shrink as more railroads are required to comply with part 271; and (4) railroads will observe the positive behaviors and results of those railroads with RRPs and will embrace the better safety practices of those railroads as a model. FRA does not find this number of small railroads to be a substantial number of small entities when compared with the 629 small railroads that could potentially be impacted (*i.e.,* Class III railroads) in the industry.

FRA intends to provide assistance to railroads, including small business entities, in the development of their RRPs, starting at the planning phase and continuing through the implementation phase. The proposed rule is also scalable in nature, and FRA would provide assistance to those railroads so that the scope and content of their RRPs are proportionate to their size and the nature of their operation.

As indicated above, FRA would assist a small entity in preparing its RRP program and plan. FRA anticipates that the RRP plan for such an entity would be a very concise and brief document.

FRA requests comments on these findings and conclusions.

Contractors

Some railroads use contractors to perform many different functions on their railroads. For some of these railroads, contractors perform safety-related functions, such as operating trains. For the purpose of assessing the impact of an RRP, contractors fall into two groups: Larger contractors who perform a primary operating or maintenance function for the railroads, and smaller contractors who perform ancillary functions to the primary operations. Larger contractors are typically large private companies, such as Sperry Rail Service, or part of an international conglomerate such as Balfour Beatty. Smaller contractors may perform such duties as brush clearing, painting facilities, etc.

Safety-related policies, work rules, guidelines, and regulations are imparted to the small contractors today as part of their contractual obligations and qualification to work on the Class I freight railroads, and potentially to work for railroads with inadequate safety performance. FRA sees minimal additional burden to imparting the same type of information under each railroad's RRP. A very small administrative burden may result.

Under the proposed rule, contractors (small or large) who provide significant safety-related services are not required to do anything under the rule. While the proposed rule requires the railroad to involve the persons that provide significant safety-related services in the railroad's RRP, it doesn't require the entity to do any training. Thus, any burdens imposed on contractors would be indirect or taken into account in the contract with the pertinent railroad or both. FRA requests comment on these findings and conclusions.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

There are reporting, recordkeeping, and compliance costs associated with the proposed regulation.

FRA believes that the added burden is marginal due to the proposed NPRM requirements. The total 10-year cost of this proposed rulemaking is $18.6 million, of which FRA estimates $3.2 million or less will be attributable to small entities ($3.2 million in current dollars, $2 million at a 7-percent discount rate, or $2.6 million at a 3-percent discount rate.) Based on FRA's RIA, which has been placed in the docket for this proposed rulemaking, the average railroad with inadequate safety performance would incur an average of $13,500 (non-discounted) of burden per year. If on average railroads with inadequate safety performance were in the RRP for eight years, then the life-time cost would be approximately $108,000. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad, or $47,000, is more than three times the average annual cost that these railroads will incur because of this proposed rule. FRA realizes that some railroads will have lower revenue than $4.7 million. However, FRA believes that this average provides a good representation of the small railroads, in general.

Overall, FRA believes that the proposed regulation would not be a significant economic burden for small entities. However, due to the small number of small railroads that are estimated to be impacted by this proposed rule, the cost per railroad could be found to be significant. For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this proposed rulemaking. FRA expects that most of the skills necessary to comply with the proposed regulation would be professional hazard assessment personnel, and recordkeeping and reporting personnel.

The following section outlines the potential additional burden on small railroads for each subpart of the proposed rule:

- Subpart A—General: Risk Reduction Program Regulation

The policy, purpose, and definitions outlined in subpart A, alone, would not impose a significant burden on small railroads. However, there is the small requirement for notifying employees of the railroad that FRA has found that the railroad may have inadequate safety performance. This subpart of the proposed rule would impose less than 1 percent of the total burden for small entities.

- Subpart B—Risk Reduction Program Requirements

Subpart B of the proposed rule would have a more or less proportional effect directly related to the size and complexity of a railroad. This subpart of the proposed rule would impose approximately 63 percent of the total burden for small entities. The proposed requirements in this subpart describe what must be developed and placed in the RRP to properly implement the RRP. More specifically, it requires the development of the risk-based hazard analysis, risk-based hazard management processes, and technology implementation plans. Because of the scalable nature of the proposed rule, the requirements of an RRP would be much less complex for a small railroad than they would be for a Class I railroad. This is due to several characteristics of small railroads, such as the concentrated geography of operation in a small area, the short distance of operation, and a non-fragmented and non-diffused work force (in other words, most employees of a small railroad are located in one place). Hence, the number and types of hazards for a small railroad should be limited. Also, such RRP requirements as technology plans should not be burdensome. A small railroad is very limited in the investments it can place in new technologies, and what they do invest in would quite likely be a tried-and-true technology that has been thoroughly tested elsewhere.

- Subpart C—Risk Reduction Program Plan Requirements

Subpart C of the proposed rule would have a more or less proportional effect directly related to the size and complexity of a railroad. In other words, it would have less impact on small entities than it would on Class I railroads. This subpart of the proposed rule would impose approximately 23 percent of the total burden for small

entities. These proposed requirements describe what must be developed and placed in the RRP plan to properly implement the RRP. Specifically, it requires a plan statement on each element of the RRP, including safety policy and goals, system description, consultation process, risk-based hazard management processes, technology plans, internal assessment process, and an RRP implementation plan. This proposed subpart is primarily the paperwork or written plan that supports the processes and programs in the RRP.

• Subpart D—Review, Approval, and Retention of Risk Reduction Program Plans

Subpart D of the proposed rule would impose less than 1 percent of the total burden for small entities. The proposed requirements of this subpart are for the initial delivery and review of the RRP plan, as well as delivery of any ongoing amendments. Since this is initially only expected to have 10 small railroads submitting plans for approval and approximately 5 railroads each year thereafter, this subpart should have a very small economic impact.

• Subpart E—Internal Assessments

Subpart E of the proposed rule would impose approximately 12 percent of the total burden for small entities. This burden is for the ongoing cost for the small railroads to perform an internal assessment and report on internal audits on annual basis. As noted above, initially very few small railroads would be performing internal assessments, which would serve to minimize the economic impact on small railroads.

• Subpart F—External Audits

Subpart F of the proposed rule would impose approximately 1 percent of the total burden for small entities. This burden is for the ongoing cost for the small railroads to host an external audit by FRA or its designees on a periodic basis. This includes the burden to produce an improvement plan if such were required as a result of the external audit findings. FRA does not expect more than five of these railroads to receive an external audit for any given year.

Market and Competition Considerations

The railroad industry has several significant barriers to entry, such as the need to own or otherwise obtain access to rights-of-way and the high capital expenditure needed to purchase a fleet, as well as track and equipment. Furthermore, the small railroads under consideration would potentially be competing only with the trucking industry and typically deal with the transport of commodities or goods that are not truck-friendly. Thus, while this proposed rule would have an economic impact on Class I freight railroads and railroads with inadequate safety performance, it should not have an impact on the competitive position of small railroads. FRA requests comment on these findings and conclusions.

5. Identification of Any Duplicative, Overlapping, or Conflicting Federal Rules

FRA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. In fact, the rule would support most other safety regulations for railroad operations.

The Federal Transit Administration (FTA) first implemented requirements similar to an RRP in 49 CFR part 659 in 1995, and its requirements can be much more systemic and encompassing. However, FTA's part 659 program applies to only rapid transit systems, or portions thereof, that are not subject to FRA's rules. *See* 49 CFR 659.3 and 659.5. Therefore, FTA's part 659 does not apply to any of the railroads that are within the scope of the proposed RRP rule.

FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. As noted above FRA has estimated that railroads with inadequate safety performance would incur less than 12 percent of the total cost of this proposed rule. Based on FRA's RIA, the average railroad with inadequate safety performance would incur an average of $13,500 (non-discounted) of burden per year. If on average railroads with inadequate safety performance were in the RRP for eight years, then the life-time cost would be approximately $108,000. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad, or $47,000, is more than three times the average annual cost that these railroads will incur because of this proposed rule. FRA realizes that some railroads will have lower revenue than $4.7 million. However, FRA believes that this average provides a good representation of the small railroads, in general. FRA specifically requests comments as to whether small railroads would incur a significant economic impact from this proposed rule. FRA will consider all comments received in the public comment process when making a final determination regarding the economic impact on small entities.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA 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'' are 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, the agency may not issue a regulation with 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 the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the proposed 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. In addition, FRA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This NPRM proposes to add part 271, Risk Reduction Programs. FRA is not aware of any State having regulations similar to proposed part 271. However, FRA notes that this part could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and codified at 49 U.S.C. 20106 (Sec. 20106). Sec. 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the

Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to Sec. 20106. Although FRA is proposing to specify in proposed § 271.11(c) that state discovery rules and sunshine laws that could be used to require the disclosure of information protected by § 271.11(a) are preempted, the purpose of this language is only to clarify the preemptive effect of Sec. 20106, and is not intended to have preemptive effect that goes beyond the operation of Sec. 20106. The proposed information protection provisions clearly relate to matters of railroad safety because, as previously discussed, 49 U.S.C. 20119(b) authorizes FRA to issue a rule governing the discovery and use of risk analysis information in litigation.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than preemption of State laws under 49 U.S.C. 20106 and 20119. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
271.7—Waiver Petitions to FRA	22 railroads	1 petition	80 hours	80
271.13—Determination of Inadequate Safety Performance (ISP)—Notice to Employees of ISP Designation by FRA.	22 railroads	120 notices	30 minutes	60
—Employee Confidential Comments to FRA regarding RR ISP Designation.	100 employees	10 comments	30 minutes	5
—RR Documentation to FRA Refuting ISP Designation.	10 railroads	10 document	8 hours	80
271.101(a)—Risk Reduction Programs (RRPs)—Class I Railroads.	7 railroads	7 RRPs	6,987 hours	48,910
—Risk Reduction Programs (RRPs)—Inadequate Safety Performance (ISP) Railroads.	10 railroads	10 RRPs	343 hours	3,430
(c)—Communication by RRs that host passenger train service with Class I RRs subject to FRA System Safety Program Requirements.	7 railroads	40 consults	2 hours	80
(d)—RR Identification/Communication with railroads performing significant safety-related services—Class I RRs.	7 railroads	318 consults	2 hours	636
—RR Identification/Communication with contractors performing significant safety related services.	7 railroads	1,488 consult	1 hour	1,488
(d)—ISP RRs identification/communication w/entities performing significant safety-related services.	10 railroads	10 consults	4 hours	40
271.107—Reporting to management risk-based HMP Activities—Class I.	7 railroads	84 reports	30 minutes	42
—Reporting to management—ISP RRs	10 railroads	120 reports	3 hours	360
271.111—Implementation Training.				
—Employee RRP training—Class I RR	150,000 employees	1,400 worker	2 hours	2,800
—Replacement/new employees: Class I	150,000 employees	140 workers	2 hours	280
—Employee RRP training—ISP RRs	1,000 employees	100 workers	2 hours	200
—Employee RRP training records (Class I RRs + ISP RRs).	17 railroads	1,640 records	3 minutes	82
271.201/203—Written Risk Reduction Plans (RRPs)—Adoption and Implementation of RRP Plans—Class I.	7 railroads	7 RRP Plans	1,152 hours	8,064
—Written RRP Plans—ISP RRs	10 railroads	10 RRP Plans	240 hours	2,400
271.207—RR Good Faith Consultation w/Directly Affected Employees—Class I RRs.	7 Railroads	7 consults	200 hours	1,400
—RR Good Faith Consultations—ISP RRs	10 Railroads	10 consults	20 hours	200
—RR Notification to Employees of Consultation Meeting—Class I RRs.	7 Railroads	2 notices	8 hours	16
—ISP RR Notification to Employees	10 Railroads	1 notice	30 minutes	1

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Voluntarily compliant RR consultation with directly affected employees on RRP Plan contents.	72 railroads	1 consult/statement	20 hours	20
—Copy of RRP Plan/Consultation Statement to General Chair of Labor Union and to Individuals Identified in RRP Plan Service List.	7 Railroads	380 plan copies + 380	2 minutes	25
—Statements from Directly Affected Employees—Class I RRs.	10 Labor Unions	3 statements	6 hours	18
271.209—Substantive Amendments to RRP Plan—Class I RRs.	7 Railroads	7 amended plans	40 hours	280
Substantive Amendments to RRP Plan—ISP RRs.	10 Railroads	10 amended plans	4 hours	40
271.301—Filing of RRP Plan w/FRA—Class I RRs + ISP RRs.	17 railroads	17 filed plans	2 hours	34
—Class I RR corrected RRP Plan	7 railroads	2 RRP plans	2 hours	4
—FRA requested Class I RR consultation with directly affected employees regarding substantive corrections/changes to RRP Plan.	7 railroads	2 consulting statements	3 hours	6
271.303—*Amendments* Consultation w/Directly Affected Employees on Substantive Amendments to RRP Plan—Class I RRs + ISP RRs.	17 railroads	2 consults	60 minutes	2
—Amended RRP Plan—Class I RRs	7 railroads	7 plans	6 hours	42
—Amended RRP Plan—ISP RRs	10 railroads	1 plan	1 hour	1
—Amended RRP Plan Disapproved by FRA and Requiring Correction.	7 Railroads	1 corrected RRP Plan	80 hours	80
271.307—Retention of RRP Plans—Copies of RRP Plan/Amendments by RR at System/Division Headquarters.	17 railroads	34 plan copies	10 minutes	6
217.401/403—RR Internal Assessment/Improvement Plans—Class I RRs.	7 railroads	7 plans	120 hours	840
—ISP RR Improvement Plans	10 railroads	10 plans	32 hours	320
271.405—Internal Assessment Report Copy to FRA—Class I RRs.	7 railroads	7 reports/copies	8 hours	56
—Internal Assessment Report Copy to FRA—ISP RRs.	10 railroads	10 reports/copies	2 hours	20
271.503—External Audit Improvement Plans—Submission of Improvement Plans upon FRA Written Notice of Agency Audit Results—Class I RRs.	7 railroads	2 plans	40 hours	80
—External Audit Improvement Plans—Submission of Improvement Plans upon FRA Written Notice of Agency Audit Results—Class I RRs.	10 railroads	1 plan	4 hours	4
—Submission of Amended Improvement Plan after FRA Disapproval.	7 railroads	1 plan	8 hours	8
—Status Report Requested by FRA concerning Implementation of Improvements in Improvement Plan.	7 railroads	1 status report	8 hours	8
Appendix B—Request by FRA for Additional Information/Documents to determine whether Railroad has met Good Faith and Best Efforts Consultation Requirements of Section 271.207.	7 railroads	3 documents	40 hours	120
—Further Railroad Consultation w/employees after determination by FRA that railroad did not use Good Faith/Best Efforts.	7 railroads	1 consult	8 hours	8
—Meeting to discuss Administrative Details of Consultation Process during the time between Initial Meeting and Applicability Date—Class I RRs.	7 railroads	7 meetings/consults	2 hours	14
—Meeting to discuss Administrative Details of Consultation Process during the time between Initial Meeting and Applicability Date –ISP RRs.	10 railroads	10 meetings/consults	1 hour	10
—Draft RRP Plan Proposal to Employees—ISP RRs.	10 railroads	2 proposals/copies	20 hours	40
—Employee comments on RRP Plan Draft Proposal.	100 Employees	6 comments	1 hour	6

The estimates in this table are based upon FRA's general experience and expertise regarding the railroad industry and the development of plans. All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C.

3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov*; *Kim.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: ''(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.''

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to sec. 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $143,100,000 to account for inflation. This proposed rule would not result in the expenditure of more than $143,100,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

I. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

List of Subjects in 49 CFR Part 271

Penalties; Railroad safety; Reporting and recordkeeping requirements; and Risk reduction.

The Proposal

In consideration of the foregoing, FRA proposes to add part 271 to chapter II, subtitle B of title 49, Code of Federal Regulations, to read as follows:

PART 271—RISK REDUCTION PROGRAM

Subpart A—General

Sec.
271.1 Purpose and scope.
71.3 Application.
71.5 Definitions.
271.7 Waivers.

Authority: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

§ 271.1 Purpose and scope.

(a) The purpose of this part is to improve railroad safety through structured, proactive processes and procedures developed and implemented by railroads. Each railroad subject to this part must establish a Risk Reduction Program (RRP) that systematically evaluates railroad safety hazards on its system and manages the risks associated with those hazards in order to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of RRPs. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) This part prescribes the protection of information generated solely for the purpose of developing, implementing, or evaluating an RRP under this part.

(d) An RRP required by this part is not intended to address and should not address the safety of employees while performing inspections, tests, and maintenance, except where FRA has already addressed workplace safety issues, such as blue signal protection in part 218 of this chapter. FRA does not intend to approve any specific portion of an RRP plan that relates to employee working conditions.

§ 271.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to—

(1) Class I railroads;

(2) Railroads determined to have inadequate safety performance pursuant to § 271.13; and

(3) Railroads that voluntarily comply with the requirements of this part pursuant to § 271.15.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(2) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation;

(3) Operation of private cars, including business/office cars and circus trains;

(4) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 271.5); and

(5) Commuter or intercity passenger railroads that are subject to Federal system safety program requirements.

§ 271.5 Definitions.

As used in this part only—

Accident/incident means—

(1) Any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The term ''highway user'' includes automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation (motorized and un-motorized);

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold identified in part 225 of this chapter to railroad on-track equipment, signals, track, track structures, and roadbed;

(3) Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in § 225.19(d)(1) through (6) of this chapter if any event or exposure arising from the operation of a railroad is a discernible cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernible causes; it need not be the sole or predominant cause.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

FRA means the Federal Railroad Administration.

FRA Associate Administrator means the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, or the Associate Administrator's delegate.

Fully implemented means that all elements of an RRP as described in the RRP plan are established and applied to the safety management of the railroad.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment.

Inadequate safety performance means safety performance that FRA has determined to be inadequate based on the criteria described in § 271.13.

Mitigation strategy means an action or program intended to reduce or eliminate the risk associated with a hazard.

Person means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor or subcontractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

Pilot project means a limited scope project used to determine whether

quantitative proof suggests that a particular system or mitigation strategy has potential to succeed on a full-scale basis.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, is not considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Positive train control system means a system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, as described in subpart I of part 236 of this chapter.

Railroad means—

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation; and

(2) A person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Risk means the combination of the probability (or frequency of occurrence) and the consequence (or severity) of a hazard.

Risk-based HMP means a risk-based hazard management program.

Risk reduction means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk mitigation strategies. It includes systematic procedures, practices, and policies for the management of safety risk.

RRP means a Risk Reduction Program.

RRP plan means a Risk Reduction Program plan.

Safety culture means the shared values, actions, and behaviors that demonstrate a commitment to safety over competing goals and demands.

Safety performance means a realized or actual safety accomplishment relative to stated safety objectives.

Safety outreach means the communication of safety information to support the implementation of an RRP throughout a railroad.

Senior management means personnel at the highest level of a railroad's management who are responsible for making major policy decisions and long-term business plans regarding the operation of the railroad.

STB means the Surface Transportation Board of the United States.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations.

§ 271.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 271.9 Penalties and responsibility for compliance.

(a) Any person that violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to individuals, or has caused death or injury, a penalty not to exceed $105,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person that knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)). Appendix A to this part contains a schedule of civil penalty amounts used in connection with this part.

(b) Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor or subcontractor to a railroad, performs any function covered by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

§ 271.11 Discovery and admission as evidence of certain information.

(a) Any information (including plans, reports, documents, surveys, schedules, lists, or data) compiled or collected for the sole purpose of developing, implementing, or evaluating an RRP under this part, including a railroad carrier's analysis of its safety risks conducted pursuant to § 271.103(b) and a statement of the mitigation measures with which it would address those risks created pursuant to § 271.103(c), shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, or property damage.

(b) This section does not affect the discovery, admissibility, or consideration for other purposes of information (including plans, reports, documents, surveys, schedules, lists, or data) compiled or collected for a purpose other than that specifically identified in paragraph (a) of this section. Such information shall continue to be discoverable, admissible into evidence, or considered for other purposes if it was discoverable, admissible, or considered for other purposes prior to the existence of this section. This includes such information that either:

(1) Existed prior to [365 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(2) Was compiled or collected prior to [365 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE

IN THE **FEDERAL REGISTER**] and that continues to be compiled or collected; or

(3) Is compiled or collected after [365 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(c) State discovery rules and sunshine laws that could be used to require the disclosure of information protected by paragraph (a) of this section are preempted.

§ 271.13 Determination of inadequate safety performance.

(a) *General.* (1) This section describes FRA's methodology for determining which railroads are required to establish an RRP because they have inadequate safety performance. FRA's methodology will consist of a two-phase annual analysis, comprised of both a quantitative analysis and qualitative assessment, which will include all railroads except for:

(i) Railroads excluded from this part under § 271.3(b);

(ii) Railroads already required to comply with this part;

(iii) Railroads that are voluntarily complying with this part under § 271.15; and

(iv) Except as provided in paragraph (a)(2) of this section, new start-up railroads that have reported accident/incident data to FRA pursuant to part 225 of this chapter for fewer than three years.

(2) Notwithstanding paragraph (a)(1)(iv) of this section, railroads formed through amalgamation of operations (for example, railroads formed through consolidations, mergers, or acquisitions of control) will be included in the analysis using the combined data of the pre-amalgamation entities.

(b) *Quantitative analysis.* (1) *Methodology.* The first phase of FRA's annual analysis will be a statistically-based quantitative analysis of each railroad within the scope of the analysis, using historical safety data maintained by FRA for the three most recent full calendar years. The purpose of the quantitative analysis is to make a threshold identification of railroads that possibly have inadequate safety performance. This quantitative analysis will calculate the following four factors:

(i) A railroad's number of on-duty employee fatalities during the 3-year period, calculated using ''Worker on Duty-Railroad Employee (Class A)'' information reported on FRA Form 6180.55a pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter;

(ii) A railroad's on-duty employee injury/illness rate, calculated using ''Worker on Duty-Railroad Employee (Class A)'' information reported on FRA Forms 6180.55a and 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter. This rate will be calculated using the following formula, which gives the rate of employee injuries and occupational illnesses per 200,000 employee hours over a 3-year period:

Injury/Illness Rate = (Total FRA Reportable On-Duty Employee Injuries + Total FRA Reportable On-Duty Employee Occupational Illnesses over a 3-year period) ÷ (Total Employee Hours over a 3-year period/200,000)

(iii) A railroad's rail equipment accident/incident rate, calculated using information reported on FRA Forms 6180.54 and 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter. This rate will be calculated using the following formula, which gives the rate of rail equipment accidents/incidents per 1,000,000 train miles over a 3-year period:

Rail Equipment Accident/Incident Rate = Total FRA Reportable Rail Equipment Accidents/Incidents over a 3-year period ÷ (Total Train Miles over a 3-year period/1,000,000)

(iv) A railroad's violation rate. This rate will be calculated using the following formula, which gives the rate of violations issued by FRA to a railroad per 1,000,000 train miles over a 3-year period:

Violation Rate = Total FRA Violations over a 3-year period ÷ (Total Train Miles over a 3-year period/1,000,000)

(2) *Identification.* The quantitative analysis will identify railroads as possibly having inadequate safety performance if at least one of the following two conditions exists within the scope and timeframe of the analysis:

(i) A railroad has one or more fatality; or

(ii) A railroad is at or above the 95th percentile in at least two of three factors described in paragraphs (b)(1)(ii) through (iv) of this section.

(c) *Qualitative assessment.* The second phase of FRA's analysis will be a qualitative assessment of railroads identified in the quantitative analysis as possibly having inadequate safety performance.

(1) *Notification and railroad/employee comment.* FRA will notify a railroad in writing if it will be subject to a qualitative assessment because it was identified in the quantitative analysis as possibly having inadequate safety performance.

(i) No later than 15 days after receiving FRA's written notice, a railroad shall notify its employees of FRA's written notice. This employee notification shall be posted at all locations where the railroad reasonably expects its employees to report and to have an opportunity to observe the notice. The notification shall be posted and remain continuously displayed until 45 days after FRA's initial written notice. Employees who do not have a regular on-duty point for reporting to work shall be notified by other means, in accordance with the railroad's standard practice for communicating with employees. The notification shall inform railroad employees that they may confidentially submit comments to FRA regarding the railroad's safety performance for a period of 45 days following FRA's initial written notice, and shall contain instructions for doing so.

(ii) No later than 45 days after receiving FRA's written notice, a railroad may provide FRA documentation supporting any claims that the railroad does not have inadequate safety performance.

(2) *Methodology.* No later than 90 days after providing the initial notice to a railroad identified by the quantitative analysis, FRA will conduct a qualitative assessment of the identified railroad and make a final determination regarding whether it has inadequate safety performance. The qualitative assessment will consider any documentation provided by the railroad, comments submitted by railroad employees, and any other pertinent information.

(d) *Final notification and compliance.* FRA will provide a final written notice to each railroad that receives an initial written notice, informing the railroad whether or not FRA determines that the railroad has demonstrated inadequate safety performance. A railroad with inadequate safety performance shall develop and implement an RRP meeting the requirements of this part. As provided by § 271.301(a), a railroad with inadequate safety performance shall submit to FRA an RRP plan no later than 90 days after receiving final written notice from FRA that it shall comply with this part, or no later than [545 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(e) *Compliance.* A railroad with inadequate safety performance shall comply with the requirements of this part for a minimum period of five years, running from the date on which FRA approves the railroad's RRP plan pursuant to subpart D of this part.

(f) *Petition.* After the five-year compliance period, the railroad may petition FRA for approval to discontinue compliance with this part. A petition shall be filed according to the procedures for waivers contained in part 211 of this chapter. Upon receiving a petition, FRA will reevaluate the railroad's safety performance for the purpose of determining whether the railroad's RRP has resulted in significant and sustained safety improvements, and whether these measured improvements are likely sustainable in the long term. FRA's evaluation will include a quantitative analysis as described in paragraph (b) of this section. FRA will also examine qualitative factors and review information from FRA RRP audits and other relevant sources. After completing its evaluation, FRA will notify the railroad in writing whether or not it shall be required to continue compliance with this part.

§ 271.15 Voluntary compliance.

(a) *General.* A railroad not otherwise subject to this part may voluntarily comply by establishing and fully implementing an RRP meeting the requirements of this part. A voluntary RRP shall be supported by an RRP plan that has been submitted to FRA for approval pursuant to the requirements of subpart D of this part. After FRA has approved its RRP plan, a voluntarily-compliant railroad could be subject to civil penalties or other enforcement action for failing to comply with the requirements of this part.

(b) *Duration.* A voluntarily-compliant railroad will be required to comply with the requirements of this part for a minimum period of five years, running from the date on which FRA approves the railroad's plan pursuant to subpart D of this part.

(c) *Petition.* After this five-year period, a voluntarily-compliant railroad may petition FRA for approval to discontinue compliance with this part. This petition shall be filed according to the procedures for waivers contained in part 211 of this chapter.

(d) *Discovery and admission as evidence of certain information.* The information protection provisions found in § 271.11 apply only to information compiled or collected pursuant to a voluntary RRP that is conducted in accordance with the requirements of this part.

Subpart B—Risk Reduction Program Requirements

§ 271.101 Risk reduction programs.

(a) *Program required.* Each railroad shall establish and fully implement an RRP meeting the requirements of this part. An RRP shall systematically evaluate safety hazards on a railroad's system and manage the resulting risks to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. An RRP is not a one-time exercise, but an ongoing program that supports continuous safety improvement. An RRP shall include the following:

(1) A risk-based hazard management program, as described in § 271.103;

(2) A safety performance evaluation component, as described in § 271.105;

(3) A safety outreach component, as described in § 271.107;

(4) A technology analysis and technology implementation plan, as described in § 271.109; and

(5) RRP implementation and support training, as described in § 271.111.

(b) *RRP plans.* A railroad's RRP shall be supported by an FRA-approved RRP plan meeting the requirements of subpart C of this part.

(c) *Host railroads and system safety programs.* As part of its RRP, each railroad that hosts passenger train service for a railroad subject to FRA system safety program requirements shall communicate with the railroad that provides or operates such passenger service and coordinate the portions of the system safety program applicable to the railroad hosting the passenger train service.

(d) *Persons that utilize or perform significant safety-related services.* Under § 271.205(b), a railroad's RRP plan shall identify persons utilizing or performing on the railroad's behalf significant safety-related services (including entities such as host railroads, contract operators, shared track/corridor operators, or other contractors utilizing or performing significant safety-related services). A railroad shall ensure that these persons utilizing or performing significant safety-related services on its behalf support and participate in its RRP.

§ 271.103 Risk-based hazard management program.

(a) *General.* (1) An RRP shall include an integrated, system-wide, and ongoing risk-based hazard management program (HMP) that proactively identifies hazards and mitigates the risks resulting from those hazards.

(2) A risk-based HMP shall be fully implemented (*i.e.,* activities initiated) within 36 months after FRA approves a railroad's RRP plan pursuant to § 271.301(b).

(b) *Risk-based hazard analysis.* As part of its risk-based HMP, a railroad shall conduct a risk-based hazard analysis that addresses, at a minimum, the following aspects of a railroad's system: Infrastructure; equipment; employee levels and work schedules; operating rules and practices; management structure; employee training; and other areas impacting railroad safety that are not covered by railroad safety laws or regulations or other Federal laws or regulations. A railroad shall make the results of its risk-based hazard analysis available to FRA upon request. At a minimum, a risk-based hazard analysis shall:

(1) Identify hazards by analyzing:

(i) Aspects of the railroad's system, including any operational changes, system extensions, or system modifications; and

(ii) Accidents/incidents, injuries, fatalities, and other known indicators of hazards;

(2) Calculate risk by determining and analyzing the likelihood and severity of potential events associated with identified risk-based hazards; and

(3) Compare and prioritize the identified risks for mitigation purposes.

(c) *Mitigation strategies.* (1) As part of its risk-based HMP, a railroad shall design and implement mitigation strategies that improve safety by:

(i) Mitigating or eliminating aspects of a railroad's system that increase risks identified in the risk-based hazard analysis; and

(ii) Enhancing aspects of a railroad's system that decrease risks identified in the risk-based hazard analysis.

(2) A railroad may use pilot projects, including pilot projects conducted by other railroads, to determine whether quantitative data suggests that a particular mitigation strategy has potential to succeed on a full-scale basis.

§ 271.105 Safety performance evaluation.

(a) *General.* As part of its RRP, a railroad shall develop and maintain ongoing processes and systems for evaluating the safety performance of its system and measuring its safety culture. A railroad's safety performance evaluation shall consist of both a safety monitoring and a safety assessment component.

(b) *Safety monitoring.* A railroad shall monitor the safety performance of its system by, at a minimum, establishing processes and systems to acquire safety data and information from the following sources:

(1) Continuous monitoring of operational processes and systems (including any operational changes, system extensions, or system modifications);

(2) Periodic monitoring of the operational environment to detect changes that may generate new hazards;

(3) Investigations of accidents/incidents, injuries, fatalities, and other known indicators of hazards;

(4) Investigations of reports regarding potential non-compliance with Federal railroad safety laws or regulations, railroad operating rules and practices, or mitigation strategies established by the railroad; and

(5) A reporting system through which employees can report safety concerns (including, but not limited to, hazards, issues, occurrences, and incidents) and propose safety solutions and improvements.

(c) *Safety assessment.* For the purpose of assessing the need for changes to a railroad's mitigation strategies or overall RRP, a railroad shall establish processes to analyze the data and information collected pursuant to paragraph (b) of this section (as well as any other relevant data regarding its operations, products, and services). At a minimum, this assessment shall:

(1) Evaluate the overall effectiveness of the railroad's RRP in reducing the number and rates of railroad accidents/incidents, injuries, and fatalities;

(2) Evaluate the effectiveness of the railroad's RRP in meeting the goals described by its RRP plan (*see* § 271.203(c));

(3) Evaluate the effectiveness of risk mitigations in reducing the risk associated with an identified hazard. Any hazards associated with ineffective mitigation strategies shall be reevaluated through the railroad's risk-based HMP, as described in § 271.103; and

(4) Identify new, potential, or previously unknown hazards, which shall then be evaluated by the railroad's risk-based HMP, as described in § 271.103.

§ 271.107 Safety outreach.

(a) *Outreach.* An RRP shall include a safety outreach component that communicates RRP safety information to railroad personnel (including contractors) as that information is relevant to their positions. At a minimum, a safety outreach program shall:

(1) Convey safety-critical information;

(2) Explain why RRP-related safety actions are taken; and

(3) Explain why safety procedures are introduced or changed.

(b) *Reporting to management.* The status of risk-based HMP activities shall be reported to railroad senior management on an ongoing basis.

§ 271.109 Technology analysis and technology implementation plan.

(a) *General.* As part of its RRP, a Class I railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than [1095 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. A railroad with inadequate safety performance shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after receiving final written notification from FRA that it shall comply with this part, pursuant to § 271.13(e), or no later than [1095 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. A railroad that the STB reclassifies or newly classifies as a Class I railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years following the effective date of the classification or reclassification or no later than [1155 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. A voluntarily-compliant railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after FRA approves the railroad's RRP plan.

(b) *Technology analysis.* A technology analysis shall evaluate current, new, or novel technologies that may mitigate or eliminate hazards and the resulting risks identified through the risk-based hazard management program. The railroad shall analyze the safety impact, feasibility, and costs and benefits of implementing technologies that will mitigate or eliminate hazards and the resulting risks. At a minimum, the technologies a railroad shall consider as part of its technology analysis are: processor-based technologies, positive train control systems, electronically-controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position monitors and indicators, trespasser prevention technology, and highway-rail grade crossing warning and protection technology.

(c) *Technology implementation plan.* A railroad shall develop, and periodically update as necessary, a technology implementation plan that contains a prioritized implementation schedule describing the railroad carrier's plan for development, adoption, implementation, maintenance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified in the railroad's risk-based hazard management program.

(d) *Positive train control.* Except as required by subpart I of part 236 of this chapter, if a railroad decides to implement positive train control systems as part of its technology implementation plan, the railroad shall set forth and comply with a schedule for implementation of the positive train control system no later than December 31, 2018.

§ 271.111 Implementation and support training.

(a) A railroad shall provide RRP training to each employee, including an employee of any person identified by the railroad's RRP plan pursuant to § 271.205(a)(3) as utilizing or performing significant safety-related services on the railroad's behalf, who has significant responsibility for implementing and supporting the railroad's RRP. This training shall help ensure that all personnel with significant responsibility for implementing and supporting the RRP understand the goals of the program, are familiar with the elements of the railroad's program, and have the requisite knowledge and skills to fulfill their responsibilities under the program.

(b) A railroad shall keep a record of training conducted under this section and update that record as necessary.

(c) Training under this section may include, but is not limited to, interactive computer-based training, video conferencing, or formal classroom training.

Subpart C—Risk Reduction Program Plan Requirements

§ 271.201 General.

A railroad shall adopt and implement its RRP through a written RRP plan containing the elements described in this subpart. A railroad's RRP plan shall be approved by FRA according to the requirements contained in subpart D of this part.

§ 271.203 Policy, purpose and scope, and goals.

(a) *Policy statement.* An RRP plan shall contain a policy statement endorsing the railroad's RRP. This statement shall be signed by the chief official at the railroad (*e.g.,* Chief Executive Officer).

(b) *Purpose and scope.* An RRP plan shall contain a statement describing the purpose and scope of the railroad's RRP.

This purpose and scope statement shall describe:

(1) The railroad's safety philosophy and safety culture;

(2) How the railroad promotes improvements to its safety culture;

(3) The roles and responsibilities of railroad personnel (including management) within the railroad's RRP; and

(4) How any person that utilizes or provides significant safety-related services to a railroad (including host railroads, contract operators, shared track/corridor operators, or other contractors) will support and participate in the railroad's RRP.

(c) *Goals.* An RRP plan shall contain a statement that defines the specific goals of the RRP and describes clear strategies for reaching those goals. These goals shall be long-term, meaningful, measurable, and focused on the mitigation of risks arising from identified safety hazards.

§ 271.205 System description.

(a) An RRP plan shall contain a description of the characteristics of the railroad's system. At a minimum, the system description shall:

(1) Support the identification of hazards by establishing a basic understanding of the scope of the railroad's system;

(2) Include components briefly describing the railroad's history, operations, scope of service, maintenance, physical plant, and system requirements; and

(3) Identify all persons that utilize or perform significant safety-related services on the railroad's behalf (including entities such as host railroads, contract operations, shared track/corridor operators, or other contractors).

(b) [Reserved]

§ 271.207 Consultation process description.

(a) *General duty.* (1) Each railroad required to establish an RRP under this part shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor organization representing a class or craft of directly affected employees, on the contents of the RRP plan.

(2) A railroad that consults with a non-profit employee labor organization is considered to have consulted with the directly affected employees represented by that organization.

(3) A Class I railroad shall meet no later than [240 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] with its directly affected employees to discuss the consultation process. The Class I railroad shall notify the directly affected employees of this meeting no less than 60 days before it is scheduled.

(4) A railroad determined to have inadequate safety performance shall meet no later than 30 days following FRA's notification with its directly affected employees to discuss the consultation process. The inadequate safety performance railroad shall notify the directly affected employees of this meeting no less than 15 days before it is scheduled.

(5) A railroad that the STB reclassifies or newly classifies as a Class I railroad shall meet with its directly affected employees to discuss the consultation process no later than 30 days following the effective date of the classification or reclassification. The reclassified or newly classified Class I railroad shall notify the directly affected employees of this meeting no less than 15 days before it is scheduled.

(6) A voluntarily-compliant railroad shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor organization representing a class or craft of directly affected employees, on the contents of the RRP plan. However, as there is no deadline for a voluntarily-compliant railroad to file an RRP plan with FRA, there is also no requirement for a voluntarily-compliant railroad to meet with its directly affected employees within a certain timeframe.

(7) Appendix B to this part contains guidance on how a railroad might comply with the requirements of this section.

(b) *Railroad consultation statements.* A railroad required to submit an RRP plan under § 271.301(a) shall also submit, together with that plan, a consultation statement that includes the following information:

(1) A detailed description of the process the railroad utilized to consult with its directly affected employees;

(2) If the railroad was not able to reach agreement with its directly affected employees on the contents of its RRP plan, identification of any known areas of non-agreement and an explanation why it believes agreement was not reached;

(3) If the RRP plan would affect a provision of a collective bargaining agreement between the railroad and a non-profit employee labor organization, identification of any such provision and an explanation how the RRP plan would affect it; and

(4) A service list containing the names and contact information for the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees and any directly affected employee not represented by a non-profit employee labor organization who significantly participated in the consultation process. If an international/national president did not participate in the consultation process, the service list shall also contain the name and contact information for a designated representative who participated on his or her behalf. When a railroad submits its RRP plan and consultation statement to FRA, it shall also send a copy of these documents to all individuals identified in the service list. A railroad may send the documents to the identified individuals via electronic means or utilizing other service means reasonably calculated to succeed.

(c) *Statements from directly affected employees.* (1) If a railroad and its directly affected employees cannot reach agreement on the proposed contents of an RRP plan, then directly affected employees may file a statement with the FRA Associate Administrator explaining their views on the plan on which agreement was not reached. The FRA Associate Administrator shall consider any such views during the plan review and approval process.

(2) As provided in § 271.301(a)(4), a railroad's directly affected employees have 60 days following the railroad's submission of a proposed RRP plan to submit the statement described in paragraph (c)(1) of this section.

§ 271.209 Consultation on amendments.

A railroad's RRP plan shall include a description of the process the railroad will use to consult with its directly affected employees on any subsequent substantive amendments to the railroad's system safety program. The requirements of this paragraph do not apply to non-substantive amendments (*e.g.,* amendments that update names and addresses of railroad personnel).

§ 271.211 Risk-based hazard management program process.

(a) *Risk-based hazard analysis.* An RRP plan shall describe the railroad's method for conducting its risk-based hazard analysis pursuant to § 271.103(b). The description shall specify:

(1) The processes the railroad will use to identify hazards and the risks associated with those hazards;

(2) The sources the railroad will use to support the ongoing identification of

hazards and the risks associated with those hazards; and

(3) The processes the railroad will use to compare and prioritize identified risks for mitigation purposes.

(b) *Mitigation strategies.* An RRP plan shall describe the railroad's processes for:

(1) Identifying and selecting mitigation strategies; and

(2) Monitoring an identified hazard through the mitigation of the risk associated with that hazard.

§ 271.213 Safety performance evaluation process.

An RRP plan shall describe a railroad's processes for measuring its safety culture pursuant to § 271.105(a), monitoring safety performance pursuant to § 271.105(b), and conducting safety assessments pursuant to § 271.105(c).

§ 271.215 Safety outreach process.

An RRP plan shall describe a railroad's process for communicating safety information to railroad personnel and management pursuant to § 271.107.

§ 271.217 Technology implementation plan process.

(a) An RRP plan shall contain a description of the railroad's processes for:

(1) Conducting a technology analysis pursuant to § 271.109(b); and

(2) Developing a technology implementation plan pursuant to § 271.109(c).

(b) [Reserved]

§ 271.219 Implementation and support training plan.

(a) An RRP plan shall contain a training plan describing the railroad's processes, pursuant to § 271.111, for training employees with significant responsibility for implementing and supporting the RRP (including employees of a person identified pursuant to § 271.205(a)(3) as utilizing or performing significant safety-related services on the railroad's behalf who have significant responsibility for implementing and supporting the railroad's RRP).

(b) The training plan shall describe the frequency and content of the RRP training for each position or job function identified pursuant to § 271.223(b)(3) as having significant responsibilities for implementing the RRP.

§ 271.221 Internal assessment process.

(a) An RRP plan shall describe the railroad's process for conducting an internal assessment of its RRP pursuant to subpart E of this part. At a minimum, this description shall contain the railroad's processes used to:

(1) Conduct an internal assessment of its RRP;

(2) Internally report the results of its internal assessment to railroad senior management; and

(3) Develop improvement plans, including developing and monitoring recommended improvements (including any necessary revisions or updates to the RRP plan) for fully implementing the railroad's RRP, complying with the implemented elements of the RRP plan, or achieving the goals identified in the railroad's RRP plan pursuant to § 271.203(c).

(b) [Reserved]

§ 271.223 RRP implementation plan.

(a) An RRP plan shall describe how the railroad will implement its RRP. A railroad may implement its RRP in stages, so long as the entire RRP is fully implemented within 36 months of FRA's approval of the plan.

(b) At a minimum, a railroad's implementation plan shall:

(1) Cover the entire implementation period;

(2) Contain a timeline describing when certain implementation milestones will be achieved. Implementation milestones shall be specific and measurable;

(3) Describe the roles and responsibilities of each position or job function that has significant responsibility for implementing the railroad's RRP or any changes to the railroad's RRP (including any such positions or job functions held by an entity or contractor that utilizes or performs on the railroad's behalf significant safety-related services); and

(4) Describe how significant changes to the RRP may be made.

Subpart D—Review, Approval, and Retention of Risk Reduction Program Plans

§ 271.301 Filing and approval.

(a) *Filing.* A Class I railroad shall submit one copy of its RRP plan to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer at Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC, 20590, no later than [545 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. A railroad with inadequate safety performance shall submit its RRP plan no later than 90 days after receiving final written notification from FRA that it shall comply with this part, pursuant to § 271.13(d), or no later than [545 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. A railroad that the STB reclassifies or newly classifies as a Class I railroad shall submit its RRP plan no later than 90 days following the effective date of the classification or reclassification or no later than [545 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. A voluntarily-compliant railroad may submit an RRP plan at any time. A railroad's submitted RRP plan shall include:

(1) The signature, name, title, address, and telephone number of the chief official responsible for safety and who bears the primary managerial authority for implementing the submitting railroad's safety policy. By signing, this chief official is certifying that the contents of the RRP plan are accurate and that the railroad will implement the contents of the program as approved by FRA;

(2) The contact information for the primary person responsible for managing the RRP;

(3) The contact information for the senior representatives of the persons that the railroad has determined utilize or provide significant safety-related services (including host railroads, contract operators, shared track/corridor operators, and other contractors); and

(4) As required by § 271.207(b), a statement describing how it consulted with its directly affected employees on the contents of its RRP plan. Directly affected employees have 60 days following the railroad's submission of its proposed RRP plan to file a statement in accordance with § 271.207(c).

(b) *Approval.* (1) Within 90 days of receipt of an RRP plan, or within 90 days of receipt of each RRP plan submitted prior to the commencement of railroad operations, FRA will review the proposed RRP plan to determine if it sufficiently addresses the required elements. This review will also consider any statement submitted by directly affected employees pursuant to § 271.207(c).

(2) FRA will notify the primary contact person of the submitting railroad in writing whether FRA has approved the proposed plan and, if not approved, the specific points in which the RRP plan is deficient. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under § 271.207(b)(4).

(3) If FRA does not approve an RRP plan, the submitting railroad shall amend the proposed plan to correct all identified deficiencies and shall provide FRA a corrected copy no later than 60

days following receipt of FRA's written notice that the submitted plan was not approved. If FRA determines that the necessary corrections are substantively significant, it will direct the railroad to consult further with its directly affected employees regarding the corrections. If the corrections are substantively significant, a railroad will also be required to include an updated consultation statement, along with its resubmitted plan, pursuant to § 217.107(b). Directly affected employees will also have 30 days following the railroad's resubmission of its proposed RRP plan to file a statement addressing the substantively significant changes in accordance with § 271.207(c).

(c) *Electronic Submission.* All documents required to be submitted to FRA under this part may be submitted electronically pursuant to the procedures in Appendix C to this part.

§ 271.303 Amendments.

(a) *Consultation requirements.* For substantive amendments, a railroad shall follow the process, described in its RRP plan pursuant to § 271.209, for consulting with its directly affected employees.

(b) *Filing.* (1) A railroad shall submit any amendment(s) to its approved RRP plan to FRA's Associate Administrator not less than 60 days prior to the proposed effective date of the amendment(s). The railroad shall file the amendment(s) with a cover letter outlining the proposed change(s) to the approved RRP plan.

(2) If the proposed amendment is limited to adding or changing a name, title, address, or telephone number of a person, FRA approval is not required under the process of this section, although the railroad shall still file the amended RRP plan with FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. These proposed amendments may be implemented by the railroad upon filing with FRA. All other proposed amendments must comply with the formal approval process described by this section.

(c) *Review.* (1) FRA will review a proposed amendment to an RRP plan within 45 days of receipt. FRA will then notify the primary contact person of the railroad, whether the proposed amendment has been approved by FRA. If not approved, FRA will inform the railroad of the specific points in which the proposed amendment is deficient.

(2) If FRA has not notified the railroad by the proposed effective date of the amendment whether the amendment has been approved or not, the railroad may implement the amendment, subject to FRA's decision.

(3) If a proposed RRP plan amendment is not approved by FRA, no later than 60 days following the receipt of FRA's written notice, the railroad shall either provide FRA a corrected copy of the amendment that addresses all deficiencies noted by FRA or notice that the railroad is retracting the amendment.

§ 271.305 Reopened review.

Following approval of an RRP plan or an amendment to such a plan, FRA may reopen consideration of the plan or amendment, in whole or in part, for cause stated.

§ 271.307 Retention of RRP plans.

(a) *Railroads.* A railroad shall retain at its system and division headquarters one copy of its RRP plan and each subsequent amendment(s) to that plan. A railroad may comply with this requirement by making an electronic copy available.

(b) *Inspection and copying.* A railroad shall make a copy of the RRP plan available to representatives of the FRA or States participating under part 212 of this chapter for inspection and copying during normal business hours.

Subpart E—Internal Assessments

§ 271.401 Annual internal assessments.

(a) Beginning with the first calendar year after the calendar year in which FRA approves a railroad's RRP plan pursuant to § 271.301(b), the railroad shall annually (*i.e.,* once every calendar year) conduct an internal assessment of its RRP.

(b) The internal assessment shall determine the extent to which the railroad has:

(1) Achieved the implementation milestones described in its RRP plan pursuant to § 271.223(b);

(2) Complied with the implemented elements of the approved RRP plan;

(3) Achieved the goals described in its RRP plan pursuant to § 271.203(c);

(4) Implemented previous internal assessment improvement plans pursuant to § 271.403; and

(5) Implemented previous external audit improvements plans pursuant to § 271.503.

(c) A railroad shall ensure that the results of its internal assessments are internally reported to railroad senior management.

§ 271.403 Internal assessment improvement plans.

(a) Within 30 days of completing its internal assessment, a railroad shall develop an improvement plan that addresses the findings of its internal assessment.

(b) At a minimum, a railroad's improvement plan shall:

(1) Describe recommended improvements (including any necessary revisions or updates to the RRP plan, which would be made through the amendment process described in § 271.303) that address the findings of the internal assessment for fully implementing the railroad's RRP, complying with the implemented elements of the RRP plan, achieving the goals identified in the railroad's RRP plan pursuant to § 271.203(c), and implementing previous internal assessment improvement plans and external audit improvement plans;

(2) Identify by position title the individual who is responsible for carrying out the recommended improvements;

(3) Contain a timeline describing when specific and measurable milestones for implementing the recommended improvements will be achieved; and

(4) Specify processes for monitoring the implementation and evaluating the effectiveness of the recommended improvements.

§ 271.405 Internal assessment reports.

(a) Within 60 days of completing its internal assessment, a railroad shall submit a copy of an internal assessment report to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer at Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC, 20590.

(b) This report shall be signed by the railroad's chief official responsible for safety and who bears primary managerial authority for implementing the railroad's safety policy. The report shall include:

(1) A description of the railroad's internal assessment;

(2) The findings of the internal assessment;

(3) A specific description of the recommended improvements contained in the railroad's internal assessment improvement plan, including any amendments that would be made to the railroad's RRP plan pursuant to § 271.303; and

(4) The status of the recommended improvements contained in the railroad's internal assessment improvement plan and any outstanding recommended improvements from previous internal assessment improvement plans.

Subpart F—External Audits

§ 271.501 External audits.

FRA will conduct (or cause to be conducted) external audits of a railroad's RRP. Each audit shall evaluate the railroad's compliance with the elements of its RRP required by this part. FRA will provide a railroad written notice of the audit results.

§ 271.503 External audit improvement plans.

(a) *Submission.* Within 60 days of receiving FRA's written notice of the audit results, if necessary, a railroad shall submit for approval an improvement plan addressing any instances of deficiency or non-compliance found in the audit to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer at Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC, 20590.

(b) *Requirements.* At a minimum, an improvement plan shall:

(1) Describe the improvements the railroad will implement to address the audit findings;

(2) Identify by position title the individual who is responsible for carrying out the improvements necessary to address the audit findings; and

(3) Contain a timeline describing when milestones for implementing the recommended improvements will be achieved. These implementation milestones shall be specific and measurable.

(c) *Approval.* If FRA does not approve the railroad's improvement plan, FRA will notify the railroad of the plan's specific deficiencies. The railroad shall amend the proposed plan to correct the identified deficiencies and provide FRA a corrected copy no later than 30 days following receipt of FRA's notice that the proposed plan was not approved.

(d) *Status reports.* Upon the request of the FRA Associate Administrator, a railroad shall provide FRA for review a status report on the implementation of the improvements contained in the improvement plan.

Appendix A to Part 271—Schedule of Civil Penalties

[Reserved]

Appendix B to Part 271—Federal Railroad Administration Guidance on the Risk Reduction Program Consultation Process

A railroad required to develop a risk reduction program (RRP) under this part shall in good faith consult with and use its best efforts to reach agreement with its directly affected employees on the contents of the RRP plan. *See* § 271.207(a)(1). This appendix discusses the meaning of the terms ''good faith'' and ''best efforts,'' and provides guidance on how a railroad could comply with the requirement to consult with directly affected employees on the contents of its RRP plan. Specific guidance will be provided for employees who are represented by a non-profit employee labor organization and employees who are not represented by any such organization.

I. The Meaning of ''Good Faith'' and ''Best Efforts''

''Good faith'' and ''best efforts'' are not interchangeable terms representing a vague standard for the § 271.207 consultation process. Rather, each term has a specific and distinct meaning. When consulting with directly affected employees, therefore, a railroad shall independently meet the standards for both the good faith and best efforts obligations. A railroad that does not meet the standard for one or the other will not be in compliance with the consultation requirements of § 271.207.

The good faith obligation requires a railroad to consult with employees in a manner that is honest, fair, and reasonable, and to genuinely pursue agreement on the contents of an RRP plan. If a railroad consults with its employees merely in a perfunctory manner, without genuinely pursuing agreement, it will not have met the good faith requirement. A railroad may also fail to meet its good faith obligation if it merely attempts to use the RRP plan to unilaterally modify a provision of a collective bargaining agreement between the railroad and a non-profit employee labor organization.

On the other hand, ''best efforts'' establishes a higher standard than that imposed by the good faith obligation, and describes the diligent attempts that a railroad shall pursue to reach agreement with its employees on the contents of its RRP plan. While the good faith obligation is concerned with the railroad's state of mind during the consultation process, the best efforts obligation is concerned with the specific efforts made by the railroad in an attempt to reach agreement. This would include considerations such as whether a railroad had held sufficient meetings with its employees, or whether the railroad had made an effort to respond to feedback provided by employees during the consultation process. For example, a railroad would not meet the best efforts obligation if it did not initiate the consultation process in a timely manner, and thereby failed to provide employees sufficient time to engage in the consultation process. A railroad would also likely not meet the best efforts obligation if it presented employees with an RRP plan and only permitted the employees to express agreement or disagreement on the plan (assuming that the employees had not previously indicated that such a consultation would be acceptable). A railroad may, however, wish to hold off substantive consultations regarding the contents of its RRP plan until one year after publication of the rule in order to ensure that information generated as part of the process is protected from discovery and admissibility into evidence under § 271.11 of the rule. Generally, best efforts are measured by the measures that a reasonable person in the same circumstances and of the same nature as the acting party would take. Therefore, the standard imposed by the best efforts obligation may vary with different railroads, depending on a railroad's size, resources, and number of employees.

When reviewing RRP plans, FRA will determine on a case-by-case basis whether a railroad has met its § 271.207 good faith and best efforts obligations. This determination will be based upon the consultation statement submitted by the railroad pursuant to § 271.207(b) and any statements submitted by employees pursuant to § 271.207(c). If FRA finds that these statements do not provide sufficient information to determine whether a railroad used good faith and best efforts to reach agreement, FRA may investigate further and contact the railroad or its employees to request additional information. (FRA also expects a railroad's directly affected employees to utilize good faith and best efforts when negotiating on the contents of an RRP plan. If FRA's review and investigation of the statements submitted by the railroad under § 271.207(b) and the directly affected employees under § 271.207(c) reveal that the directly affected employees did not utilize good faith and best efforts, FRA could consider this as part of its approval process.)

If FRA determines that a railroad did not use good faith and best efforts, FRA may disapprove the RRP plan submitted by the railroad and direct the railroad to comply with the consultation requirements of § 271.207. Pursuant to § 271.301(b)(3), if FRA does not approve the RRP plan, the railroad will have 60 days, following receipt of FRA's written notice that the plan was not approved, to correct any deficiency identified. In such cases, the identified deficiency would be that the railroad did not use good faith and best efforts to consult and reach agreement with its directly affected employees. If a railroad then does not submit to FRA within 60 days

an RRP plan meeting the consultation requirements of § 271.207, the railroad could be subject to penalties for failure to comply with § 271.301(b)(3).

II. Guidance on How a Railroad May Consult With Directly Affected Employees

Because the standard imposed by the best efforts obligation will vary depending upon the railroad, there may be countless ways for various railroads to comply with the consultation requirements of § 271.207. Therefore, FRA believes it is important to maintain a flexible approach to the § 271.207 consultation requirements, in order to give a railroad and its directly affected employees the freedom to consult in a manner best suited to their specific circumstances.

FRA is nevertheless providing guidance in this appendix as to how a railroad may proceed when consulting (utilizing good faith and best efforts) with employees in an attempt to reach agreement on the contents of an RRP plan. FRA believes this guidance may be useful as a starting point for railroads that are uncertain about how to comply with the § 271.207 consultation requirements. This guidance distinguishes between employees who are represented by a non-profit employee labor organization and employees who are not, as the processes a railroad may use to consult with represented and non-represented employees could differ significantly.

This guidance does not establish prescriptive requirements with which a railroad shall comply, but merely outlines a consultation process a railroad may choose to follow. A railroad's consultation statement could indicate that the railroad followed the guidance in this appendix as evidence that it utilized good faith and best efforts to reach agreement with its employees on the contents of an RRP plan.

(a) Employees Represented by a Non-Profit Employee Labor Organization

As provided in § 271.207(a)(2), a railroad consulting with the representatives of a non-profit employee labor organization on the contents of an RRP plan will be considered to have consulted with the directly affected employees represented by that organization.

A railroad could utilize the following process as a roadmap for using good faith and best efforts when consulting with represented employees in an attempt to reach agreement on the contents of an RRP plan.

(1) Pursuant to § 271.207(a)(3), a railroad shall meet with representatives from a non-profit employee labor organization (representing a class or craft of the railroad's directly affected employees) within 240 days from [THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] to begin the process of consulting on the contents of the railroad's RRP plan. A railroad should provide notice at least 60 days before the scheduled meeting.

(2) During the time between the initial meeting and the applicability date of § 271.11 the parties may meet to discuss administrative details of the consultation process as necessary.

(3) Within 60 days after [365 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], a railroad should have a meeting with the representatives of the directly affected employees to discuss substantive issues with the RRP plan.

(4) Within 180 days after [365 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], a railroad would file its RRP plan with FRA.

(5) As provided by § 271.207(c), if agreement on the contents of an RRP plan could not be reached, a labor organization (representing a class or craft of the railroad's directly affected employees) could file a statement with the FRA Associate Administrator explaining its views on the plan on which agreement was not reached.

(b) Employees Who Are Not Represented by a Non-Profit Employee Labor Organization

FRA recognizes that some (or all) of a railroad's directly affected employees may not be represented by a non-profit employee labor organization. For such non-represented employees, the consultation process described for represented employees may not be appropriate or sufficient. For example, FRA believes that a railroad with non-represented employees shall make a concerted effort to ensure that its non-represented employees are aware that they are able to participate in the development of the railroad's RRP plan. FRA therefore is providing the following guidance regarding how a railroad may utilize good faith and best efforts when consulting with non-represented employees on the contents of its RRP plan.

(1) Within 120 days from [THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], a railroad should notify non-represented employees that—

(A) The railroad is required to consult in good faith with, and use its best efforts to reach agreement with, all directly affected employees on the proposed contents of its RRP plan;

(B) Non-represented employees are invited to participate in the consultation process (and include instructions on how to engage in this process); and

(C) If a railroad is unable to reach agreement with its directly affected employees on the contents of the proposed RRP plan, an employee may file a statement with the FRA Associate Administrator explaining his or her views on the plan on which agreement was not reached.

(2) This initial notification (and all subsequent communications, as necessary or appropriate) could be provided to non-represented employees in the following ways:

(A) Electronically, such as by email or an announcement on the railroad's Web site;

(B) By posting the notification in a location easily accessible and visible to non-represented employees; or

(C) By providing all non-represented employees a hard copy of the notification.

A railroad could use any or all of these methods of communication, so long as the notification complies with the railroad's obligation to utilize best efforts in the consultation process.

(3) Following the initial notification (and before the railroad submits its RRP plan to FRA), a railroad should provide non-represented employees a draft proposal of its RRP plan. This draft proposal should solicit additional input from non-represented employees, and the railroad should provide non-represented employees 60 days to submit comments to the railroad on the draft.

(4) Following this 60-day comment period and any changes to the draft RRP plan made as a result, the railroad should submit the proposed RRP plan to FRA, as required by this part.

(5) As provided by § 271.207(c), if agreement on the contents of an RRP plan cannot be reached, then a non-represented employee may file a statement with the FRA Associate Administrator explaining his or her views on the plan on which agreement was not reached.

Appendix C to Part 271—Procedures for Submission of Railroad Risk Reduction Program Plans and Statements From Directly Affected Employees

This appendix establishes procedures for the submission of a railroad's RRP plan and statements by directly affected

employees in accordance with the requirements of this part.

Submission by a Railroad and Directly Affected Employees

(a) As provided for in § 271.101, each railroad must establish and fully implement an RRP that continually and systematically evaluates railroad safety hazards on its system and manages the resulting risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities. The RRP shall be fully implemented and supported by a written RRP plan. Each railroad must submit its RRP plan to FRA for approval as provided for in § 271.201.

(b) As provided for in § 271.207(c), if a railroad and its directly affected employees cannot come to agreement on the proposed contents of the railroad's RRP plan, the directly affected employees have 30 days following the railroad's submission of its proposed RRP plan to submit a statement to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer explaining the directly affected employees' views on the plan on which agreement was not reached.

(c) The railroad's and directly affected employees' submissions shall be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA. The mailing address for FRA is 1200 New Jersey Avenue SE., Washington, DC 20590. When a railroad submits its RRP plan and consultation statement to FRA pursuant to § 270.201, it must also simultaneously send a copy of these documents to all individuals identified in the service list pursuant to § 271.107(b)(4).

(d) Each railroad and directly affected employee is authorized to file by electronic means any submissions required under this part. Prior to any person submitting anything electronically, the person shall provide the Associate Administrator with the following information in writing:

(1) The name of the railroad or directly affected employee(s);

(2) The names of two individuals, including job titles, who will be the railroad's or directly affected employees' points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the railroad's or directly affected employees' points of contact;

(4) The railroad's system or main headquarters address located in the United States;

(5) The email addresses for the railroad's or directly affected employees' points of contact; and

(6) The daytime telephone numbers for the railroad's or directly affected employees' points of contact.

(e) A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Upon receipt of a request for electronic submission that contains the information listed above, FRA will then contact the requestor with instructions for electronically submitting its program or statement. A railroad that electronically submits an initial RRP plan or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

Issued in Washington, DC on February 11, 2015, under the authority provided by 49 U.S.C. 20156.

Sarah Feinberg,

Acting Administrator.

[FR Doc. 2015–03268 Filed 2–26–15; 8:45 am]

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Part V

Department of Transportation

Federal Transit Administration

49 CFR Part 674
State Safety Oversight; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 674

[Docket No. FTA–2015–0003]

RIN 2132–AB19

State Safety Oversight

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This notice seeks public comment on proposed rules that would transform and strengthen State Safety Oversight (SSO) of rail fixed guideway public transportation systems. FTA will issue a final rule and response to comments following the close of the comment period. Once FTA issues a final rule, the agency will rescind its current regulations.

DATES: Comments must be received by April 28, 2015.

ADDRESSES: Please submit your comments by only one of the following methods:

- Online: Use the Federal eRulemaking portal at *http://www.regulations.gov* and follow the instructions for submitting comments.
- U.S. Mail: Send your comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: Go to Room W12–140 on the ground floor of the West Building, U.S. Department of Transportation headquarters, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday except Federal holidays.
- Telefax: Send your comments to 202–493–2251.

Instructions: All comments must include the docket number for this rulemaking: FTA–2015–0003. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed, stamped postcard. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION** below, for Privacy Act information pertinent to any submitted comments or materials, and you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477.

Docket Access: For access to background documents and comments received in the rulemaking docket, go to *www.regulations.gov* or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, Lynn Spencer, Director, FTA Office of System Safety, telephone 202–366–5112 or *Lynn.Spencer@dot.gov;* For legal matters, Richard Wong, FTA Office of Chief Counsel, telephone 202–366–0675 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

This rulemaking would replace the regulations for State Safety Oversight (SSO) of rail fixed guideway public transportation systems in place for the past twenty years, and significantly strengthen the program to prevent and mitigate accidents and incidents on those systems. In the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141, July 6, 2012), Congress directed FTA to establish a comprehensive Public Transportation Safety Program (codified at 49 U.S.C. 5329), one element of which is the State Safety Oversight program. The purpose of today's NPRM is to carry out the several explicit statutory mandates to strengthen the States' oversight of the safety of their rail transit systems, and ensure that the States' regulatory agencies have the necessary enforcement authority and financial and human resources for that purpose.

In the legislative history of MAP–21, Congress took note of several critical weaknesses in the State Safety Oversight program, including:

- Lack of adequate and consistent safety practices across rail transit systems
- Lack of regulatory, oversight, and enforcement authority
- Limited SSO program funding, staff, training, and other resources
- Lack of SSO financial and legal independence from the rail transit agencies they oversee.

See generally, Sen. Rpt. 111–232 (July 26, 2010).

Today's NPRM is the critical first step in meeting the MAP–21 requirements for State Safety Oversight of rail fixed guideway public transportation systems now set forth at 49 U.S.C. 5329(e). Once FTA issues a final rule for State Safety Oversight, to be codified at 49 CFR part 674, the agency will rescind the current regulations at 49 CFR part 659.

Legal Authority

Section 20021 of MAP–21 amended 49 U.S.C. 5329 by adding several new provisions that required FTA to establish a comprehensive public transportation safety program, the elements of which include a National Public Transportation Safety Plan; a training and certification program for Federal, state, and local transportation agency employees with safety responsibilities; public transportation agency safety plans; and a strengthened State Safety Oversight Program, consisting of elements at both the state and rail transit agency level.

Summary of Key Provisions

The NPRM proposes to make the following changes to strengthen the existing SSO program:

- States would assume greater responsibility for overseeing the safety of their rail fixed guideway systems.
- FTA would review and approve each state's SSO program, including certifying whether states are meeting the statutory criteria and withholding funds from those states that do not.
- FTA would impose financial penalties on those states with non-existent or non-compliant safety oversight programs.

Costs and Benefits

As discussed in greater detail below, FTA conducted a task-by-task analysis to assess recurring and non-recurring costs for the proposed regulations to SSOs and rail transit agencies against the recurring costs for the current SSO regulations. Compared to current spending levels of State Safety Oversight activities, the proposed rule would require an *incremental* $9.5 million per year on the part of SSOAs and $13.1 million for rail transit agencies, compared to current spending levels. FTA is providing approximately $22 million in grant funds each year to the States to off-set this NPRM's annual costs, meaning that this rulemaking is revenue neutral between the Federal government and the States. FTA also provides funding that rail transit agencies may use for these purposes, but is unable to provide an estimate of how much FTA funds will be used here. FTA conducted a breakeven analysis in order to determine what amount of the quantified benefits would need to accrue to outweigh the costs for this rulemaking and the Transit Agency Safety Plan by looking at, primarily, the safety events reported to FTA and, in a more conservative analysis, only the 5 NTSB-investigated accidents since 2004 that were related to inadequate safety oversight programs.

Background

The Moving Ahead for Progress in the 21st Century Act (''MAP–21''; Pub. L. 112–141), authorizes a comprehensive Public Transportation Safety Program at 49 U.S.C. 5329. Four key components of the program are the National Public Transportation Safety Plan, authorized by Section 5329(b); the Public Transportation Safety Certification Training Program, authorized by Section 5329(c); the Public Transportation Agency Safety Plans, required by Section 5329(d); and the State Safety Oversight Program, authorized by Section 5329(e). FTA will issue rules to carry out all of these plans and programs under the rulemaking authority of 49 U.S.C. 5329(f)(7).

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) for the National Public Transportation Safety Plan (''National Plan''), the Public Transportation Safety Certification Training Program (''Certification Training Program''), and the Public Transportation Agency Safety Plans (''Transit Agency Safety Plans''). 78 FR 61251–73. On April 30, 2014, FTA proposed interim provisions for a Safety Certification Training Program, as authorized by 49 U.S.C. 5329(c)(2). 79 FR 24363. In today's **Federal Register**, FTA is issuing final interim certification safety training program provisions. FTA is now reviewing the comments on the ANPRM for the National Plan, Certification Training Program, and Transit Agency Safety Plans. In the near future, FTA expects to issue an NPRM for the National Plan, Certification Training Program, and Transit Agency Safety Plans.

Earlier, on May 13, 2013, the Federal Transit Administrator issued a *Dear Colleague* letter to the public transportation industry announcing the agency's intention to adopt the framework and principles of Safety Management Systems (SMS) as the basis for all rulemakings and other initiatives FTA will undertake to improve the safety of public transportation. Both the *Dear Colleague* letter and a set of frequently asked questions about SMS are available on FTA's Web site at *http://www.fta.dot.gov/tso_15177.html.*

This NPRM pertains only to the State Safety Oversight (SSO) Program authorized by 49 U.S.C. 5329(e). The rulemaking for the SSO Program differs from the other rulemakings under the Public Transportation Safety Program in that it will replace a set of regulations that have been in place since 1995, codified at 49 CFR part 659. The SSO regulations pertain only to a limited portion of the public transportation industry—the recipients of Federal funds under 49 U.S.C. Chapter 53 that operate rail fixed guideway transit systems not subject to the jurisdiction of the Federal Railroad Administration (FRA), the States in which those rail systems lie, and the State Safety Oversight Agencies (SSOAs) required to oversee the safety of those rail systems. Conversely, the rulemakings for the National Plan, the Transit Agency Safety Plans, and the Safety Certification Training Program all arise under the authority of MAP–21, which took effect on October 1, 2012; these rulemakings will apply to all modes of public transportation, both rail and rubber tire; and they will apply to the manufacturers of public transportation vehicles, as well as the operators of public transportation.

To provide some context for this NPRM, the following is a brief history of FTA's State Safety Oversight Program.

History of State Safety Oversight

FTA's predecessor agency, the Urban Mass Transportation Administration (UMTA), originated under the Urban Mass Transportation Act (UMT Act) of 1964—a *Great Society* initiative under the Kennedy and Johnson Administrations, designed to assist state and local governments in financing urban mass transportation systems ''to be operated by public or private mass transportation companies as determined by local needs.'' (Pub. L. 88–365; quoting Section 2(b)(3) of the UMT Act, 49 U.S.C. app. 1602(b)(3)). UMTA's mission, at that time, was strictly limited to providing Federal financial assistance to develop and maintain municipal transit systems. UMTA had no regulatory authority whatsoever over any of its grant recipients. Deliberately, the Congress chose not to give UMTA any ability to establish national standards for safety in urban mass transportation. *See, e.g., Amalgamated Transit Union* v. *Skinner,* 894 F.2d 1362, 1364 (D.C. Cir. 1990).

Several years thereafter, following a series of troubling accidents in the rail transit industry, Congress recognized a need to provide UMTA with a limited authority to investigate accidents and hazardous conditions in urban mass transportation. Specifically, in Section 107 of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93–503), Congress instructed the agency to ''investigate unsafe conditions in any facility, equipment, or manner of operation financed under this Act which the Secretary believes creates a serious hazard of death or injury.'' The statute further directed UMTA to determine the nature and extent of hazardous conditions on transit systems; determine the means that might best correct or eliminate those hazardous conditions; and compel a grant recipient to submit a plan for correcting or eliminating those hazardous conditions. Eight years later, however, in the Surface Transportation Assistance Act of 1982, the Congress weakened this investigatory authority by repealing Section 107 of the National Mass Transportation Assistance Act of 1974; moving the authority to Section 22 of the UMT Act; and amending the statute to make the authority discretionary—not mandatory—striking the word ''shall'' and inserting the word ''may.''

This very limited Federal authority for safety did not prove satisfactory, in the view of the National Transportation Safety Board (NTSB or ''Board''). In August 1991, after a number of accidents in the industry—including very serious accidents on rapid rail systems in Philadelphia, Chicago, and New York City—the Board published a study titled ''Oversight of Rail Rapid Transit Safety'' (NTSB/SS–91/02) in which it urged all States to develop or revise safety programs to ensure comprehensive and effective oversight over rapid rail systems in their jurisdictions. The NTSB suggested that States have primary authority for oversight of rail transit safety, but it urged UMTA to evaluate the effectiveness of States' oversight of rail transit, develop guidelines, and require States and transit operators to use their UMTA grant funds to improve the safety of rail transit systems. Also, the NTSB implored UMTA to withhold its Federal financial assistance as necessary pending corrective action by the States and transit operators.

Very shortly thereafter, in response to the NTSB recommendations, the Congress created a State Safety Oversight program for rail fixed guideway transit safety in Section 3029 of the Intermodal Surface Transportation Efficiency Act (ISTEA), enacted in December 1991 (Pub. L. 102–240). Among the many fundamental changes ISTEA made to the Federal-aid programs for highways and public transportation, ISTEA renamed UMTA as the Federal Transit Administration (FTA), and directed FTA to compel States with rail transit systems within their borders not otherwise subject to the jurisdiction of the Federal Railroad Administration (FRA) (*e.g.,* commuter rail systems, or light rail systems connecting to the ''general railroad system'' of the United States, as

described in 49 CFR part 209 Appendix A) to establish and carry out safety program plans for each of those rail transit systems. The statute directed that the safety program plans include, at minimum, core requirements for safety, lines of authority, levels of responsibility, and methods of documentation for those subjects. Further, Section 3029 of ISTEA vested FTA with explicit authority to withhold funding from any State that did not comply with the statutory mandates, and directed FTA to promulgate rules for that purpose. In enacting Section 3029, the Congress agreed with NTSB that the States, not FTA, should be the principal oversight authorities for rail transit within their jurisdictions, given that public transportation is an inherently local activity that, with few exceptions, did not cross state boundaries. Notably, this new authority for FTA, initially codified at Section 28 of the Federal Transit Act, later re-codified at 49 U.S.C. 5330, made no provision for oversight of bus operations—perhaps because the 1991 NTSB report had focused on rail transit.

The First Rulemaking: To meet the ISTEA directives, FTA issued an Advance Notice of Proposed Rulemaking for State Safety Oversight on June 25, 1992, at 57 FR 28572–5, followed by a Notice of Proposed Rulemaking (NPRM) on December 9, 1993, at 58 FR 64856–69. On December 27, 1995, FTA promulgated a final rule for State Safety Oversight at 60 FR 67034–48. In short, the final rule obliged every State with a rail transit system not subject to the jurisdiction of FRA to establish an oversight agency, and obliged that oversight agency to develop a ''system safety program standard'' that, at a minimum, adopted the uniform guidelines for rail transit systems set by the *Manual for the Development of Rail System Safety Program Plans,* published by the American Public Transit Association (APTA). These ''APTA Guidelines'' were incorporated by reference into the final rule. Also, the final rule obliged the State oversight agencies to review safety audit reports from the rail systems, conduct on-site safety reviews at least once every three years, investigate accidents and ''unacceptable hazardous conditions'' as reported by the rail transit systems, approve ''corrective action plans'' submitted by the rail transit systems, make annual reports to FTA summarizing its oversight activities for the preceding twelve months, and make periodic reports to FTA summarizing accidents, hazardous conditions, and corrective action plans. The effective date of the final rule was deferred to January 1, 1997, to give States an opportunity to enact state statutes and regulations to carry out the ISTEA mandates.

The FTA SSO rule and the APTA Guidelines were widely accepted as the baseline for State oversight of the safety of rail transit until the summer of 2001. In June and August of that year, there were two collisions of rapid rail trains on the Chicago Transit Authority (CTA) system—both investigated by the NTSB—which called into question the effectiveness of the rule and the guidelines. In its Special Investigation Report issued in September 2002 (NTSB/SIR–02/01), the Board determined the probable cause of both accidents to have been the train operators' failure to comply with operating rules designed to prevent those types of collisions, and the failure of CTA management to exercise adequate oversight of the operational safety of its rapid rail system. Additionally, however, the Board identified several weaknesses in FTA's SSO program, and noted, specifically, that a previous audit of CTA by APTA had not identified any deficiencies in CTA's adherence to APTA's ''System Safety Checklist''—a procedure that used only record reviews and supplemental spot checks to gauge whether operating rules were being followed, and which provided little guidance on what rules a compliance program should entail or how those rules should be carried out. Thus, the NTSB concluded that the APTA Guidelines were not sufficiently specific for making assessments of the effectiveness of rail transit operators' safety programs, nor were the Guidelines an effective tool for State oversight of rail transit safety. The NTSB called on APTA to revise its manual to provide explicit guidance to the industry on auditing the effectiveness of rail transit safety compliance programs, and for FTA to amend its SSO regulations at 49 CFR part 659, accordingly.

The Second Rulemaking: In response to the 2002 NTSB report on the CTA accidents, on March 9, 2004, FTA published an NPRM at 69 FR 11218–32 intended to strengthen the SSO regulations. Specifically, FTA proposed to remove the incorporation by reference of the APTA Guidelines from 49 CFR part 659, and in lieu thereof, establish a set of enhanced, performance-based measures for the rail transit industry, including, notably, a rule making hazard identification and resolution a performance-based procedure, as opposed to the previous practice of allowing a rail transit operator or an SSOA to subjectively determine and address an ''unacceptable hazardous condition.'' FTA issued a final rule on April 29, 2005, at 70 FR 22562–83, which is the rule still in place today. In the final rule, FTA chose to include a good many of the APTA Guidelines as regulatory standards. Further, the final rule clarified the roles and responsibilities of States and their SSOAs; set a new definition of ''hazard,'' and requirements for hazard management plans; revised the requirements for SSOAs to conduct investigations; and fleshed out the minimum standards for system safety program plans, accident notification, and corrective action plans.

Notwithstanding the amendments to the SSO regulations in the 2005 rulemaking, the regulations were criticized for their lack of rigor, and the States' SSO programs were criticized for lack of authority, resources, and expertise. Most notably, in July 2006, the U.S. Government Accountability Office (GAO) criticized the regulations and identified some fundamental weaknesses in SSOAs in a report titled ''Rail Transit: Additional Federal Leadership Would Enhance FTA's State Safety Oversight Program,'' *http://www.gao.gov/products/GAO-06-821.* The GAO report found that the staffing levels and expertise varied greatly across the SSOAs, and that by their own admission, many of the SSOAs lacked enough qualified staff and adequate levels of training to meet their responsibilities—some of them employing as few as 0.1 or 0.2 full-time equivalent positions for dedicated rail transit safety oversight—and for many of them, the lack of funding was a serious impediment. The GAO noted that the SSO regulations provided no enforcement power to the SSOAs, and very little enforcement power to FTA, with only the option of withholding up to five percent of a rail transit system's urbanized area formula funding if FTA were to find a State not in compliance with the SSO regulations. Additionally, the GAO report faulted FTA for having failed to set goals and performance measures for State Safety Oversight, and having failed to audit SSOAs as often as originally planned. GAO urged FTA to set both short- and long-term goals for State Safety Oversight, with measures of progress toward each of those goals. Further, the GAO recommended that FTA audit each of the SSOAs at least once every three years, and develop an appropriate training curriculum for SSOAs that would include courses on

how to conduct oversight of rail transit systems.

Legislation Leading to Enactment of State Safety Oversight Authority in MAP–21: Not long after the GAO's criticisms, the rail transit industry suffered a string of fatal accidents and accidents with multiple personal injuries. On November 30, 2006, a Washington Metropolitan Area Transit Authority (WMATA) Blue Line train struck and killed two employees inspecting rapid rail track in Alexandria, Virginia. On January 7, 2007, a WMATA Green Line train derailed near the Mt. Vernon station in Washington, DC, injuring 23 people and causing $3.8 million in damage. On May 28, 2008, two Massachusetts Bay Transportation Authority (MBTA) light rail trains collided with one another on the Green Line in Newton, Massachusetts—a suburb of Boston—killing the driver of the second train, injuring eight people, and causing $8 million in damage. On May 8, 2009, the MBTA suffered another accident on its Green Line light rail system in which one train rear-ended another in the tunnel near the Government Center station in downtown Boston; 68 people were injured, with more than $9 million in damage. On June 22, 2009, two WMATA rapid rail trains collided with one another near the Fort Totten station on the Red Line, killing the driver of the second train and eight passengers, injuring another 52 passengers, and causing $12 million in damage. On July 18, 2009, two Municipal Transportation Agency light rail trains collided with one another at the West Portal station in San Francisco, injuring the drivers of both trains and 46 people and causing $4.5 million in damage. And in August and September, 2009, two WMATA maintenance employees lost their lives while working on the rapid rail system; one was struck by a maintenance vehicle on the Orange Line, the other by a train on the Blue Line.

In conducting its several investigations, the NTSB found a variety of probable causes for these accidents. Among them, equipment malfunctions; equipment in poor or marginal condition, including equipment that can pose particular risks to safety, such as signal systems; lack of vehicle crashworthiness; and employee error, such as inattentiveness, or failure to follow a rail transit system's operating procedure. In the instance of WMATA, the NTSB found the lack of a strong safety culture to be a contributing factor. Also, the NTSB found a lack of adequate oversight both by the rail transit systems' State Safety Oversight Agencies, and FTA.

In July 2009—one month after the WMATA Red Line accident near the Fort Totten station—Senators and Representatives from the Maryland and Virginia delegations introduced the National Metro Safety Act in both houses of Congress (H.R. 3338, S 1506, 111th Cong. (2009)). The bills would have required FTA to establish national minimum safety standards for transit systems, including several particular standards recommended by the NTSB pertaining to event recorders, emergency access and egress, crashworthiness of vehicles, and employee hours of service. Neither bill was reported out of committee. In December 2009, on behalf of the President, Secretary of Transportation Ray LaHood and Federal Transit Administrator Peter Rogoff formally submitted a legislative proposal to the Congress that contemplated a more comprehensive approach to safety in public transportation. In testimony before both the House Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs, the Secretary and the Administrator presented the details of this proposal, which, ultimately, were introduced in both houses in February 2010 as the Public Transportation Safety Program Act of 2010 (H.R. 4643, S 3105, 111th Cong. (2010)). Citing the warning signs of increasing collisions, derailments, and casualties, the Secretary and the Administrator emphasized that rail transit always carries the potential for catastrophic accident and damage—notwithstanding its record of being a very safe means of travel—and that the State Safety Oversight program, as it currently exists, suffered from a number of fundamental weaknesses:

- Under the existing SSO framework, each rail transit system was free to determine its own safety practices. An SSOA would simply review those practices and report the progress of any corrective actions.
- Each SSOA had only so much regulatory, oversight, and enforcement authority as had been given by the State government. In many instances, the SSOA lacked authority to enforce any standards or compel compliance by the rail transit systems it oversaw.
- Many States viewed the SSO program as an unfunded mandate. Thus, many States devoted insufficient resources to the program, which compromised the abilities of SSOAs to recruit staff, provide adequate training to their staff, and develop their own expertise.
- In many instances, an SSOA was dependent upon financial resources from the same entities it was obliged to oversee—the rail transit systems—thus creating a conflict of interest.

In pertinent part, the Administration's bill would have required FTA to develop uniform, national standards for rail transit safety; given FTA authority to inspect rail transit systems for compliance with those standards; established a certification program for State Safety Oversight; authorized grants of 100 percent Federal funding for SSO programs, once certified; and required the SSO programs to be financially independent from the rail transit systems. Further, the Administration's bill would have given States the option to decline participation in the SSO program, without penalty, in which instance, FTA would have been required to perform the oversight function. Also, the Administration's bill would have given FTA authority to issue civil or criminal penalties for noncompliance. *See generally, Examining the Federal Role in Overseeing the Safety of Public Transportation Systems: Hearing Before the Subcomm. On Hous., Transp. & Cmty. Dev. of the S. Comm. On Banking, Hous. & Urban Affairs,* 111th Cong. 89–97 (2009).

Both the House and Senate versions of the Administration's bill were referred to committees. In July 2010, the Senate committee on Banking, Housing, and Urban Affairs reported a bill sponsored by the chairman of the committee, Senator Dodd, titled the Public Transportation Safety Act of 2010 (S 3638, 111th Cong. (2010)), which laid the foundation for the State Safety Oversight provisions eventually enacted under MAP–21. The Senate Banking bill embraced most of the fundamental precepts of the Administration's legislative proposal, but it differed from the Administration's bill in that it did not allow a State to decline participation in the SSO program; the grants of Federal funds for an SSO program would require a 20 percent match; and States could be allowed as much as three years, after the effective date of a final rule, to develop an SSO program adequate for certification—after which, in the event of an inadequate SSO program, FTA would be authorized to withhold all Federal grant funds from all public transportation operators in that State, not just the rail transit systems. *See generally,* the Senate Banking committee report accompanying the Senate bill (S. Rept. 111–232; (2010)). The 111th Congress adjourned before the Senate could act on the Senate Banking bill, and the House did not consider any similar bill.

In the 112th Congress, the Senate Banking committee re-introduced its Public Transportation Safety Act of 2010, which became Section 20021 of the larger bill for reauthorization of surface transportation—the Moving Ahead for Progress in the 21st Century Act (S 1813, 112th Cong. (2012), ''MAP–21''), shepherded by the Senate Committee on Environment and Public Works—that passed the Senate on March 14, 2012. The House bill for reauthorization of surface transportation—the American Energy and Infrastructure Jobs Act of 2012 (H.R. 7, 112th Cong. (2012))—had nothing comparable to the Senate bill insofar as State Safety Oversight of rail transit systems. Ultimately, the conferees from the House and Senate chose to adopt Section 20021 of the Senate bill, with some amendments, and the title of the Senate bill, ''MAP–21,'' as the title of the legislation that the president signed on July 6, 2012 (Pub. L. 112–141).

The New Statute and Today's Proposed Rulemaking

As noted, MAP–21 authorizes a comprehensive Public Transportation Safety Program, now codified at 49 U.S.C. 5329. As part of this comprehensive program, new Section 5329(e) significantly revises the existing SSO program, creating a program that is more demanding of the States and their SSO programs, and FTA, as well, in several ways. First, with respect to the States, the statute requires them to submit their SSO programs to FTA for its approval. In order to gain this approval, the States must assume responsibility for overseeing the safety of their rail fixed guideway public transportation systems, adopt and enforce Federal and relevant State safety laws, determine appropriate staffing levels for their SSOAs, and ensure proper training and certification of their safety oversight personnel. The organization designated as an SSOA must be financially and legally independent of the rail transit systems they oversee, *i.e.,* an SSOA cannot be reimbursed for its expenses by the rail transit agencies they oversee, nor can the SSOA be the same agency that operates a rail transit agency. An SSOA may not employ any individual who is also responsible for the administration of rail fixed guideway public transportation systems that are subject to the State's oversight. An SSOA must have investigative and enforcement authority under State law, must audit at least triennially the compliance of the rail transit systems under its oversight, and provide at least annually a status report to FTA, the Governor of the State, and the board of directors of the rail transit system. FTA is then obliged to submit an annual evaluation of the State Safety Oversight programs to the Congress.

MAP–21 also made considerable changes regarding FTA's role in the SSO program. As mentioned previously, FTA must now approve each State's SSO program. In addition, FTA must establish a grant program to help the States develop and carry out their SSO functions, and to obtain the necessary training and certification for their SSOA staff. FTA must certify whether the States are meeting the statutory requirements, deny certification to those that are not, and FTA can withhold Federal funds until an SSO program can be certified. Congress provided FTA with additional authority to conduct inspections, investigations, audits, and examinations; test the equipment, facilities, rolling stock, and operations of rail transit systems; make reports and issue directives with respect to safety; issue subpoenas and take depositions from any employee of a rail transit system who is responsible for safety; require production of documents; and issue regulations for State Safety Oversight through public notice and comment.

On February 6, 2013, the Federal Transit Administrator issued a *Dear Colleague* letter to the States and the public transportation industry, outlining the steps that each State must take to develop an SSO program and establish an SSOA in compliance with Section 5329. This letter is available on FTA's Web site at *http://www.fta.dot.gov/tso.html* On May 13, 2013, FTA published for public comment an illustrative apportionment of the SSO grant funds available to eligible States in Federal Fiscal Year 2013, at 78 FR 28014–8. On or before October 1, 2013, the Administrator notified each State, individually, of his decision whether to issue a certification for that State's SSO program, in accordance with the statutory deadline set by 49 U.S.C. 5329(e)(7). On March 10, 2014, FTA announced the final apportionment of FY 2013 and FY 2014 grant funds for SSO programs, at 79 FR 13380. On February, 9, 2015, FTA published the apportionment for FY 2015 grant funds for SSO programs, at 80 FR 7254.

Today's NPRM is a critical step in transforming and strengthening the regulatory framework for State Safety Oversight of rail fixed guideway public transportation systems. Once FTA issues a final rule for State Safety Oversight, the agency will rescind the current regulations at 49 CFR part 659. The following is a section-by-section analysis of the proposed rule in today's rulemaking:

Section-by-Section Analysis

Section 674.1 Purpose

This section explains that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5329(e) for States to perform oversight of rail fixed guideway public transportation systems within their jurisdictions. This section differs only slightly in wording from the current rule at 49 CFR 659.1.

Section 674.3 Applicability

This section explains that these regulations apply to States with rail fixed guideway public transportation systems, the SSOAs that oversee the safety of those systems, and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance from FTA. The first two sentences of this section are similar in wording to the current rule at 49 CFR 659.3, titled ''Scope.''

Section 674.5 Policy

This section identifies three separate, explicit policies that underlie these regulations: First, FTA is using the principles and methods of Safety Management Systems (SMS) as the basis for these regulations and all other regulations and policies FTA will issue under the authority of 49 U.S.C. 5329. Second, the primary responsibility for overseeing the safety of rail transit systems lies with the States—and a State's SSOA must have sufficient authority and resources to oversee the number, size, and complexity of rail transit systems that operate within that State. Third, FTA is obliged to make Federal funds available to eligible States to help them develop and carry out their SSO programs—and certify whether those SSO programs are adequate to promote the purposes of the public transportation safety programs under 49 U.S.C. 5329. The current rule at 49 CFR part 659 does not include a statement of policy.

Section 674.7 Definitions

This section sets forth a number of definitions for terms used repeatedly throughout the State Safety Oversight program and the other safety programs authorized by 49 U.S.C. 5329. Some of these defined terms are the same as set forth in the current regulations at 49 CFR part 659, but the wording of the definitions has been changed, in today's proposed rulemaking, for sake of clarity; readers should refer, specifically, to the definitions of ''contractor,'' ''corrective action plan,'' ''hazard,'' ''individual,'' ''investigation,'' ''passenger,'' ''rail fixed

guideway public transportation system'' and ''rail transit agency.'' A few of the definitions remain the same as stated in the current regulations, or as stated in other FTA regulations; we refer, specifically, to the definitions of ''Administrator,'' ''FRA,'' ''FTA,'' and ''State.''

There are new definitions, however, for the terms ''National Public Transportation Safety Plan,'' ''Public Transportation Safety Certification Training Program,'' ''Public Transportation Agency Safety Plan,'' ''State Safety Oversight Agency (SSOA)'', and ''State Safety Oversight Program (SSOP),'' all of which are strictly consistent with the use of those terms in the statutes. And there are new, common-sense definitions for the terms ''Transit Agency Safety Plan,'' and ''vehicle.'' ''Transit Agency Safety Plan'' is a shorthand reference to the Public Transportation Agency Safety Plan; and ''vehicle'' means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

We have also included definitions for the terms ''accident,'' ''event,'' ''incident,'' and ''occurrence.'' We propose amending the definition for ''accident'' as it relates to injuries. In 49 CFR 659.33, the definition includes, ''injuries requiring immediate medical attention away from the scene for two or more individuals.'' We propose changing that to ''one or more persons suffers a serious injury,'' and we propose adding the NTSB definition of ''serious injury'' found in 49 CFR 830.2: ''any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.'' FTA seeks comment on this change. The term ''event'' is defined as any accident, incident, or occurrence. As stated in our January 28, 2015, **Federal Register** notice on updates to the National Transit Database (NTD) safety information collection, we added the term ''event'' in order to cover all planned and unplanned events that are required to be reported to the NTD. The purpose of the change is to provide better alignment with nomenclature used in other transportation modes, and to provide clarity during data analysis conducted to identify safety trends. An ''incident'' is an event that exceeds the definition of ''occurrence,'' but does not meet the definition of ''accident.'' Examples include but are not limited to near misses, close calls, railyard derailments, non-serious injuries, and violations of safety standards. An occurrence is an event with no injuries, or where damage occurs to property or equipment but does not affect transit operations. FTA seeks comment on these definitions. In particular, FTA seeks comment on whether we should include definitions for ''close call'' and ''near miss'' in the final rule.

Additionally, there are a number of new definitions in today's proposed rulemaking that are based on the principles and methods of Safety Management Systems (SMS). Readers should refer, specifically, to the terms ''accountable executive,'' ''risk,'' ''risk control,'' ''safety assurance,'' ''Safety Management System,'' ''safety policy,'' ''safety promotion,'' and ''safety risk management.'' In the years since the rules at 49 CFR part 659 were first issued in 1995, SMS has emerged as the best practice for enhancing safety in all modes of transportation, and the Secretary of Transportation instructed each of the Department's operating administrations to develop rules, plans, and programs to apply SMS to their grant recipients and regulated communities. See, *http://www.fedeval.net/docs/2012Coplen_1.pdf.* In brief, SMS is a formal, top-down, organization-wide approach to managing risks and assuring the effectiveness of risk controls. An SMS establishes lines of safety accountability throughout an organization, starting at the executive management level, and provides a structure to support a sound safety culture. SMS is not a one-size-fits-all approach, however. SMS is flexible, and can be scaled to the mode, size, and complexity of any transit operator, in any environment—urban, suburban, or rural. As mentioned, both the Administrator's May 13, 2013, *Dear Colleague* letter and a set of frequently asked questions about SMS are available on FTA's Web site at *http://www.fta.dot.gov/tso_15177.html.* Also, as explained below, the Appendix to these proposed rules, titled ''Safety Management Systems Framework,'' will give the reader a basic understanding of SMS.

Many of the definitions for applying the principles and methods of SMS in proposed section 674.7 are very similar to those set forth in a Notice of Proposed Rulemaking and a Final Rule on SMS by FTA's sister agency, the Federal Aviation Administration (FAA). The NPRM, issued on October 7, 2010, at 75 FR 62008, titled ''Safety Management Systems for Certified Airports,'' proposes to apply the principles and methods of SMS to airports that hold certificates in accordance with 14 CFR part 139. A Final Rule, issued on January 8, 2015, at 80 FR 1308, titled ''Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders,'' applies the principles and methods of SMS to domestic, international flag, and supplemental operations air carriers that hold certificates in accordance with 14 CFR part 121. FTA also anticipates that it will be incorporating many if not all of these same definitions for applying SMS to public transportation in its future rulemakings for the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans.

Section 674.9 Transition From Previous Requirements for State Safety Oversight

In framing the provisions of MAP–21 for a much stronger State Safety Oversight program—and much higher expectations of the States and their SSOAs—the Congress recognized that the States and the rail transit systems they oversee would need a period of transition. Also, the Congress recognized that FTA would need time to conduct rulemakings through public notice and comment. Thus, MAP–21 Section 20030(e) provides that the previous authorization statute for State Safety Oversight, 49 U.S.C. 5330, will remain in effect for three years after FTA promulgates a final rule under the authority of the new authorization statute for State Safety Oversight, 49 U.S.C. 5329(e). Although nothing in this rulemaking precludes a State from immediately establishing an oversight agency that fully complies with MAP–21's requirements, Congress recognized that many States would need time to enact enabling legislation during the transition from the current program to a MAP–21 compliant program, particularly in States where the legislature meets only part-time or biennially. This section in today's proposed rulemaking recognizes that transition. (See, specifically, proposed 49 CFR 674.9(a) in today's NPRM.) Also, this section states that the current SSO regulations at 49 CFR part 659 will be rescinded upon the effective date of a final rule under the new authorization statute, 49 U.S.C. 5329(e).

Section 674.11 State Safety Oversight Program

Readers should please be mindful of the differences between a State Safety Oversight Program (SSOP) and the State Safety Oversight Agency (SSOA) that carries out an SSOP. In essence, an SSOA is a State agency that is obliged to interpret, administer, and enforce the State statutes enacted by a State legislature and the State regulations and program standards developed by a Governor and his or her designees in the executive branch of State government. An SSOP is the collection of law, rules, and administrative standards that define the minimum requirements for safety of rail public transportation in the State; the financial, physical, and human resources necessary to establish and maintain the SSOA; and the system of checks and balances, within State government, that holds an SSOA accountable for its actions.

In enacting MAP–21, the Congress very carefully spelled out the different missions and functions of an SSOP and an SSOA. The missions and functions of an SSOP are specified at 49 U.S.C. 5329(e)(3). The missions and functions of an SSOA are specified at 49 U.S.C. 5329(e)(4). In today's rulemaking, proposed section 674.11 states the missions and functions of an SSOP, and proposed section 674.13 states the missions and functions of an SSOA, as directed by the statutes. Most importantly, in an SSOP, a State must do the following: A State must explicitly assume responsibility for overseeing the safety of rail transit systems within its borders. A State must adopt and enforce Federal and relevant State law for that purpose. Not only must a State establish an SSOA, but it must ensure that the SSOA has a staffing level adequate to oversee the number, size, and complexity of the rail transit systems within the State, and that the staff of the SSOA are trained and qualified to perform their jobs. Further, a State must ensure that an SSOA does not receive any financial support from the rail transit systems the SSOA is obliged to oversee.

In summary, an SSOP is the means by which a State ensures that an SSOA is sufficiently empowered by law, and supported with the resources necessary to do its job, without bias toward any rail transit system within the SSOA's oversight. Through the requirements for an SSOP, the Congress is calling on the Governors of all States with rail fixed guideway public transportation systems to create SSOAs that are agile, competent watchdogs for the safety of those rail transit systems. Moreover, MAP–21 rectifies the previous, untenable practice in which a number of SSOAs had to rely upon subsidization from one or more of the rail transit systems they were obliged to oversee; through the SSOP, a State must now ensure that those previous conflicts of interest no longer exist.

Section 674.13 Designation of Oversight Agency

In MAP–21, the Congress established a set of requirements for designation of a State Safety Oversight Agency (SSOA) that are more prescriptive than those of SAFETEA–LU and the previous authorization statutes, including, notably, the requirements for financial and legal independence, audit, investigation and enforcement authority, and other safeguards against conflicts of interest between an SSOA and the rail fixed guideway public transportation systems the SSOA will oversee. This section of the NPRM simply reiterates the statutory requirements for designation and establishment of an SSOA now codified at 49 U.S.C. 5329(e)(4)(A). Also, this section of the NPRM notes the Administrator's authority to waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest in the instance of a State in which the rail fixed guideway public transportation systems have fewer than one million revenue miles per year combined, or provide fewer than ten million unlinked passenger trips per year, combined. The statutory authority for a waiver is codified at 49 U.S.C. 5329(e)(4)(B).

Additionally, this section reiterates the reporting requirements for an SSOA now codified at 49 U.S.C. 5329(e)(4), including, notably, the requirements that an SSOA make annual reports on the status of the safety of the rail fixed guideway public transportation systems it oversees to both the Governor and the boards of directors of the rail transit systems.

Section 674.15 Designation of Oversight Agency for Multi-State System

In a few instances across the United States, there are rail fixed guideway public transportation systems that operate in more than one State. This section of the NPRM identifies the same option for State Safety Oversight of such a multi-state system as now provided by 49 U.S.C. 5329(e)(5): The States may choose either to apply uniform safety standards and procedures to the rail transit system through a State Safety Oversight Program compliant with 49 U.S.C. 5329 and approved by the Administrator, or to designate a single entity that meets the requirements for an SSOA to serve as the SSOA for that rail transit system, through a program approved by the Administrator.

Section 674.17 Use of Federal Financial Assistance

This section explains that Federal financial assistance is now available to States to develop and carry out State Safety Oversight Programs (SSOPs), and may be used, specifically, for both the operational and administrative expenses of SSOPs and SSOAs and the expenses of employee training. Also, this section notes that the Federal financial assistance to a State will be allocated in accordance with a formula applicable to all eligible States; a grant of Federal funds will be subject to terms and conditions as the Administrator deems appropriate; the Federal share of eligible expenses under a grant will be eighty percent; and the non-Federal share of the expenses under a grant cannot be comprised of Federal funds, funds received from a public transportation agency, or any revenues earned by a public transportation agency.

Section 674.19 Certification of a State Safety Oversight Program

One of the most important provisions of the MAP–21 framework for safety is the new mandate for an FTA certification of a State Safety Oversight Program (SSOP); specifically, the mandate that the Administrator make a determination not only whether an SSOP meets the technical requirements of the statute, but whether that same SSOP *''is adequate to promote the purposes''* of the National Public Transportation Safety Plan and the other goals and objectives of 49 U.S.C. 5329(e)(7)(A) (emphasis added). The Congress recognizes that the weaknesses of the State Safety Oversight Agencies (SSOAs) cannot be addressed by the SSOAs, themselves. Consequently, Congress is obliging the States to either provide the current SSOAs with stronger authority and more resources to conduct the necessary oversight of rail fixed guideway public transportation systems, or to establish and nurture new organizations for that purpose. Further, Congress is obliging the FTA Administrator to determine whether each and every State has an adequate program through the mechanism of issuing or denying the issuance of a certification that the program is adequate to meet both the letter and the purposes of the law.

This section of the NPRM fleshes out the requirements and the process for certification of a State's SSOP. Specifically, proposed section 674.17(a)

states that the Administrator must determine whether an SSOP meets the requirements of the statute and is adequate to promote the purposes of 49 U.S.C. 5329, including, but not limited to, the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans (referenced as the ''Transit Agency Safety Plans'' in this rulemaking). Proposed section 674.17(b) recites the statutory mandate that the Administrator must issue either a certification or a denial of certification for each State's SSOP. Proposed section 674.17(c) states that in the event the Administrator issues a denial of a certification, he or she must provide the State a written explanation and an opportunity to modify its SSOP to merit the issuance of certification, and ask the Governor to take all possible steps to correct the deficiencies that are precluding the issuance of a certification.

Proposed section 674.17(c) states that in his or her discretion, the Administrator may impose financial penalties as authorized by Congress at 49 U.S.C. 5329(e)(7)(D). In brief, the statute provides the Administrator three options in imposing a financial penalty: (1) The Administrator can withhold SSO grant funds from the State; (2) The Administrator can withhold not more than five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSOP can be certified; or (3) The Administrator can require all of the rail fixed guideway public transportation systems governed by the SSOP to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for ''safety-related improvements'' on their systems, only, until such time as the SSOP can be certified. See, 49 U.S.C. 5329(e)(7)(D)(ii)(I)–(III).

Additionally, proposed section 674.17(d) states that in deciding whether to issue a certification for a State's SSOP, the Administrator will evaluate whether the SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail transit systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth in a sufficient level of detail in the State's SSOP.

Section 674.21 Withholding of Federal Financial Assistance for Noncompliance

Proposed section 674.21(a) explains that in those instances in which the Administrator has discretion to impose financial penalties for noncompliance with the SSO requirements, in making a decision whether to do so, and determining the nature and amount of a financial penalty, the Administrator must consider the extent and circumstances of the noncompliance, the operating budgets of both the SSOA and the rail transit systems that will be affected by the penalty, and such other matters as justice may require.

There is one instance, however, in which the Administrator will be unable to exercise any discretion to mitigate a very harsh financial penalty for noncompliance with the SSO requirements. If a State fails to establish a State Safety Oversight Program approved by the Administrator within three years of the effective date of the final rule that will follow today's NPRM, FTA will be prohibited by law from obligating any Federal financial assistance to *any* entity in that State that is otherwise eligible to receive funding through any of the FTA programs authorized by 49 U.S.C. Chapter 53. *See,* 49 U.S.C. 5329(e)(3). In other words: If for whatever reason, a State is unable or unwilling to come into compliance with a final rule for State Safety Oversight within three years after that final rule takes effect, all FTA grant funds for all of the public transportation agencies, designated recipients, subrecipients, and Metropolitan Planning Organizations in that State will be cut off. The statute is designed to provide every incentive to a State to develop and carry out an SSO program compliant with the regulations. Proposed section 674.21(b) reflects the congressional mandate of 49 U.S.C. 5329(e)(3).

Section 674.23 Confidentiality of Information

When FTA first promulgated a rule for State Safety Oversight, the agency recognized that rail transit systems often face litigation arising from accidents, and that the release of accident investigation reports can compromise both the defense of litigation and the abilities of rail transit systems to obtain comprehensive, confidential analyses of accidents. *See,* the preamble to the 1995 rule at 60 FR 67034, 67042 (Dec. 27, 1995). Thus, the current rule at 49 CFR 659.11 provides that a State ''may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages. . . .'' Also, the current rule makes clear that the Federal regulations at 49 CFR part 659 do not require a rail transit system to make a security plan available to the public, or any security procedures referenced in that plan. *See,* 49 CFR 659.11(b). Thus, as a practical matter, any questions whether to admit investigation reports into evidence for litigation are left to the courts to determine, in accordance with the relevant State law and the courts' rules of evidence.

Today's proposed rulemaking would clarify, and slightly expand, the current rule, by specifying that a ''State, State Safety Oversight Agency, or a rail fixed guideway public transportation system may withhold an investigation report prepared or adopted in accordance with the Federal regulations for State Safety Oversight from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.'' *See,* proposed section 674.21(a). Also, the proposed rule would clarify, and slightly expand, the current rule, by specifying that FTA's SSO regulations would ''not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.'' *See,* proposed section 674.21(b).

Section 674.25 Role of the State Safety Oversight Agency

Ever since 1995, when FTA issued the current SSO regulations at 49 CFR part 659, the SSOA has been required to set minimum standards for the safety of all rail fixed guideway public transportation agencies within their oversight. Today's proposed rulemaking would continue that requirement. *See,* proposed section 674.25(a). Under today's NPRM, however, those minimum standards must be consistent with the National Public Transportation Safety Plan (the ''National Plan''), the Public Transportation Safety Certification Training Program (the ''Safety Certification Training'' program), and the principles and methods of Safety Management Systems (SMS), all of which will be the subject of future rulemakings separate from today's NPRM. What this may mean, as a practical matter, is that any number of SSOAs may have to revise and reissue their minimum standards for safety of rail fixed guideway public transportation once FTA issues final rules for the National Plan, the Safety Certification program, and the Transit Agency Safety Plan, to ensure that their minimum standards are consistent with

FTA regulations. As noted above, FTA issued an ANPRM for the National Plan, the Transit Agency Safety Plans, and the Safety Certification Training program on October 3, 2013, at 78 FR 61251–73. Also, in today's **Federal Register** FTA is issuing final interim provisions for the Safety Certification Training program. FTA encourages all SSOAs and interested persons to participate in the rulemakings.

Proposed section 674.25(b) notes that basic principles and methods of SMS are set forth in an Appendix to the rules, titled the ''Safety Management Systems (SMS) Framework.''

Proposed section 674.25(c) would require an SSOA to review and approve the Transit Agency Safety Plan, oversee the execution of that plan, and enforce the execution of that plan through the order of a corrective action plan or any other means, as necessary or appropriate. Proposed sections 674.25(d) and 674.25(e) recognize that an SSOA has primary responsibility for investigating the hazards, risks, and accidents on a rail transit system, and any alleged noncompliance with a Transit Agency Safety Plan, but these responsibilities do not preclude the Federal Transit Administrator from exercising his or her independent authority to investigate hazards, risks, or accidents.

Proposed section 674.25(f) would allow an SSOA to retain the services of a contractor for assistance in investigating accidents and incidents and for expertise the SSOA does not have within its own organization. Proposed section 674.25(g) makes clear that all personnel and contractors employed by an SSOA must comply with the requirements of the Safety Certification Training program—either the interim provisions for the program or the final rule, once the final rule is issued.

Section 674.27 State Safety Program Standards

Under 49 CFR 659.15—the rule in place since 1995—the SSOAs have been required to develop a nine-part State safety program standard comprised of requirements for program management, standards development, oversight of the internal safety and security reviews by rail transit systems, the frequency of those reviews, accident notification requirements, investigation procedures, corrective actions, the 21-point ''system safety program plan'' for rail transit systems, and the ''system security plan'' for rail transit systems. The current rule sets a regimen that is reactive, highly prescriptive, and mechanistic; today's proposed rulemaking will be proactive, emphasizing the avoidance and mitigation of hazards and risks.

Today's NPRM transforms the list-specific, mechanistic approach to State safety program standards into one based on the more flexible, effective principles and methods of SMS. The SMS approach to State safety program standards at proposed section 674.27 addresses many of the same elements as are called out in the current SSO rule; it does so, however, in ways that are more comprehensive for preventing accidents, afford more latitude to the SSOAs, and can be scaled to the number, size, and complexity of the rail fixed guideway public transportation systems within the oversight of an SSOA. First, proposed section 674.27(a) obliges an SSOA to adopt and distribute a program standard that is consistent with the National Safety Plan, SMS, and the relevant State Safety Oversight Program. Next, proposed section 674.27(a) obliges an SSOA to identify the processes and procedures that will govern its own activities. Next, proposed section 674.27(a) obliges an SSOA to identify the processes and procedures a Rail Transit Agency must have in place to comply with the SSO's program standard. Finally, proposed section 674.27(a) sets explicit but minimum, flexible standards for program management, standards development, oversight of a Rail Transit Agency's internal safety reviews, triennial audits of Transit Agency Safety Plans, accident notification, investigations, and corrective actions.

Readers should note in particular the proposed requirements for an explanation of an SSOA's authority; the steps an SSOA must take to ensure ''open, on-going communication'' with the rail transit systems within its oversight; the process whereby an SSOA will evaluate the material submitted under the signatures of a Rail Transit Agency's accountable executives; the procedures an SSOA and a Rail Transit Agency will follow to manage findings and recommendations arising from a triennial audit; the coordination of an SSOA investigation with a Rail Transit Agency's own internal investigation; the role of an SSOA in supporting any investigation or findings made by the NTSB; and the procedures and SSOA and a Rail Transit Agency will follow to manage any conflicts over the contents or execution of a corrective action plan. *See,* proposed subsections 674.27(a)(1)–(7).

Also, readers should please note the new FTA responsibility for reviewing the effectiveness of State safety program standards. Under proposed section 674.27(b), FTA will evaluate an SSOA's program standard as part of its continuous evaluation of every State Safety Oversight Program (SSOP), and in preparing FTA's annual report to Congress on the certification status of every SSOP, both of which are required by 49 U.S.C. 5329(e)(8). FTA will certify each compliant SSOA within the first three years following publication of the final rule, and will monitor compliance annually thereafter.

Section 674.29 Transit Agency Safety Plans: General Requirements

One of the most significant changes in State Safety Oversight under today's proposed rulemaking is the transition from the simple review-and-approval of the ''system safety program plan'' for a rail fixed guideway public transportation system, now codified at 49 CFR 659.17, to the more hands-on, proactive role for an SSOA in evaluating the effectiveness of a Transit Agency Safety Plan in proposed section 674.29. To reiterate, ''Transit Agency Safety Plan'' is a shorthand reference to the new Public Transportation Agency Safety Plan now required of *all* operators of public transportation—not just rail transit systems—in accordance with 49 U.S.C. 5329(d). Although this is the subject of a rulemaking separate from today's proposal, Section 5329(d) sets forth seven explicit, minimum standards for a Transit Agency Safety Plan. (See, for example, the standards for identifying and evaluating safety risks, strategies to minimize exposure to hazards, performance targets, assignment of an ''adequately trained safety officer'' reporting directly to the chief executive, and the ''comprehensive staff training program,'' codified at 49 U.S.C. 5329(d)(1)). Today's proposed rulemaking makes the SSOA responsible for helping ensure that the Transit Agency Safety Plan for a rail transit system—the most complex type of public transportation system—is sufficient to protect both the public and the Rail Transit Agency's employees.

Specifically, under proposed section 674.29(a), an SSOA must evaluate whether a Transit Agency Safety Plan is based on an adequate Safety Management System (SMS), is consistent with the National Safety Plan, and is in compliance with the seven minimum standards set by the statute. Under proposed section 674.29(b), an SSOA must make a number of judgments in determining whether the Transit Agency Safety Plan is based on an adequate SMS: Most notably, the judgments whether a Transit Agency Safety Plan sets forth a sufficiently explicit safety policy for the rail transit system, and whether the plan

identifies adequate means for risk control, safety assurance, and promotion of safety to support the execution of the Transit Agency Safety Plan throughout the rail fixed guideway public transportation system—by all employees and agents of the system, and its contractors. Under proposed section 674.29(c), in any instance in which an SSOA does not approve a Transit Agency Safety Plan, the SSOA must provide the Rail Transit Agency a written explanation, and the Rail Transit Agency an opportunity to modify and resubmit its plan for the SSOA's approval.

In short, under proposed section 674.29, the SSOA becomes a vigorous, diligent, ''institutional check'' on whether a Transit Agency Safety Plan for a rail transit system is adequate to avoid or mitigate hazards and risks to everyone who uses, manages, or maintains that system. This is a much more assertive role for an SSOA than has been the case under the regulations in place since 1995.

Section 674.31 Triennial Audits: General Requirements

Under the current regulations, an SSOA conducts an ''on-site review'' of the ''system safety program plan'' for a rail fixed guideway public transportation system at least once every three years. *See,* 49 CFR 659.29. As a practical matter, this sort of review has amounted to little more than a checklist procedure, and the superficiality of the on-site review was a specific point of criticism by the National Transportation Safety Board following the rapid and light rail accidents in 2009, referenced above.

Under today's NPRM, the three-year on-site review would be transformed into a more searching analysis of the safety of a rail transit system. Specifically, under proposed section 674.31, an SSOA will conduct a complete audit of a Rail Transit Agency's compliance with its Transit Agency Safety Plan at least once every three years, or on an on-going basis over a three-year timeframe, if the Rail Transit Agency concurs. At the conclusion of the three-year audit cycle an SSOA will issue a report with findings and recommendations that include, at minimum, an analysis of the effectiveness of the Transit Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The Rail Transit Agency must be given an opportunity to comment on the findings and recommendations arising from the audit. Optimally, an SSOA audit, per se, will be a more independent, effective means of testing the value of a Transit Agency Safety Plan and the steps a Rail Transit Agency has taken to carry out that plan over a three-year cycle.

Section 674.33 Accident and Incident Notification

Proposed section 674.33 differs very little from the two-hour notification requirement for certain types of accidents in the current rule at 49 CFR 659.33, with two exceptions. The first exception is the addition of the term ''Incident.'' The second exception is the additional requirement that FTA be notified of an Accident or Incident together with the SSOA.

FTA is proposing to require two-hour notification for either an ''Accident'' or ''Incident.'' In proposed section 674.7, ''Incident'' is characterized as a near miss, close call, a violation of a safety standard that poses a hazard to a rail fixed guideway public transportation system, or equipment or property damage in an amount less than $25,000 that effects transit operations. Experience teaches that a near miss or close call may be as much or more important for detecting hazards and mitigating risk as an accident that results in personal injury or property damage. And logically, a violation of a safety standard calls for notification, regardless whether the violation led to personal injury or property damage.

To enhance FTA's own situational awareness, a Rail Transit Agency must notify FTA of any accident or incident at the same time a Rail Transit Agency notifies the SSOA. In recent years FTA has benefitted from the electronic notification process a number of rail transit systems are using to inform multiple parties of accidents, similar to the telephonic notifications that railroads subject to 49 CFR part 225 provide to the Federal Railroad Administration via the National Response Center. Insofar as the rail fixed guideway public transportation systems already use an electronic notification system, FTA asks that it be added to their automated lists of addressees, which would require minimal effort.

Section 674.35 Investigations

In the deliberations leading to the enactment of MAP–21, the congressional authorization committees took a fresh look at whether investigation and enforcement authority for safety in rail fixed guideway public transportation should be vested in FTA or retained by the States. Ultimately, the Congress decided that FTA and the States, through their SSOAs, will have concurrent authority to investigate any incident involving the safety of a rail transit vehicle or taking place on the property of a rail transit system, while the SSOAs retain the role of primary oversight for the safety of rail fixed guideway public transportation. See, 49 U.S.C. 5329(e)(4)(A)(v), 5329(f)(1). Consequently, under today's proposed rulemaking, FTA will continue to defer to the SSOAs to conduct initial inspections and investigations. Should an SSOA request FTA's assistance, however, or should the Administrator determine that an SSOA lacks the ability to conduct an investigation as necessary or appropriate, FTA may initiate an investigation.

Under the current regulations, an SSOA may request a rail transit system to conduct an investigation on behalf of the SSOA. See, 49 CFR 659.35(a), (c). In some instances, it may benefit a rail transit system to investigate an accident occurring on its property, but in FTA's view, that practice can trigger a conflict of interest, particularly where a rail transit system has an ability to influence an apportionment of fault and liability. Given that 49 U.S.C. 5329 now provides SSOAs with resources to conduct their own investigations, and requires professional training and certification of their employees to investigate accidents, proposed section 674.35(a) would require an SSOA to conduct an ''independent investigation'' of any accident or incident that a Rail Transit Agency reports to the SSOA in compliance with proposed section 674.33(a). Further, proposed section 674.35(c) would require all personnel and contractors conducting investigations for an SSOA to be trained to conduct investigations in accordance with the Safety Certification Training program. Obviously, a Rail Transit Agency would not be prohibited from conducting its own internal investigation of an accident. Rather, proposed section 674.35(a) states that in any instance in which both an SSOA and a Rail Transit Agency are conducting an investigation, they must coordinate their investigations with one another in accordance with the State safety oversight program standard required by proposed section 674.27.

Under proposed section 674.35(b), an SSOA must issue a written report on an investigation that identifies the factors that caused or contributed to the accident or incident, describes the SSOA's investigation activities, and sets forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt an investigation report and transmit that report to the Rail Transit Agency for review and concurrence. If a Rail Transit Agency

does not concur in an SSOA's investigation report, the SSOA may allow the Rail Transit Agency to submit a written dissent from the report, and the SSOA may include the Rail Transit Agency's dissent in the report, if the SSOA so chooses.

Also, readers should note that MAP–21 has vested the Federal Transit Administrator with broad authority to conduct investigations of public transportation systems—whether to ensure the continuing safety of a system, or in response to an accident or incident. See, 49 U.S.C. 5329(f)(1) (as the Secretary's designee, the Administrator ''may . . . conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of [a] public transportation system . . .''). To facilitate the Administrator's authority to conduct investigations, he or she may make reports and issue directives, issue subpoenas, take depositions, require production of documents by either a public transportation system or an SSOA, and provide guidance to public transportation systems ''regarding prevention of accidents and incidents.'' See, 49 U.S.C. 5329(f)(2)–(6). The FTA Office of Safety and Oversight will carry out the Administrator's authority to conduct investigations, with assistance from staff of the ten FTA Regional Offices.

Section 674.37 Corrective Action Plans

It is most likely an SSOA will order a Rail Transit Agency to prepare and carry out a corrective action plan as the result of an investigation of an accident or hazard, an internal safety audit, or an SSOA's triennial audit of a Transit Agency Safety Plan. Although it is not possible to know what potential corrective action plans may call for, under proposed section 674.37(a), in any instance in which a Rail Transit Agency is ordered to develop and carry out a corrective action plan, the SSOA must review and approve that plan before the Rail Transit Agency carries out the plan. A corrective action plan must specify the actions a Rail Transit Agency will take to avoid or mitigate the risks and hazards that led to the plan, the schedule for taking the corrective actions, and the persons who will take the corrective actions. The Rail Transit Agency will periodically report its progress in carrying out the corrective action plan, and the SSOA may monitor the Rail Transit Agency's progress through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate. Also, in any instance in which the National Transportation Safety Board (NTSB) has conducted an investigation, an SSOA must evaluate whether the NTSB's findings and recommendations call for a corrective action plan by the Rail Transit Agency, and if so, the SSOA must order the Rail Transit Agency to develop and carry out a corrective action plan.

Section 674.39 State Safety Oversight Agency Annual Reporting to FTA

It is not FTA's objective to increase the reporting burdens on States, their SSOAs, or rail fixed guideway public transportation systems any more than absolutely necessary. Moreover, the current SSOA reporting requirements at 49 CFR 659.39 have worked well for the limited authority and responsibilities given to the SSOAs under the State Safety Oversight program in place for the past twenty years. As further described in the Paperwork Reduction Act section of this notice, below, the Office of Management and Budget (OMB) extended the approval for FTA to collect information from SSOAs as required by 49 U.S.C. 5330 and the rules at 49 CFR part 659.

Today's rulemaking proposes to keep the basic structure of the current 49 CFR 659.39 insofar as the data and information SSOAs must report to FTA on an annual basis, with a few additions and revisions, as follows. First, under proposed subsection 674.39(a)(2), an SSOA would be obliged to submit evidence once a year that each of its employees and contractors are in compliance with the applicable Safety Training Certification requirements. Second, under proposed subsection 674.39(a)(4), an SSOA would be obliged to submit a summary of the triennial audits completed during the preceding year, and the Rail Transit Agencies' progress in carrying out any corrective action plans arising from those audits. Third, under proposed subsection 674.39(a)(5), an SSOA would be obliged to submit evidence of its review and approval of any changes to Transit Agency Safety Plans during the preceding year.

Section 674.41 Conflicts of Interest

Proposed section 674.41(a) incorporates a fundamental change enacted by MAP–21: An SSOA must now be both financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA. See, 49 U.S.C. 5329(e)(4)(A)(i). The only exception to this requirement would be an instance in which the Administrator has issued a waiver based on the relatively small annual fixed guideway revenue mileage in a State (less than one million actual and projected revenue miles, in total), or the relatively small number of unlinked passenger trips carried by all the rail transit systems in a State, on an annual basis (fewer than ten million actual and projected unlinked passenger trips, in total). See, 49 U.S.C. 5329(e)(4)(B).

Proposed section 674.41(b) would change the current rule, 49 CFR 659.41, to make it clear that an SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA. Also, the proposed rule would delete the reference in the current rule to state law determinations of conflict of interest. Again, however, the Administrator could issue a waiver from this requirement on the basis of the relatively small annual fixed guideway revenue mileage (less than one million miles) in a State or the relatively small number of unlinked passenger trips per year (less than 10 million unlinked trips) in a State, using the same thresholds as specified in proposed section 674.41(a).

Finally, proposed section 674.41(c) would make it clear that a contractor may not provide its services to both an SSOA and a rail transit system under the oversight of that SSOA. There is no waiver available with respect to this particular requirement.

Appendix: Safety Management Systems (SMS) Framework

For a basic understanding of SMS, readers should please consult the Appendix that immediately follows the text of the proposed rules: The document titled ''Safety Management Systems (SMS) Framework.'' This document describes at some length each of the four key components of a viable SMS for any transportation provider: (1) The Safety Management Policy for an organization, (2) an organization's Risk Management practices, (3) the means for Safety Assurance throughout an organization, and (4) the practices for Safety Promotion within an organization, through training, education, and communication. This document explains that SMS is both flexible and scalable to the size of an organization and its operating environment. This document addresses the role of the Accountable Executive—the leader at the top of an organization who is ultimately responsible for safety—and the roles of a chief safety officer, an executive leadership team, employees who specialize in operations, maintenance, and asset management, employees with front-line

responsibilities for safety, and an organization's board of directors. Also, this document speaks to discrete activities such as hazard identification and analysis, risk assessment and mitigation, change management, continuous improvement, and the integration of an organization's SMS with its public safety and emergency preparedness.

This Appendix is a guidance document. Unlike the final rules that will follow the public notice and comment on the proposed rules in this NPRM, this Appendix will not have the force of law. FTA is publishing the Safety Management Systems (SMS) Framework in this Appendix to provide practical advice both to the rail fixed guideway public transportation systems that will develop and integrate SMS into their operations and managerial structures, and the States and SSOAs that will oversee the rail transit systems' practice of SMS. FTA does not intend to set substantive standards for SMS through today's proposed rulemaking for State Safety Oversight. Rather, FTA intends to propose substantive standards for SMS in the upcoming Notices of Proposed Rulemaking for the National Public Transportation Safety Plan and the Transit Agency Safety Plans. Nonetheless, FTA invites readers to comment on the material set forth in this Appendix, together with your comments on the rules proposed in this NPRM. Indeed, FTA expects to revise this Appendix from time to time, in the years ahead, as the practice of SMS matures throughout the transit industry.

Additional Matters of Interest in the Proposed Rules

Security. Persons versed in the current State Safety Oversight program will notice that today's proposed rulemaking omits any mention of system *security* plans and internal *security* reviews for rail fixed guideway public transportation systems. In short, the 49 CFR part 659 regulations, issued in 1995, preceded the terrorist attacks of September 11, 2001, and the creation of the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security (DHS), which now has lead responsibility for the Federal Government's activities in the area of security in public transportation. This lead responsibility for TSA is set forth in the Memorandum of Agreement (MOA) between DHS and DOT executed in September 2004 and the Annex to that MOA executed by TSA and FTA in September 2005. Further, under Sections 1405 and 1512 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53; Aug. 3, 2007) (''9/11 Commission Act''), TSA is given the authority to issue regulations that will require public transportation agencies to develop and carry out security plans. Under Section 1404 of the 9/11 Commission Act, DHS is carrying out a national strategy for public transportation security with guidelines that minimize security threats and maximize the ability of public transportation agencies to mitigate damage from terrorist attack and other major incidents. Also, TSA has issued rules that apply to rail transit systems insofar as TSA inspection authority, appointment of rail security coordinators, and reporting significant concerns to TSA. See, 49 CFR 1508.5, 1508.201, and 1508.203.

In omitting any mention of rail transit system security plans and reviews, the rules FTA is proposing for State Safety Oversight in this NPRM would not prohibit rail transit systems from continuing to improve their practices to prevent and mitigate the threats to the security of their systems. To the contrary, rail transit systems are encouraged to do so—and strictly in accordance with the rules and guidelines TSA has issued and will issue in the future. Both FTA and TSA recognize, moreover, that some of the steps a public transportation agency takes to protect public and employee safety are often one and the same as those it takes to protect its transit system from a terrorist attack; for example, the steps an agency takes as part of a threat and vulnerability assessment. FTA and TSA work to ensure that the transit industry is not confronted with inconsistent government-issued security requirements or guidance.

Plain English. For purposes of plain English, and compliance with the Plain Writing Act of 2010 (Pub. L. 111–274; Oct. 13, 2010), FTA has made every effort to keep the text of the rules in this NPRM short, simple, and clear. Admittedly, the current regulation at 49 CFR part 659 is lengthy, and less than a model of clarity, thus, FTA seeks to move in the opposite direction. A certain level of detail may be sacrificed in this rulemaking, but FTA would prefer to put a rule in place that is easier to understand and to work with.

Annual Certifications of Compliance. Readers should please note that the requirement that an SSOA annually submit a certification of its compliance with the rules, codified at 49 CFR 659.43, is being moved to proposed subsection 674.39(a)(6) with the other requirements for annual reporting.

Estimated Costs and Benefits

Existing 49 CFR Part 659 Program Requirements and Activities

As stated in the Background section above, this NPRM replaces a set of regulations that have been in place since December 27, 1995, codified at 49 CFR part 659. As such, this NPRM applies to a discrete subsection of the public transportation industry—the recipients of Federal funds under 49 U.S.C. chapter 53 that operate rail fixed guideway transit systems not subject to the jurisdiction of the Federal Railroad Administration; the States in which those rail systems lie; and the SSOAs required to oversee the safety of those rail systems.

Through the implementation of 49 CFR part 659, the States, SSOAs and rail transit agencies affected by 49 U.S.C. 5329(e) already engage in core activities that address many of this NPRM's proposed requirements. In practical terms, many of the changes required in this NPRM serve to increase the frequency and/or comprehensiveness of activities that are already performed, such as reviews, inspections, field observations, investigations, safety studies, data analysis activities, and hazard management.

Costs to States of Implementing 49 CFR Part 659, CY 2011–2013

Pursuant to 49 CFR part 659, FTA collects annual information from the SSOAs regarding the hours they expend to implement SSO requirements for the rail transit agencies in their jurisdictions. Based on this information, when totals are averaged for the last three reporting years (CY 2011–CY 2013), FTA has determined that the 28 covered SSOAs expend approximately 115,396 total hours per year implementing part 659 requirements. While these hours average out to roughly 4,120 per State per year, there is wide variation across the States in terms of the total level of effort devoted to compliance with part 659. Some States, such as California, oversee multiple rail transit systems with two or more full-time equivalents (FTEs) devoted to each system. Most States covered by part 659, however, have one (1) rail fixed guideway system and devote between .5 and 1 FTEs per year to implementing 49 CFR part 659 requirements for that system, supplemented by contractor resources for major activities, such as the Three-Year Review and accident investigation.

The table below illustrates the break-down of activities and labor hours currently expended to implement 49 CFR part 659 by the States and SSOAs.

Using the 2013 Bureau of Labor Statistics (BLS) average wage rate of $42.70 per hour for State and local government operations managers, this level of effort equates to an annual cost of approximately $5 million for States and SSOAs to implement 49 CFR part 659 requirements nationwide.

The table also identifies one-time, non-recurring activities with an asterisk (*). These activities, such as establishing standards and procedures, are performed initially to establish the SSO program standard for a State new to implementing part 659. By including these non-recurring costs, FTA's table reflects the reality that new States and rail transit agencies are joining the SSO program each year. In fact, since January 1, 1997, when the December 27, 1995 rule implementing 49 CFR part 659 went into effect, the SSO program has grown by 40 percent, increasing from 19 SSOAs and 32 rail transit agencies to 28 SSOAs and 48 rail transit agencies.

Annual state activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Develop and adopt program standard *	1,400	$59,780.00
Develop and adopt program procedures *	1,400	59,780.00
Review and update program standard and procedures	2,912	124,342.40
Review and approve rail transit agency SSPP	3,840	163,968.00
Review and approve rail transit agency system security plan	3,840	163,968.00
Travel	5,376	229,555.20
Review and approve rail transit agency procedures	3,072	131,174.40
Review and approve SSPP modifications and updates	3,072	131,174.40
Review and approve system security plan modifications and updates	3,072	131,174.40
Perform three-year review of rail transit agency	9,216	393,523.20
Training	3,840	163,968.00
Review and approve internal safety review report	4,224	180,364.80
Review and approve internal security review report	4,224	180,364.80
Prepare three-year safety and security review report	13,440	573,888.00
Prepare accident investigation report	5,376	229,555.20
Review and approve rail transit agency accident investigation reports	6,144	262,348.80
Review, approve and track corrective action plans	15,360	655,872.00
Monitor rail transit agency adherence to hazard management process	19,200	819,840.00
Designation Submission *	30	1,281.00
Initial Submission *	2,270	96,929.00
Annual Submission	3,528	150,645.60
Periodic Submission	560	23,912.00
Total including non-recurring costs	115,396	4,927,409.20

* Non-recurring cost.

Costs to Rail Transit Agencies of Implementing 49 CFR Part 659, CY 2011–2013

Based on information collected from the SSO agencies in annual reports and previous assessments conducted by the Government Accountability Office and the National Transportation Safety Board, FTA has also established the level of effort required to implement 49 CFR part 659 requirements for the 48 rail transit agencies covered by the regulation. Based on this data, FTA has determined that each year, rail transit agencies expend approximately 237,000 hours implementing 49 CFR part 659 requirements.

While these hours average out to approximately 5,000 per rail transit agency per year, there is variation in the rail transit industry based on the size of rail fixed guideway systems. The nation's five (5) largest rail transit agencies each employ between 6 and 15 full-time equivalents who work exclusively on 49 CFR part 659 activities. Most of the remaining rail transit agencies devote between .5 and 2 FTEs to implement 49 CFR part 659 activities. Major activities performed by the rail transit agencies to implement 49 CFR part 659 include developing safety and security plans and procedures; conducting internal reviews and audits to assess the implementation of safety and security plans; conducting accident and incident investigations; identifying, assessing and resolving hazards and their consequences; managing safety data acquisition and analysis; coordinating with emergency response planning; and communicating with/responding to the SSO agency through reports, meetings, teleconferences, emails, training, submittals and support for field observations and reviews.

Also using the 2013 Bureau of Labor Statistics average wage rate of $42.70 per hour for State and local government operations managers, FTA has determined that the rail transit industry spends about $10 million per year to implement the 49 CFR part 659 requirements nationwide. FTA's table below reflects non-recurring costs required for new rail transit agencies covered by part 659, and for existing rail transit agencies to address new extensions and capital projects, once they become operational, as averaged over the last three years.

Annual rail transit agency activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Develop system safety program plan *	6,272	$267,814.40
Review and update system safety program plan	7,550	322,385.00
Develop system security plan *	4,036	172,337.20
Review and update system security plan	6,208	265,081.60
Develop program procedures *	5,946	253,894.20
Review and update program procedures	4,142	176,863.40
Travel	4,146	177,034.20

Annual rail transit agency activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Conduct internal safety and security reviews	15,230	650,321.00
Prepare internal safety and security review reports	8,160	348,432.00
Prepare annual internal safety and security review report for state oversight	10,708	457,231.60
Conduct accident investigations	30,000	1,281,000.00
Prepare accident investigation reports	19,168	818,473.60
Investigate unacceptable hazardous conditions	14,030	599,081.00
Prepare unacceptable hazardous condition reports	12,032	513,766.40
Implement hazard management process	32,312	1,379,722.40
Prepare and submit corrective action plans	19,090	815,143.00
Coordinate hazard management program activities with state oversight	23,848	1,018,309.60
Maintain safety data	3,570	152,439.00
Plan and conduct annual emergency preparedness drill	3,382	144,411.40
Prepare and submit after-action report for annual emergency drill	1,090	46,543.00
Maintain security data	3,570	152,439.00
Make submissions to state oversight agency	2,618	111,788.60
Total including non-recurring costs	236,996	10,119,729.20

* Non-recurring cost.

Limitations of the Resources Expended by States and Rail Transit Agencies

Based on the assessment provided in the two tables above, collectively the States, the SSOAs and the rail transit agencies expend approximately 352,000 labor hours or $15 million to implement 49 CFR part 659 requirements each year. While this level of effort helps make the transit industry among the safest modes of surface transportation, it has not been sufficient to prevent major accidents with multiple fatalities from occurring. As discussed in the preamble to this NPRM, over the last decade, the rail transit industry remains vulnerable to catastrophic occurrences.

Since 2004, the National Transportation Safety Board (NTSB) has investigated (or preliminarily investigated) 19 major rail transit accidents, and has issued 25 safety recommendations to FTA, including six (6) Urgent Recommendations. In conducting these investigations, the NTSB found a variety of probable causes for these accidents. Among them, equipment malfunctions; equipment in poor or marginal condition, including equipment that can pose particular risks to safety, such as signal systems; lack of vehicle crashworthiness; employee fatigue and fitness for duty issues; and employee error, such as inattentiveness or failure to follow a rail transit system's operating procedure. The NTSB also identified the lack of a strong safety culture and a lack of adequate oversight both by the rail transit systems' State Safety Oversight Agencies and FTA. Deficiencies in oversight—of the kind being addressed by this rulemaking—were specifically identified as a contributing factor for five of the 19 major accidents. As a result, the NTSB has made improving the operational safety of the rail transit industry one of its Top Ten Most Wanted Items in 2014.

FTA has also observed that while other modes of surface transportation, such as highway and commercial motor carrier, freight railroad and commercial trucking have achieved significant improvements in safety performance over the last decade, the public transportation industry's safety performance has not improved. Over the last decade, the rail transit industry actually has experienced increases in several key categories, including the number and severity of collisions, the number of worker fatalities and injuries, and the number and severity of passenger injuries. In this respect, the public transportation industry, and the nation's rail transit agencies in particular, are outliers to the overall U.S. DOT modal safety experience.

Perhaps coincidentally, FTA also notes that the current level of expenditure by the States and rail transit agencies on safety oversight activities falls considerably below one (1) percent of the roughly $4 billion that FTA awards to rail transit agencies each year. A review of safety programs administered by other modal administrations, such as the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA), demonstrates that at least one (1) percent of the Federal investment is typically devoted to safety oversight activities and programs in most other related modes of transportation. Other modes have determined that this level of investment in safety returns positive dividends in safety performance while also addressing tight budget margins in the transportation industry.

Combined with a lack of resources devoted to safety oversight, FTA has observed that the operating, maintenance and service environments of the nation's rail transit agencies continue to change. Rail transit ridership is at an all-time high, while rail transit equipment and infrastructure is in a deteriorated condition. The heavier service cycles required to meet rising demand in some of the nation's largest urbanized areas create challenges for aging infrastructure with potential safety implications. FTA's Transit Asset Management (TAM) NPRM, authorized at 49 U.S.C. 5326, will attempt to address some of these challenges through the institution of formal asset management programs.

In addition, this NPRM also implements an earlier decision made by the Federal Transit Administrator to adopt the framework and principles of Safety Management Systems (SMS). This decision was communicated in a May 13, 2013 Dear Colleague letter to the public transportation industry. FTA's adoption of SMS better positions the SSOAs and rail transit agencies to address the nexus between safety and state of good repair more effectively.

MAP–21 Requirements To Address Known Gaps in Oversight

MAP–21 creates a new regulatory role for FTA and the States that responds to known gaps in oversight and safety performance. For example, to address noted FTA and NTSB concerns regarding conflicts of interest and the ability of SSO agencies to act independently in the interest of public safety, 49 U.S.C. 5329(e)(4)(i) specifies that each SSO agency must have financial and legal independence from each of the rail fixed guideway public

transportation systems in its jurisdiction.

To address the need for an enhanced safety regulatory program, 49 U.S.C. 5329(e)(2)(A–B) directs States to assume oversight responsibility for rail transit agencies in engineering and construction, as well as in revenue service. This requirement increases the number of States subject to the State Safety Oversight regulations from 28 to 30, and increases the number of rail transit agencies from 48 to 60 nationwide.

MAP–21 SSO Grant Program—Costs to States

The statutory changes to State Safety Oversight include a new grant program to assist with the costs of compliance. Federal financial assistance is now available to States to help them develop and carry out their State Safety Oversight Programs (SSOPs), and may be used, specifically, for up to eighty percent of both the operational and administrative expenses of SSOAs, including the expenses of employee training.

On March 10, 2014, FTA announced its apportionment of $21,945,771 in funding to eligible States for their SSOPs and SSOAs for Federal Fiscal Year 2013, and $22,293,250 for Federal Fiscal Year 2014. 46 FR 13380. In addition, on February, 9, 2015, FTA announced the apportionment of $14,841,808 in funding to eligible States for SSOPs and SSOAs for Federal Fiscal Year 2015 through May 31, 2015. 80 FR 7254. Thus, for purposes of cost-benefit analysis, this rulemaking is revenue neutral between the Federal government and the States, and this has been factored into the analysis.

Specifically, in determining the additional costs that would be imposed through this rulemaking, we have factored the net transfer from FTA to the States and their SSOAs. The table below compares and contrasts the specific activities performed, the labor hours and the total costs expended under the existing 49 CFR part 659 requirements (as discussed above) with FTA's proposal for the MAP–21 program authorized at 49 U.S.C. 5329(e) and described in this NPRM. Readers should note that the 49 CFR part 659 labor hours and costs reflect 28 SSOAs and 48 rail transit agencies, while the 49 U.S.C. 5329(e) labor hours and costs reflect 30 SSOAs and 60 rail transit agencies. As discussed above, new definitions in 49 U.S.C. 5329 expand State Safety Oversight requirements to include rail transit agencies in construction and engineering phases of development.

Labor estimates for the activities in this NPRM were derived based on the hours required to complete them as reported by States already implementing the specific activities; the estimates and general discussion provided in the Senate report to the Public Transportation Safety Act of 2010 (S. 3638, 111th Congress); and the experience of FTA's legal, policy, grant making and safety team.

This table shows a minimum four-fold increase in the level of oversight activity performed to implement the NPRM. In particular, as part of proposed section 674.27, SSOAs would be required to establish a new set of activities unique to the oversight of SMS in the rail transit industry. The 30 SSOAs would be required to identify their ''accountable executive'' for the implementation of the SSO program, and determine their procedures and process for overseeing the effective functioning of each rail transit agency's SMS, including overseeing elements such as organizational accountability, safety climate and culture, committee structures, safety performance monitoring, safety audits and reviews, safety risk management, and, perhaps most importantly, the implementation and monitoring of safety risk mitigations. Through the MAP–21 SSO grant program, this additional oversight activity will be funded at no additional cost to the States. FTA welcomes comments and observations regarding the hours reported for the part 659 requirements and the estimates presented for the proposed activities in this NPRM.

State oversight agency activity in NPRM	49 CFR part 659 labor hours	49 CFR part 659 total cost	Section 5329 labor hours	Section 5329 total cost
§ 674.11 Develop State Safety Oversight Program:				
• Explicit Acknowledgement of State Responsibility to Oversee Safety of Rail Transit Agencies in Engineering, Construction and Operations *	0	$0.00	1,200	$51,240.00
• Demonstrate Authority to Adopt and Enforce State and Federal Regulations *	0	0.00	1,200	51,240.00
• Demonstrate Adequate/Appropriate Staffing Level *	0	0.00	3,000	128,100.00
• Demonstrate Qualification and Certification of Staff *	0	0.00	3,000	128,100.00
• Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency *	0	0.00	600	25,620.00
§ 674.13 Designation of oversight agency:				
• Legal and Financial Independence Procedures and Disclosures *	0	0.00	2,400	102,480.00
• Annual Updates and Legal and Financial Independence Disclosures	0	0.00	600	25,620.00
• Documentation of No Provision of Transit Service	0	0.00	60	2,562.00
• Documentation of No Employment for Personnel Administering Rail Transit Programs	0	0.00	60	2,562.00
• Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan *	0	0.00	30,000	1,281,000.00
• Establish and Document Investigative and Enforcement Authority *	0	0.00	30,000	1,281,000.00
§ 674.15 Designation of oversight agency for multi-state system	0	0.00	3,000	128,100.00
§ 674.17 Use of Federal financial assistance				
• Identifying and Providing Appropriate Match for Grant Program *	0	0.00	6,000	256,200.00
• SSO Grant Management and Reporting Activities	0	0.00	3,000	128,100.00
§ 674.19 Certification of a State Safety Oversight Program:				
• Certification Pre-Submittal Documentation to FTA	0	0.00	2,400	102,480.00
• Work Plan and Quarterly Updates to FTA	0	0.00	3,000	128,100.00
• Initial Certification Documentation	2,860	122,122.00	300	12,810.00
• Final Certification Documentation	0	0.00	600	25,620.00
• Maintenance of Annual Certification	0	0.00	600	25,620.00
§ 674.21 Withholding of Federal financial assistance for noncompliance	0	0.00	0	0.00

State oversight agency activity in NPRM	49 CFR part 659 labor hours	49 CFR part 659 total cost	Section 5329 labor hours	Section 5329 total cost
§ 674.23 Confidentiality of information:				
• Develop and adopt procedures/regulation to withhold an investigation report from being admitted as evidence or used in a civil action *	0	0.00	3,000	128,100.00
§ 674.25 Role of the State safety oversight agency				
• Establish minimum standards for the safety of rail transit agencies *	0	0.00	30,000	1,281,000.00
• Update minimum standards as needed or required	0	0.00	6,000	256,200.00
• Review and approve Agency Safety Plan (§ 674.29 Transit Agency Safety Plans: general requirements)	3,840	163,968.00	9,600	409,920.00
• Review and Approve Supporting and Referenced Procedures	3,072	131,174.40	9,600	409,920.00
• Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures	3,072	131,174.40	4,800	204,960.00
• Oversee the Rail Transit Agency's execution of its Transit Agency Safety Plan.	8,448	360,729.60	60,000	2,562,000.00
• Enforce the execution of a Transit Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate.	0	0.00	1,200	51,240.00
• Ensure that a Transit Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d) and the regulations that are or may be codified at 49 CFR Part 673	0	0.00	1,200	51,240.00
• Investigate any hazard or risk that threatens the safety of a Rail Transit Agency	19,200	819,840.00	60,000	2,562,000.00
• Investigate any allegation of noncompliance with a Transit Agency Safety Plan	0	0.00	0	0.00
• Exert primary responsibility to investigate each Rail Transit Agency accident	0	0.00	0	0.00
• Enter into agreements with contractors	0	0.00	6,000	256,200.00
• Comply with the requirements of the Public Transportation Agency Safety Certification Training Program	3,840	163,968.00	24,000	1,024,800.00
§ 674.27 State safety program standards:				
• Develop and adopt program standard *	1,400	59,780.00	6,000	256,200.00
• Develop and adopt program procedures *	1,400	59,780.00	6,000	256,200.00
• Develop and adopt Safety Management Systems oversight principles and oversight methods *	0	0.00	6,000	256,200.00
• Review and update program standard and procedures	2,912	124,342.40	600	25,620.00
§ 674.31 Triennial audits: general requirements:				
• Conduct Three Year Audit	9,216	393,523.20	36,000	1,537,200.00
• Document Results and Findings	13,440	573,888.00	12,000	512,400.00
§ 674.33 Notifications: Accidents and other incidents				
• Receive and track notification of accidents	0	0.00	1,000	42,700.00
• Report to FTA	0	0.00	1,000	42,700.00
§ 674.35 Investigations				
• Prepare Accident Investigation Report	5,376	229,555.20	60,000	2,562,000.00
• Review, Approve and/or Adopt Accident Investigation Reports	6,144	262,348.80	6,000	256,200.00
§ 674.37 Corrective action plans	15,360	655,872.00	18,000	768,600.00
§ 674.39 State Safety Oversight Agency annual reporting to FTA	3,528	150,645.60	2,400	102,480.00
§ 674.41 Conflicts of interest	0	0.00	600	25,620.00
Travel	5,376	229,555.20	1,200	51,240.00
Security	6,912	295,142.40	0	0.00
Total State Oversight Agencies, including non-recurring costs (Year 1)	115,396	4,927,409.20	463,220	19,779,494.00
Total State Oversight Agencies, including only recurring costs (Future Years)	*112,596*	*4,807,849.20*	*366,020*	*14,348,054.00*

* Non-recurring cost.

MAP–21 SSO Grant Program—Costs to Rail Transit Agencies

As discussed above, this NPRM implements the framework and principles of Safety Management Systems. The costs included in the table below reflect FTA's estimation regarding the likely requirements of SMS adoption by the rail transit agencies in critical areas overseen by the SSO program, such as investigations, inspections, and reviews; safety data acquisition and analysis; and safety performance monitoring. Notably, we have not included the costs to develop and update safety plans and procedures under today's NPRM. These costs will be included in the Public Transportation Agency Safety Plan rulemaking. Therefore, while there are non-recurring costs under part 659, there are no non-recurring costs attributable to this NPRM.

This table depicts general increases on the order of 10 to 20 percent for the labor hours in most major activities currently performed to implement 49 CFR part 659, indicating enhanced activity in the specific area based on the more rigorous MAP–21 SSO program, as well as the requirements of additional collaboration and coordination with a significantly expanded SSO function in the State. Additional labor is provided to augment internal safety audit programs, manage corrective action plans, and implement hazard management programs. Activities

related to the review and approval of security plans have been removed for the MAP–21 program.

The most significant changes come in the ''accident/incident investigation'' and ''maintain safety data'' categories. With the enhanced role of the SSO agencies in accident and incident investigation, FTA proposes that the amount of time required for rail transit agencies to develop reports and document results will decrease. Through FTA's adoption of SMS principles, FTA and the SSO agencies ultimately will be working to ensure that operations and maintenance data and information can be reviewed and assessed in as close to real-time as possible to identify and address potential safety issues and concerns before they result in accidents. Safety performance monitoring will become a critical component of the SSO program.

FTA appreciates that the majority of this activity may be currently managed by other departments and personnel outside of the rail transit agency's safety department. For example, management information systems have already been adopted by rail transit agencies to support vehicle and infrastructure maintenance, control center operations, and construction management. However, the data collected and maintained in these systems may not be routinely assessed for safety issues, concerns, hazards or potential impacts. FTA's new MAP–21 program addresses NTSB and GAO recommendations that each rail transit agency evaluate this data from a safety perspective in as close to real-time as possible. Thus, the agency may be overstating the costs to rail transit agencies here, but does believe that, even for those rail transit agencies that already collect and maintain much of this data, there may be some additional costs associated with assessing this data for safety purposes in real-time.

It should be noted that for the MAP–21 columns, this table includes 60 rail transit agencies, as opposed to the 48 rail transit agencies covered by the 49 CFR part 659 requirements. Even if no other changes were addressed, increasing the number of covered rail transit agencies by 25 percent would raise the total cost of the SSO program considerably.

Rail transit agency activity	49 CFR part 659 labor hours	49 CFR part 659 total cost	MAP–21 labor hours	MAP–21 total cost
Develop system safety program plan *	6,272	$267,814.40	** 0	** 0
Review and update system safety program plan	7,550	322,385.00	** 0	** 0
Develop system security plan *	4,036	172,337.20	0	0.00
Review and update system security plan	6,208	265,081.60	0	0.00
Develop program procedures *	5,946	253,894.20	** 0	** 0
Review and update program procedures	4,142	176,863.40	** 0	** 0
Travel	4,146	177,034.20	4,800	204,960.00
Conduct internal safety and security reviews	15,230	650,321.00	30,000	1,281,000.00
Prepare internal safety and security review reports	8,160	348,432.00	14,400	614,880.00
Prepare annual internal safety and security review report for state oversight	10,708	457,231.60	21,000	896,700.00
Conduct accident investigations	30,000	1,281,000.00	24,000	1,024,800.00
Prepare accident investigation reports	19,168	818,473.60	3,000	128,100.00
Investigate unacceptable hazardous conditions	14,030	599,081.00	60,000	2,562,000.00
Prepare unacceptable hazardous condition reports	12,032	513,766.40	0	0.00
Implement hazard management process	32,312	1,379,722.40	60,000	2,562,000.00
Prepare and submit corrective action plans	19,090	815,143.00	24,000	1,024,800.00
Coordinate hazard management program activities with state oversight	23,848	1,018,309.60	30,000	1,281,000.00
Maintain safety data	3,570	152,439.00	240,000	10,248,000.00
Plan and conduct annual emergency preparedness drill	3,382	144,411.40	4,800	204,960.00
Prepare and submit after-action report for annual emergency drill	1,090	46,543.00	1,200	51,240.00
Maintain security data	3,570	152,439.00	0	0.00
Make submissions to state oversight agency	2,618	111,788.60	9,600	409,920.00
Total including non-recurring costs (Year 1)	237,108	10,124,511.60	526,800	22,494,360.00
Total including recurring costs only (Future Years)	*220,854*	*9,430,465.80*	*526,800*	*22,494,360.00*

** Non-recurring cost.*

*** FTA will include these costs in the upcoming Transit Agency Safety Plan rulemaking.*

Total Estimated Impact of NPRM

Based on the tables provided above, FTA estimates that minimum implementation of this NPRM will require a total of approximately $20 million for the 30 States to implement, and a total of roughly $22 million for the 60 rail transit agencies to implement.

Compared to current spending levels of State Safety Oversight activities, the proposed rule would require an *incremental* $9.5 million per year on the part of SSOAs and $13.1 million for rail transit agencies, compared to current spending levels. This represents a combined increase of roughly $23 million per year over current levels.

In terms of the actual costs to the States, FTA is providing approximately $22 million in grant funds each year to the States to off-set this NPRM's annual costs. This funding is treated as a transfer for the purposes of benefit-cost analysis. In addition, since the States already expend approximately $5 million to implement 49 CFR part 659 requirements, this existing expenditure will more than cover the 20 percent local match required in FTA's grant program. FTA therefore finds that that the States will bear no new net costs as a result of this NPRM. With regard to costs to the rail transit agencies, FTA currently provides funding that rail transit agencies may use for these purposes, but, since there is no safety-focused grant program similar to that for SSOs and each rail transit agency receives and uses its formula funds differently, we are unable to provide an estimate of how much FTA funds will be used here. We request comment on this point and also will revisit in the Transit Agency Safety Plan NPRM.

FTA believes that a significant portion of the incremental expenses may comprise activities that are already performed—and management information systems that are already maintained—by rail transit departments other than the safety department, such as operations, maintenance and performance monitoring. For instance, FTA reviews at rail transit agencies and SSO audits confirm that all rail transit agencies use and maintain formal systems to track rules checks performed on operators; inspections and preventative/corrective maintenance activities for vehicles and infrastructure; reports regarding the occurrence and cause of events resulting in service delays lasting longer than a prescribed period of minutes; and unusual occurrences reported during revenue service. Therefore, the cost estimate calculated above may overstate the true incremental costs of the changes to the SSO program, but is used here to be conservative. FTA requests comment on this point.

Doing more to analyze and assess this information from a safety perspective is at the core of SMS, and FTA anticipates that this level of active review of operations and maintenance data will ultimately result in cost savings for many rail transit agencies, as has been the case in the aviation and trucking industries. See, *e.g.,* Federal Aviation Administration, Final Regulatory Evaluation: Safety Management System for Domestic, Flag, and Supplemental Operations, Docket No. FAA–2009–0671. Initially, however, FTA anticipates that the rail transit agencies will be required to spend an additional $13.1 million per year to implement this NPRM, which equates to approximately $228,000 per rail transit agency. Larger rail transit agencies will be required to assume a larger portion of these costs, while smaller rail transit agencies likely will spend considerably less.

As the 60 rail transit agencies affected by the NPRM gain greater experience with proactive safety data analysis focused on safety problem identification and the development of mitigation strategies, as well as enhanced verification techniques to assess the effectiveness of the implementation of these strategies, FTA expects that, as in other transportation industries, the rail transit agencies will begin receiving greater efficiencies on their return in this investment, not just related to safety. However, based on the newness of SMS implementation in the rail transit industry and SSO program, FTA does not propose including these kinds of operational gains as part of the benefits from this NPRM. FTA also has not yet had the opportunity to conduct SMS pilots in the rail transit industry which will provide even greater clarification regarding the full impacts on both the rail transit agencies and SSO program, although the agency is planning on conducting pilots to assist the industry with implementing SMS.

The safety benefits of the proposed changes are difficult to estimate quantitatively because they involve numerous small but important changes to State and agency safety practices, and because the overall rate of serious injuries on rail transit systems is already quite low. These changes to the SSO regulations address longstanding deficiencies in the current SSO structure and improve the ability of SSOAs to carry out their mission of improving safety on rail fixed guideway transit systems. In addition, NTSB has advocated for many of these changes based on their investigation of rail transit accidents, their analysis of the current SSO structure, and their expertise in ensuring safe operation across all modes of transportation. FTA likewise believes that the revised SSO structure and associated activities will enhance the safety of rail fixed guideway transit systems, increasing accountability and decreasing transit-related incidents, injuries, and fatalities.

That said, although this rule would not on its own implement SMS, it does create the organizational structure needed for SMS to be successful. Thus, FTA has considered how other transportation modes that are in the process of implementing SMS or similar systematic approaches to safety have estimated the benefits of their programs in reducing incidents and adverse outcomes. For example, although no two programs are identical, the Federal Railroad Administration (FRA) in its NPRM implementing its System Safety Program (SSP) (77 FR 55372, Sept. 7, 2012) provided anecdotal evidence that the program could lead to meaningful reductions in serious crashes. Similarly, in its final rule implementing SMS for air carriers, the Federal Aviation Administration estimated that its SMS program could yield a 20% reduction in crashes. 80 FR 1308, Jan. 8, 2015. Enhancements brought about by SMS also have supported transportation and oversight agencies in mitigating the impacts of those events that do occur.

FTA has, therefore, considered what percentage of potential safety benefits this rule would need to achieve in order to ''break even'' with the costs (including both the transfer of funds from FTA and the costs to the SSOs and rail transit agencies themselves) based on two different estimates of the potential benefit pool. FTA notes that this analysis is not intended to be the full analysis of the potential benefits of SMS for transit safety, which will be conducted in our subsequent safety rulemakings; rather, it is intended to provide some quantified estimate of the potential benefits of the changes to the SSO program proposed in this rule. Further, we note that this analysis may understate the potential benefits because we did not have information on some non-injury related costs associated with many incidents, particularly regarding property damage and travel delays. Also, as mentioned above, we did not include an estimate of FTA funds provided to transit agencies for these activities because, unlike with SSO funding, we did not have sufficient certainty on this funding level.

First, over the last six years, as reported by the SSO agencies in their annual reports to FTA, the rail transit industry has averaged approximately 975 safety events meeting 49 CFR part 659 accident reporting thresholds per year (*i.e.* what must be reported). In an average year, these events result in 135 fatalities (of which approximately 85 per year involve suicides and trespassers) and 645 injuries requiring hospitalization away from the scene. Using Departmental guidance regarding the valuation of fatalities and injuries,[1] these incidents have an economic value of $1.865 billion per year. Rail transit incidents also entail costs related to vehicle and infrastructure damage, delays and disruptions to commuters, and emergency response costs. For example, the May 2008 collision between two light-rail vehicles in Newton, Massachusetts, caused $8.6 million in property damage and caused significant service delays during the evening rush hour. These additional incident costs could not be comprehensively quantified due to data limitations, and FTA requests comment on additional data that may assist it in quantifying this aspect of the analysis.

As an illustrative calculation, based on the above analysis, in order for the benefits of this rule to break even with the costs to both SSOs and rail transit agencies, this rule would only need to prevent 1.21% of these accidents per year, which does not include potentially significant unquantified costs related to property damage and disruption. FTA

[1] Rogoff, Peter and Thomson, Kathryn, ''Guidance on Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses.'' June 13, 2014. The fatality number is $9.2 million. Hospitalized injuries are assumed to be equivalent to a ''serious'' injury on the Abbreviated Injury Scale (AIS–3); this value is 10.5% of the VSL, or $966,000.

believes that this level of accident reduction will likely be attainable based on the NPRM's proposed enhancements to the SSO program and the associated improvements in rail transit agency safety practices that lend themselves to greater awareness of risks and hazards. This figure also does not account for the $22 million FTA provided the SSOs or the FTA formula funds provided to the rail transit agencies. If only the SSO funds were taken into account, this rule would only need to prevent 0.007 of these accidents per year in order to break even with the increased costs directly born by the rail transit agencies. A lower break even number would exist if FTA were able to provide an estimate of the FTA funding used by the rail transit agencies for these activities.

Second, as an alternative, we performed a more narrow analysis of the potential safety benefits of the proposed regulation by reviewing the rail transit incidents specifically identified by the NTSB as related to inadequate safety oversight programs. Of the 19 major rail transit accidents the NTSB has investigated (or preliminarily investigated) since 2004, five had probable causes that included inadequate safety oversight on the part of the rail transit agency or FTA. These incidents and the corresponding damages and costs are detailed below.

Date	Agency	Fatalities	Minor injuries	Moderate injuries	Severe injuries	Cost of property damage
2/3/2004	Chicago Transit Authority (CTA)	0	42	0	0	$62,000
7/11/2006	Chicago Transit Authority (CTA)	0	125	21	6	1,004,900
6/22/2009	Washington Metropolitan Area Transit Authority (WMATA).	9	38	12	2	12,000,000
1/26/2010	Washington Metropolitan Area Transit Authority (WMATA).	2	0	0	0	0
7/20/2010	Miami-Dade Transit (MDT)	0	16	0	0	406,691
Total	.....	11	221	33	8	13.5 million

Again using Departmental guidance regarding the valuation of fatalities and injuries,[2] FTA used a value of $9.2 million per fatality. NTSB's qualitative injury levels were converted to the Abbreviated Injury Scale and monetized as follows: Minor is assumed to be AIS–1 ($27,000), Moderate is assumed to be AIS–2 ($432,000), and Severe is (conservatively) assumed to be AIS–3 ($955,000).

As such, the total quantifiable cost for the five incidents is approximately $142.6 million (fatalities: $101.2 million, minor injuries: $6.0 million, moderate injuries $14.3 million, severe injuries: $7.6 million, property damage: $13.5 million) or approximately $14.3 million per year over a ten year period. The average cost per incident was $28.5 million, plus unquantified losses from travel delays and emergency response. The most costly incident, the 2009 WMATA crash, had total costs of over $100 million, including $91 million in monetized injuries and $12 million in property damage. While improved safety oversight cannot necessarily prevent all rail transit accidents, preventing even a single incident on the scale of the 2009 WMATA crash would yield societal benefits that exceed the incremental costs of compliance across multiple years of implementation, especially when considering FTA's funding of this program. Benefits would also accrue from the prevention of multiple, less severe incidents, including those where only property damage or travel delays occur. The agency requests comment and information on any other accidents that have been identified as being related to inadequate safety oversight programs.

In conducting a break even analysis, as in the above analysis, when considering the incremental costs to SSOs for this rule and rail transit agencies, this rule would need to prevent 1.6 of the types of accidents significant enough to be investigated by NTSB and identified as being caused by inadequate safety oversight per year in order to break even. Similarly, when FTA funding of the SSOs (but not the rail transit agencies) is taken into account, this rule would need to prevent 0.91 of these incidents in order to break even. However, we believe that including all of the costs to the rail transit agencies may overstate the costs in this illustrative analysis and is therefore a very conservative analysis. We request comment on this point.

Rulemaking Analyses and Notices

All comments received on or 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 closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

Executive Orders 13563 and 12866; U.S. DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct Federal 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. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. FTA is also required under 49 U.S.C. 5329(h) to ''take into consideration the costs and benefits of each action the Secretary proposes to take under'' section 5329.

FTA has determined this rulemaking is a nonsignificant regulatory action within the meaning of Executive Order 12866 and is nonsignificant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. FTA has determined that this rulemaking is not economically significant. The proposals set forth in this NPRM will not result in an effect on the economy of $100 million or more. The proposals set forth in the NPRM will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities, and has determined that they will not have a significant economic impact on a substantial number of small entities. The recipients of the State Safety

[2] *Id.*

Oversight funds are eligible States, and the entities that will carry out the oversight of rail fixed guideway public transportation—the SSOAs—are State agencies. For this reason, FTA certifies that this action will not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act

This proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform act of 1995 (Pub. L. 104–4; 109 Stat. 48). The Federal share for the grants made under 49 U.S.C. 5329(e)(6) is eighty percent. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999), and FTA has determined that the proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the NPRM on State and local governments and determined that the collection and analysis of the data is eligible for Federal funding as part of the State Safety Oversight program costs.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.;* ''PRA'') and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this NPRM entails collection of information to facilitate State Safety Oversight of rail fixed guideway public transportation systems, including, specifically, annual status reporting on the safety of rail fixed guideway public transportation systems, triennial auditing of rail transit systems' compliance with their public transportation agency safety plans, requests for FTA certification of State Safety Oversight programs, and completion of public transportation safety certification training programs—all of which are mandated by 49 U.S.C. 5329(e). Therefore, FTA is seeking comment whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

Readers should note that the information collection will be specific to each State and its State Safety Oversight Agency (SSOA), to facilitate and record the SSOA's exercise of its oversight responsibilities. The paperwork burden for each State and its SSOA will be proportionate to the number of rail fixed guideway public transportation systems within that State, the type of mode of those systems (*e.g.,* rapid rail, light rail, or streetcar), and the size and complexity of those rail transit systems. Moreover, the labor-burden of the reporting requirements such as annual reporting and triennial auditing are largely borne by the SSOA staff that will be financed, in the main, by the Federal financial assistance under 49 U.S.C. 5329(e)(6).

Also, readers should note that FTA already collects information from States and SSOAs in accordance with the requirements of 49 U.S.C. 5330 and the regulations at 49 CFR part 659. Please see FTA's currently approved collection, 2132–0558, available at *http://www.reginfo.gov/public/do/PRAMain,* which describes the SSOAs' development of program standards and their review and approval of System Safety Program Plans and System Security Plans for rail fixed guideway public transportation systems; the triennial, on-site reviews that SSOAs conduct of rail transit systems; and various other reporting, such as SSOAs' review and approval of accident reports and corrective action plans, and submittal of annual reports of safety and security oversight activities and certifications of compliance with Section 5330. Most if not all of the information collection from States and SSOAs under 49 U.S.C. 5330 and 49 CFR part 659 will carry over into the new State Safety Oversight program codified at 49 U.S.C. 5329 and the specific requirements proposed in today's rulemaking.

Heretofore, there has been no Federal financial assistance available to States and their SSOAs to defray the costs of information collection under 49 U.S.C. 5330 and the longstanding regulations at 49 CFR part 659. The costs of information collection associated with today's NPRM would be eligible for reimbursement under the SSO grants authorized by 49 U.S.C. 5329(e)(6).

Type of Collection: Rail Fixed Guideway Systems; State Safety Oversight.

Type of Review: OMB Clearance. Updated information collection request.

Summary of the Collection: The information collection includes annual status reporting on the safety of rail fixed guideway public transportation systems, triennial auditing of rail transit systems' compliance with their public transportation agency safety plans, requests for FTA certification of State Safety Oversight programs, and completion of public transportation safety certification training programs.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure that state oversight agencies can perform their designated safety functions. Without comprehensive safety information from rail transit agencies, State safety oversight agencies would be unable to monitor safety as directed by 49 U.S.C. 5326, and without the State safety oversight reporting requirements, FTA would be unable to determine each State's compliance with 49 U.S.C. 5326(e).

Respondents: Currently there are 30 States with 60 rail fixed guideway public transportation systems. Twenty-eight of these States have already established a State Safety Oversight program and an SSOA; two more have indicated their intention to do so in the near future. The PRA estimate is based on a total of 30 States deploying SSOAs and seeking Federal financial assistance under 49 U.S.C. 5329(e)(6), per year.

Frequency: Information will be collected at least once per year.

Estimated Total Annual Burden Hours: 230,130, estimated as follows: Annually, each SSOA would devote approximately 3,962 hours to information collection activities for each of the rail transit systems in the State's jurisdiction. Combined, the SSOAs would devote approximately 118,860 hours on those information collection activities that year. The local governments affected by 49 U.S.C. 5329(e) and today's proposed rulemaking, including the 60 rail fixed

guideway public transportation systems, would spend an estimated annual total of 111,300 hours on information collection activities, or approximately 1,855 hours each. Also, the States and SSOAs would spend approximately 50 hours each in the preparation of applications for Federal financial assistance for their SSO programs, for a combined estimate of 1,500 hours per year. FTA will post the supporting documentation for this collection in the docket for this NPRM.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.117(c)(20), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 (Feb. 8, 1994) directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The USDOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA has issued a program circular addressing environmental justice in public transportation, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients.* This circular provides a framework for FTA grantees as they integrate principles of environmental justice into their transit decision-making processes. The Circular includes recommendations for State Departments of Transportation, Metropolitan Planning Organizations, and public transportation systems on (1) How to fully engage environmental justice populations in the transportation decision-making process; (2) How to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) How to avoid, minimize, or mitigate these effects.

Executive Order 12988 (Civil Justice Reform)

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this proposed rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule will not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this proposed rulemaking under Executive Order 13175 (Nov. 6, 2000) and finds that the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; will not preempt tribal laws; and will not impose any new consultation requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action 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 requirement.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires the Secretary of Transportation to prescribe regulations for State Safety Oversight of rail fixed guideway public transportation systems. The authority is codified at 49 U.S.C. 5329(e)(9)(C). Also, the Secretary is authorized to issue regulations to carry out the general provisions of the Public Transportation Safety Program pursuant to 49 U.S.C. 5329(f)(7).

Regulation Identification Number

A Regulation Identification Number (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 set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 674

Grant Programs—Transportation, Mass Transportation, Reporting and recordkeeping requirements, Safety.

Issued in Washington, DC under the authority delegated at 49 CFR 1.91.

Therese McMillan,

Acting Administrator.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(e), 5329(f), and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding Part 674, as set forth below:

Title 49—Transportation

PART 674—STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Sec.

Subpart A—General Provisions

§ 674.1 Purpose.

This part carries out the mandate of 49 U.S.C. 5329(e) for State safety oversight of rail fixed guideway public transportation systems.

§ 674.3 Applicability.

This part applies to States with rail fixed guideway public transportation systems; State safety oversight agencies that oversee the safety of rail fixed guideway public transportation systems; and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance authorized under 49 U.S.C. Chapter 53.

§ 674.5 Policy.

(a) The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. All rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329 will follow the principles and methods of SMS.

(b) In accordance with 49 U.S.C. 5329(e), a State that has a rail fixed guideway public transportation system has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system. A State safety oversight agency must have sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of rail fixed guideway public transportation systems that operate within a State.

(c) FTA will make Federal financial assistance available to help an eligible State develop or carry out its State safety oversight program. Also, FTA will certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329(e) and is adequate to promote the purposes of the public transportation safety programs codified at 49 U.S.C. 5329.

§ 674.7 Definitions.

As used in this part:

Accident means an Event that involves any of the following: A fatality; one or more persons suffers a serious injury; property or equipment damage equal to or greater than $25,000; a mainline derailment, occurring at any location; an evacuation of equipment or a station to prevent injury or loss of life.

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Safety Management System of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Administrator means the Federal Transit Administrator or the Administrator's designee.

Contractor means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.

Corrective action plan means a plan developed by a Rail Transit Agency that describes the actions the Rail Transit Agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a Rail Transit Agency to develop and carry out a corrective action plan.

FRA means the Federal Railroad Administration, an agency within the United States Department of Transportation.

FTA means the Federal Transit Administration, an agency within the United States Department of Transportation.

Event means any Accident, Incident or Occurrence.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, or property of a rail fixed guideway public transportation system; or damage to the environment.

Incident means an Event that exceeds the definition of an Occurrence, but does not meet the requirements of an Accident. Examples include, but are not limited to: A near miss or close call, a railyard derailment, non-serious injuries, a violation of a safety standard, or equipment or property damage less than $25,000 that affects transit operations.

Individual means a passenger, employee, contractor, pedestrian, trespasser, or any person on the property of a rail fixed guideway public transportation system.

Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53; authorized by 49 U.S.C. 5329(b).

Occurrence means an Event with no injuries, where damage occurs to property or equipment but does not affect transit operations.

Passenger means a person who is on board, boarding, or alighting from a vehicle on a rail fixed guideway public transportation system for the purpose of travel.

Public Transportation Safety Certification Training Program means either the certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1).

Public Transportation Agency Safety Plan means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d); based on a Safety Management System. For convenience, a Public Transportation Agency Safety Plan is referred to as a ''Transit Agency Safety Plan'' throughout these regulations for State Safety Oversight.

Rail fixed guideway public transportation system means any fixed guideway system that uses rail, is

operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail Transit Agency means any entity that provides services on a rail fixed guideway public transportation system.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk control means a method or methods to eliminate or reduce the effects of hazards.

Safety assurance means processes within a Rail Transit Agency's Safety Management System that function to ensure the performance and effectiveness of safety risk controls, and to ensure that the Rail Transit Agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a Rail Transit Agency's safety risk controls. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

Safety policy means a Rail Transit Agency's documented commitment to safety, which defines the Rail Transit Agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

Safety promotion means a combination of training and communication of safety information to support SMS as applied to the Rail Transit Agency's rail fixed guideway public transportation system.

Safety risk management means a process within a Rail Transit Agency's SMS that describes the Rail Transit Agency's practice of SMS, and its means for identifying hazards and analyzing, assessing, and controlling risk.

Serious injury means any injury which:

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

(2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(3) causes severe hemorrhages, nerve, muscle, or tendon damage;

(4) involves any internal organ; or

(5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State Safety Oversight Agency (SSOA) means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in this part.

Transit Agency Safety Plan means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d); based on a Safety Management System. See also, Public Transportation Agency Safety Plan.

Vehicle means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

§ 674.9 Transition from previous requirements for State safety oversight.

(a) Pursuant to section 20030(e) of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (''MAP–21''), the statute now codified at 49 U.S.C. 5330, titled ''State safety oversight,'' will be repealed three years after the effective date of the regulations set forth in this part.

(b) Upon the effective date of the regulations set forth in this part, the regulations now codified at part 659 of this chapter will be rescinded.

Subpart B—Role of the State

§ 674.11 State Safety Oversight Program.

Within three years of the effective date of this part, every State that has a rail fixed guideway public transportation system must have a State Safety Oversight Program (SSOP) that has been approved by the Administrator. FTA will audit each State's compliance at least triennially, consistent with 49 U.S.C. 5329(e)(9). At minimum, an SSOP must:

(a) Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;

(b) Demonstrate the State's ability to adopt and enforce Federal and relevant State law for safety in rail fixed guideway public transportation systems;

(c) Establish a State safety oversight agency, by State law, in accordance with the requirements of 49 U.S.C. 5329(e) and this part;

(d) Demonstrate that the State has determined an appropriate staffing level for the State safety oversight agency commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the State, and that the State has consulted with the Administrator for that purpose;

(e) Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions, based on appropriate training, including the successful completion of the Public Transportation Safety Certification Training Program; and

(f) Demonstrate that by law, the State prohibits any public transportation agency in the State from providing funds to the State safety oversight agency.

§ 674.13 Designation of oversight agency.

(a) Every State that must establish a State Safety Oversight Program in accordance with 49 U.S.C. 5329(e) must also establish a State Safety Oversight Agency (SSOA) for the purpose of overseeing the safety of rail fixed guideway public transportation systems within that State. Further, the State must ensure that:

(1) The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee;

(2) The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system the SSOA is obliged to oversee;

(3) The SSOA does not employ any individual who is also responsible for administering a rail fixed guideway public transportation system the SSOA is obliged to oversee;

(4) The SSOA has authority to review, approve, oversee, and enforce the public transportation agency safety plan for a rail fixed guideway public transportation system required by 49 U.S.C. 5329(d);

(5) The SSOA has investigative and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State;

(6) At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required by 49 U.S.C. 5329(d); and

(7) At least once a year, the SSOA reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the FTA, and the board of directors, or

equivalent entity, of the rail fixed guideway public transportation system.

(b) At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest under paragraphs (a)(1) and (a)(3) of this section, if the rail fixed guideway public transportation systems in design, construction, or revenue operations in the State have fewer than one million combined actual and projected rail fixed guideway revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips per year. However:

(1) If a State shares jurisdiction over one or more rail fixed guideway public transportation systems with another State, and has one or more rail fixed guideway public transportation systems that are not shared with another State, the revenue miles and unlinked passenger trips of the rail fixed guideway public transportation system under shared jurisdiction will not be counted in the Administrator's decision whether to issue a waiver.

(2) The Administrator will rescind a waiver issued under this subsection if the number of revenue miles per year or unlinked passenger trips per year increases beyond the thresholds specified in this subsection.

§ 674.15 Designation of oversight agency for multi-state system.

In an instance of a rail fixed guideway public transportation system that operates in more than one State, all States in which that rail fixed guideway public transportation system operates must either:

(a) Ensure that uniform safety standards and procedures in compliance with 49 U.S.C. 5329 are applied to that rail fixed guideway public transportation system, through a State safety oversight program that has been approved by the Administrator; or

(b) Designate a single entity that meets the requirements for an SSOA to serve as the SSOA for that rail fixed guideway public transportation system, through a State safety oversight program that has been approved by the Administrator.

§ 674.17 Use of Federal financial assistance.

(a) In accordance with 49 U.S.C. 5329(e)(6), FTA will make grants of Federal financial assistance to eligible States to help the States develop and carry out their State Safety Oversight Programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of State Safety Oversight Programs, consistent with the uniform administrative requirements for grants to States under 2 CFR parts 200 and 1201. The expenses eligible for reimbursement include, specifically, the expense of employee training and the expense of establishing and maintaining a State Safety Oversight Agency in compliance with 49 U.S.C. 5329(e)(4).

(b) The apportionments of available Federal financial assistance to eligible States will be made in accordance with a formula, established by the Administrator, following opportunity for public notice and comment. The formula will take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems within each eligible State not subject to the jurisdiction of the Federal Railroad Administration.

(c) The grants of Federal financial assistance for State safety oversight shall be subject to terms and conditions as the Administrator deems appropriate.

(d) The Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities shall be eighty percent of the reasonable costs incurred under that grant.

(e) The non-Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities may not be comprised of Federal funds, any funds received from a public transportation agency, or any revenues earned by a public transportation agency.

§ 674.19 Certification of a State Safety Oversight Program.

(a) The Administrator must determine whether a State Safety Oversight Program meets the requirements of 49 U.S.C. 5329(e). Also, the Administrator must determine whether a State Safety Oversight Program is adequate to promote the purposes of 49 U.S.C. 5329, including, but not limited to, the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans (''Transit Agency Safety Plans'').

(b) The Administrator must issue a certification to a State whose State Safety Oversight Program meets the requirements of 49 U.S.C. 5329(e). The Administrator must issue a denial of certification to a State whose State Safety Oversight Program does not meet the requirements of 49 U.S.C. 5329(e).

(c) In an instance in which the Administrator issues a denial of certification to a State whose State Safety Oversight Program does not meet the requirements of 49 U.S.C. 5329(e), the Administrator must provide a written explanation, and allow the State an opportunity to modify and resubmit its State Safety Oversight Program for the Administrator's approval. In the event the State is unable to modify its State Safety Oversight Program to merit the Administrator's issuance of a certification, the Administrator must notify the Governor of that fact, and must ask the Governor to take all possible actions to correct the deficiencies that are precluding the issuance of a certification for the State Safety Oversight Program. In his or her discretion, the Administrator may also impose financial penalties as authorized by 49 U.S.C. 5329(e), which may include:

(1) Withholding SSO grant funds from the State;

(2) Withholding up to five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSOP can be certified; or

(3) Requiring all of the rail fixed guideway public transportation systems governed by the SSOP to spend up to 100 percent of their Federal funding under 49 U.S.C. chapter 53 for ''safety-related improvements'' on their systems, only, until such time as the SSOP can be certified.).

(d) In making a determination whether to issue a certification or a denial of certification for a State Safety Oversight Program, the Administrator must evaluate whether the cognizant State Safety Oversight Agency has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth to a sufficient level of detail in the State Safety Oversight Program.

§ 674.21 Withholding of Federal financial assistance for noncompliance.

(a) In making a decision to impose financial penalties as authorized by 49 U.S.C. 5329(e), and determining the nature and amount of the financial penalties, the Administrator shall consider the extent and circumstances of the noncompliance; the operating budgets of the State Safety Oversight Agency and the rail fixed guideway public transportation systems that will be affected by the financial penalties; and such other matters as justice may require.

(b) If a State fails to establish a State Safety Oversight Program that has been approved by the Administrator within three years of the effective date of this part, FTA will be prohibited from obligating Federal financial assistance apportioned under 49 U.S.C. 5338 to any entity in the State otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. 5329(e)(3).

§ 674.23 Confidentiality of information.

(a) A State, a State Safety Oversight Agency, or a Rail Transit Agency may withhold an investigation report prepared or adopted in accordance with these regulations from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.

Subpart C—State Safety Oversight Agencies

§ 674.25 Role of the State safety oversight agency.

(a) A State Safety Oversight Agency (SSOA) must establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. These minimum standards must be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the principles and methods of Safety Management Systems, and all applicable Federal and State law.

(b) Basic principles and methods of Safety Management Systems are set forth in an Appendix to this part, the ''Safety Management Systems (SMS) Framework.''

(c) An SSOA must review and approve the Transit Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee a Rail Transit Agency's execution of its Transit Agency Safety Plan. An SSOA must enforce the execution of a Transit Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. An SSOA must ensure that a Transit Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d).

(d) An SSOA has primary responsibility for the investigation of any hazard or risk that threatens the safety of a rail fixed guideway public transportation system within its oversight. An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Transit Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(e) An SSOA has primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system. This responsibility does not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(f) An SSOA may enter into an agreement with a contractor for assistance in investigating accidents and incidents and for expertise the SSOA does not have within its own organization.

(g) All personnel and contractors employed by an SSOA must comply with the requirements of the Public Transportation Safety Certification Training Program.

§ 674.27 State safety program standards.

(a) A State Safety Oversight Agency (SSOA) must adopt and distribute a written State safety oversight program standard, consistent with the State Safety Oversight Program, the National Public Transportation Safety Plan, and the principles and methods of Safety Management Systems. This program standard must identify the processes and procedures that govern the activities of the SSOA. Also, this program standard must identify the processes and procedures a Rail Transit Agency must have in place to comply with the program standard. At minimum, this program standard must meet the following requirements:

(1) *Program management.* The program standard must explain the authority of the SSOA to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the SSOA; the reporting requirements that govern both the SSOA and the rail fixed guideway public transportation systems; and the steps the SSOA will take to ensure open, on-going communication between the SSOA and every rail fixed guideway public transportation system within its oversight.

(2) *Program standard development.* The program standard must explain the SSOA's process for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.

(3) *Safety Management Systems.* The program standard must explain how the SSOA will apply the principles and methods of Safety Management Systems (SMS) in conducting oversight of Transit Agencies within its jurisdiction. The program standard must identify the SSOA official who serves as the functional equivalent of an accountable executive in a Rail Transit Agency, and all other officials in positions of executive leadership in the State or SSOA responsible for carrying out the State Safety Oversight Program. The program standard must set an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State. The program standard must explain the role of the SSOA in overseeing a Rail Transit Agency's practice of risk management, safety assurance, and safety promotion, throughout the Rail Transit Agency's organization. Basic principles and methods of SMS are set forth in an Appendix to this part, the ''System Management Systems (SMS) Framework.''

(4) *Oversight of Rail Transit Agency Safety Plans and Transit Agencies' internal safety reviews.* The program standard must explain the role of the SSOA in overseeing a Rail Transit Agency's execution of its Transit Agency Safety Plan and any related safety reviews of the Rail Transit Agency's rail fixed guideway public transportation system. The program standard must describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of a Rail Transit Agency's accountable executive. Also, the program standard must establish a procedure whereby a Rail Transit Agency will notify the SSOA before the Rail Transit Agency conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.

(5) *Triennial SSOA audits of Rail Transit Agency Safety Plans.* The program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the Rail Transit Agency's compliance with its Transit Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329(d) and 49 U.S.C. 5329(e)(4)(iv). Alternatively, the SSOA and Rail Transit Agency may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and a Rail Transit Agency will follow to

manage findings and recommendations arising from the triennial audit.

(6) *Accident and incident notification.* The program standard must establish requirements for a Rail Transit Agency to notify the SSOA of accidents and incidents on the Rail Transit Agency's rail fixed guideway public transportation system. These requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the Rail Transit Agency must submit to the SSOA.

(7) *Investigations.* The program standard must identify thresholds for incidents and accidents that require a Rail Transit Agency to conduct an investigation. Also, the program standard must address how the SSOA will coordinate its investigation with a Rail Transit Agency's own internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the National Transportation Safety Board; and procedures for protecting the confidentiality of the investigation reports.

(8) *Corrective actions.* The program standard must explain the process and criteria by which the SSOA may order a Rail Transit Agency to develop and carry out a corrective action plan, and a procedure for the SSOA to review and approve a corrective action plan. Also, the program standard must explain the SSOA's policy and practice for tracking and verifying a Rail Transit Agency's compliance with a corrective action plan, and managing any conflicts between the SSOA and a Rail Transit Agency relating either to the development or execution of a corrective action plan or the findings of an investigation.

(b) At least once a year an SSOA must submit its program standard and any referenced program procedures to FTA, with an indication of any revisions made to the program standard since the last annual submittal. FTA will evaluate the SSOA's program standard as part of its continuous evaluation of the State Safety Oversight Program, and in preparing FTA's report to Congress on the certification status of that State Safety Oversight Program, in accordance with 49 U.S.C. 5329(e)(8).

§ 674.29 Transit Agency Safety Plans: General requirements.

(a) In determining whether to approve a Transit Agency Safety Plan for a rail fixed guideway public transportation system, a State Safety Oversight Agency (SSOA) must evaluate whether the Transit Agency Safety Plan is based on an adequate Safety Management System; is consistent with the National Public Transportation Safety Plan; is in compliance with the requirements of 49 U.S.C. 5329(d), and the program standard set by the SSOA.

(b) In determining whether a Transit Agency Safety Plan is based on an adequate Safety Management System, an SSOA must determine, specifically, whether the Transit Agency Safety Plan sets forth a sufficiently explicit safety policy for the rail fixed guideway public transportation system; a sufficiently explicit process for safety risk management, with adequate means of risk control for the rail fixed guideway public transportation system; adequate means of safety assurance for the rail fixed guideway public transportation system; and adequate means of safety promotion to support the execution of the Transit Agency Safety Plan by all employees, agents, and contractors for the rail fixed guideway public transportation system.

(c) In an instance in which an SSOA does not approve a Transit Agency Safety Plan, the SSOA must provide a written explanation, and allow the Rail Transit Agency an opportunity to modify and resubmit its Transit Agency Safety Plan for the SSOA's approval.

§ 674.31 Triennial audits: General requirements.

At least once every three years, a State Safety Oversight Agency (SSOA) must conduct a complete audit of a Rail Transit Agency's compliance with its Transit Agency Safety Plan. Alternatively, an SSOA and a Rail Transit Agency may agree that the SSOA will conduct the audit on an on-going basis over the three-year timeframe. At the conclusion of the three-year audit cycle, the SSOA shall issue a report with findings and recommendations arising from the audit, which must include, at minimum, an analysis of the effectiveness of the Transit Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The Rail Transit Agency must be given an opportunity to comment on the findings and recommendations.

§ 674.33 Notifications: Accidents and Incidents.

(a) *Two-hour notification.* In addition to the requirements for accident notification set forth in a State Safety Oversight Program standard, a Rail Transit Agency must notify both the State Safety Oversight Agency (SSOA) and the Administrator within two hours of any Accident or Incident occurring on a rail fixed guideway public transportation system. The criteria and thresholds for Accident or Incident notification and reporting are defined in a reporting manual developed for the electronic reporting system specified by FTA as required in § 674.39(b).

(b) *FRA notification.* In any instance in which a Rail Transit Agency must notify the Federal Railroad Administration (FRA) of an Accident or Incident as defined by 49 CFR 225.5 (*i.e.,* shared use of the general railroad system trackage or corridors), the Rail Transit Agency must also notify the SSOA and the Administrator of the Accident or Incident within the same time frame as required by the FRA.

§ 674.35 Investigations.

(a) A State Safety Oversight Agency (SSOA) must conduct an independent investigation of any Accident or Incident that is reported to the SSOA and the Administrator in accordance with § 674.33(a). In any instance in which a Rail Transit Agency is conducting its own internal investigation of the Accident or Incident, the SSOA and the Rail Transit Agency must coordinate their investigations in accordance with the State safety oversight program standard and any agreements in effect.

(b) Within a reasonable time, an SSOA must issue a written report on its investigation of an Accident or Incident in accordance with established reporting requirements. The report must describe the investigation activities; identify the factors that caused or contributed to the Accident or Incident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an Accident or Incident and transmit that report to the Rail Transit Agency for review and concurrence. If a Rail Transit Agency does not concur with an SSOA's report, the SSOA may allow the Rail Transit Agency to submit a written dissent from the report, which may be included in the report, in the discretion of the SSOA.

(c) All personnel and contractors that conduct investigations on behalf of an SSOA must be trained to conduct investigations in accordance with the Public Transportation Safety Certification Training Program.

§ 674.37 Corrective action plans.

(a) In any instance in which a Rail Transit Agency must develop and carry out a corrective action plan, the State Safety Oversight Agency (SSOA) must review and approve the plan before the Rail Transit Agency carries out the plan. A corrective action plan must describe, specifically, the actions the Rail Transit

Agency will take to minimize, control, correct, or eliminate the risks and hazards identified by the plan, the schedule for taking those actions, and the individuals responsible for taking those actions. The Rail Transit Agency must periodically report to the SSOA the Rail Transit Agency's progress in carrying out the corrective action plan. The SSOA may monitor the Rail Transit Agency's progress in carrying out the corrective action plan through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

(b) In any instance in which a safety Event on the Rail Transit Agency's rail fixed guideway public transportation system is the subject of an investigation by the National Transportation Safety Board (NTSB), the SSOA must evaluate whether the findings or recommendations by the NTSB require a corrective action plan by the Rail Transit Agency, and if so, the SSOA must order the Rail Transit Agency to develop and carry out a corrective action plan.

§ 674.39 State Safety Oversight Agency annual reporting to FTA.

(a) On or before March 15 of each year, a State Safety Oversight Agency (SSOA) must submit the following material to FTA:

(1) The State safety oversight program standard adopted in accordance with § 674.27, with an indication of any changes to the program standard during the preceding twelve months;

(2) Evidence that each of its employees and contractors is in compliance with the requirements of the Public Transportation Safety Certification Training Program;

(3) A publicly available report that summarizes its oversight activities for the preceding twelve months, describes the causal factors of accidents or incidents identified through investigation, and identifies the status of corrective actions, changes to Transit Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;

(4) A summary of the triennial audits completed during the preceding twelve months, and the Transit Agencies' progress in carrying out corrective action plans arising from triennial audits conducted in accordance with § 674.31;

(5) Evidence that the SSOA has reviewed and approved any changes to the Transit Agency Safety Plans during the preceding twelve months; and

(6) A certification that the SSOA is in compliance with the requirements of this part.

(b) These materials must be submitted electronically through a reporting system specified by FTA.

§ 674.41 Conflicts of interest.

(a) A State Safety Oversight Agency (SSOA) must be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

(b) An SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

(c) A contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA.

Appendix A to Part 674 to Part 674—Safety Management Systems (SMS) Framework

I. Overview

The Federal Transit Administration (FTA) is adopting the principles and methods of Safety Management Systems (SMS) as the basis for the National Public Transportation Safety Program. With a focus on organization-wide safety policy, proactive hazard management, strong safety communication between workers and management, targeted safety training, and clear accountabilities and responsibilities for critical safety activities, SMS provides an enhanced structure for addressing the safety provisions specified in the Moving Ahead for Progress in the 21st Century Act (MAP–21).

SMS is a formal, top-down, organization-wide approach to managing safety risks and assuring the effectiveness of safety risk mitigations. The specific components and sub-components of FTA's SMS framework are discussed in Section V of this Appendix.

II. Background

Building on the public transportation industry's four decades of experience with system safety, SMS supplements traditional engineering processes by integrating management systems and organizational culture into critical safety risk management and assurance functions. As a result, SMS ensures that each public transportation agency, no matter its size or service environment, has the necessary organizational structures, accountabilities, activities and tools in place to direct and control resources to optimally manage safety.

Focusing on collaboration and information sharing, SMS helps management and labor work together to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more clearly. The ultimate goal of SMS is to ensure that the public transportation agency has an inclusive and effective process to direct resources to optimally manage safety.

SMS establishes lines of safety accountability throughout an organization, starting at the executive management level, and provides a structure to support a sound safety culture from the front-line to the boardroom. SMS enables agencies to address organizational deficiencies that may lead to safety issues or unidentified safety risks, identify system-wide trends in safety, and manage the potential consequences of hazards before they result in incidents or accidents.

SMS is scalable to organizations of any size and flexible enough to be effective in all transit environments, from the largest urban operator to the smallest rural transit system provider. SMS also provides oversight agencies with new tools, approaches, and opportunities to align safety priorities and promote continuous improvement.

In the public transportation safety provisions of the Moving Ahead for Progress in the 21st Century Act (MAP–21), FTA, the States and the public transportation industry have been presented with a rare opportunity to implement a modern regulatory framework that will help a safe industry become even safer. Adopting SMS principles will further deepen the industry's commitment to the safety of its passengers, employees, equipment and facilities and will strengthen its core competencies in hazard identification, safety data acquisition and analysis, and internal auditing. Most significantly, SMS offers the promise of a stronger culture for employees and managers to work together to solve safety problems.

III. Scalability and Flexibility

Service providers within the public transportation industry can vary greatly based on size, complexity and operating characteristics. Transit agency management needs processes, activities and tools that scale to size, complexity and uniqueness of the transit system. SMS provides such an approach. SMS is flexible, and can be scaled to the mode, size, and complexity of any transit operator, in any environment—urban, suburban, or rural. The extent to which the transit agency's SMS processes, activities and tools are used and documented will vary from agency to agency. For a small bus operation, that SMS is going to be simple and straightforward. For a larger transit agency with hundreds or thousands of employees and multiple modes, that system is going to be more complicated.

SMS scales itself to reflect the size and complexity of the operation, but the fundamental accountability remains the same. FTA's SMS Framework establishes the accountabilities, processes and activities necessary to implement an effective SMS. However, the transit agency will determine the level of detail necessary to identify and evaluate their own unique safety risks and target their resources to manage those safety risks.

IV. Executive Management Commitment

SMS establishes lines of safety accountability throughout an organization,

particularly at the senior management level, and provides a structure to support a sound safety culture. Because SMS is a management approach, safety accountability must reside at the highest levels of management within a transit agency. In FTA's SMS Framework, this would be the *Accountable Executive.* Typically, the Accountable Executive will be the head of a transit agency, its Chief Executive Officer, President, General Manager, or Executive Director. Whatever the person's job title, the Accountable Executive plays the central role in developing and carrying out an SMS. Without the Accountable Executive's active endorsement and acceptance of accountability for the safety performance of a public transportation agency, an SMS cannot be effective. The extent to which an Accountable Executive will be involved in day-to-day SMS activities will depend both on the individual executive and the size and complexity of the organization.

SMS does not require an Accountable Executive to be an expert in safety. Rather, the Accountable Executive must understand how the SMS works in his or her organization; know the key personnel to call upon for evaluating safety information; and grasp the significant safety issues that face the organization. The Accountable Executive should use the reports and analysis performed as part of the SMS process to support the agency's decision-making. For an Accountable Executive, safety information, like financial, schedule and service information, is an integral part of how resources are allocated, budgets are set, and risks are managed.

V. Key Components and Functional Elements of a Safety Management System

As depicted below, FTA's SMS Framework is comprised of four key components and eleven sub-components that work together to refine, reinforce, and sustain the implementation of an SMS throughout a transit agency:

(1) Safety Management Policy,
(2) Safety Risk Management,
(3) Safety Assurance, and
(4) Safety Promotion.

The component **Safety Management Policy** provides for the foundations of a public transportation agency's system for the management of safety. This component encompasses the agency's commitment to achieve explicit safety objectives and safety performance targets, as well as the agency's compromise to provide the necessary organizational structures to accomplish them. Under this component, senior leadership and employee responsibilities for the management of safety throughout the agency are respectively and distinctly established. This component also commits senior leadership to actively engage in the oversight of the agency's safety performance, by requiring regular review of the safety management policy statement, budget, and program by a designated Accountable Executive.

The sub-components of the Safety Management Policy component are:

Safety management policy statement—Clearly, succinctly and unambiguously frames the fundamentals upon which the transit agency will build and operate its SMS, documents management's commitment to the SMS, and inserts the management of safety at the same level of the topmost business processes of the transit agency.

Critical to the value of the safety management policy statement, and to the operation of the SMS overall, is the introduction of an unambiguous clause reflecting executive level support for an effective employee safety reporting program.

The safety management policy statement also documents management's commitment to continuous safety improvement, as well as to the continuous improvement of the safety management system itself.

The Accountable Executive signs the safety management policy statement, which is distributed, with visible support from executive management, throughout the transit agency.

Safety accountabilities and responsibilities—An explicit definition of the lines of accountability and responsibility for the management of safety within the transit agency, as well as the authorities required to deliver accountabilities and discharge responsibilities.

This sub-component provides for the identification of an Accountable Executive and the definition of the required accountabilities, responsibilities and authorities of the post holder. The Accountable Executive is ultimately accountable for the implementation and continuous operation of the transit agency's SMS, ensuring that the transit agency has allocated resources and implemented mechanisms for the efficient and effective management of safety through its SMS to an extent commensurate to its needs, possibilities and constraints.

The sub-component also provides for the appointment of a subject matter expert for the implementation and day-to-day operation of the SMS, the lines of relationship of the post holder with the Accountable Executive and the transit agency's governance structure, and the appointment of the staff necessary to support the post holder in the day-to-day operation of the SMS.

It lastly provides for the definition of accountabilities, responsibilities and authorities of executive and senior management regarding the effective and efficient operation of the SMS.

While safety management accountabilities, responsibilities and their delegation, and authorities may vary from agency to agency, they must nevertheless be defined and implemented.

Integration with public safety and emergency management—All transit agencies have some level of emergency plans, procedures and/or protocols that direct both internal emergency response to transit related events, and external emergency response in coordination with Local Emergency Management for community-wide emergency activities. Integration of plans, procedures and protocols through specific SMS-related activities provides a 360-degree vision of how the transit agency meets its overall safety emergency management responsibilities.

SMS documentation and records—SMS activities must be formally documented and available for reference throughout the organization. Therefore, a formal system of records and documentation control is an important element within the operation of SMS.

This sub-component provides for the requirements of the agency to document its overall approach to the management of system, the activities for SMS implementation and its subsequent day-to-day operation, and the activities or procedures for the management of new or revised safety requirements, regulatory or otherwise.

While the extent and complexity of the SMS documentation will be commensurate to the agency's size and complexity, SMS documentation and records must be readily available to all those with accountabilities for SMS performance or responsibilities for SMS implementation and operation.

The component Safety Risk Management provides for the activities and tools a transit agency needs in order to identify precursors of safety concerns that might present during service delivery as well as their supporting operations. This allows a transit agency to anticipate the potential negative consequences of safety concerns, by evaluating whether it has taken enough precautions to control the potential consequences of identified safety concerns.

Safety risk management is an ongoing and never-ending process. Safety risk management involves activities that allow the identification of hazards associated with the operation and maintenance of a public transportation system. Once hazards are identified, the Safety Risk Management process provides for the analysis of the potential consequences of identified hazards, for the evaluation of the safety risk of the potential consequences, and lastly for the development and implementation safety risk mitigations to address the anticipated, potential consequences of hazards.

The sub-components of Safety Risk Management component are:

Hazard identification and analysis—Provides for the critical first two steps in the SRM process. Under SMS, these steps help a transit agency identify and address concerns before they escalate into incidents, and provide a foundation for the evaluation activities that come next. It is important that hazard identification and analyses are supported agency-wide. Safety concerns and issues are an inevitable part of transit operations. Only after hazards are identified, can they be analyzed. Therefore, an explicit hazard identification program is critical. In this respect, a transit agency's employees are an irreplaceable asset for hazard identification.

Safety risk evaluation and mitigation—Safety risk evaluation provides for the evaluation of the magnitude of the potential consequence of identified hazards. The term safety risk refers to the likelihood that people could be harmed or equipment could be damaged by the potential consequences of a hazard. Therefore, safety risk is expressed and measured by the predicted probability and severity of the hazard's potential

consequences. Safety risk evaluation must include the evaluation of existing mitigations to help determine whether the potential consequences of the hazard must be further mitigated. Safety risk mitigation is an action or resource which, when applied to an evaluated safety risk, reduces the probability and/or severity of the potential consequence of a hazard. Safety risk mitigation enables a transit agency to actively ''manage'' safety risk in a manner that is aligned with its safety performance targets and consists of initial, ongoing and revised mitigations.

The component **Safety Assurance** ensures that chosen mitigations are appropriate and effective in addressing the evaluated safety risks, and generates confidence that the SMS contributes to the agency meeting its safety objectives and safety performance targets. This is achieved through the collection, analysis, and assessment of safety data. Safety Assurance is performed through inspections, observations, and auditing activities to support safety oversight and performance monitoring. Safety Assurance also helps a transit agency evaluate whether or not an anticipated change may impact safety.

The sub-components of the Safety Assurance component are:

Safety performance monitoring and measurement—An ongoing activity that ensures senior management has the data and information it needs to measure whether safety risk mitigations and safety-related activities are appropriate and effective. Safety performance monitoring does not as much involve monitoring individuals, but rather monitoring the safety performance of the organization itself.

Management of change—SMS places emphasis on managing change. There is a very simple reason for this. Whenever change is introduced within a public transportation agency, there is the potential that the change may impact safety by impacting existing safety risk mitigations. Therefore, the safety assurance component of an effective SMS will evaluate the anticipated change and, if it might impact safety, ensure that it is further evaluated through the transit agency's safety risk management process.

Continuous improvement—Ensures constant improvement in the functioning of the entire SMS and includes ongoing management support to continuously monitor SMS implementation. SMS evaluation is necessary to ensure that the SMS continues to meet its core safety objectives; transit agency safety performance is monitored against its safety performance targets, and identified weaknesses are immediately addressed.

The component **Safety Promotion** requires a combination of training and communication of safety information to employees to heighten the efficiency and effectiveness of the transit agency's SMS. Safety promotion provides visibility and knowledge of executive management's commitment to safety performance and an effective SMS throughout the transit agency. It typically includes formal and informal platforms for the communication of safety management information throughout the organization, safety management training for employees, training on employee roles and responsibilities within the SMS, and training on the mechanism for employees to report safety concerns.

Safety promotion is a critical component of an efficient and effective SMS, setting the tone for the transit agency's safety management activities and helping to build a positive safety culture.

The two sub-components of the Safety Promotion component are:

Safety communication—Critical to maintaining the two-way feedback loop between front-line employees and management and establishing a safety culture that promotes the effective reporting of safety concerns or issues. Effective safety communication and SMS education will ensure that personnel are aware of the SMS and their role within it. It also ensures that safety critical information is conveyed in a timely manner, and effectively explains why particular safety actions are taken and why safety procedures are introduced or changed.

Competencies and training—Provides for the development, through training, of key safety management competencies essential for the effective implementation and operation of an SMS, including safety reporting competencies and safety data management competencies. Each competency should be primarily aimed at a specific employee level.

At the front-line employee level, safety management training should provide for the development of *safety reporting competencies, i.e.* employees should receive formal training on the expected contents of employee safety reporting (what to report; what not to report) and the procedures established for reporting. At the subject matter expert level (key safety management staff), formal training should develop *safety data management competencies, i.e.* how to analyze safety *data,* how to extract *information,* and how to turn safety information into safety *intelligence f*or senior management decision-making. This also includes formal training to develop safety data collection, storage and retrieval competencies.

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Part VI

Department of Agriculture

Commodity Credit Corporation
7 CFR Part 1468
Agricultural Conservation Easement Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1468

RIN 0578–AA61

[Docket No. NRCS–2014–0011]

Agricultural Conservation Easement Program

AGENCY: Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Interim rule with request for comments.

SUMMARY: The Agricultural Act of 2014 (the 2014 Act) consolidates the purposes of the Farm and Ranch Lands Protection Program (FRPP), Grassland Reserve Program (GRP), and Wetlands Reserve Program (WRP) into one easement program called the Agricultural Conservation Easement Program (ACEP). ACEP restores, protects, and enhances wetland on eligible land; protects the agricultural use, viability, and related conservation values of eligible land by limiting non-agricultural uses of that land; and protects grazing uses and related conservation values by restoring and conserving eligible land. This interim rule with request for comments sets forth the policies and procedures related to implementation of ACEP as authorized by the 2014 Act. Since the Conservation Farm Option (CFO) is a repealed program that was never implemented, NRCS is replacing the CFO regulations at 7 CFR part 1468 with the regulations necessary to implement ACEP.

DATES: *Effective date:* The rule is effective February 27, 2015.

Comment date: Submit comments on or before April 28, 2015. Comments will be made available to the public or posted publicly in their entirety.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for Docket No. NRCS–2014–0011.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. NRCS–2014–0011, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, MD 20705.

NRCS will post all comments on *http://www.regulations.gov.* Personal information provided with comments will be posted. If your comment includes your address, phone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not wish for it to be made public. This interim rule may be accessed via Internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/;* select the Farm Bill link from the menu; select the Interim final link from beneath the Final and Interim rules Index title under the heading ''2014 NRCS Farm Bill Conservation Program Rules.'' Select Agricultural Conservation Easement Program.

FOR FURTHER INFORMATION CONTACT: Kim Berns, 202–720–1882.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Upon implementation of this rule the Natural Resources Conservation Service intends to conduct a retrospective review of this rule with the purpose of improving program performance, and better understanding the longevity of conservation implementation.

The Office of Management and Budget (OMB) designated this interim rule, with request for comment, a significant regulatory action. The administrative record is available for public inspection at the Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 5831 South Building, Washington, DC. In accordance with Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this preamble, and a copy of the analysis is available upon request from Kim Berns, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890; or at: *http://www.nrcs.usda.gov/programs/acep/* under *ACEP Rules and Notices with Supporting Documents.*

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your comments on this interim rule, we invite your comments on how to make the provisions easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (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. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Even so, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Congressional Review Act

Section 1246(c) of the Food Security Act of 1985 (the 1985 Act), as amended by Section 2608 of the Agricultural Act of 2014, requires that the Secretary of Agriculture use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego Congressional Review Act usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs, authorized or amended under Title XII of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly prior to planting season. For these reasons, this rule is effective upon publication in the **Federal Register**.

Environmental Analysis

A programmatic Environmental Assessment (EA) has been prepared in association with this rulemaking. The analysis has determined there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement (EIS) is not required to be prepared (40 CFR 1508.13). The EA and Finding of No Significant Impact (FONSI) are available for review and comment for 30 days from the date of publication of this interim rule in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the current available draft of the ACEP EA and FONSI.

A copy of the EA and Finding of No Significant Impact (FONSI) may be obtained from the following Web site: *http://www.nrcs.usda.gov/ea.* A hard copy may also be requested in one of the following ways: (1) Email: *andree.duvarney@wdc.usda.gov* with ''Request for EA'' in the subject line; or (2) written request: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Post Office Box 2890, Washington, DC 20013–2890. Comments should be specific and indicate that comments provided are on the EA and FONSI. Public comment on the environmental analysis only may be submitted by any of the following means: (1) Email comments to *andree.duvarney@wdc.usda.gov,* (2) go to *http://www.regulations.gov* and follow the instructions for submitting comments for Docket No. NRCS–2014–0011, or (3) mail written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Room 6159–S, P.O. Box 2890, Washington, DC 20013–2890.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that this interim rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The data presented in the Civil Rights Impact Analysis indicate producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that ACEP will be administered in a nondiscriminatory manner as the predecessor programs have been. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in U.S. Department of Agriculture (USDA) programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this interim rule portends no adverse civil rights implications for women, minorities, and persons with disabilities. Copies of the Civil Rights Impact Analysis are available, and may be obtained from Kim Berns, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890, or electronically at: *http://www.nrcs.usda.gov/programs/ACEP.*

Paperwork Reduction Act

Section 1246 of the Food Security Act of 1985 (the 1985 Act) as amended by the Agricultural Act of 2014 (the 2014 Act) requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, chapter 35 of Title 44, U.S.C. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, USDA assessed the effects of this interim rule on State, local, and Tribal governments, and the public. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Executive Order 13132

This interim rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that this interim rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, NRCS concludes that this interim rule does not have Federalism implications.

Executive Order 13175

This interim rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 required Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have been substantial direct effects on (1) one or more Indian Tribes, (2) the

Relationship between the Federal Government and Indian Tribes, or (3) the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not have Tribal implication that requires Tribal consultation under EO 13175. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. The agency has developed an outreach/collaboration plan that it will implement as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB published two regulations, codified at 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance in complying with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in System Award Management (SAM). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier subawards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 applies to ACEP financial assistance provided to entities. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements into the ACEP regulations and will continue to include the requisite provisions as part of assistance agreements.

Background

The Agricultural Conservation Easement Program (ACEP) is a voluntary program to help farmers and ranchers preserve their agricultural land and restore, protect, and enhance wetlands on eligible lands. The program has two easement enrollment components: (1) Agricultural land easements; and (2) wetland reserve easements. Under the agricultural land easement component, NRCS provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase permanent agricultural land easements. Under the wetland reserve easement component, NRCS protects wetlands by purchasing directly from owners a reserved interest in eligible land or entering into 30-year contracts on acreage owned by Indian Tribes, in each case providing for the restoration, enhancement, and protection of wetlands and associated lands. Wetland reserve easements may be permanent, 30-years, or the maximum duration authorized by State law.

The 2014 Act kept much of the substance of the statutory provisions that originally existed for the Wetlands Reserve Program (WRP) and Farm and Ranch Lands Protection Program (FRPP), with land eligibility elements from the Grassland Reserve Program (GRP) incorporated. In particular, ACEP as authorized by the 2014 Act:

- Consolidates FRPP, GRP, and WRP easement options into one program, and repeals these three programs; and
- Incorporates elements of FRPP and GRP into the agricultural land easement component of ACEP, and elements of WRP into the wetland reserve easement component of ACEP.

ACEP provisions are organized by those provisions that affect the entire program, provisions that affect only the Agricultural Land Easement component, and provisions that affect only the Wetlands Reserve Easement component. Provisions that affect the entire program include:

- Identification of the following lands as ineligible—
  - Federal lands except lands held in trust for Indian Tribes.
  - State-owned lands, including lands owned by agencies or subdivisions of the State or unit of local government.
  - Land subject to an existing easement or deed restriction that provides similar protection that would be achieved by enrollment.
  - Lands that have onsite or offsite conditions which would undermine meeting the purposes of the program.
- Authorization for easement subordination, modification, exchange, termination of easements under specific criteria.
- Identification that lands enrolled in FRPP, GRP, and WRP are considered enrolled in ACEP.
- Transition of contracts, agreements, and easements entered into prior to October 1, 2013, creating a pool of funds from each of the original programs to address existing enrollments, to remain available until expended.

Provisions that affect only the Agricultural Land Easement Component include:

- Limiting the Federal share of the easement cost for projects that are not *grasslands of special environmental significance* to not exceed 50 percent of the *fair market value* of the agricultural land easement, while requiring the non-Federal share to be at least equivalent to the Federal share, with an eligible entity contributing at least 50 percent of the Federal share with its own cash resources. Eligible entities may include Indian Tribes, State governments, local governments, or nongovernmental organizations which have farmland or grassland protection programs that purchase agricultural land easements.
- Protecting grasslands of special environmental significance by authorizing NRCS to pay up to 75 percent of the fair market value of the agricultural land easement for the enrollment of such grasslands.
- Providing flexibility for projects of special significance by authorizing NRCS to waive the eligible entity cash contribution requirement with no increase in Federal share where the landowner voluntarily increases the landowner contribution commensurate to the amount of the waiver and the property is in active agricultural production.
- Maintaining a certification process for eligible entities.
- Prohibiting the assigning of a higher priority to an application solely on the basis of lesser cost to the program.
- Requiring all easements to be subject to an *agricultural land easement plan*.

Provisions that affect only the Wetland Reserve Easement Component include:

- Maintaining most elements of WRP eligibility and administrative framework.
- Authorizing a waiver process to allow enrollment of Conservation Reserve Program (CRP) lands established to trees.
- Allowing ranking criteria to consider the extent to which a landowner or other person or entity leverages the Federal investment.
- Reducing length of ownership requirement prior to enrollment from 7 years to 24 months.

• Keeping WRP easement compensation framework for wetland reserve easements.

The enrollment options under ACEP differ slightly from the source programs because ACEP does not incorporate GRP rental agreements or the authority for the Secretary of Agriculture to directly purchase and hold grassland easements; requires a State or other entity to provide 50 percent of the WRE-easement cost for lands meeting the closed basin lake WRE eligibility criteria; and eliminates the stand-alone wetland Restoration Cost-Share Agreements without an associated easement.

With these slight differences acknowledged, NRCS is incorporating the substance of many of the regulatory provisions of FRPP and WRP originally promulgated at 7 CFR part 1491 and 7 CFR part 1467, respectively in this regulation. However, ACEP is a consolidated program, and therefore, NRCS has organized these provisions into three subparts. Subpart A contains provisions that apply to both agricultural land easements and to wetland reserve easements and 30-year contracts; subpart B contains provisions specific to the implementation of agricultural land easements; and subpart C contains provisions specific to the implementation of wetland reserve easements and 30-year contracts. These subparts, and their constituent provisions, are described more fully below, including a discussion about how NRCS will exercise provisions that are new or different from the predecessor programs.

Subpart A—General Provisions

§ 1468.1 Applicability

This section sets forth the requirements, policies, and procedures for ACEP; identifies that ACEP is available in all 50 States, District of Columbia, and certain territories; describes how the remainder of the regulation is organized; and addresses stewardship responsibilities associated with existing easements.

§ 1468.2 Administration

This section identifies that ACEP is administered under the general supervision and direction of the NRCS Chief, who is a Vice President of the Commodity Credit Corporation (CCC), and sets forth the roles and responsibilities of NRCS staff and other agencies that assist with ACEP implementation.

§ 1468.3 Definitions

The purpose of the definitions section set forth at § 1468.3 is to ensure consistent interpretation of the terms used throughout the regulation. These definitions are the same definitions that were used to implement FRPP or WRP with adjustments made, where needed, to further the purposes of ACEP as authorized by the 2014 Act.

The definitions of ''*30-year contract''* and ''*Acreage Owned by Indian Tribes''* are the same definitions that were used in WRP and are included to implement the 30-year contract enrollment option under subpart C.

The definition of ''*Access''* is included to clarify what constitutes sufficient legal access to ensure that the purposes of the program can be achieved and federal investment in the easement can be enforced for the duration of the easement. This definition allows NRCS to provide additional flexibility under ALE than is available for the Federally-held easements under WRE. NRCS welcomes public comment on whether NRCS should adopt this greater flexibility for eligible entities on what constitutes sufficient access for ALE easements and what specific conditions should be considered sufficient access under ALE to ensure the federal investment is protected?

The definition of ''*Active agricultural production''* is included to establish the parameters of the requirement that the land be in active agricultural production to qualify as a project of special significance under subpart B of this part.

The definition of ''*Agreement''* is included to identify any document that specifies the rights of NRCS and a person or legal entity participating in ACEP. This term formerly was only defined in WRP.

The definition of ''*Agreement to purchase''* is included to identify the document that NRCS uses to obligate funding for the acquisition of a wetland reserve easement and proceed with easement acquisition activities.

The definition of ''*Agricultural commodity''* is included since it is part of the statutory and regulatory definition of ''legal entity.''

The definition of ''*Agriculture uses''* uses a more universal term of ''farm or ranch land protection program'' than was used under FRPP to ensure that programs that have the principal purpose of protecting grasslands or grazing uses are included. NRCS will refer to the State definition of agricultural use found in either its farm and ranch land protection program or tax assessment authority, but reserves the right to impose deed restrictions to comply with Federal law or to protect soil or related natural resources. For example, some States have identified that sod farming or turf operations are an agricultural use despite such activities representing an unsustainable mining of valuable topsoil resources, and therefore, NRCS reserves its right to require that such activities be prohibited in the terms of an Agriculture Land Easement (ALE) funded with ACEP funds.

The definition of ''*Agricultural Land Easement''* is included to identify the type of conservation easement that is funded pursuant to the policies and procedures under subpart B.

The definition of ''*Agricultural Land Easement Plan''* is included to identify the document that NRCS will use to meet the requirements of section 1265B(b)(4)(C)(iv) of the 1985 Act, which requires land enrolled under subpart B to be subject to an agricultural land easement plan. All ACEP-Agricultural Land Easement (ALE) enrollments must have an agricultural land easement plan and may also incorporate by reference any required component plans needed to address particular land types or resource issues on the enrolled parcel, such as a grasslands management plan on grassland, a forest management plan for certain forest land, or a conservation plan for highly erodible cropland. The agricultural land easement plan and any associated component plans are collectively referred to as the agricultural land easement plan. The agricultural land easement plan must promote the long-term viability of the land to meet the purposes for which the easement was acquired. The eligible entity is responsible for the development of an agricultural land easement plan, though NRCS may provide technical assistance in the development of the agricultural land easement plan or any of the component plans. The eligible entity is responsible to annually monitor compliance and provide NRCS an annual monitoring report that documents that the landowner and eligible entity are in compliance with the terms of easement deeds, including the agricultural land easement plan.

The definition of ''*Beginning farmer or rancher''* is included to meet program outreach purposes and is consistent with how the term is identified in USDA programs.

The term ''*Certified entities''* is added to meet the statutory requirement providing for an eligible entity certification process. Certification of ''eligible entities'' is discussed in the description of § 1468.27.

The term ''*Chief''* existed in both FRPP and WRP, and is the official who

has been delegated administrative responsibility for ACEP by the Secretary of Agriculture.

The terms for ''*Commenced conversion wetland,*'' ''*Converted wetland,*'' ''*Lands substantially altered by flooding,*'' ''*Riparian areas,*'' ''*Wetlands,*'' and ''*Wetland functions and values*'' were defined terms under WRP and are incorporated in this rulemaking as applicable to the land eligibility requirements for enrollment of wetland reserve easements and 30-year contracts under subpart C.

The definition of ''*Commodity Credit Corporation*'' is included since ACEP is funded through CCC and since the Chief serves as a Vice-President of the CCC.

The definition of ''*Compatible use*'' is included to describe the mechanism through which NRCS may authorize the implementation of activities that NRCS determines are consistent with the long-term purposes of a wetland reserve easement.

The definition of ''*Conservation plan*'' is included since section 1265B(b)(4)(C)(iv)(III) requires that highly erodible cropland enrolled in an agricultural land easement must be subject to a conservation plan developed pursuant to the requirements under 7 CFR part 12.

The definition of ''*Conservation practice*'' is included since NRCS may provide technical assistance for the development of agricultural land easement plans for lands enrolled in ACEP–ALE and will provide technical and financial assistance for the planning and implementation of conservation practices on lands enrolled in ACEP-Wetland Reserve Easement (WRE).

The definition of ''*Conservation Reserve Program*'' is included since lands enrolled in CRP are eligible for enrollment in ACEP, with priority provided for enrollment in ACEP–ALE of grasslands leaving CRP and for enrollment in the ACEP-WRE of high value wetlands that are likely to return to production upon leaving CRP.

The term ''*Cooperative agreement*'' is included to define the document that specifies the obligations and rights of NRCS and the eligible entities related to the purchase of an agricultural land easement under subpart B.

The term ''*Cost-share payment*'' is added to refer to a payment for program implementation that NRCS provides to an eligible entity related to the purchase of an agricultural land easement under subpart B.

The term ''*Dedicated fund*'' is added and describes an account that can only be used for the purposes of management, monitoring, and enforcement of agricultural land easements. This requirement applies to nongovernmental organizations who seek to become ''certified entities'' under subpart B and serves as evidence of their capacity to ensure the long-term protection of easements.

Definitions for ''*Easement exchange,*'' ''*Easement modification,*'' ''*Easement subordination,*'' and ''*Easement termination*'' have been added to address the various ways that NRCS may address the long-term management and administration of the easements rights it has in lands enrolled in ACEP.

The definition of ''*Easement payment*'' is included to identify the payment that is made by NRCS to a landowner under ACEP–WRE.

The definition of ''*Easement restoration agreement*'' is included to encompass any of the legal arrangements NRCS may enter into to effect the restoration of any area enrolled in ACEP–WRE under subpart C. Section 1265C(d) identifies that NRCS may ''enter into one or more contracts with private entities or agreements with a State, nongovernmental organization, or Indian Tribe to carry out necessary restoration, enhancement or maintenance of a wetland reserve easement if the Secretary of Agriculture determines that the contract or agreement will advance the purposes of the program.''

The definition of ''*Eligible activity*'' is included to address actions that may be included in a Wetland Reserve Plan of Operation (WRPO) to further the wetland functions and values of lands enrolled under subpart C. The former WRP rule referred to this plan as the Wetlands Restoration Plan of Operations.

The definition of ''*Eligible entity*'' is included to identify the entities who are eligible to receive assistance under ACEP–ALE as described in subpart B.

The definition of ''*Eligible land*'' is included to identify lands that are eligible for assistance under ACEP as specified in subparts B and C.

The definition of ''*Fair market value*'' is included to refer to the basis upon which NRCS will base its cost-share payment to an eligible entity under ACEP–ALE and its easement payment under ACEP–WRE.

The definition of ''*Farm and ranch land of statewide importance*'' is included to provide greater specificity to the existing umbrella term ''other productive soils.'' This definition is the technical definition of this land type which is subsumed in the general term ''other productive soils.''

The definition of ''*Farm and ranch land of local importance*'' is added for the same reason discussed above under ''Farm and ranch land of statewide importance.''

The definition of ''*Farm or ranch succession plan*'' is included to assist with identification of parcels that may receive priority consideration since the landowners had taken action to ensure the long-term viability of the agricultural use of the parcel.

The definition of ''*Farm Service Agency (FSA)*'' is included since NRCS coordinates with FSA on many program matters, including land and landowner eligibility criteria.

The definition of ''*Field Office Technical Guide (FOTG)*'' is included to provide consistency with the way the term is defined in other NRCS program regulations.

The definition of ''*Fish and Wildlife Service (FWS)*'' is included since NRCS coordinates with Department of the Interior's Fish and Wildlife Service at the local level on several matters related to wetland reserve easements and contracts with Indian Tribes.

The definition of ''*Forest land*'' is included since it is identified as land category eligible for enrollment in ACEP–ALE.

The term ''*Forest management plan*'' is included to identify the documentation required to demonstrate forest land eligibility for agricultural land easements, when the ''forest land'' is being enrolled under the ''contributes to the economic viability of the agricultural operation'' land eligibility category. NRCS is using the ''forest management plan'' as documentation for eligibility, rather than requiring submission of receipts or tax returns which may be viewed as intrusive. The definition is consistent with the way the term is defined in other NRCS program regulations. Additionally, a forest management plan is a component of an agricultural land easement plan as described above.

The term ''*Grassland of special environmental significance*'' is included since section 1265B of the 1985 Act authorizes NRCS to provide additional cost-share assistance for the purchase of an agricultural land easement by an eligible entity on land that is grassland of special environmental significance. NRCS has defined grassland of special environmental significance in this interim rule as ''grasslands that contain little or no noxious or invasive species; are subject to threat of conversion to nongrassland uses or are subject to fragmentation; and the land is rangeland, pastureland, or shrubland on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized

pastureland and rangeland. In addition, these must be lands that provide, or could provide, habitat for threatened, endangered species or at-risk species; protect sensitive or declining native prairie or grassland types; or provide protection of highly sensitive natural resources.''

The definition of ''*Grasslands management plan*'' is similar to the definition that existed in the GRP regulation, and such a plan is required by section 1265B(b)(4)(C)(iv)(II) of the 1985 Act for grasslands subject to an agricultural land easement.

The definition of ''*Historical and archaeological resources*'' includes resources related to parcels listed in the National Register of Historic Places, but can include lands listed in the State Historic Preservation Office or Tribal Historic Preservation Office inventory with written justification as to why the resource meets the National Register of Historic Places criteria. This definition recognizes preservation efforts of State, Tribal, and local preservation offices.

The definition of ''*Historically underserved landowner*'' is included to further the outreach purposes of ACEP.

The definition of ''*Imminent harm*'' is included to help identify situations where NRCS may exercise its right of enforcement on agricultural land easements.

The definition of ''*Impervious surface*'' is included since the terms of an agricultural land easement under subpart B must specify an impervious surface limitation appropriate for the agricultural operation.

The definition of ''*Indian Tribe*'' is consistent with how the term has been defined in the previous FRPP and WRP regulations. However, the term ''pueblo'' has been added consistent with other conservation programs. ''Pueblo'' is a type of collective ownership already encompassed by the statutory definition of Indian Tribe, but clarification was sought by commenters in prior rulemaking efforts.

The definition of the ''*Land Evaluation and Site Assessment System*'' is included since it is the land evaluation system used to rank land for farm and ranch land protection purposes.

The definition of ''*Landowner*'' is included since conservation easements, whether through an agricultural land easement or a wetland reserve easement, is a real property transaction which requires the participation by the fee title landowner. The definition of ''*landowner*'' is adopted from the WRP regulation and is included to clarify that a landowner may be a ''person, legal entity, or Indian Tribe.'' An Indian Tribe does not meet the definition of person or legal entity as defined by section 1201 of the 1985 Act, and thus, needs to be included in order to ensure full participation in ACEP.

The definition of ''*Legal entity*'' is included since ACEP payment eligibility requirements apply to persons and legal entities.

The definition of ''*Limited Resource Farmer or Rancher*'' is included as an embedded term in the definition of ''*Historically Underserved Landowner.*''

The definition of ''*Maintenance*'' is included to identify actions necessary to be conducted on lands enrolled in the program to meet program purposes.

The term ''*Natural Resources Conservation Service*'' existed in both the FRPP and WRP regulations. However, the WRP definition more fully describes NRCS relationship to CCC, and therefore, has been adopted for use in ACEP. ACEP is funded through the CCC.

The definition of ''*Nongovernmental organization*'' is included in accordance with the 2014 Act that identifies the types of agencies and organizations that may qualify as an eligible entity under subpart B.

The definition of ''*Other interests in land*'' is included to clarify interests in land other than easements NRCS may provide cost-share assistance to an eligible entity to purchase under subpart B. However, NRCS requires that an eligible entity obtain prior approval from the Chief before rights or interests in land other than an agricultural land easement are funded under subpart B.

The definition of ''*Other productive soils*'' is included to identify that the term is restricted to farm and ranch land soils that are considered ''unique farmland'' and ''farm and ranch land of statewide and local importance.'' The terms ''unique farmland,'' ''farm and ranch land of statewide importance,'' and ''farm and ranch land of local importance'' are defined separately rather than within the definition of ''other productive soils.'' The change was made to provide specific definitions for these types of land.

The definition of ''*Parcel*'' is included to simplify the language used to identify an area of land that is either subject to an application or enrollment under ACEP.

The definition of ''*Participant*'' is included as it identifies who may be accepted for participation in ACEP.

The definition of ''*Pending offer*'' is included since a parcel must be subject to a written pending offer by an eligible entity in order to be eligible for cost-share assistance under subpart B.

The definition of ''*Permanent easement*'' is included to clarify that the duration for easements enrolled as ''permanent easements'' under ACEP is perpetual. Wetland reserve easements that are for a duration that is the maximum authorized by State law, but are not perpetual, will be subject to the same payment rates as 30-year wetland reserve easements.

The definition of ''*Prime farmland*'' is the technical definition that is used by NRCS under the Farmland Protection Policy Act and is included given the purposes for acquiring an agricultural land easement.

The definition of ''*Private land*'' is included since land is only eligible for enrollment if it is private or Tribal land. Tribal land is land identified as ''acreage owned by an Indian tribe'' as defined above.

The term ''*Right of enforcement*'' is an interest in the land enrolled in the ACEP–ALE which the United States may exercise under specific circumstances to enforce the terms of the agricultural land easement. The definition is included to identify that the right of enforcement may only be used under circumstances where the eligible entity or other holder of the easement has not enforced the terms of an agricultural land easement.

The definition of ''*Socially disadvantaged farmer or rancher*'' is included as an embedded term in the definition of ''*Historically underserved landowner.*''

The definition of ''*State Conservationist*'' is inclusive of Directors of the ''Caribbean and Pacific Island Areas.''

The definition of ''*State Technical Committee*'' existed in both FRPP and WRP, and the FRPP definition, since it cites to both statutory and regulatory authority for the State Technical Committees, is adopted for use in ACEP.

The term ''*Unique farmland*'' is added to improve clarity and provide a more technically accurate definition of this type of land that is encompassed by the clause ''prime and unique farmland.''

The definition of ''*Wetland Reserve Easement*'' is included to identify the type of reserve interest conservation easement that NRCS will purchase directly from a landowner of eligible land pursuant to the policies and procedures under subpart C.

The definition of ''*Wetland Reserve Plan of Operations*'' is included to identify the easement plan that is applicable to lands enrolled under subpart C.

The definition of ''*Wetland restoration*'' existed in WRP and is included to identify the actions

necessary to further the purposes of ACEP–WRE.

§ 1468.4 Appeals

This section identifies the different programmatic relationships that NRCS has with persons, legal entities, or eligible entities that receive payment under ACEP in return for participation in the program and the nature of the appeal rights that flow from these relationships. Additionally, NRCS clarifies the scope of program participation so that it is clear that prior to the transfer of property rights and the payment of compensation, NRCS decisions that affect the participant adversely are appealable under NRCS appeal procedures, including a direct appeal to the National Appeals Division (NAD) as provided in 7 CFR part 11. NRCS determinations that are after easement closing would not be subject to the appeal process in 7 CFR part 11. In the latter situation, a WRE landowner, or ALE eligible entity as applicable, with easement lands that are not in compliance with the easement terms would be provided advance notice of the NRCS determination and the landowner or eligible entity would be provided the opportunity to file an appeal with the appropriate State Conservationist.

NRCS enters into agreements with and makes payments to eligible entities under ACEP–ALE, and thus, the eligible entities are the program participants under subpart B. NRCS enters into agreements with and makes payment directly to landowners of eligible land under ACEP–WRE, and thus, the private landowners are the program participants under subpart C. Given the different program agreement relationships, the appeal rights differ.

§ 1468.5 Scheme or Device

This section is similar to other conservation program provisions and is included to describe the authority which NRCS exercises to protect the Federal investment in conservation easements from fraudulent activities.

§ 1468.6 Subordination, Exchange, Modification, and Termination

This section implements the new easement administration provisions authorized by section 1265D(c) of the 1985 Act as added by the 2014 Act. This section provides the necessary flexibility to ensure that the long-term viability of agricultural land and wetland protection efforts through conservation easements will be achieved in a manner that can accommodate subsequent compelling public needs, or will facilitate the practical administration of the program when no reasonable alternatives are available. This section clarifies the preferred alternative is always avoidance of impacts to the easement area, followed by minimization of impacts to the easement area. Furthermore, NRCS will give preference to addressing impacts of an action to the easement onsite or immediately adjacent to original easement area over addressing such impacts offsite. This consideration of alternative and sequencing is consistent with NRCS responsibilities under the National Environmental Policy Act (NEPA).

Given its stewardship responsibilities, NRCS has limited the scope of the easement that may be affected by an easement action to 10 percent of the easement area. Under very limited circumstances, NRCS may consider easement actions that exceed this 10 percent limitation if NRCS determines that the original easement area has experienced offsite landscape changes such as catastrophic changes to hydrology, complete loss of all agricultural infrastructure and markets, or contamination from hazardous materials from adjacent properties, and NRCS determines that such changes make achieving easement purposes impracticable.

NRCS will make the determination of equal or greater economic value to the United States based upon an approved easement valuation methodology in place at the time of the easement action request. Currently, the easement valuation methodology for ALE easements is outlined under subpart B and outlined for WRE easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

To further ensure that the easement action will result in equal or greater conservation value to the United States, NRCS places a limitation concerning the geographic area from which exchange acres can be obtained. The type of conservation and economic values of exchange properties are more likely to be similar if situated in close proximity to the original easement area, and thus NRCS identifies that replacement of easement acres as part of an easement exchange must occur in the same 8-digit watershed and within the same State.

§ 1468.7 Transfer of Land

This section sets forth how NRCS will address enrollment of land where the landowner transfers the rights in land to a third party prior to the purchase of the easement.

§ 1468.8 Payments Not Subject to Claims

This section sets forth that NRCS will make payment to its program participants without regard to any claims that non-Federal creditors may have on the financial assets of the program participant as authorized by 7 CFR part 1403.

§ 1468.9 Assignments

This section identifies that a program participant has the ability to assign their right to payment to another person or legal entity in accordance with 7 CFR part 1404.

§ 1468.10 Environmental Markets

This section provides that a landowner subject to an ACEP easement may also enter into an environmental credit agreement with third parties provided that the terms of the environment credit agreement do not interfere with the rights acquired by the United States and do not cause the landowner to violate the terms of the agricultural land easement or wetland reserve easement.

Subpart B—Agricultural Land Easements

§ 1468.20 Program Requirements

This section includes the program requirements for eligible entities who wish to receive cost-share assistance from NRCS for the purchase of an agricultural land easement.

Paragraph (a) identifies that NRCS will facilitate and provide funding for the purchase of easements or other interests in eligible land that is subject to a written pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting nonagricultural uses of the land. Paragraph (a) also identifies the basic parameters of the program, including that eligible entities must submit applications to NRCS State offices, that funding would be provided through a cooperative agreement that specifies NRCS minimum deed terms, and that all easements or other interests in land will be in perpetuity unless provided otherwise by State law.

Paragraph (b) provides that to be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or nongovernmental organization must demonstrate a commitment to long-term conservation of agricultural lands; a capability to acquire, manage, and enforce easements;

sufficient number of staff dedicated to monitoring and easement stewardship; and the availability of funds.

Paragraph (c) provides that a landowner who is selling an eligible entity an agricultural land easement is responsible for meeting conservation compliance requirements at 7 CFR part 12, as required by section 1265D(e) of the 1985 Act and the Adjusted Gross Income Limitation provisions at 7 CFR part 1400. Under paragraphs (b) and (c), the regulation clarifies that it is the eligible entity and landowner's responsibility to ensure that the necessary records have been established in the USDA customer records system.

Paragraph (d) sets forth the criteria by which land can be determined eligible. In particular, eligible land includes private or Tribal agricultural land on a farm or ranch subject to a pending written offer by the eligible entity and contains at least 50 percent prime or unique farmland or designated farm and ranch land of State or local importance, unless a lesser percentage is determined appropriate by NRCS based on local conditions; contains historical or archaeological resources; protects grazing uses and related conservation values by restoring and conserving land; or furthers a State or local government policy consistent with the purposes of the program.

Paragraph (d) specifies that the land must be cropland, rangeland, grassland, or land that contains forbs or shrubland for which grazing is the predominant use, located in an area historically dominated by grassland, forbs, or shrubs, and could provide habitat for animal or plant populations of significant ecological value, pastureland, or nonindustrial private forest land that meet specific criteria. Consistent with the prior FRPP regulation and policy that sought to minimize overlap and conflict with other forest easement programs, paragraph (d) clarifies that land cannot include forest land greater than two-thirds of the easement area. NRCS will reduce its cost-share in proportion to the extent that an easement protects forest land that exceeds two-thirds of the easement area. For example, if a 100 acre easement contains 30 acres of cropland and 70 acres of forest land, NRCS would provide cost-share on the 30 acres of cropland and 66.6 acres of forest land, but would not provide any cost-share for the purchase of the remaining 3.4 acres of forest land. However, this paragraph also identifies that NRCS may waive the forest land restriction for sugar bush acreage that contributes significantly to the economic viability of the parcel being offered for enrollment. A sugar bush refers to a forest stand which is utilized by agricultural landowners for the production of maple syrup. The tree canopy is dominated by sugar maple, black maple, or similar tree species, and other tree species, if present, form only a small fraction of the total tree cover. NRCS believes that landowners manage their sugar bush as an integral part of their overall agricultural operations.

Paragraph (e) specifies lands that are ineligible for enrollment. Lands that are owned by a governmental entity, unless in trust for an Indian Tribe, are ineligible. Additionally, certain land owned by nongovernmental organizations whose purpose is to protect agricultural use and related conservation values are ineligible since such lands are already protected from conversion to agricultural use. NRCS will also consider land ineligible if it is subject to (1) onsite or offsite conditions that would interfere with the agricultural viability of the property, including the risk of the presence of hazardous substances or incompatible land uses, or (2) subject to a deed restriction that provides similar protection to that provided by the program.

§ 1468.21 Application Procedures

This section identifies the application procedures that an entity must follow in order to have their application be considered for funding under ACEP–ALE.

Paragraph (a) requires an entity to submit an application to NRCS in the State where parcels are located.

Paragraph (b) identifies that applications may be submitted on a continuous basis or in response to specific program solicitations. However, NRCS may announce application cut-off periods to evaluate applications received by a date certain.

Paragraph (c) provides that NRCS will determine whether an applicant is eligible to participate in ACEP–ALE based on the criteria set forth in § 1468.20(b).

Paragraph (d) provides that at the end of each fiscal year, NRCS will cancel the lists of pending, unfunded eligible parcels unless the eligible entity requests that certain parcels be considered for funding in the following fiscal year.

§ 1468.22 Establishing Priorities, Ranking Considerations, and Application Selection

This section sets forth how parcels will be ranked for funding. NRCS will determine the eligibility of the landowner and land prior to ranking. The NRCS ranking system in each State incorporates national and State-specific criteria to rank, score and prioritize each eligible parcel within the State. All eligible parcels that compete for funding during a given application period are ranked using the same NRCS ranking criteria. The national criteria must comprise at least 50 percent of the total numerical ranking score with the state criteria comprising the remaining 50 percent.

The national ranking criteria include quantitative factors such as the percent of prime, unique, and important soil or grazing uses and related conservation values in the parcel to be protected; the percent of cropland, pastureland, grassland, and rangeland in the parcel to be protected; the ratio of the total acres of land in the parcel to be protected to average farm or ranch size in the county according to the most recent USDA Census of Agriculture; the percent population growth in the county as documented by the United States Census; the threat of conversion to incompatible land uses; the existence of a farm or ranch succession plan; proximity to other protected land; grassland that is currently enrolled in the conservation reserve program in a contract that is set to expire within 1 year that would benefit from protection under a long-term easement; and other similar criteria.

This section also identifies the factors that may be identified by NRCS at the State level. State criteria are determined by the State Conservationist, with advice from the State Technical Committee. This section of the regulation identifies that the State criteria may consider the location of a parcel in an area zoned for agricultural use, the eligible entity's performance in managing and enforcing easements, multifunctional benefits of agricultural land protection, geographic regions where enrollment of particular lands may help achieve program objectives, diversity of natural resources to be protected, score using the land evaluation and site assessment system or equivalent measure for grassland enrollments, or other criteria determined by NRCS that will allow for the selection of parcels that will achieve ACEP–ALE purposes. When developing the State ranking factors, the State Conservationist must use factors that will assess the parcels potential to meet the purpose and goals of ACEP–ALE.

The ranking system incorporating both national and state criteria enables NRCS to prioritize parcels that merit ACEP–ALE enrollment. The ranking process must be followed and parcels funded in order of priority unless

inadequate funds are available to fund the next highest ranked parcel. If adequate funds are not available, NRCS may select the next highest-ranked parcel for which funding is available.

The ranking system may assign negative points or place at the bottom of the ranking list any parcels submitted by an eligible entity which is delinquent on submitting annual monitoring reports on prior-year conservation easements or has open ACEP–ALE cooperative agreements more than 2 years old. State Conservationists may also establish ranking thresholds below which parcels will not be funded.

In summary, NRCS will rank all eligible parcels submitted by eligible entities prior to an announced application cut-off date. NRCS will rank all parcels in accordance with the national and State criteria identified in this section. As required by section 1265B(b)(3)(C) of the 1985 Act, NRCS will not assign a higher priority to any parcel solely based on the lesser cost to the program.

NRCS will list the selected eligible parcels in the cooperative agreement to be entered into between NRCS and the eligible entity.

§ 1468.23 Cooperative Agreements

This section addresses the principal program document under which NRCS and an eligible entity identify how they will coordinate the activities needed for the eligible entity to purchase a conservation easement with ACEP assistance, including their respective rights and responsibilities related to program enrollment under this subpart. In particular, NRCS, on behalf of the CCC, enters into a cooperative agreement with entities selected for funding. Once NRCS selects an application, the eligible entity works with NRCS to finalize and sign a standard program cooperative agreement, incorporating all necessary ACEP–ALE requirements including the requirement that each easement must have an agricultural land easement plan.

§ 1468.24 Compensation and Funding for Agricultural Land Easements

This section addresses the extent to which NRCS will provide financial assistance to an eligible entity for the purchase of an agricultural land easement by the eligible entity. NRCS may provide up to 50 percent of the approved fair market value of the agricultural land easement. NRCS will approve the use of the Uniform Standards for Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), or Areawide Market Analysis procedures by the eligible entity for determining ''fair market value of the agricultural land easement.'' An eligible entity is responsible to obtain a fair market value determination of the easement using one of the approved methods in accordance with NRCS specifications and applicable industry standards. The eligible entities provide the easement valuation determination documentation to NRCS. The Uniform Standards of Professional Appraisal Practices may serve as an industry standard for areawide market analysis. NRCS welcomes comments on what other types of ''industry methods'' should be considered when determining ''fair market value of the agricultural land easement'' for Federal match requirements for agricultural land easements.

A landowner may make donations toward the acquisition of the agricultural land easement. However, the 2014 Act requires that the eligible entity provide a share that is at least equivalent to that provided by NRCS. While the eligible entity may include as part of its share a landowner's qualified donation, the statute identifies that the eligible entity must contribute its own cash resources in an amount that is at least 50 percent of the amount contributed by NRCS. To ensure that the Federal share meets these parameters, NRCS requires that prior to execution of the easement deed and payment of compensation to the landowner, the eligible entity provide the necessary acceptable valuation documentation and NRCS approve the determination of fair market value.

This section also outlines circumstances where NRCS may waive certain cost-share limitations for grassland of special environmental significance or other projects of special significance. For grasslands of special environmental significance, NRCS may provide up to 75 percent of the fair market value of the agricultural land easement and the eligible entity is required to provide the remainder as the entity share, of which the eligible entity is still required to provide its own cash resources as at least half of the entity share unless an additional entity cash contribution waiver is requested and granted.

For projects of special significance, NRCS may waive the eligible entity cash contribution requirement in accordance with the criteria and circumstances outlined in this section. However, for these projects of special significance, the landowner donation must increase commensurate to the amount of the waiver, the landowner donation must be voluntary, and the property must be in active agricultural production. This section identifies the criteria by which a project may be determined to be one of special significance, including that the land is subject to threat of conversion or fragmentation and is in proximity to other protected areas supporting agricultural, grassland, or other compatible uses.

Additional factors considered are whether the project is listed on the National Register of Historic Places, if the location is within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land, if the location is within a metropolitan statistical area, if the project will increase participation in agriculture by underserved communities, veterans, or beginning or disabled farmers and ranchers, and whether the farm or ranch is used as an education or demonstration farm focused on agricultural production and natural resource conservation, and other similar factors. NRCS welcomes input on the criteria that have been developed and any additional criteria that may be used to determine projects of special significance.

NRCS will provide ACEP–ALE cost-share funds toward the cost of the agricultural land easement itself. Since section 1265B of the 1985 Act does not authorize any cost-share beyond contribution towards the purchase of an ACEP–ALE easement based on the approved fair market value of the agricultural land easement, NRCS does not provide funds for related administrative costs such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

§ 1468.25 Agricultural Land Easement Deeds

Section 1265B(b)(4)(C) of the 1985 Act anticipates that an eligible entity is able to use its own deed terms provided that NRCS is able to determine that such terms ''are consistent with the purposes of the program [and] permit effective enforcement of the conservation purposes of such easements.'' Therefore, in order for NRCS to provide cost-share assistance to an eligible entity, NRCS must ensure that the eligible entity will include in its agricultural land easement deeds the terms and conditions necessary to ensure ACEP statutory purposes and requirements are met.

NRCS may determine that an agricultural land easement deed meets program purposes by either the eligible entity drafting all of the deed terms and conditions for an individual easement

and submitting the entire deed to NRCS for review, or through NRCS developing a standard set of minimum deed terms that the eligible entity agrees to incorporate as a whole into the deed along with the entity's own deed terms. In either scenario the eligible entity may use their own terms and conditions, the difference is the review process by which NRCS ensures the purposes and requirements of the program are met.

Under FRPP, NRCS reviewed each individual deed review due to the variability of easement deed terms. The result of this highly individualized approach provided maximum flexibility for the eligible entity but also resulted in extended acquisition timelines, inconsistent deed terms, variability in deed enforceability, and risk of inequitable treatment of eligible entity applicants.

Under ACEP, NRCS will provide a standard set of minimum deed terms that could be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed. NRCS and the eligible entity would agree to the standard minimum deed terms through the cooperative agreement, and the eligible entity would include these standard minimum deed terms into the agricultural land easement deed directly or as deed addendum attached and incorporated by reference into the deed.

If the eligible entity agrees to and incorporates these minimum standard deed terms, NRCS may choose not to review individual deeds prior to closing. NRCS goals with this approach are to streamline program delivery, increase the transparency of program requirements, ensure the equitable treatment of all participants, and reduce inconsistency in the long-term management and enforcement of the easements. This approach still allows the eligible entity to introduce its own deed terms, including those that are more restrictive. Through the publication of this interim rule, NRCS is seeking and welcomes specific public comment on the content of these standard minimum deed terms. The current minimum deed terms can be found at [enter URL for such terms].

Due to high program demand, limited funds, and anticipated cost-savings from streamlining program delivery, in fiscal year 2015, NRCS will prioritize those applications with entities who agree to use the standard minimum deed terms found at *http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/*.

Among the minimum requirements that must be in each ALE funded easement, whether or not an eligibility entity elects to use the minimum standard set of deed terms, is a right of enforcement for the Secretary of Agriculture required by Section 1265B(b)(4)(C)(iii) of the 1985 Act. The United States right of enforcement may only be used if the terms of the Agricultural Land Easement are not enforced by the holder of the easement. The right of enforcement includes the right of inspection so that NRCS can ensure that the eligible entity is meeting its enforcement, monitoring and stewardship responsibilities. As described above, the eligible entity must annually monitor compliance and provide NRCS an annual monitoring report that documents that the eligible entity and landowner have complied with the Agricultural Land Easement and Agricultural Land Easement Plan. Therefore, pursuant to its right of enforcement, if the annual monitoring report is insufficient or is not provided annually, or if NRCS has evidence of an unaddressed violation, as determined by NRCS, NRCS may exercise this right of inspection and enter the easement area with advance notice to the eligible entity and the landowner or landowner's representative. In the event of an emergency, NRCS may enter the easement area to prevent, terminate, or mitigate a potential or unaddressed violation of the easement's restrictions and will provide notice to both the eligible entity and the landowner at the earliest practicable time.

Consistent with former FRPP requirements and standard conservation easement practice, each ALE funded easement must also include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from liability arising from or related to the property enrolled in ACEP–ALE. Each eligible entity is also responsible for the development of baseline documentation that is attached to the easement deed, or if allowed by State law cross reference in the deed. Baseline documentation is submitted to NRCS with the other easement deed documents.

Consistent with policy that had been developed under FRPP, NRCS has established that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices. However, NRCS may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided that no more than 10 percent of the easement area is covered by impervious surface.

The inclusion of these minimum provisions in ALE-funded easements is a requirement for participation in the ACEP–ALE and cannot be waived. All agricultural land easement deeds acquired with ACEP–ALE funds must be recorded in the appropriate land records for the county or parish.

§ 1468.26 Agricultural Land Easement Plans

This section sets forth the requirement of section 1265B(b)(4)(C)(iv) of the 1985 Act that all agricultural land easements must be subject to an agricultural land easement plan approved by NRCS and the landowner. This section identifies the minimum requirements for an agricultural land easement plan and describes the relationship between the agricultural land easement plan and the individual component plans that are required for certain land-use types and incorporated by reference into the overarching agricultural land easement plan. The eligible entity is responsible to ensure an agricultural land easement plan that has been approved by NRCS and signed by the landowner is in place prior to the execution of the easement deed and the payment of compensation to the landowner.

As identified in Section 1265B(d), NRCS may provide technical assistance, if requested, to assist in the development of an agricultural land easement plan. Therefore, the cooperative agreement can address the availability of NRCS technical assistance to develop these plans. No separate approval of the plan by NRCS is needed if NRCS, a certified technical service provider, or other NRCS certified conservation planner develops the agricultural land easement plan. The development of a robust and comprehensive agricultural land easement plan, such as a plan at the NRCS Resource Management System planning level, is encouraged and as such, may include both required and recommended practices. NRCS recommends that NRCS' planning procedures, conservation practices, and standards and specifications be used to develop the agricultural land easement plans. Certain component plans, such as the forest land management plan may use other industry-approved planning methods and standards such as forest stewardship plans.

The eligible entity is responsible for enforcement of the easement, including ensuring the landowner is implementing or adhering to the required elements of the agricultural land easement plan. The NRCS right of enforcement includes a right of inspection that authorizes NRCS to ensure the landowner and easement holder are in compliance with the

agricultural land easement plan as required by section 1265B(b)(4)(C)(iv).

§ 1468.27 Eligible Entity Certification

Section 1265B of the Food Security Act of 1985, as amended, requires NRCS to establish a process under which eligible entities that meet established criteria may be certified and enter into long-term agreements for ACEP–ALE cost-share assistance. In summary, Section 1468.27 implements this statutory provisions and provides that, at an entity's request, the Chief will determine whether an eligible entity meets certifications requirements and if so, certify the entity.

The ACEP–ALE statutory provisions specify that an eligible entity, to be certified, must demonstrate to NRCS that the eligible entity will maintain, at a minimum, for the duration of the agreement:

(i) A plan for administering easements that is consistent with the purposes of ACEP–ALE;

(ii) The capacity and resources to monitor and enforce the agricultural land easements; and

(iii) Policies and procedures to ensure—

a. the long-term integrity of the easements,

b. timely completion of acquisition of such easements, and

c. timely and complete evaluation and reporting to NRCS on the use of ACEP–ALE cost-share assistance provided.

Additionally, NRCS must, based upon when an entity is certified, conduct a review of a certified eligible entity at least every three years to ensure it continues to meet the certification criteria. If NRCS finds that the certified entity no longer meets the criteria, NRCS may allow the entity a specified period of time to take corrective actions, and may revoke certification if the entity does not meet the requirements.

These same certification provisions existed under the ACEP–ALE predecessor program, the Farm and Ranch Lands Protection Program (FRPP). However NRCS is introducing a few key changes in the ACEP–ALE regulation and policy to streamline and improve the certification process that was initially developed under FRPP and expand the availability of certification to eligible entities.

NRCS has developed a set of objective, measurable criteria that can be used to evaluate the eligible entity's ability to meet the statutory certification criteria. The certification criteria outlined in this interim rule are similar to the criteria under FRPP with a key change to the criteria that proved most problematic under FRPP. The statutory requirement that the entity have a plan to administer easements that is consistent with the purposes of ACEP–ALE will be demonstrated by the eligible entity agreeing in their request for certification to use the template ACEP–ALE Agreement for Certified Entities if they are certified.

This change is in effort to address the issues that arose related to entities being unable or unwilling to adjust their policy and procedures to meet the programmatic FRPP requirements under the FRPP certification process. This change will also expedite the review of entity certification requests and ensure the equitable treatment of all certified entities by establishing a simple, transparent, objective criteria for determining whether the entity is addressing the statutory requirement.

Another change is that an eligible entity may submit a request for certification with associated documentation to the NRCS State Conservationist at any time rather than during specific sign-up periods. The State Conservationist will review the materials and make a recommendation to the National Office for final determination. NRCS will notify an entity in writing whether they have been certified and the rationale for the agency's decision.

This section also identifies the type of administrative flexibility available to a certified entity based upon their certification. For example, NRCS will rely on the certified entity to independently complete the easement acquisition in accordance with the terms and conditions of the cooperative agreement and consistent with the requirements of this part. NRCS will conduct annual quality assurance reviews on a subset of the transactions after closing and payment rather than prior to closing. Since NRCS review of these transactions is minimized prior to closing, a certified entity is better able to schedule easement closings and meet timelines associated with other funding sources. These benefits associated with certification will allow a certified entity greater autonomy in its acquisition of ALE-funded easements and potentially expedite the time it takes for a certified entity to complete its easement acquisitions.

§ 1468.28 Violations and Remedies

This section sets forth the eligible entity's responsibilities to enforce the easement terms and conditions. Additionally, this section sets forth the circumstances under which NRCS may exercise its right of enforcement.

NRCS will work with the eligible entity to assist it in its responsibility to enforce the easement terms. If, however, the eligible entity is unable or unwilling to enforce the easement terms and NRCS determines the eligible entity has not met its enforcement responsibilities, NRCS may exercise the United States' rights identified under an agricultural land easement or other interest in land to protect the agricultural values. If such action becomes necessary, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. Unless emergency circumstances require more immediate NRCS action to prevent imminent harm, the notice will provide the eligible entity an opportunity to cure its failure to enforce the terms of the deed within a reasonable timeframe. If NRCS is required to exercise its right of enforcement, NRCS may recover any and all administrative and legal costs from the eligible entity, the current holder of the easement if applicable, and the landowner or other party responsible for the easement violation.

Subpart C—Wetland Reserve Easements

§ 1468.30 Program Requirements

This section sets forth the basic requirements for participation in ACEP through a wetland reserve easement, including landowner and land eligibility requirements.

Paragraph (a) identifies that under the ACEP–WRE, NRCS may purchase wetland reserve easements from eligible landowners who voluntarily agree to the restoration, protection, and enhancement of wetlands on eligible private and Tribal lands. Additionally, the 30-year contract enrollment option is available to enroll acreage owned by Indian Tribes and these 30-year contracts are implemented similarly to 30-year easements. In order to participate through any of the WRE enrollment options, the landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

Paragraph (b) sets forth the county cropland enrollment limitations that are established by section 1244 of the 1985 Act as amended by the 2014 Act. In particular, no more than 25 percent of the total cropland in any county may be enrolled in CRP and ACEP–WRE, and no more than 10 percent of the total cropland in the county, as determined by FSA, may be subject to an easement under ACEP–WRE. The cropland limits do not apply to shelterbelts,

windbreaks, and certain designated wet and saturated soils.

Paragraph (c) identifies that an applicant must be the landowner of eligible land for which enrollment is sought, and must have owned that land for at least 24 months prior to the time the land is determined eligible for enrollment unless certain exemptions apply, including that it is determined by the Chief, upon application by the landowner, that such land was acquired under circumstances that give adequate assurances that the land was not acquired for the purposes of placing it in the program. NRCS has also included the requirement that the landowner must provide all necessary documents that are required by the Farm Service Agency to establish customer records in the USDA customer records system. Recipients of USDA benefits, including NRCS customers, work with the Farm Service Agency to establish the requisite eligibility records in the USDA customer service data base. NRCS checks these records to ensure that the landowner meets conservation compliance and adjusted gross income limitation requirements.

Paragraph (d) sets forth how NRCS will handle enrollment situations where, prior to easement purchase, the landowner transfers the land offered for enrollment.

Paragraph (e) sets forth the land eligibility criteria that were specified by sections 1265(3) of the 1985 Act as added by the 2014 Act. Among the categories of eligible land are: Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands; cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, together with the adjacent land, where practicable, that is functionally dependent on the cropland or grassland; farmed wetland and adjoining lands enrolled in CRP, with the highest wetland functions and values, and is likely to return to production after it leaves CRP; or a riparian area along a stream or other waterway that links or, after restoring the riparian area, will link wetlands protected by the ACEP–WRE easement, another easement, or other device or circumstance that achieves the same objectives as an easement. Determination of land eligibility is made at the time of application evaluation.

NRCS may also enroll adjacent or contiguous land if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not otherwise meet riparian eligibility requirements, and restored wetlands.

Land enrolled in the program must have sufficient legal access, be configured in a size and with boundaries that allow for the efficient management of the area for program purposes, and otherwise promote and enhance program objectives, as determined by NRCS.

Paragraph (f) addresses the enrollment of CRP lands.

Paragraph (g) identifies land that is not eligible for enrollment, including converted wetlands if the conversion was commenced after December 23, 1985; land established to trees under CRP except in cases where NRCS determines it would further the purposes of the program; lands owned by a Federal or non-Federal governmental agency; land that does not have sufficient legal access, clear title, or meet Department of Justice Title Standards; land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP–WRE; and lands where purposes of program or implementation of restoration practices would be undermined due to onsite or offsite conditions. Such conditions may include risk of contamination from hazardous substances either onsite or offsite, proposed or existing rights of way, either onsite or offsite, for infrastructure development, or adjacent land uses that would either impede complete restoration or prevent wetland functions and values from being fully restored.

With respect to the ineligibility of land established to trees under CRP, the 2014 Act authorized a waiver where NRCS determines the enrollment of such land will further the purposes of the program. Such circumstances may exist where established cover conforms to ACEP–WRE requirements if the CRP trees are on incidental land adjacent to eligible wetland; enrollment would improve the practical administration of the easement boundary; the land contains habitat for at-risk species or migratory birds; conversion to higher intensity of production is likely; or other criteria as determined appropriate by the Chief.

§ 1468.31 Application Procedures

This section sets forth the application procedures for a landowner that wants to participate in the ACEP–WRE. Specifically, a landowner may obtain and submit to NRCS an application to participate in the program at any time to the local USDA Service Center. By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes needed to evaluate the application. The landowner is entitled to accompany an NRCS representative on any site visits.

§ 1468.32 Establishing Priorities, Ranking Consideration and Project Selection

This section sets forth the factors NRCS will use to select properties for enrollment in an ACEP–WRE. Among the priority factors, NRCS may consider the conservation benefits of obtaining an easement, the cost-effectiveness of each easement, whether Federal funds are being leveraged, and the extent to which ACEP–WRE purposes would be achieved on the land.

Given the statutory priority placed on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife and maximizing the benefit of the Federal investment, NRCS will also give priority consideration to obtaining permanent easements over shorter term easements. NRCS may work with both the FWS and the State Technical Committee on priority factors to ensure that ACEP and related Federal consultation requirements are met.

As provided by section 1265D(b) of the 1985 Act, NRCS may provide priority enrollment to land that is currently enrolled in CRP in a contract that is set to expire within one year from date of application to ACEP–WRE and is a wetland or related area with high wetland functions and values; is likely to return to production after the land leaves CRP; and has not been established to trees under CRP unless that limitation has been waived by NRCS.

This section sets forth how applications will be ranked for funding. The NRCS ranking system in each State incorporates criteria to rank, score and prioritize each eligible parcel within the State. NRCS determines priority for ACEP–WRE enrollment through an onsite field reviews conducted by NRCS and an appropriate interdisciplinary team of partner specialists, which may include FWS. The landowner is invited to participate in these field reviews.

The ranking criteria include quantitative factors that assess the sites physical capacity to be restored and the extent and diversity of anticipated benefits of such restoration. Hydrology restoration potential comprises at least 50 percent of the potential points awarded for environmental benefit considerations. NRCS obtains specific

information about a site's physical capacity to be restored using metrics such as the soil and landscape form characteristics including soil type, permeability, flooding frequency, depth to water table, slope, extent the original hydrology has been manipulated or removed, the extent to which the original hydrology can be restored, and other wetland restoration factors. To receive hydrology restoration ranking points, hydrology restoration or enhancement practices must provide hydrologic conditions suitable for the needs of the native wetland-dependent wildlife species that occurred in the area and appropriate for the wetland functions and values that existed prior to manipulation.

§ 1468.33 Enrollment Process

This section sets forth the process that NRCS will use for handling applications once they have been selected for enrollment. NRCS notifies a landowner of their tentative acceptance into the program. This notice does not bind NRCS or the landowner, but allows the parties to continue the enrollment process.

Once NRCS has completed its preliminary enrollment activities, the landowner will be presented with an agreement to purchase. The agreement to purchase describes the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that NRCS may require. Easement compensation is based upon the criteria identified in § 1468.34, including the determination of fair market value of the land. This same methodology was used under the predecessor program, the Wetlands Reserve Program. USPAP establishes the criteria for appraisals and areawide market analysis which are each supplemented by NRCS Specifications and Statement of Work requirements for each methodology. NRCS has also developed policy parameters for area wide market analyses and geographic area rate caps to ensure that compensation amounts are appropriately constrained. Individual appraisals cannot be used on land that has been valued through an areawide market analysis.

Fair market value is determined, therefore, through either the use of a USPAP appraisal or an areawide market analysis or survey. For any particular easement offer, NRCS will only use one method for determining fair market value, and a landowner does not have input into which method NRCS will use. Once fair market value is determined, the value is compared to the geographic area rate cap and the landowner offer made prior to enrollment, if any. The least of these values is the value used to determine the easement compensation amount.

The landowner accepts enrollment in the ACEP–WRE by signing the agreement to purchase. A similar process is followed for enrolling land held by Indian Tribes through a 30-year contract.

The agreement to purchase establishes the scope of the agreement between the parties, including the landowners' agreement to grant to the United States a wetland reserve easement and to the implementation of a WRPO.

§ 1468.34 Compensation and Funding for Wetland Reserve Easements and 30-Year Contracts

This section sets forth how NRCS will determine the level of compensation that a landowner will receive in return for granting a wetland reserve easement. Easement compensation methodologies are determine by statute at section 1265C(b)(6) of the 1985 Act. In particular, the landowner will receive the least of: (1) The fair market value of the land; (2) a geographic rate cap; or (3) the landowner offer. This section also describes how each of these values are determined. This valuation determination uses the same methods of valuation determination that had previously been used in the WRP.

§ 1468.35 Wetland Reserve Enhancement Partnerships (WREP)

This section sets forth how NRCS will implement a wetland reserve enhancement option with partners under ACEP–WRE. In particular, the purpose of WREP is to target and leverage resources to address high priority wetlands protection, restoration, and enhancement objectives through agreements with States (including political subdivision or agency of a State, nongovernmental organizations, and Indian tribes. The Chief will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. NRCS will make public notifications of the availability of funding and instruct interested partners about the manner in which they should submit their proposal. Partners with a selected proposal will enter into WREP agreements with NRCS to carry out the project. Under WREP, individual easements are purchased directly from the landowner and held by the United States.

§ 1468.36 WRPO Payments

This section identifies that NRCS will provide funds towards implementing the WRPO on land enrolled through a wetland reserve easement or 30-year contract. NRCS will offer to pay at least 75 percent but not more than 100 percent of the cost of implementing the WRPO on land subject to a permanent easement. NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs on enrolled land subject to a 30-year easement or maximum duration allowed by state law or 30-year contract.

§ 1468.37 Easement and 30-Year Contract Participation Requirements

This section identifies that to enroll land in ACEP–WRE through the permanent or 30-year easement option, a landowner must grant an easement to the United States. Consistent with ACEP–WRE requirements and as previously required under WRP, the landowner grants the wetland reserve easement to the United States through a reserved interest deed, including the right of access to the easement area, the right to permit compatible uses of the easement area, and the right to restore, protect, enhance, maintain, and manage activities on the easement area. Similar provisions are contained in a 30-year contract that is entered into with an Indian Tribe.

This section also identifies that a landowner may be able to reserve grazing rights under a wetland reserve easement or 30-year contract if the reservation and use of the grazing rights is consistent with the historical natural uses of the land and long-term wetland protection and enhancement goals for which the easement or 30-year contract was established. Compensation for easements or 30-year contracts where the grazing rights are reserved will be reduced by an amount equal to the value of the reserved grazing rights, as determined by the Chief.

§ 1468.38 The WRPO Development

This section identifies that the development of the WRPO is through the local NRCS representative, in consultation with the State Technical Committee, with consideration of available site-specific technical input from the FWS and others as appropriate. NRCS specifies in the WRPO the manner in which land enrolled through a wetland reserve easement or 30-year contract will be restored, protected, enhanced, maintained, and managed to accomplish ACEP–WRE goals. NRCS will review, revise, and supplement the WRPO, as needed, throughout the

duration of the easement or 30-year contract term to ensure that program goals are fully and effectively achieved.

§ 1468.39 Violations and Remedies

This section identifies how NRCS will address violations of a wetland reserve easement or 30-year contract. In the event of a violation of a wetland reserve easement or 30-year contract involving the landowner, NRCS will give the landowner reasonable written notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice. However, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect wetland functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

Executive Summary of the Regulatory Impact Analysis

Section XII of the Food Security Act of 1985, as amended by the Agricultural Act of 2014 (2014 Act), requires the Natural Resources Conservation Service (NRCS) to establish the Agricultural Conservation Easement Program (ACEP) in a new Subtitle H. This Subtitle repeals the previously authorized programs, Wetlands Reserve Program (WRP), Farm and Ranchlands Protection Program (FRPP) and Grassland Reserve Program (GRP), but maintains the purposes of these programs in ACEP. Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis (RIA) of ACEP using historical data and information, including information from WRP, FRPP, and GRP. This RIA describes both the potential impact of the regulation on benefits and costs and the regulatory flexibility in the rule implementation. Implementation of this rule is required to complete the Congressional Action.

In considering alternatives for implementing ACEP, the agency followed the legislative intent to establish an open participatory process, optimize environmental/conservation benefits, and address natural resource concerns. Because ACEP is a voluntary program, the program will not impose any obligation or burden upon agricultural landowners who choose not to participate.

The 2014 Act requires establishment of ACEP to retain the provisions in the current easement programs by establishing two types of easements: Wetlands reserve easements (WRE) that protect and restore wetlands as previously available under WRP, and agricultural land easements (ALE) that limit nonagricultural uses on productive farm or grassland as previously available under FRPP and the easement component of GRP. The WRE component will provide technical and financial assistance to landowners to restore and protect wetlands and associated habitats through conservation easements. ACEP–WRE will address wetlands, wildlife habitat, soil, water, and related natural resource concerns on private lands. The ALE component will protect the natural resources and agricultural value of agricultural cropland, pasture and other working land, promote agricultural viability for future generations, preserve open space, provide scenic amenities, and protect grazing uses and related conservation values by restoring and conserving eligible land and limiting nonagricultural uses.

The 2014 Act also identified ACEP as a covered program for implementation of the Regional Conservation Partnership Program (RCPP), authorized by Subtitle I of Title XII of the Food Security Act of 1985, as amended (16 U.S.C. 3871 *et seq.*) RCPP is funded, in part, by a reservation of 7 percent of funds that have been allocated to implement covered programs, including 7 percent of funds allocated for ACEP implementation.

Impacts of ACEP

Most of this rule's impacts consist of transfer payments from the Federal Government to farmers, landowners, and producers. Although these transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Under the 2014 Act, ALE and WRE enrollments are limited by funding. As set forth in the 2014 Act, total proposed ACEP funding and associated transfer payments by fiscal year is presented in Table ES–1.

TABLE ES–1—PROPOSED CONSERVATION TRANSFER PAYMENTS FACILITATED BY ACEP FUNDING, INCLUDING THE POTENTIAL RCPP ALLOCATION, FY 2014–2018

FY	Nominal-dollar farm-bill authorization	Real-dollar [1] authorization 2.1% GDP deflator	Real-dollar [1] authorization discounted at 3%	Real-dollar [1] authorization discounted at 7%
	million $	*million $*	*million $*	*million $*
FY 2014	$400.0	$400.0	$400.0	$400.0
FY 2015	425.0	416.3	404.1	389.0
FY 2016	450.0	431.7	406.9	377.0
FY 2017	500.0	469.8	429.9	383.5
FY 2018	250.0	230.1	204.4	175.5
Total [2]	2,025.0	1,947.8	1,845.4	1,725.1

[1] 2013 dollars.
[2] Net present value of discounted funding levels.

Conservation Impacts of the Program

Land enrolled in ACEP–WRE easements will produce onsite and offsite environmental impacts. Those include: Restoration and protection of high value wetlands; control of sheet and rill erosion as lands are restored from cropland to wetlands and associated habitats; restoration, enhancement, and protection of habitat for fish and wildlife, including threatened and endangered species and migratory birds; improving water quality by filtering sediments and chemicals; reducing flooding and flood-related damage; recharging groundwater; protecting biological diversity; controlling invasive species with planting of native vegetation; as well as providing opportunities for

educational, scientific, and recreational activities. Soil health and air quality are improved by reduced wind erosion, reduced soil disturbance, increased organic matter accumulation, and an increase in carbon sequestration. Many of those conservation impacts are difficult to quantify at a national scale, but have been described by studies at an individual project, watershed, or flyway scale.

For land enrolled in ACEP–ALE, the suite of conservation effects on protected grasslands are different than those on protected farmland. ACEP–ALE easements on grasslands limit agricultural activities to predominately grazing and haying, whereas easements on farmland allow crop cultivation and pasture-based agriculture. As such, farmland protection effects are derived from onsite and ecological services, as well as preserving highly productive agricultural areas from development or fragmentation. Impacts on grasslands are derived from onsite and ecological impacts as well as preventing conversion to nongrassland uses. The net conservation effects through time from farmland protection include direct access benefits (pick-your-own, agri-tourism, and nature based activities like hunting) indirect access benefits (open spaces and scenic views) and nonuse benefits (wildlife habitat and existence values). Grassland protection conservation effects include the direct, indirect, and nonuse benefits, but also include on-farm production gains and carbon sequestration.

Expected Costs of the Program

The main program costs are the purchase of easements and associated restoration expenses under the ACEP–WRE component. Agricultural production ceases on lands enrolled in ACEP–WRE. At the same time, disaster payments, crop loss payments, and other commodity payments are eliminated.

Through ACEP–ALE, landowners voluntarily restrict the land to agricultural uses by the sale of conservation easements to eligible entities. Local cooperating entities are key drivers in farmland [1] conservation because they benefit from the indirect services (offsite and nonuse benefits) provided by agricultural land, and in the case of ACEP–ALE and its predecessors, also share in the costs of purchasing conservation easements. The local nature of the supply of and demand for conservation easements, and the site-specific nature of the potential benefits complicate the description of conservation effects conducted in this analysis.

The public and private costs of ACEP–ALE are: (1) The actual cost of purchasing the easement; (2) a reduced tax base which includes the opportunity cost of lower local economic activity, which for this analysis we assume is offset by a reduction in needed public infrastructure and associated taxes to support that infrastructure; and (3) the forgone economic activity fostered by new development. These costs are not social costs and we do not estimate them in this analysis.

Allocation Process and Comparison to Legacy Programs

NRCS allocates ACEP funding based upon State-generated assessments of priority natural resource needs and associated work necessary to address identified resource concerns. These State-developed assessments, following national guidance to assure accuracy and consistency, are submitted to agency leadership for review. At the national level NRCS analyzes in a systematic manner these state-reported resource needs and requests along with factors including NRCS landscape initiatives or other nationally established conservation priorities; regional factors such as development pressure, migratory bird flyways, multi-state watersheds with water quality resource concerns; existing State capacity, workload, and performance; and other factors. This approach provides flexibility to address nationally and locally important natural resource concerns. Once funds are allocated to the States, individual project selection occurs at the State level based on the prioritization of the eligible applications using the NRCS ranking criteria.

Over the course of the 2008 Farm Bill, the three easement programs (WRP, GRP, and FRPP) received an average of $691 million annually, which was comprised of $513 million WRP, $138 million in FRPP, and $39 million in GRP. All three easement programs were combined under ACEP and the purposes of FRPP and GRP were combined under the ACEP–ALE component. The average annual funding available under the new ACEP program will be approximately $368 million annually, about 53 percent of the amount previously available under the repealed programs.

Conclusions

Executive Summary Table ES–2 provides an overview of the potential benefits from both sub-program areas of ACEP. For the private landowner, the end products of the ACEP–WRE include assurances of the restoration of the property and associated recreational use, the potential to engage in compatible uses on the property, and the elimination of negative impacts to agricultural operations on the property. Outcomes from the private landowner view of the ACEP–ALE include the long-term protection of the agricultural nature of the land and potential increases in productivity (from implementing the ALE plan) and sustainability of the local agricultural market (from local production). In addition, the private landowner, along with the general public, will reap the benefits of recreational waterfowl harvest, upland species harvest, and agri-tourism. Also in many cases easement that protect farmsteads under ACEP–ALE will provide the general public with an opportunity to engage with and obtain food products from a local farm producer.

Both ACEP–WRE and ACEP–ALE may provide benefits that are achieved for society as a whole, within the limitations of a voluntary program. These include: Improved water quality and water quantity; carbon sequestration; restoration of habitat for endangered or threatened wildlife species; flood prevention and protection; and improvements to scenic quality and rural characteristics. We note that agricultural lands and wetlands sequester carbon at higher rates than lands converted to development.

Participation in ACEP is voluntary and landowners participate in the program for many reasons, such as estate planning, income diversity, expanded recreational opportunity, improving agricultural efficiency, and their personal natural resource ethic. Landowners may also participate in part to meet requirements they face in managing their operation. For example, a landowner may decide to enroll acres in ACEP in order to protect highly productive grasslands from conversion to crop production and thus limit soil and chemical runoff into a nearby stream. Such actions may help demonstrate compliance with other State or Federal requirements, such as State plans to meet Federal TMDL requirements. ACEP may help landowners meet any compliance responsibilities that they may have under the Endangered Species Act. Also, ACEP–WRE implementation provides new habitat through the restoration of degraded wetlands that benefits wildlife. Even in the absence of a FWS critical habitat listing, as is

[1] Farmland refers to agricultural land used in crop production and livestock production, *i.e.,* cropland and pasture. For the purposes of this document, farmland does not include grasslands.

generally the case, land enrolled in ACEP could benefit at-risk species.

NRCS has a long-term responsibility to ensure ACEP program objectives are achieved and statutory requirements are met on these lands. Monitoring policy for these lands is in place to guide NRCS in meeting these responsibilities and to maintain working relationships with landowners. In addition, the Statement of Federal Financial Accounting Standards 29 (SFFAS 29) considers easements held by the United States as Stewardship Lands which must be accounted for as part of the agency's annual financial accountability reporting. The SFFAS 29 requires that the ''Condition'' of all Stewardship Lands be reported regularly. Therefore, NRCS incorporates this additional financial accounting responsibility to report on the condition of Stewardship Lands into its monitoring requirements by assessing compliance with the terms of the easement and whether the easement is meeting program objectives. NRCS added functionality to its easement database to aid its State Offices in tracking monitoring events and observations.

NRCS requires an annual monitoring review of all ACEP easements to ensure compliance with easement terms and that program purposes are being met. For ACEP–ALE easements, NRCS requires the eligible entity to submit annual monitoring reports to NRCS for all ALE easements it holds, while NRCS conducts the annual monitoring of all ACEP–WRE easements.

Data, however, currently do not exist that would allow for parsing, or attributing, different potential benefits to the suite of motivations that might result in a producer participating in this program. What can be said, is that those actions benefit the public as a whole and the ACEP easement payment compensates the landowner for the rights they are encumbering as a result of participating in ACEP. In addition, those transfer payments from the Federal Government to farmers, landowners, and producers may also create incentives that cause changes in the way society uses its resources. As mentioned, we lack data with which to estimate and attribute the overall social costs or benefits.

NRCS is committed to the continual improvement of its collection and analysis of administrative and programmatic data to ensure that program benefits are being achieved through adoptions and implementation of targeted resource-based policies and procedures. Given the existing limitation and lack of data, NRCS will investigate ways to quantify the incremental benefits obtained from this program.

TABLE ES–2—POTENTIAL BENEFITS FROM THE AGRICULTURAL CONSERVATION EASEMENTS PROGRAM DESCRIBED IN THE 2014 FARM BILL BY RECIPIENT

Ecosystem function	Ecosystem service	Wetlands reserve easements	Agricultural lands easements
Benefits likely to accrue to private landowner			
Tree growth medium	Commercial timber harvest	√	
Fish habitat	Commercial fish harvest	√	
Grassland preservation	Forage production	√	√
Benefits that potentially accrue to both private landowner and public			
Wildlife habitat	Recreational waterfowl harvest	√	
Wildlife habitat	Recreational upland species harvest	√	√
Land for Food Production	Local Food Production		√
Recreation Opportunities	Agri-tourism	√	√
Potential Social Benefits			
Flood retention	Reduced flood flows/peaks	√	√
Water filtration	Water Quality	√	√
Endangered and Threatened wildlife habitat	Biodiversity	√	√
Open Space	Scenic quality and rural characteristics	√	√
Carbon Sequestration	Carbon Storage	√	√
Groundwater Recharge	Water Quantity	√	√

Summary of Request for Comments

NRCS seeks general comments related to how to make the provisions easier to understand. In addition, NRCS seeks public comment related to the ACEP regulation adopted by this interim rule, including seeking comment on the following topics:

• Access—Under ALE, NRCS has modified the requirements for what constitutes sufficient access to the easement to be less stringent than what is required by the Department of Justice title standards for WRE easements. Should NRCS adopt this greater flexibility for eligible entities on what constitutes sufficient access for ALE easements and what specific conditions should be considered sufficient access under ALE to ensure the federal investment is protected?

• New terms—NRCS defined several new terms to implement new statutory authorities. What improvements to the definitions and implementation of the associated provisions should NRCS incorporate? The new terms include *active agricultural production, agricultural land easement plan,* the easement administration definitions (*easement modification, easement exchange, easement subordination,* and *easement termination*), and *grassland of special environmental significance.*

• Project Selection Criteria and Weightings—What additional criteria should NRCS adopt in its allocation of funds and selection of ACEP projects, what weighting should NRCS provide to existing or new criteria, should this weighting of particular ranking factors occur at the National or State level, and what other changes would assist NRCS in selecting projects that best further ACEP purposes.

• ALE Valuation methods—What other types of ''industry methods'' should NRCS allow for determining

agricultural land easement ''fair market value'' for Federal match requirements?

• Projects of Special Significance—Did NRCS select appropriate criteria for determining projects of special significance and what other criteria should NRCS consider?

• Standard Minimum Easement Deed Terms—NRCS has developed a standard set of minimum deed terms that implement the minimum requirements that must be addressed by provisions in every ALE deed. What improvements can NRCS make to these standard deed terms?

List of Subjects in 7 CFR Part 1468

Agricultural operations, conservation practices, conservation payments, conservation easements, farmland protection, grasslands, natural resources, soil conservation, wetlands, wildlife.

For the reasons stated in the preamble, the Natural Resources Conservation Service revises part 1468 of Title 7 of the CFR to read as follows:

PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Agricultural Land Easements

Subpart C—Wetland Reserve Easements

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865–3865d.

Subpart A—General Provisions

§ 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS).

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

§ 1468.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS may seek advice from the State Technical Committee on the identification of lands of statewide importance, development of a priority ranking process, and related technical matters.

(c) NRCS may delegate at any time its wetlands reserve easement management responsibilities to other Federal or State agencies or conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(d) NRCS may delegate at any time its wetlands reserve easement monitoring and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(e) NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(f) The Chief may allocate funds for purposes related to: encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; special pilot programs for easement management and monitoring; cooperative agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans; or for other goals of the ACEP found in this part.

(g) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part.

(h) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision is necessary to further the purposes of ACEP under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985. The waiver must further ACEP purposes while also addressing whether the purpose and conservation objectives of the RCPP project(s) are consistent with the specific Wetland Reserve Easement (WRE) or Agricultural Land Easement (ALE) conservation purpose and objectives. No waiver will result in reducing the quality of wetland wildlife habitat that is restored under WRE, or the protection for agricultural viability under ALE.

(i) To assist in RCPP implementation the Chief may also waive the applicability of the limitation in section 1001D(b)(2) of the Food Security Act of 1985 for participating landowners if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

§ 1468.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

30-year Contract means an ACEP–WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Access means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

Acreage owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe or the Bureau of Indian Affairs.

Active agricultural production means that on lands that meet the definition of being in agricultural use, agricultural or forest-related products or livestock are being produced or have been produced within one year of the date of application by an eligible entity for funding under subpart B of this part. Land may also be considered in active agricultural production if it is current or former CRP land that is planted, considered planted, or in conserving use as determined by NRCS.

Agreement means the document that specifies the obligations and rights of NRCS and any person, legal entity, or eligible entity who is participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, a wetland reserve easement restoration agreement, a cooperative agreement, a partnership agreement, or an interagency agreement.

Agreement to purchase means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the wetland reserve easement acquisition process and to incur costs for surveys, title clearance, due diligence activities, and closing procedures on the easement.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

Agricultural uses means those activities defined by a State's farm or ranch land protection program, or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, degrade soils, the agricultural nature of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils, the agricultural nature of the land, or related natural resources.

Agricultural land easement means an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan.

Agricultural land easement plan means the document developed by NRCS or provided by the eligible entity and approved by NRCS, in consultation with the eligible entity and landowner, that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. The agricultural land easement plan includes a description of the farm or ranch management system, conservation practices that address the resource concerns for which the easement was enrolled, and any required component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part. Where appropriate, the agricultural land easement plan will include conversion of highly erodible cropland to less intensive uses.

Beginning farmer or rancher means an individual or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years and who will materially and substantially participate in the operation of the farm or ranch. This requirement applies to all members of a legal entity.

(2) In the case of an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Certified entity means an eligible entity that NRCS has determined to meet the certification requirements in 1468.27 for the purposes of ACEP–ALE.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated the authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency (FSA) has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Commodity Credit Corporation (CCC) is a wholly-owned government corporation within the Department of Agriculture.

Compatible use means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, timing, frequency, intensity, and duration limitations prescribed by NRCS.

Conservation plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and where appropriate, will include conversion of highly erodible cropland to less intensive uses; and

(3) Is developed in accordance with 7 CFR part 12.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the CCC pursuant to 16 U.S.C. 3831–3836.

Converted wetland means a wetland that has been drained, dredged, filled,

leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program under subpart B or the document that authorizes the transfer of assistance between NRCS and a non-Federal entity associated with implementation of the program under subpart C.

Cost-share payment means the payment made by NRCS to an eligible entity for the purchase of an ALE easement as set forth in subpart B of this part.

Dedicated fund means an account held by a nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

Easement area means the portion of a parcel that is encumbered by an ACEP easement.

Easement exchange means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its real property rights or interests in an easement which are replaced by real property rights or interests granted through an easement that has equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights in an easement, and easement exchanges are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement.

Easement modification means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights in an easement, and easement modifications are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement payment means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP–WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts.

Easement restoration agreement means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract enrollment.

Easement subordination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate its real property rights on all or a portion of an easement as part of an easement exchange or easement modification. The subordinated rights will be replaced by rights that are of equivalent or greater conservation value, acreage, and economic value to the United States. NRCS is not required to subordinate any of its rights in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement termination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate its rights in an easement or portion thereof to facilitate a project that addresses a compelling public need for which there is no practicable alternative and such termination action will result in equivalent or greater conservation value and economic value to the United States, and the United States is provided compensation for such termination. NRCS is not required to terminate any of its rights in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

Eligible activity means an action other than a conservation practice that is included in the Wetland Reserve Plan of Operations (WRPO), as applicable, and that has the effect of alleviating problems or improving the condition of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an easement or 30-year contract.

Eligible entity means an Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland or grassland protection program that purchases agricultural land easements for the purpose of protecting agriculture use and related conservation values, including grazing uses and related conservation values, by limiting conversion to nonagricultural uses of the land.

Eligible land means private or Tribal land that NRCS has determined to meet the requirements of § 1468.20 or § 1468.30 of this part.

Fair market value means the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart B or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or areawide market analysis or survey, as established in subpart C.

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, bio-fuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, bio-fuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for

agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include specific intra-family succession agreements or business asset transfer strategies to create opportunities for veteran farmers or ranchers or other historically underserved landowners.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, animal, and energy resources applicable to the local area for which it is prepared.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest land means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

Forest land of statewide importance means forest land that NRCS, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

Forest management plan means a site-specific plan developed or approved by NRCS, in consultation with the eligible entity and the landowner, that describes management practices to conserve, protect, and enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by NRCS. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements.

Grassland of special environmental significance means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to nongrassland uses or fragmentation; and the land is:

(1)(i) Rangeland, pastureland, or shrubland on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Improved, naturalized pastureland and rangeland; and

(2)(i) Provides, or could provide, habitat for threated or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types, or

(iii) Provides protection of highly sensitive natural resources.

Grasslands management plan means the site-specific plan developed or approved by NRCS that describes the management system and practices to conserve, protect, and enhance the viability of the grassland. The grasslands management plan will include a description of the grassland management system consistent with NRCS practices contained in the FOTG, including the prescribed grazing standard for easements that will be managed using grazing; the management of the grassland for grassland-dependent birds, animals, or other resource concerns for which the easement was enrolled; the permissible and prohibited activities; and any associated restoration plan or conservation plan. The grasslands management plan is a component of either an agricultural land easement plan or wetland reserve plan of operations.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Historically underserved landowner means a beginning, limited resource, or socially disadvantaged farmer or rancher.

Imminent harm means easement violations or threatened violations that, as determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including, for the purposes of this part, pueblos.

Land evaluation and site assessment system means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

Limited resource farmer or rancher means either:

(1)(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Maintenance means work performed to keep the wetland reserve easement functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices or activities on a wetland reserve easement, as approved by NRCS.

Natural Resources Conservation Service (NRCS) means an agency of the U.S. Department of Agriculture (USDA), including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

Nongovernmental organization means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since, the formation of the organization and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) and (2) of that Code, or

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Other interests in land include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further the agricultural use of the land and other ACEP–ALE purposes.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland and farm and ranch land of statewide and local importance.

Parcel means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

Participant means a person, legal entity, Indian Tribe, native corporation, or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase or 30-year contract, or the cooperative agreement for agricultural land easements.

Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire an agricultural conservation easement before the legal title to these rights has been conveyed for the purposes of protecting the agricultural use and future viability, including the protection of grazing uses and related conservation values, by limiting nonagricultural uses of the land or by restoring and conserving eligible land.

Permanent easement means an easement that lasts in perpetuity.

Person means a natural person.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

Private land means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this part.

Projects of special significance means projects identified by the Chief using the criteria identified in § 1468.24 of this part.

Right of enforcement means the right of the United States to inspect the easement area and to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, and includes the Directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Technical Committee means a committee established pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by NRCS. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland reserve easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the United States, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Wetland reserve plan of operations (WRPO) means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, and protected to achieve the purposes of the wetland reserve easement enrollment.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at-risk species;

(2) Protection and improvement of water quality;
(3) Attenuation of water flows due to flood;
(4) The recharge of ground water;
(5) Protection and enhancement of open space and aesthetic quality;
(6) Protection of flora and fauna which contributes to the Nation's natural heritage;
(7) Carbon sequestration; and
(8) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:
(1) The original vegetation community and hydrology are, to the extent practical, re-established; or
(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the easement area.

§ 1468.4 Appeals.

(a) ACEP–ALE eligibility of entities. An entity which has submitted an ACEP–ALE application to be considered an eligible entity may obtain a review of any administrative determination concerning their eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.
(b) ACEP–WRE applicants and participants. An applicant or participant in the ACEP–WRE may obtain a review of any administrative determination concerning eligibility for participation or receipt of payment utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.
(c) Easement administration determinations under ACEP after easement closing. NRCS determinations that are made pursuant to its rights in an ACEP-funded easement after closing may be appealed to the State Conservationist as specified in the notice provided to the landowner when NRCS exercises its rights under the easement. Such determinations are not subject to appeal under 7 CFR part 11.

§ 1468.5 Scheme or device.

(a) If it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.
(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving anyone of a program benefit, or for the purpose of obtaining a payment to which they would otherwise not be entitled.

§ 1468.6 Subordination, exchange, modification, and termination.

(a) After an easement has been recorded, no subordination, exchange, modification, or termination will be made in any interest in land, or portion of such interest, except as approved by the NRCS.
(b) NRCS may approve subordinations, exchanges, modifications, or terminations if NRCS determines that:
(1) It is in the Federal Government's interest to subordinate, exchange, modify, or terminate the interest in the land enrolled in the program;
(2) The subordination, exchange, modification, or termination action will address a compelling public need or will facilitate the practical administration and management of the easement area or the program, as determined by the NRCS;
(3) There is no practicable alternative that would address the compelling public need and avoid the easement area;
(4)(i) The change will not adversely affect the conservation functions and values for which the easement was acquired or
(ii) If there are no practicable alternative that exists other than impact to the conservation value of the easement area, such adverse impacts have been minimized to the greatest extent practicable, and any remaining adverse impacts mitigated by enrollment of other lands that provide equal or greater conservation functions and values, as determined by NRCS, at no cost to the government;
(5) The easement subordination, modification, exchange, or termination under this section will not affect more than 10 percent of the original easement area. NRCS may authorize a greater percentage of the original easement area to be affected if NRCS determines that it is impracticable to achieve program purposes on the original easement area; and
(6) The subordination, exchange, modification, or termination action will result in comparable conservation functions and value and equivalent or greater economic value to the United States as determined pursuant to paragraph (d) of this section.
(c) NRCS must determine that the landowner and, if applicable, the eligible entity agree to such easement subordination, modification, exchange, or termination prior to considering that such easement administration action should be approved.
(d) A determination of equal or greater economic value to the United States under paragraph (b) of this section will be made in accordance with an approved easement valuation methodology for ALE easements under subpart B or for WRE easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.
(e) Subordinations, exchanges, modifications, or terminations must result in equal or greater conservation and economic values to the United States. Subordinations, exchanges, or modifications of ACEP easements must result in no net loss of easement acres.
(f) When reviewing a proposed action under this section, the preferred alternative is to avoid the easement area. If the easement area cannot be avoided entirely, then the preferred alternative should minimize impacts to the original easement area and its conservation functions and values.
(g) Easement modifications, including subordinations, are preferred to easement exchanges which involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.
(h) Replacement of easement acres as part of an easement exchange must occur within the same State and within the same eight-digit watershed as determined by the hydrologic unit codes developed by the U.S. Geological Survey.
(i) Where NRCS determines that recordation of a new deed is necessary to effect an easement administration action under this section, NRCS will use the most recent version of the ACEP deed document or deed terms approved by NRCS.
(j) If a modification, subordination or exchange involves an amended or new easement deed, the amended or new easement deed will be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation of documents.
(k) At least 90 days prior to taking any termination action, written notice of such termination action will be

provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(l) A termination must meet criteria identified in this part and are limited to those circumstances where NRCS determines that the purposes of the program can no longer be achieved on the original easement area or the terms of the easement are no longer enforceable and there are no acceptable replacement acres available. NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, and legal filing fees.

(m) *Easement plan.* Insofar as is consistent with the easement and applicable law, NRCS may approve modifications to an easement plan that do not affect provisions of the easement. Easement plans include any agricultural land easement plans and component plans, wetland reserve plans of operations, or wetland reserve easement restoration agreements. Any easement plan modification must meet ACEP regulations and program objectives and must result in equal or greater conservation benefits on the enrolled land.

§ 1468.7 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to recording the easement in the applicable land records or executing the 30-year contract may void the availability of ACEP funding for that easement transaction, unless the new landowner is determined eligible, the transfer is approved by NRCS, and the new landowner is willing to comply with ACEP requirements.

(b) *Payments to participants.* For wetland reserve easements with annual installment payments, any remaining easement payments will be made to the original participants unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS will bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1468.8 Payments not subject to claims.

Any cost-share, contract, agreement, or easement payment or portion, thereof, due any person, legal entity, Indian Tribe, eligible entity, or other party under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1468.9 Assignments.

Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1468.10 Environmental markets.

(a) *Ecosystem services credits for conservation improvements under a wetland reserve easement.* Landowners may obtain environmental credits under other programs but such action must not adversely affect the interests granted under the easement to the United States or be inconsistent with or defeat the conservation purpose for which the easement is acquired.

(b) *Ecosystem Services Credits Related to an Agricultural Land Easement:* Landowners may obtain environmental credits under other programs but such action must not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement or be inconsistent with or defeat the conservation purpose for which the easement is acquired.

Subpart B—Agricultural Land Easements

§ 1468.20 Program requirements.

(a) *General.* (1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is subject to a written pending offer from an eligible entity for the purpose of protecting the agricultural use, including grazing, and related conservation values of the land by limiting nonagricultural uses of the land.

(2) To participate in ACEP–ALE, eligible entities as identified in paragraph (b) of this section must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities with applications selected for funding must enter into a cooperative agreement with NRCS and use the NRCS required minimum deed terms specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan as approved by NRCS.

(3) Under the agreement, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement and the eligible entity will provide a share that is at least equivalent to the Federal share, and at least 50 percent of the eligible entity share is from the eligible entity's own cash resources unless otherwise specified in this part.

(4) The duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration permitted by State law.

(b) *Entity eligibility.* (1) To be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligible entity as listed in § 1468.3. In addition, eligible entities interested in receiving ACEP–ALE funds must provide NRCS sufficient evidence of:

(i) A commitment to long-term conservation of agricultural lands,

(ii) A capability to acquire, manage, and enforce easements,

(iii) Sufficient number of staff dedicated to monitoring and easement stewardship, and

(iv) The availability of funds at the time of application sufficient to meet the eligible entity's contribution requirements for each parcel proposed for funding.

(2) All entities identified on the application or agreement must:

(i) Ensure that their records and the records of all landowners with parcels selected for funding have been established in the USDA customer records system and are responsible for ensuring that USDA has all the documentation needed to establish these records, and

(ii) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170, and maintain such registration for the duration of the cooperative agreement.

(c) *Landowner eligibility.* Under ACEP–ALE, the parcel landowners must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income

Limitation provisions of 7 CFR part 1400;

(2) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and

(3) Have their records established in the USDA customer records system.

(d) *Land eligibility.* (1) Land will only be considered eligible for enrollment in ACEP–ALE based on NRCS determination that such land:

(i) Is private or Tribal land on a farm or ranch subject to a written pending offer by an eligible entity,

(ii) Contains at least 50 percent prime or unique farmland, or designated farm and ranch land of State or local importance unless otherwise determined by NRCS, contains historical or archaeological resources, the enrollment of which would protect grazing uses and related conservation values by restoring and conserving land, or furthers a State or local policy consistent with the purposes of the ACEP–ALE,

(iii) Is cropland; rangeland; grassland or land that contains forbs or shrubland for which grazing is the predominant use; located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value; pastureland; or nonindustrial private forest land that contributes to the economic viability of a parcel offered for enrollment or serves as a buffer to protect such land from development, and

(iv) Possesses suitable onsite and offsite conditions which will allow the easement to be effective in achieving the purposes of the program.

(2) If land offered for enrollment is determined eligible under paragraph (d)(1) of this section, then NRCS may also enroll land that is incidental to the eligible land if the incidental land is determined by NRCS to be necessary for the efficient administration of an agricultural land easement.

(3) Eligible land, including eligible incidental land, may not include forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before the easement is purchased and compensation paid to the landowner unless NRCS has approved an alternative means by which the forest land's contribution to the economic viability of the land has been demonstrated.

(e) *Ineligible land.* The following land is not eligible for enrollment in ACEP–ALE:

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes;

(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government;

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land;

(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the program;

(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land uses;

(6) Land which NRCS determines to have unacceptable exceptions to clear title or insufficient legal access; or

(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP–ALE unless it is determined by NRCS that the third party rights will not harm or interfere with the conservation values or agricultural uses of the easement, that any methods of exploration and extraction will have only a limited and localized impact on the easement, and the limitations are specified in the ALE deed.

§ 1468.21 Application procedures.

(a) To apply for enrollment under a new agreement or if applicable, under an existing agreement in a subsequent fiscal year, an eligible entity must submit an entity application for an ACEP–ALE agreement and any associated individual parcel applications to NRCS in the State where parcels are located.

(b) Applications may be submitted on a continuous basis or in response to specific program solicitations. NRCS may announce one or more application cut-off dates for funding consideration within a given fiscal year.

(c) NRCS will determine the entity, land, and landowner eligibility based on the application materials provided by the eligible entity, onsite assessments, and the criteria set forth in § 1468.20.

(d) At the end of each fiscal year, the lists of pending, unfunded eligible parcels will be cancelled unless the eligible entity requests that specific parcels be considered for funding in the next fiscal year and provides updated application information to NRCS.

§ 1468.22 Establishing priorities, ranking considerations and project selection.

(a) After NRCS determines the eligibility of the landowner and the land, it can score and rank the parcels for funding. NRCS will use national and State criteria to score and rank eligible parcels. The national ranking criteria will comprise at least half of the ranking score. The State criteria will be developed by NRCS on a State-by-State basis, with advice from the State Technical Committee. Eligible parcels are ranked at the State level.

(b) The national ranking criteria are:

(1) Percent of prime, unique, and other important farmland in the parcel to be protected;

(2) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Existence of a farm or ranch succession plan or similar plan established to address farm viability for future generations;

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use;

(9) Proximity of the parcel to other agricultural operations and agricultural infrastructure;

(10) Maximizing the protection of contiguous acres devoted to agricultural use;

(11) Whether the land is currently enrolled in CRP in a contract that is set

to expire within one year and is grassland that would benefit from protection under a long-term easement; and

(12) Other additional criteria as determined by NRCS.

(c) State or local criteria as determined by NRCS, with advice of the State Technical Committee, may only include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The eligible entity's performance in managing and enforcing easements. Performance must be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, environmental benefits, species protection, or climate change resiliency;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the land evaluation and site assessment system or equivalent measure for grassland enrollments. This score serves as a measure of agricultural viability (access to markets and infrastructure); and

(7) Other criteria determined by NRCS that will allow for the selection of parcels that will achieve ACEP–ALE purposes.

(d) If NRCS determines that the purchase of two or more agricultural land easements are comparable in achieving program goals, NRCS will not assign a higher priority to any one of these agricultural land easements solely on the basis of lesser cost to the program.

(e) NRCS will rank all eligible parcels that have been submitted prior to an application cut-off date in accordance with the national and State ranking criteria before selecting parcels for inclusion in a cooperative agreement.

(f) NRCS will list the selected eligible parcels in the cooperative agreements with the eligible entities that submitted the parcels, and the cooperative agreements will be signed by NRCS and eligible entities.

(g) If the terms of the cooperative agreement allow for amendments in a subsequent fiscal year, the subsequent fiscal year's selected eligible parcels will be identified on an amendment to the cooperative agreement for that fiscal year. Funds for each subsequent fiscal year's parcels will be obligated with new NRCS and eligible entity signatures on each fiscal year's amendment. Parcels funded on each fiscal year's amendment will have a separate deadline for easement purchase, requesting reimbursement, and funding expiration.

§ 1468.23 Cooperative agreements.

(a) NRCS will enter into a cooperative agreement with selected eligible entities that stipulates the terms and conditions under which the eligible entity is permitted to use ACEP–ALE funding, and will incorporate all ACEP–ALE requirements. NRCS will make a cooperative agreement template available to the eligible entities. The cooperative agreement will address:

(1) The interests in land to be acquired, including the United States' right of enforcement, the minimum deed requirements, as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with ACEP–ALE funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with ACEP–ALE funds;

(5) The requirement for each easement to have an agricultural land easement plan that is approved by NRCS and signed by the landowner and the eligible entity prior to execution of the easement deed and payment of easement compensation to the landowner;

(6) The allowance of eligible parcel substitution upon mutual agreement of the parties;

(7) The certification by the landowner at the time of easement execution and payment of easement compensation of the extent of any charitable contribution the landowner has provided to eligible entity; and

(8) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(b) The term of cooperative agreements will be up to 5 fiscal years following the fiscal year the agreement is signed for certified entities and up to 3 fiscal years following the fiscal year the agreement is signed for other eligible entities.

(c) The cooperative agreement will include an attachment listing the eligible parcels accepted by the NRCS. This list will include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information.

(d) The cooperative agreement will require the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

(e) With NRCS approval, the eligible entity may substitute acres within a pending easement offer. Substituted acres must not decrease the monetary value of the offered easement or reduce the easements capability in meeting program purposes. With NRCS approval, an eligible entity may substitute pending easement offers within their cooperative agreement. The substituted landowner and easement offer must meet eligibility criteria as described in § 1468.20. NRCS may require re-ranking of substituted acres within an easement offer and substituted easement offers within a cooperative agreement.

§ 1468.24 Compensation and funding for agricultural land easements.

(a) *Determining the fair market value of the agricultural land easement.* (1) The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement, as determined using:

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions,

(ii) An areawide market analysis or survey, or

(iii) Another industry-approved method approved by NRCS.

(2) Prior to receiving funds for an agricultural land easement, the eligible entity must provide NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets the requirements of this part.

(3) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions as selected by the eligible entity.

(4) If the fair market value of the easement is determined using an areawide market analysis or survey, the

areawide market analysis or survey must be completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis or survey. The use of areawide market analysis or survey must be approved by NRCS prior to entering a cooperative agreement.

(5) Requests to use another industry-approved method must be submitted to NRCS and approved by NRCS prior to entering into the cooperative agreement. NRCS will identify the applicable industry standards and any associated NRCS specifications based on the methodology approved.

(6) NRCS will review for quality assurance purposes, appraisals, areawide market analysis or surveys, valuation reports, or other information resulting from another industry-approved method approved for use by NRCS. Eligible entities must provide a copy of the applicable report or other information used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned date of easement execution and payment of easement compensation to the landowner.

(7) Prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner, NRCS must approve the determination of the fair market value of the agricultural land easement upon which the Federal share will be determined.

(8) The landowner may make a charitable donation for a qualified conservation contribution (as defined by Section 170(h) of the Internal Revenue Code of 1986) to the eligible entity as provided in paragraph (b) of this section.

(b) *Determining the Federal share of the agricultural land easement.* (1) Subject to the statutory limits, NRCS may provide up to 50 percent of the fair market value of the agricultural land easement. An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is at least equivalent to the Federal share.

(2) An eligible entity may include as part of its share a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the amount of the Federal share.

(3) NRCS may authorize a waiver to increase the Federal share of the cost an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if:

(i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part,

(ii) An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is no less than 33.33 percent of the Federal share. The eligible entity share may include a qualified landowner contribution if the eligible entity contributes its own cash resources in an amount that is at least 16.67 percent of the Federal share, and

(iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grasslands of special environmental significance attributes are protected.

(4) NRCS may waive a portion of the applicable eligible entity cash contribution requirement for enrollments that NRCS determines are of projects of special significance, including ALE enrollments that have received a waiver as grasslands of special environmental significance waiver. The waiver of the entity cash contribution does not result in an increase in the applicable Federal share and may only be authorized if NRCS determines the parcel is a project of special significance and NRCS determines that—

(i) The transaction is subject to an increase in the private landowner donation that is equal to the amount of the waiver,

(ii) The increase in the landowner donation is voluntary,

(iii) The property is in active agricultural production,

(iv) The agricultural land easement plan will address the protection of the attributes resulting in the parcel being a project of special significance, and

(v) The eligible entity contributes its own cash resources in an amount that is:

(A) For projects of special significance that are not grasslands of special environmental significance, at least 25 percent of the amount of the Federal share, or at least 10 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land; and

(B) For enrollment on lands that has received a grasslands of special environmental significance waiver, at least 8.33 percent of the amount of the Federal share, or at least 3.33 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land.

(vi) The parcel must meet definition of project of special significance and meet one or more of the following national criteria. The parcel is:

(A) Listed on the National Register of Historic Places or is a traditional cultural property;

(B) Located within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land;

(C) Located within a metropolitan statistical area;

(D) An education or demonstration farm or ranch focused on agricultural production and natural resource conservation;

(E) A farm or ranch operated for the purpose of increasing participation in agriculture and natural resource conservation by underserved communities, veterans, beginning farmers or ranchers, or disabled farmers or ranchers;

(F) Officially designated as having been in the same family ownership for over 100 years; or

(G) Meets the definition of grasslands of special environmental significance.

(c) *Uses of NRCS ACEP–ALE funds.* (1) ACEP–ALE funds may not be used for eligible entity expenditures for appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(2) NRCS will conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and its hazardous materials reviews.

(3) NRCS may provide technical assistance to develop an agricultural land easement plan or component plans or may provide ACEP–ALE funds to technical service providers (TSP) under 7 CFR part 652 to develop the agricultural land easement plan or component easement plans.

§ 1468.25 Agricultural land easement deeds.

(a) Under ACEP–ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ACEP–ALE cooperative agreement. The easement deed will require that the easement area be maintained in accordance with ACEP–ALE goals and objectives for the term of the easement.

(b) Written pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation

easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must contain the minimum deed requirements as specified by NRCS in the cooperative agreement, either in the deed or through an addendum that is incorporated therein.

(d) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) The eligible entity must submit individual agricultural land easement deeds to NRCS at least 90 days before the planned easement purchase date and be approved by NRCS in advance of use.

(2) Eligible entities with multiple eligible parcels in a cooperative agreement may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(3) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by National Headquarters and that the appropriate site-specific information has been included.

(e) NRCS reserves the right to require additional specific language or require removal of language in the agricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) Among the minimum deed requirements specified in the cooperative agreement, the deed must:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement remains in effect for the duration of the easement and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Ensure compliance with an agricultural land easement plan that is provided by the eligible entity in consultation with the landowner, approved by NRCS, and implemented according to NRCS requirements. NRCS may provide technical assistance for the development or implementation of the agricultural land easement plan. If the parcel contains highly erodible land, the conservation plan component of the agricultural land easement plan will be developed and managed in accordance with the Food Security Act of 1985 and its associated regulations. The access must be sufficient to provide the United States ingress and egress to the easement area to ensure compliance pursuant to its right of enforcement.

(3) Specify that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2 percent impervious surface limitation at the time that a parcel is approved for funding,

(ii) NRCS may waive the 2 percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces,

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired,

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP–ALE easements must include language limiting the amount of impervious surfaces within the easement area.

(4) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP–ALE. This provision cannot be waived.

(5) Include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the agricultural land easement and this part. Any substantive amendment, including any subordination of the terms of the easement or modifications, exchanges, or terminations of the easement area, must be approved by NRCS prior to recordation or else the action is null and void.

(6) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(7) Prohibit the subdivision of the property subject to the agricultural land easement, except where state or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(8) Include specific protections related to the purposes for which the agricultural land easement is being purchased, including provisions to protect historic or archaeological resources or grasslands of special environmental significance.

(9) Other minimum deed terms specified by NRCS to ensure that ACEP–ALE purposes are met.

(g) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that could be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. If an eligible entity agrees to use the standard set of minimum deed terms, NRCS and the eligible entity will identify in the cooperative agreement those minimum standard deed terms as a requirement and the review of individual deeds may not be required. The minimum standard deed terms will specify that if such terms conflict with other terms of the deed, the NRCS terms superseded and prevail. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms.

(h) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with a governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management and enforcement responsibilities.

(i) All agricultural land easement deeds acquired with ACEP–ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the cooperative agreement.

§ 1468.26 Agricultural land easement plan.

(a) The terms of the agricultural land easement deed will permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan, approved by NRCS and the landowner. An agricultural land

easement plan is required on all ACEP–ALE easements and at a minimum must:

(1) Describe the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired;

(2) Identify required and recommended conservation practices that address the purposes and resource concerns for which the parcel was selected;

(3) Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed; and

(4) If the agricultural land easement contains certain land use types, a component plan must be incorporated by reference into the agricultural land easement plan for each land use type present on the easement as follows:

(i) Grasslands must have a grasslands management plan as defined in this part which includes a description of the grazing management system consistent with NRCS prescribed grazing standards,

(ii) Forest land as described in § 1468.20(d)(3) must have a forest management plan, and

(iii) Highly erodible land must have a conservation plan wherein NRCS may require the conversion to less intensive uses. The terms of the conservation plan must be developed and managed in compliance with the Food Security Act of 1985 and its associated regulations.

(5) The eligible entity is responsible to obtain and provide the agricultural land easement plan to NRCS. The agricultural land easement plan may be developed by NRCS, a qualified TSP, or an NRCS-certified conservation planner with current certifications.

(6) Prior to the execution of the easement by the eligible entity and the landowner and payment of easement compensation to the landowner, the agricultural land easement plan must be approved by NRCS and be signed by the landowner and the eligible entity. The eligible entity is primarily responsible to ensure compliance with any required provisions of the agricultural land easement plan.

(b) [Reserved].

§ 1468.27 Eligible entity certification.

(a) To be considered for certification, an entity must submit a written request for certification to NRCS, which specifically addresses the following items:

(1) An explanation of how the entity meets the requirements identified in § 1468.20(d) of this section;

(2) An agreement to use for ACEP–ALE funded acquisitions easement valuation methodologies identified in section § 1468.24 of this part;

(3) Proof that the entity holds, manages, and monitors a minimum of 25 agricultural land conservation easements, unless the entity requests and receives a waiver of this requirement from NRCS;

(4) Proof that the entity holds, manages, and monitors a minimum of five ACEP–ALE, FRPP, or Farmland Protection Program conservation easements;

(5) A showing of a demonstrated ability to complete acquisition of easements in a timely fashion;

(6) A showing that it has the capacity to enforce the provisions of easement deeds and history of such enforcement;

(7) For nongovernmental organizations, information that the entity possesses a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized. The fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(8) A plan for administering easements enrolled under this part, as determined by NRCS.

(b) NRCS will notify an entity in writing whether they have been certified and the rationale for the agency's decision. When NRCS determines an entity qualifies as certified:

(1) NRCS may enter into a cooperative agreement with the certified entity through which NRCS may obligate funding for up to 5 fiscal years. New parcels or prior-year unfunded parcels submitted for funding by certified entities must compete for funding each year. Selected parcels and funding will be added to the existing cooperative agreement using an amendment to the cooperative agreement. Amendments added in the last year of the agreement cannot be extended;

(2) NRCS will accept applications from certified entities continuously throughout the fiscal year;

(3) The terms of the cooperative agreement will include the minimum deed terms and conditions to ensure that ACEP–ALE purposes will be met by the certified entity without requiring NRCS to pre-approve each easement transaction prior to closing.

(i) Certified entities may purchase easements without NRCS approving the agricultural land easement deeds, agricultural land easement plans, titles, or appraisals before the purchase of the easement;

(ii) Certified entities will prepare the agricultural land easement deeds, agricultural land easement plans, titles, and appraisals in accordance with NRCS requirements as identified in the cooperative agreement;

(4) NRCS may provide technical assistance to develop the agricultural land easement plan.

(5) NRCS will conduct quality assurance reviews of a percentage of the agricultural land easement transactions submitted by the certified entity for payment and annual monitoring reports submitted by the certified entity. The review will include whether the deed, title review, agricultural land easement plan, easement valuation determinations, and subsequent monitoring were conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity; and

(6) If an agricultural land easement deed, agricultural land easement plan, title, appraisal, or other easement valuation determination, or monitoring report fails the NRCS quality assurance review, NRCS will provide the certified entity an opportunity to correct the errors. If the certified entity fails to correct the errors to NRCS' satisfaction, NRCS will consider whether to allow the certified entity to continue to purchase ALE-funded easements without prior NRCS approval, to decertify the entity in accordance with paragraph (c) of this section, or require the certified entity to take administrative steps necessary to remedy the deficiencies.

(c) *Review and decertification of the certified entity.* (1) NRCS will conduct a review of the certified entity a minimum of once every 3 years to ensure that the certified entities are meeting the certification criteria established in this section.

(2) If NRCS determines that the certified entity no longer meets these criteria, the Chief will:

(i) Provide the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to correct the identified deficiencies, and

(ii) If NRCS determines the certified entity does not meet the criteria established in this part after the 180 days, NRCS will send written notice of decertification of the entity's certification status or eligibility for future ACEP–ALE funding. This notice will specify the actions that have not been completed to retain certification status, the actions entity must take to request certification status, the status of funds in the cooperative agreement; and the eligibility of the entity to apply for future ACEP–ALE funds. The entity may contest the Notice of Decertification in

writing to NRCS within 20 calendar days of receipt of the notice of decertification. The entity's letter must provide specific reasons why the decision to decertify is in error.

(3) The period of decertification may not exceed 3 years in duration, with duration of decertification based upon the seriousness of the facts; and

(4) The entity may be recertified upon application to NRCS, after the decertification period has expired, and when the entity has met the requirements as outlined under § 1468.20(d).

§ 1468.28 Violations and remedies.

(a) In the event of a violation of the agricultural land easement terms, the eligible entity will notify the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the agricultural land easement as determined by NRCS, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner and the eligible entity, reserves the right to enter upon the easement area if the annual monitoring report provided by the eligible entity documenting compliance with the agricultural land easement and the agricultural land easement plan is insufficient or is not provided annually, the United States has evidence of an unaddressed violation, or to remedy deficiencies or easement violations as it relates to the agricultural land easement plan. In the event of an emergency, the entry may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate or mitigate a potential or unaddressed violation with notification to the landowner and eligible entity provided at the earliest practicable time. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(d) The United States will be entitled to recover any and all costs from the eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the ACEP–ALE easement.

(e) In instances where an easement is terminated, the proponent of the termination action shall pay to CCC an amount determined by NRCS.

(f) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

Subpart C—Wetland Reserve Easements

§ 1468.30 Program requirements.

(a) *General.* (1) Under the ACEP–WRE, NRCS may purchase wetland reserve easements from with eligible landowners who voluntarily cooperate to restore, protect, and enhance wetlands on eligible private or Tribal lands. A 30-year contract enrollment option is also available for acreage owned by Indian Tribes.

(2) To participate in ACEP–WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

(3) NRCS may provide financial assistance through an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values and associated habitats.

(4) For ACEP–WRE enrollments, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, an interagency agreement, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS or its designee.

(5) The duration of a wetland reserve easement may be either perpetual, 30-years, or the maximum duration permitted by State law. The duration of a 30-year contract on acreage owned by Indian Tribes is 30 years.

(b) *Acreage limitations.* (1) No more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in CRP and ACEP–WRE, and no more than 10 percent of the total cropland in the county may be subject to an easement under ACEP–WRE.

(2) The limitations in paragraph (1) of this subsection do not apply to areas devoted to windbreaks or shelterbelts after November 28, 1990, or to cropland designated by NRCS with ''subclass w'' in the land capability classes IV through VIII because of severe use limitations due to factors related to excess water such as poor soil drainage, wetness, high water table, soil saturation, or inundation.

(3) NRCS and the Farm Service Agency will concur before a waiver of the 25 percent limit of paragraph (b)(1) of this section can be approved for an easement proposed for enrollment in ACEP–WRE. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* To be eligible to enroll in the ACEP–WRE, all landowners must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at 7 CFR part 1400 and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Provide any documentation required by NRCS as necessary to determine eligibility;

(3) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170; and

(4) For easement applications, have been the landowner of such land for the 24-month period prior to the time of application unless it is determined by NRCS that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner or pursuant to the terms of an existing trust,

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS,

that such land was not acquired for the purposes of placing it in the program. Adequate assurances will include documentation that the change of ownership resulted from circumstances such as:

(A) The prior landowner owned the land for 2 years or more and transferred ownership amongst members of the immediate family (father, mother, spouse, children, grandparents, or grandchildren),

(B) A completion of a contract for deed entered into 24 months or more prior to the application date,

(C) The new landowner had leased the land for agricultural purposes for 24 months or more prior to the application date, or

(D) The easement area is a portion of a larger property where the majority portion was acquired for agriculture purposes.

(4) Agree to provide such information to NRCS as the agency deems necessary to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *Transfer of parcel before purchase of easement.* When a parcel of land that has been accepted for enrollment into the ACEP–WRE is sold or transferred prior to NRCS purchase of the easement, NRCS will cancel the application or agreement to purchase and remove the acres from enrollment unless the new landowner meets the requirements of paragraph (c) of this section and accepts the terms and conditions of enrollment. The new landowner must submit required documentation for NRCS review and execute any required agreements or contracts. The decision to approve and execute an enrollment transferred prior to closing is at NRCS' discretion.

(e) *Land eligibility.* (1) Only private land or acreage owned by an Indian Tribe may be considered for enrollment into ACEP–WRE.

(2) NRCS will determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of such land and resultant wetland functions and values merit inclusion of such land in the program when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

(3) Land will only be considered eligible for enrollment in the ACEP–WRE if NRCS determines, in consultation with the FWS, that the enrollment of such land maximizes wildlife benefits and wetland function and values.

(4) To be determined eligible, NRCS must also determine that such land is—

(i) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands, if such land is identified by NRCS as:

(A) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop and retain wetland functions and values; or

(B) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored; or

(C) Farmed wetland and adjoining land enrolled in CRP that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; or

(D) A riparian area along a stream or other waterway that links, or after restoring the riparian area, will link wetlands protected by the ACEP–WRE easement, another easement, or other device or circumstance that achieves the same objectives as an ACEP–WRE easement; or

(ii) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of:

(A) A closed basin lake, together with adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide 50 percent share of the cost of the an easement; or

(B) A pothole and adjacent land that is functionally dependent on it; and

(C) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(5) If land offered for enrollment is determined eligible under this subsection, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not meet the requirements of paragraph (e)(4)(i)(D) of this section, and restored wetlands, but not more than NRCS, in consultation with the State Technical Committee, determines is necessary to maximize wildlife benefits and contribute significantly to wetland functions and values. NRCS will not enroll as adjacent or contiguous land any constructed wetlands that treat wastewater or contaminated runoff.

(6) To be enrolled in the program, eligible land must have sufficient access and be configured in a size and with boundaries that allow for the efficient management of the area for program purposes and otherwise promote and enhance program objectives as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in ACEP–WRE only if the land and landowner meet the requirements of this part and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in ACEP–WRE, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The following land is not eligible for enrollment in the ACEP–WRE:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land established to trees under the CRP, except in cases where the land meets all other WRE eligibility criteria, the established cover conforms to WRE restoration requirements and NRCS specifications, an active CRP contract will be terminated or otherwise modified upon purchase of the WRE easement, and any additional criteria NRCS uses to determine if enrollment of such lands would further the purposes of the program;

(3) Lands owned the United States other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP–WRE;

(6) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, including, but not limited to—

(i) Risk of hazardous substances either onsite or offsite,

(ii) Proposed or existing rights of way, either onsite or offsite, for infrastructure development, or

(iii) Adjacent land uses, such as airports, that would either impede

complete restoration or prevent wetland functions and values from being fully restored; or

(7) Land which NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

§ 1468.31 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an application to NRCS.

(b) *Preliminary agency action.* By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values and for other activities, such as the ranking and development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in costs.* In order to enhance the probability of enrollment in ACEP–WRE, the landowner or someone other than the landowner may offer to contribute financially to the cost of the acquisition or restoration of the wetland reserve easement to leverage Federal funds. This offer must be made in writing to NRCS.

§ 1468.32 Establishing priorities, ranking consideration and project selection.

(a) When evaluating easement or 30-year contract applications from landowners, NRCS, with advice from the State Technical Committee, may consider:

(1) The conservation benefits of obtaining an easement or other interest in the land, including but not limited to:

(i) Habitat that will be restored for the benefit of for migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed;

(ii) Extent and use of habitat that will be restored for threatened, endangered, or other at-risk species or number of different at-risk species benefitted;

(iii) Protection or restoration of native vegetative communities;

(iv) Habitat diversity and complexity to be restored;

(v) Proximity and connectivity to other protected habitats;

(vi) Extent of beneficial adjacent land uses;

(vii) Proximity to impaired water bodies;

(viii) Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types;

(ix) Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits.

(2) The cost effectiveness of each easement;

(3) Whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of this part would be achieved on the land;

(5) The productivity of the land;

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(7) Such other factors as NRCS determines are necessary to carry out the purposes of the program.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS will give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS, as may be appropriate.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on:

(1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; and

(2) Land that is currently enrolled in CRP in a contract that is set to expire within one year from the date of application and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP.

(d) Notwithstanding any limitation of this part regarding priority ranking, NRCS may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. NRCS may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. NRCS may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

§ 1468.33 Enrollment process.

(a) *Tentative selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in ACEP–WRE, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land.

(c) *Acceptance and effect of offer of enrollment*—(1) *Wetland reserve easement.* For applications requesting enrollment through a wetland reserve easement, NRCS will present an agreement to purchase to the landowner which will describe the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The easement compensation amount will be based upon the lowest of the fair market value of the land, the geographic area rate cap, or the landowner offer, as provided in § 1468.34 of this part. The landowner accepts enrollment in the ACEP–WRE by signing the agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *30-year contract.* For applications requesting enrollment of acreage owned by an Indian tribe through the 30-year contract option, NRCS will present an agreement to enter 30-year contract to the Tribal landowner which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The Tribal landowner accepts enrollment in the ACEP–WRE by signing the agreement to enter 30-year contract. NRCS will proceed with implementation of the WRPO after the 30-year contract has been executed.

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment document establishes the terms of enrollment consistent with the terms and conditions of this part and identifies the:

(i) Scope of the agreement between NRCS and the landowner,

(ii) Basis for NRCS to obligate funds, and

(iii) Nature and method through which NRCS will provide ACEP–WRE technical and financial assistance to the landowner.

(2) The agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land and sufficient access to the enrolled land as set forth under § 1468.37,

(ii) Implementing a WRPO which provides for the restoration and protection of the wetland functions and values,

(iii) Recording the easement in accordance with applicable State law,

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS and in accordance with Department of Justice Title Standards, and

(v) Withholding the landowner's share of the restoration cost from the easement payment for 30-year or non-permanent easement or 30-year contract enrollments.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake on its own or through an agreement with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment.* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, insufficient access, sale of the land, risk of hazardous substance contamination, or other reasons.

(f) *Landowner failure to accept enrollment offer in timely manner.* The offer of enrollment to the landowner will be void if not executed by the landowner within the time specified.

§ 1468.34 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.* (1) Compensation for an easement or 30-year contract under this part will be made in cash in such amount as is agreed to and specified in the agreement to purchase or agreement to enter 30-year contract and finalized in the warranty easement deed or 30-year contract.

(2) Payments for 30-year easements, nonpermanent easements as limited by State law, or 30-year contracts will be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS will pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices or based on an areawide market analysis or survey,

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section, or

(iii) A written offer made by the landowner.

(4) Each fiscal year NRCS, in consultation with the State Technical Committee, will establish one or more geographic area rate caps within a State. NRCS will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: soil types, types of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2)(i) For easements or 30-year contracts valued at $500,000 or less, NRCS will provide compensation in up to 10 annual payments, as requested by the participant, as specified in the agreement to purchase or agreement to enter 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than $500,000, NRCS may provide compensation in at least 5, but not more than 10 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the NRCS Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the agreement to purchase a conservation easement (APCE) or agreement to enter contract for 30-year land use, entered into between NRCS and the landowner.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse the landowner for fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as authorized and determined by NRCS.

(d) *Per acre basis calculations.* If easement or 30-year contract payments are calculated on a per acre basis, NRCS will identify an estimated amount in its agreement to purchase and the final easement or 30-year contract payment will be made based on final determination of acreage and specified in the warranty easement deed or 30-year contract.

§ 1468.35 Wetland Reserve Enhancement Partnerships.

(a) The purpose of the Wetland Reserve Enhancement Partnership (WREP) option is to target and leverage resources to address high priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, or Indian Tribes.

(b) NRCS will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. Among other selection criteria, NRCS will prioritize proposals that address wetland restoration needs of national or regional importance, including special project or area-wide proposals.

(c) NRCS will make the information regarding WREP available to the public and potential partners.

(d) NRCS will evaluate proposals and make final funding selections based upon the priorities identified in the public notice of funding availability.

(e) NRCS will enter into WREP agreements with partners who have projects selected for funding.

§ 1468.36 WRPO payments.

(a) NRCS may provide financial assistance for implementing the WRPO on the enrolled land. The amount and terms and conditions of the financial assistance will be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a 30-year or nonpermanent easement or 30-year contract, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs. The landowner's share of the WRPO implementation costs may be withheld from the easement or 30-year contract payment.

(b) Payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice

has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO.

(c) Payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private organizations as long as the conservation practices or activities funded are approved by NRCS and implemented in compliance with this part.

§ 1468.37 Easement and 30-year contract participation requirements.

(a) *Easement requirements.* (1) To enroll eligible land in ACEP–WRE through the permanent or 30-year easement option, a landowner will grant an easement to the United States. The easement will require that the easement area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement will grant to the United States:

(i) A sufficient right of legal access to the easement area,

(ii) The right to authorize compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established,

(iii) All rights, title, and interest in the easement area except those rights specifically reserved in the deed, and

(iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.

(3) The landowner will convey title to the easement in a manner that is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for title exceptions deemed acceptable by NRCS.

(4) The participant will:

(i) Comply with the terms of the easement,

(ii) Comply with all terms and conditions of any related contract or agreement,

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area, as determined by FSA,

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements, and

(v) Agree that each person or legal entity that is subject to the easement will be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll eligible land in ACEP–WRE through the 30-year contract option, a landowner will enter into a contract with NRCS. The contract will require that the enrolled area be maintained in accordance with ACEP–WRE goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of the 30-year contract, the contract will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the WRPO. In addition, the 30-year contract will grant to NRCS:

(i) A sufficient right of legal access to the entire contract area for the duration of the contract,

(ii) The right to authorize compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, or periodic haying or grazing if such use is consistent with the long-term protection and enhancement of the wetland resources for which the contract was established, and

(iii) The right to restore, protect, enhance, maintain, and manage activities on the enrolled area.

(3) The landowner will:

(i) Comply with the terms of the contract,

(ii) Comply with all terms and conditions of any associated agreement,

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the enrolled area in accordance with the terms of the contract and related agreements, and

(iv) Agree that each person or legal entity that is subject to the contract will be jointly and severally responsible for compliance with the contract and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

(c) *Reservation of grazing rights.* (1) NRCS may include in the terms and conditions of an easement a provision under which the landowner reserves grazing rights if NRCS determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the wetland reserve easement or 30-year contract,

(ii) Is consistent with the historical natural uses of the land and long-term wetland protection and enhancement goals for which the wetland reserve easement or 30-year contract was established,

(iii) Is subject to a recorded Exhibit to the deed outlining grazing purposes and limitations, and

(iv) Complies with a WRPO developed by NRCS.

(2) Compensation for easements or 30-year contracts where the grazing rights are reserved under this subsection will be based on the method described in § 1468.34, except such compensation will be reduced by an amount equal to the value of the reserved grazing rights, as determined by NRCS.

§ 1468.38 The WRPO development.

(a) The WRPO will be developed as determined by NRCS in consultation with the State Technical Committee and consideration of available site-specific technical input from FWS and others as appropriate.

(b) The WRPO will specify the manner in which the enrolled land will be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. The WRPO will be developed to ensure that cost effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the onsite alternations and the offsite watershed conditions that adversely impact the hydrology and associated wildlife and wetland functions and values.

§ 1468.39 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement or 30-year contract involving the landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's failure to comply with easement obligations.

(3) If there is failure to comply with easement obligations, the easement will remain in effect, and NRCS may, in addition to any other remedy available to the United States, retain any payment otherwise required to be paid under this part and require the refund of any payment previously made under this part.

(b) *30-year contract or wetland reserve easement restoration agreements violations.* (1) If NRCS determines that a landowner is in violation of the terms of a 30-year contract or wetland reserve easement restoration agreement, or documents incorporated by reference into the 30-year contract or wetland reserve easement restoration agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation. If the violation continues, NRCS may terminate the 30-year contract or wetland reserve easement restoration agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 30-year contract or wetland reserve easement restoration agreement termination is effective immediately upon a determination by the NRCS that the landowner has:

(i) Submitted false information,

(ii) Filed a false claim, or

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(3) If NRCS terminates a 30-year contract or wetland reserve easement restoration agreement, the landowner will forfeit all rights for future payments under the 30-year contract or wetland reserve easement restoration agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

Signed this 13th day of February, 2015, in Washington, DC.

Jason A. Weller,

Vice-President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2015–03781 Filed 2–26–15; 8:45 am]

BILLING CODE 3410–16–P

FEDERAL REGISTER

Vol. 80 Friday,
No. 39 February 27, 2015

Part VII

The President

Proclamation 9234—Establishment of the Honouliuli National Monument

Federal Register
Vol. 80, No. 39
Friday, February 27, 2015

Presidential Documents

Title 3—

The President

Proclamation 9234 of February 24, 2015

Establishment of the Honouliuli National Monument

By the President of the United States of America

A Proclamation

The Honouliuli Internment Camp (Honouliuli) serves as a powerful reminder of the need to protect civil liberties in times of conflict, and the effects of martial law on civil society. Honouliuli is nationally significant for its central role during World War II as an internment site for a population that included American citizens, resident immigrants, other civilians, enemy soldiers, and labor conscripts co-located by the U.S. military for internment or detention. While the treatment of Japanese Americans in Hawai'i differed from the treatment of Japanese Americans on the U.S. mainland in ways that are detailed below, the legacy of racial prejudice, wartime hysteria, and failure of political leadership during this period is common to the history of both Hawai'i and the mainland United States.

Early on December 7, 1941, Japanese air and naval forces attacked Pearl Harbor and other military installations on O'ahu. Before martial law was invoked, government officials began selectively rounding up Hawai'i residents on suspicion of disloyalty. They were confined at local jails, courthouses, and other facilities on six of the main Hawaiian Islands before being transported to the U.S. Immigration Station and Sand Island Detention Camp on O'ahu. Nearly all of the internees were of Japanese descent, including leaders in the Japanese American community who were educated, were teachers or priests, or were distinguished by virtue of their access to means of communication with Japan or to transportation from Hawai'i. Most would be sent to the mainland to be held for the duration of the war in Department of Justice and War Relocation Authority camps. Despite the government's allegations of disloyalty, none of the Japanese American internees from Hawai'i was ever found guilty of sabotage, espionage, or overt acts against the United States, and all later received formal apologies and many received redress compensation from the United States.

On the Island of O'ahu, the U.S. War Department sought a place removed from the active combat areas of Pearl Harbor for internment of individuals. The War Department chose Honouliuli Gulch, the bottom of which was hidden from view by the gulch's steep walls. The Honouliuli Internment Camp opened on March 2, 1943, with the transfer of internees from Sand Island and rapidly swelled in population with the influx of prisoners of war. Managed by the U.S. Army, it was the largest and longest used confinement site in Hawai'i.

Honouliuli is significant for having been used as both a civilian internment camp and a prisoner of war camp, with a population of approximately 400 civilian internees and 4,000 prisoners of war over the course of its use. Honouliuli was divided into seven compounds: one compound for administration and guards, one for civilian internees, and eventually five compounds for prisoners of war. The civilian compound was further divided into sections for male civilian internees of Japanese ancestry, female civilian internees of Japanese ancestry, and civilian internees of European ancestry. Historic documents indicate there were 175 buildings, 14 guard towers, and over 400 tents among the 7 compounds on 160 acres. Many internees referred to Honouliuli as *Jigoku-Dani* (Hell Valley) because its secluded

location at the bottom of a deep gulch trapped heat and moisture and reinforced the internees' sense of isolation and unjust confinement.

The majority of Honouliuli's civilian internees were American citizens or permanent resident aliens—predominantly Japanese Americans who were citizens by birth—interned on suspicion of disloyalty. The remaining group comprised predominantly German Americans, though there were also Americans and aliens of Italian, Irish, Russian, and Scandinavian descent. Honouliuli also held women and children who were Japanese civilians displaced from the Pacific.

The 4,000 prisoners of war in Honouliuli included enemy soldiers and labor conscripts from Japan, Korea, Okinawa, Taiwan, and Italy. The prisoner of war compounds were guarded by an African American infantry unit as well as units of Japanese Americans from the mainland.

Honouliuli closed in 1945 for civilian internees and in 1946 for prisoners of war. With the closing of the camp, fast-growing vegetation quickly took over the site. Honouliuli was forgotten as Americans celebrated the victories of World War II and focused attention on the valor displayed by Americans at Pearl Harbor and abroad.

While both mainland and Hawaiian internment camps are sobering examples of wartime prejudice and injustice, Honouliuli reminds us of the differences in the way that forced removal was approached in Hawai'i and on the mainland.

The primary difference between the Japanese American experience on the mainland and on Hawai'i is that the internment in Hawai'i targeted a relatively small percentage of the ethnic Japanese population on the islands. Less than one percent of Hawai'i's ethnic Japanese population was interned in Hawai'i. This contrasts with the mass exclusion of all 120,000 Japanese Americans on the West Coast of the mainland. In Hawai'i, the Japanese American citizenry and immigrant population were over one third of the territory's total population. Without their participation in the labor force, the economy of the territory could not have been sustained and the war effort in the islands would have been crippled. Both the policies in Hawai'i and those on the mainland devastated Japanese Americans and their families and created a social stigma that was borne by Japanese Americans during and after the war. The selective nature of the internment in Hawai'i also sowed division within the Japanese American community in Hawai'i, leading to ostracism and other backlash against the targeted individuals and their families that would last their lifetimes.

The declaration of martial law served as the basis to authorize internment in Hawai'i, as opposed to the mainland where mass exclusion was authorized by Executive Order 9066. During the period of martial law from December 7, 1941, to October 24, 1944, the U.S. Army issued hundreds of military orders, some of which were applicable only to persons of Japanese ancestry and enemy aliens. For example, people of Japanese ancestry were restricted from residing in certain areas of O'ahu and were forcibly removed from their properties. These types of discriminatory policies created an atmosphere of fear and suspicion.

Finally, Honouliuli is significant because of the comparatively lower level of public understanding and awareness of the history of internment of civilians in Hawai'i during World War II. On the mainland during World War II, mass exclusion was well known. In contrast, the internment in Hawai'i was largely kept secret during World War II, and has only recently become the subject of scholarship and awareness campaigns. It was not until 1998 that information about Honouliuli resurfaced. After 4 years of research and exploration, the site was uncovered in 2002. In 2008, an archeological research survey was conducted at the site. Honouliuli remains an object of archeological interest.

Honouliuli serves to remind every American about the critical importance of safeguarding civil liberties and maintaining our values during times of

crisis. It is important to recognize Honouliuli as a part of our shared national heritage and national consciousness. It is a place to reflect on wartime experiences and recommit ourselves to the pursuit of freedom and justice.

WHEREAS section 320301 of title 54, United States Code (known as the ''Antiquities Act''), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS Honouliuli's objects of historic interest were listed in the National Register of Historic Places in 2012 as nationally significant for their association with events that have made a significant contribution to the broad patterns of our history;

WHEREAS, for the purpose of establishing a national monument to be administered by the National Park Service, the Monsanto Company has donated certain lands at Honouliuli to the United States, and the University of Hawai'i-West O'ahu has agreed to provide access across its property to those lands;

WHEREAS it is in the public interest to preserve and protect the historic objects at Honouliuli;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Honouliuli National Monument (monument) and, for the purpose of protecting those objects, reserve as a part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map entitled, ''Honouliuli National Monument,'' which is attached to and forms a part of this proclamation. The reserved Federal lands and interests in lands encompass approximately 123.0 acres, together with appurtenant easements for all necessary purposes. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries described on the accompanying map are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing or other disposition under the public land laws, from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. Lands and interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary of the Interior (Secretary) shall manage the monument through the National Park Service, pursuant to applicable legal authorities, consistent with the purposes and provisions of this proclamation. The Secretary shall prepare a management plan for the monument, with full public involvement, within 3 years of the date of this proclamation. The management plan shall ensure that the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve and protect the objects of historic interest associated with Honouliuli Internment Camp, and (2) to study and interpret the history of World War II internment and detention in Hawai'i. The management plan shall set forth the desired relationship

of the monument to other related resources, programs, and organizations associated with World War II internment, detention, and exclusion.

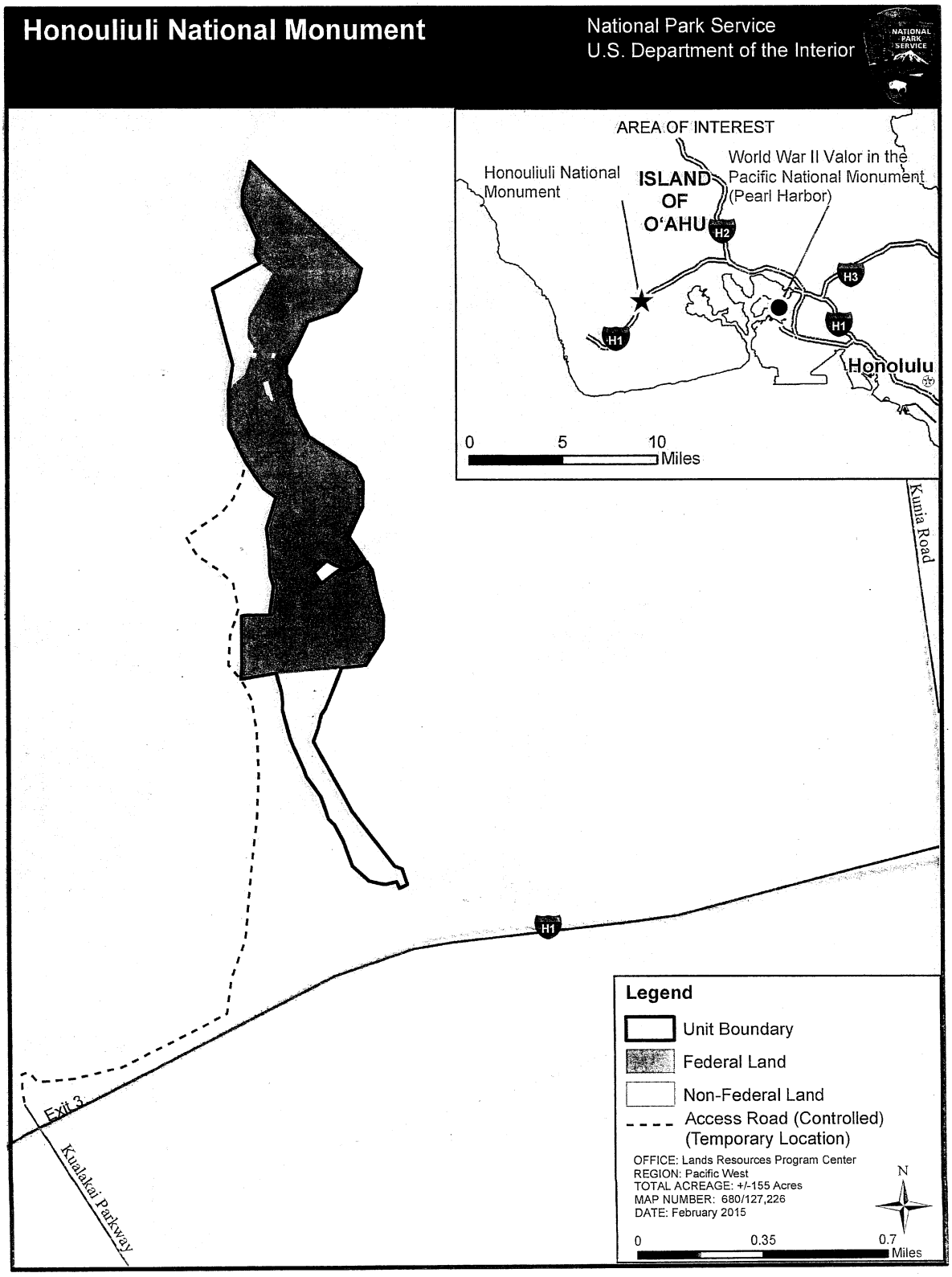
The National Park Service shall use available authorities, as appropriate, to enter into agreements to provide for access to the monument. The National Park Service shall also use available authorities, as appropriate, to enter into agreements with governmental and nongovernmental organizations to provide for research, preservation, interpretation, and education at Honouliuli and additional sites associated with World War II internment in Hawai'i and exclusion elsewhere. The National Park Service shall also coordinate management with World War II Valor in the Pacific National Monument, which commemorates the broader story of the war in the Pacific and its impacts on Hawai'i.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

Billing code 3295–F5–P



[FR Doc. 2015–04352

Filed 2–26–15; 11:15 am]

Billing code 4310–10–C

Presidential Documents

Notice of February 25, 2015

Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757, the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government. The Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. In addition, the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 25, 2015.

[FR Doc. 2015–04353
Filed 2–26–15; 11:15 am]
Billing code 3295–F5

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