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Federal Register

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC–2014–0261]

RIN 3150–AJ50

#### List of Approved Spent Fuel Storage Casks: NAC International, Inc., MAGNASTOR® System; Certificate of Compliance No. 1031, Amendment No. 5

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International, Inc., MAGNASTOR® System listing within the “List of approved spent fuel storage casks” to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1031. Amendment No. 5 makes numerous changes to the Technical Specifications (TSs) including adding a new damaged fuel assembly, revising the maximum or minimum enrichments for three fuel assembly designs, adding four-zone preferential loading for pressurized-water reactor fuel assemblies and increasing the maximum dose rates in limiting condition for operation (LCO) 3.3.1, and other editorial changes to Appendices A and B of the TSs.

**DATES:** The direct final rule is effective June 29, 2015, unless significant adverse comments are received by May 15, 2015. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2014–0261. Address questions about NRC dockets to Carol Gallagher, telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3781; email: [Solomon.Sahle@nrc.gov](mailto:Solomon.Sahle@nrc.gov).

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC–2014–0261 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2014–0261.

- *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](mailto:pdr.resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments

Please include Docket ID NRC–2014–0261 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should



inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Procedural Background

This direct final rule is limited to the changes contained in Amendment No. 5 to CoC No. 1031 and does not include other aspects of the MAGNASTOR® System design. The NRC is using the “direct final rule procedure” to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. This amendment to the rule will become effective on June 29, 2015. However, if the NRC receives significant adverse comments on this direct final rule by May 15, 2015, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For detailed instructions on submitting comments, please see the **ADDRESSES** section of this document.

## III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that “the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPA states, in part, that “[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc., MAGNASTOR® System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

## IV. Discussion of Changes

By letter dated December 19, 2013, and as supplemented on March 19, May 15, and June 13, 2014, NAC International submitted an application for Amendment No. 5 of CoC No. 1031. The amendment adds a new damaged fuel assembly; revises the maximum or minimum enrichments for three fuel assembly designs; adds four-zone preferential loading for pressurized-water reactor fuel assemblies; and increases the maximum dose rates in LCO 3.3.1.

Amendment No. 5 makes the following specific changes to Appendices A and B of the TSs:

- Page A3–11—Increase the maximum surface gamma dose rate for LCO 3.3.1 from 95 to 120 mrem/hr.
- Page A4–1—Change required minimum actual areal density for 10B from 0.334 g/cm<sup>2</sup> to the correct value of 0.0334 g/cm<sup>2</sup>.
- Page A4–4—Authorize use of the MAGNASTOR® System at an independent spent fuel storage installation (ISFSI) where the maximum design basis earthquake (DBE) acceleration is greater than previously evaluated provided that the ISFSI pad is designed with bollards that prevents a cask from overturning and bollards are designed, fabricated, and installed such that they are capable of handling the combined loading of the DBE and any contact between the bollard and cask during the DBE.
- Page A4–5—Move the lead paragraph and items a through e to page A4–5.
- Page B2–1—Extend the number of tables specifying fuel characteristics to Table B2–41.
- Pages B2–2 and B2–4—Add specific fuel characteristic tables for WE14×14 fuel assemblies in Tables B2–25 through B2–33 and for CE16×16 fuel assemblies in Tables B2–34 through B2–41; clarify that the assembly average burnup levels are for spent nuclear fuel; and add footnote a.
- Pages B2–2 and B2–5—Delete information on order and location of empty cells for a basket that is not fully loaded and add footnote a.
- Page B2–3—Add footnote a.
- Page B2–7—Increase the maximum decay heat for WE14×14 and CE16×16 fuel assemblies to 1,800 watts and add footnote 2.
- Page B2–9—Add CE16×16 fuel assembly to damaged fuel assembly portion of the table.
- Page B2–10—Revise rod cluster control (RCC) cooling times; add cooling times for fuel hardware for three-zone and four-zone loading patterns; add Tables B2–25 through B2–41 to the note; and add footnotes a, b, and c.
- Pages B2–12 and B2–14—Revise the table (figure) title to indicate more than one decay heat loading pattern definition, add three-zone title, and add four-zone heat load pattern table (figure).
- Pages B2–13 and B2–15—Remove notation showing the canister alignment mark.
- Page B2–16—Remove detail on description of how to block unused cells and indicate that unused cells must be physically blocked.

- Page B2-17—Change item G to state that unirradiated (instead of unenriched) fuel assemblies are not authorized for loading, add item H for the 86 fuel assembly basket configuration, renumber original item H to I, revise item I to indicate alternate loadings for 82 fuel assembly basket, and reference Figure B2-5 in item I.

- Page B2-18—Reduce minimum average enrichment from 1.3 to 0.7 weight percent.

- Page B2-19—Revise footnote 1 to refer to Figure B2-6 instead of B2-5.

- Page B2-20—Add footnotes c and d.

- Page B2-21—Add figure showing the 87 fuel assembly basket.

- Page B2-22—Add alternate configuration for the 82 fuel assembly basket and Increment figure number by 1.

- Page B2-23—Renumber Figure B2-5 to be B2-6.

- Page B2-24—Add row for maximum assembly average burnup of 5,000 MWd/MTU in Table B2-14.

- Pages B2-90 to B2-140—Add tables B2-25 to B2-41, respectively, to include a new pressurized-water reactor preferential loading profile.

The revised TSs are identified in the safety evaluation report (SER). As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 5 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposure, and no significant increase in the potential for or consequences of radiological accidents.

This direct final rule revises the MAGNASTOR® System listing in 10

CFR 72.214 by adding Amendment No. 5 to CoC No. 1031. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The amended MAGNASTOR® System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into MAGNASTOR® Systems that meet the criteria of Amendment No. 5 to CoC No. 1031 under 10 CFR 72.212.

#### V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the MAGNASTOR® System design listed in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements using a mechanism consistent with that particular State's administrative procedure laws, but does not confer regulatory authority on the State.

#### VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent

with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

#### VIII. Environmental Assessment and Finding of No Significant Environmental Impact

##### A. The Action

The action is to amend 10 CFR 72.214 to revise the NAC International, Inc., MAGNASTOR® System listing within the "List of approved spent fuel storage casks" to include Amendment No. 5 to CoC No. 1031. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

##### B. The Need for the Action

This direct final rule amends the CoC for the NAC International, Inc., MAGNASTOR® System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 5 makes numerous changes to the TSs including adding a new damaged fuel assembly, revising the maximum or minimum enrichments for three fuel assembly designs, adding four-zone preferential loading for pressurized-water reactor fuel assemblies and increasing the maximum dose rates in LCO 3.3.1, and other editorial changes to Appendices A and B of the TSs. The revised TSs are identified in the SER.

##### C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 5 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

The MAGNASTOR® System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area.

Postulated accidents analyzed for an ISFSI, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fires, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 5 would remain well within 10 CFR part 20 radiation safety limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for or consequences from radiological accidents. The staff documented these safety findings in the SER for this amendment.

#### *D. Alternative to the Action*

The alternative to this action is to deny approval of Amendment No. 5 and terminate the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into MAGNASTOR® System casks in accordance with the changes described in proposed Amendment No. 5 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request,

thereby increasing the administrative burden on the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

#### *E. Alternative Use of Resources*

Approval of Amendment No. 5 to CoC No. 1031 would result in no irreversible commitments of resources.

#### *F. Agencies and Persons Contacted*

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

#### *G. Finding of No Significant Impact*

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, "List of Approved Spent Fuel Storage Casks: NAC International, Inc., MAGNASTOR® System; Certificate of Compliance No. 1031, Amendment No. 5," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

### **IX. Paperwork Reduction Act Statement**

This rule does not contain any information collection requirements, and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

### **X. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

### **XI. Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR

part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use casks with NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70687), the NRC issued an amendment to 10 CFR part 72 that approved the MAGNASTOR® System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214.

On December 19, 2013, and as supplemented on March 19, May 15, and June 13, 2014, NAC International, Inc., submitted an application to amend the MAGNASTOR® System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 5 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the MAGNASTOR® System cask under the changes described in Amendment No. 5 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden on the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

### **XII. Backfitting and Issue Finality**

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1031 for the NAC International, Inc., MAGNASTOR® System, as currently listed in 10 CFR 72.214, "List of

approved spent fuel storage casks.” The revision consists of Amendment No. 5, which adds a new damaged fuel assembly; revises the maximum or minimum enrichments for three fuel assembly designs; adds four-zone new preferential loading for pressurized-water reactor fuel assemblies; increases the maximum dose rates in LCO 3.3.1; and makes other editorial changes to Appendices A and B to the TSs. The revised TSs are identified in the SER.

Amendment No. 5 to CoC No. 1031 for the NAC International, Inc., MAGNASTOR® System was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 5 applies only to new casks fabricated and used under Amendment No. 5. These changes do not affect existing users of the MAGNASTOR® System, and the current amendments continue to be effective for existing users. While any current CoC users may comply with the new requirements in Amendment No. 5, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 5 to CoC No. 1031 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing issue finality criteria in 10 CFR part 52 has been prepared by the staff.

**XIII. Congressional Review Act**

This action is not a major rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

**XIV. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ web link/ Federal Register citation
Proposed CoC No. 1031, Amendment No. 5 .....	ML14216A197
Proposed TS, Appendix A ....	ML14216A257
Proposed TS, Appendix B ....	ML14216A270
Preliminary SER .....	ML14216A310
Request to Amend Reference 1 Dated December 19, 2013 .....	ML13361A144
Request to Amend Reference 3 Dated March 19, 2014 .....	ML14079A525
Request for Additional Information (RAI) Dated May 15, 2014 .....	ML14140A239

Document	ADAMS accession No./ web link/ Federal Register citation
Supplemental Information for Proposed Action Dated June 13, 2014 .....	ML14170A032

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC–2014–0261. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0261); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1031 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*

Certificate Number: 1031.  
 Initial Certificate Effective Date: February 4, 2009.  
 Amendment Number 1 Effective Date: August 30, 2010.  
 Amendment Number 2 Effective Date: January 30, 2012.  
 Amendment Number 3 Effective Date: July 25, 2013.  
 Amendment Number 4 Effective Date: April 14, 2015.  
 Amendment Number 5 Effective Date: June 29, 2015.  
 SAR Submitted by: NAC International, Inc.  
 SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.  
 Docket Number: 72–1031.  
 Certificate Expiration Date: February 4, 2029.  
 Model Number: MAGNASTOR®.  
 \* \* \* \* \*

Dated at Rockville, Maryland, this 29th day of January, 2015.

For the Nuclear Regulatory Commission.

**Mark A. Satorius,**  
*Executive Director for Operations.*

[FR Doc. 2015–08679 Filed 4–14–15; 8:45 am]  
 BILLING CODE 7590–01–P

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 217, 225, and 238**

[Docket No. R–1509]

RIN 1700–AE 30

**Regulations Q, Y, and LL: Small Bank Holding Company Policy Statement; Capital Adequacy of Board-Regulated Institutions; Bank Holding Companies; Savings and Loan Holding Companies**

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

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting final amendments (Final Rule) to the Small

Bank Holding Company Policy Statement (Regulation Y, Appendix C) (Policy Statement) that: raise from \$500 million to \$1 billion the asset threshold to qualify for the Policy Statement; and expand the scope of companies eligible under the Policy Statement to include savings and loan holding companies. The Board is also adopting final conforming revisions to Regulation Y and Regulation LL, the Board's regulations governing the operations and activities of bank holding companies and savings and loan holding companies, respectively, and Regulation Q, the Board's regulatory capital rules.

**DATES:** The final rule is effective May 15, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Constance M. Horsley, Assistant Director, (202) 452-5239, Cynthia Ayouch, Manager, (202) 452-2204, Thomas Boemio, Manager, (202) 452-2982, Douglas Carpenter, Senior Supervisory Financial Analyst, (202) 452-2205, Page Conkling, Supervisory Financial Analyst, (202) 912-4647, or Noah Cuttler, Senior Financial Analyst, (202) 912-4678, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452-2272, or Tate Wilson, Counsel, (202) 452-3696, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background
- II. Overview of Comments
- III. Summary of the Final Rule
- IV. Administrative Law Matters
  - A. Regulatory Flexibility Act
  - B. Paperwork Reduction Act
  - C. Plain Language

**I. Background**

On February 3, 2015, the Board invited comment on a proposed rule (Proposed Rule)<sup>1</sup> to implement Public Law 113-250 (the Act).<sup>2</sup> The Proposed Rule proposed increasing the amount of assets qualifying holding companies may have, expanding the application of the Policy Statement to qualifying savings and loan holding companies, revising the applicability of the Board's regulatory capital rules<sup>3</sup> to exclude savings and loan holding companies subject to the Policy Statement, and revising certain reporting requirements. Specifically, the Proposed Rule would

allow bank holding companies and savings and loan holding companies with less than \$1 billion in total consolidated assets to qualify under the Policy Statement, provided the holding companies also comply with three qualitative requirements (Qualitative Requirements). Previously, only bank holding companies with less than \$500 million in total consolidated assets that complied with the Qualitative Requirements could qualify under the Policy Statement. With the exception of the proposed changes to the reporting requirements, the Board is adopting as final the Proposed Rule without changes.<sup>4</sup>

The Board issued the Policy Statement in 1980 to facilitate the transfer of ownership of small community-based banks in a manner consistent with bank safety and soundness. The Board has generally discouraged the use of debt by bank holding companies to finance the acquisition of banks or other companies because high levels of debt can impair the ability of the holding company to serve as a source of strength to its subsidiary banks. The Board has recognized, however, that small bank holding companies have less access to equity financing than larger bank holding companies and that the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the Board adopted the Policy Statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The Policy Statement contains several conditions and restrictions designed to ensure that small bank holding companies that operate with the higher levels of debt permitted by the Policy Statement do not present an undue risk to the safety and soundness of their subsidiary banks.

Previously, the Policy Statement applied only to bank holding companies with *pro forma* consolidated assets of less than \$500 million that met the following Qualitative Requirements: (i) Were not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) did not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank

subsidiary;<sup>5</sup> and (iii) did not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board last raised the asset threshold in 2006 when it increased it from \$150 million to \$500 million.<sup>6</sup>

Under the Policy Statement, holding companies that meet the Qualitative Requirements may use debt to finance up to 75 percent of the purchase price of an acquisition (that is, they may have a debt-to-equity ratio of up to 3.0:1), but are subject to a number of ongoing requirements. The principal ongoing requirements are that a qualifying holding company: (i) Reduce its parent company debt in such a manner that all debt is retired within 25 years of being incurred; (ii) reduce its debt-to equity ratio to .30:1 or less within 12 years of the debt being incurred; (iii) ensure that each of its subsidiary insured depository institutions is well capitalized; and (iv) refrain from paying dividends until such time as it reduces its debt-to-equity ratio to 1.0:1 or less. The Policy Statement also specifically provides that a qualifying bank holding company may not use the expedited procedures for obtaining approval of acquisition proposals or obtaining a waiver of the stock redemption filing requirements applicable to bank holding companies under the Board's Regulation Y (12 CFR 225.4(b), 225.14, and 225.23) unless the bank holding company has a *pro forma* debt-to-equity ratio of 1.0:1 or less.

**II. Overview of Comments**

The Board received 11 comments on the Proposed Rule. Comments were submitted by financial trade associations, individuals associated with financial institutions, and a law firm that represents bank holding companies and savings and loan holding companies. While each commenter expressed general support for the Proposed Rule, some commenters recommended revisions to the Proposed Rule. For instance, one commenter expressed support for raising the asset threshold higher than \$1 billion. Another commenter expressed support for the nonbanking and off-balance sheet activity requirements but suggested that the Board consider rescinding or revising

<sup>1</sup> 80 FR 5694 (February 3, 2015) (Proposed Rule).

<sup>2</sup> Pub. L. 113-250 (December 18, 2014) (Pub. L. 113-250). The Act was enacted on December 18, 2014, and became immediately effective.

<sup>3</sup> 12 CFR part 217 (Regulation Q).

<sup>4</sup> The comment period for the proposed changes to the reporting requirements in the Proposed Rule runs through April 6, 2015. Once the comment period for the proposed reporting requirements closes, the Board will consider any and all reporting and Paperwork Reduction Act-related comments before finalizing any reporting changes.

<sup>5</sup> The examples provided in the Policy Statement—securitization and asset management or administration—are not exhaustive and serve to highlight off-balance sheet activities that may involve substantial risk. Other activities may present similar concerns. See also 71 FR 9897, 9899, fn. 2 (February 28, 2006) (2006 Final Rule).

<sup>6</sup> See 2006 Final Rule.

the requirement relating to outstanding debt or equity securities registered with the SEC. The Board's responses to these comments are discussed below.

### III. Summary of the Final Rule

#### *Increase in Amount of Qualifying Assets*

Under the Final Rule, a holding company with less than \$1 billion in total consolidated assets may qualify under the Policy Statement, provided it also complies with the Qualitative Requirements. This new asset limit is set by statute.<sup>7</sup> As noted above, commenters generally supported the Board's proposal to increase the scope of the Policy Statement by allowing firms with less than \$1 billion in total assets to qualify. One commenter suggested that the threshold be increased to \$5 billion. The Act directs the Board to increase the threshold to \$1 billion, and section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>8</sup> effectively prevents the threshold from being raised any higher.

#### *Policy Statement's Application to Savings and Loan Holding Companies*

The Act also directs the Board to propose revisions to the Policy Statement that would extend its application to certain savings and loan holding companies. Consistent with the Proposed Rule, the Final Rule applies the revised Policy Statement to savings and loan holding companies by amending Appendix C to 12 CFR part 225 and adding new section 238.9 to Subpart A of Regulation LL.

As explained in the Proposed Rule, this change requires other modifications to the Policy Statement to take into account the status of savings associations under the Bank Holding Company Act of 1956, as amended (BHC Act). The first Qualitative Requirement uses the terms "nonbanking activities" and "nonbank subsidiary" to refer to the activities of a bank holding company. Under the BHC Act, however, control of a savings association by a bank holding company is considered a nonbanking activity.<sup>9</sup> Because savings and loan holding companies control savings associations, all activities of savings and loan holding companies, including the control of savings associations would be considered nonbanking activities under the Policy Statement.

This outcome would be inconsistent with Congressional intent to apply the Policy Statement to savings and loan

holding companies.<sup>10</sup> The Board therefore will treat subsidiary savings associations of savings and loan holding companies as if they were banks for purposes of applying the Policy Statement.

As is the case with bank holding companies, whether a savings and loan holding company engages in "significant" nonbanking activities will depend on the scope of the activities of the savings and loan holding company, the nature and level of risk of the activities, the condition of the savings and loan holding company, and other criteria as appropriate.<sup>11</sup>

Consistent with the Policy Statement's provisions for bank holding companies, the Board retains the right to exclude any savings and loan holding company, regardless of size, from the Policy Statement if the Board determines that such action is warranted for supervisory purposes.

#### *Policy Statement's Qualitative Requirements*

The Final Rule retains the Qualitative Requirements without change. One commenter noted that the Qualitative Requirements concerning nonbanking and off-balance sheet activities adequately cover bank holding companies and savings and loan holding companies that meet the size threshold but have unusually complex activities at the holding company level. None of the commenters expressed concerns related to the nonbanking or off-balance sheet activities requirements. Consistent with the Board's previously-issued guidance on these two Qualitative Requirements,<sup>12</sup> whether a bank holding company or savings and loan holding company engages in significant nonbanking or off-balance sheet activities will continue to depend on a consideration of the scope of the activities, the nature and level of risk of the activities, the condition of the holding company and its subsidiary depository institution, and other criteria as appropriate. As previously stated, determinations of significance are made on a case-by-case basis, and relatively few bank holding companies or savings and loan holding companies are likely to be excluded from the Policy Statement due to the Qualitative

Requirements concerning nonbanking and off-balance sheet activities.<sup>13</sup>

One commenter urged the Board to rescind the Qualitative Requirement that would disqualify a bank holding company or savings and loan holding company with a material amount of outstanding SEC-registered debt or equity securities. In the alternative, the commenter suggested the Board clarify whether bank holding companies and savings and loan holding companies that meet the asset size threshold and would otherwise qualify under the Policy Statement but for having SEC-registered debt or equity could qualify under the Policy Statement.

The exclusion from the Policy Statement of any bank holding company that has a material amount of SEC-registered debt or equity securities reflected the view that SEC registrants typically exhibited a degree of complexity of operations and access to multiple funding sources that warranted exclusion from the Policy Statement.<sup>14</sup> Determinations of materiality are made on a case-by-case basis in order to assess the complexity of a firm. In considering whether a savings and loan holding company or bank holding company has a material amount of SEC-registered debt or equity securities outstanding that contributes to its complexity (other than trust preferred securities), the Board may consider, among other factors: The number and type of classes and series of stock issued; the holding company's market capitalization; the number of outstanding shares; the average trading volume; the holding company's history of issuing equity and debt securities, including whether the entity has issued any other securities that are not registered with the SEC (e.g., privately-placed securities); the nature and distribution of ownership; whether the securities are listed on a national exchange; whether the holding company qualifies as a "smaller reporting company" pursuant to the SEC's regulations and related interpretations; and the amount, type, and terms of any debt instruments issued by the entity. While the Policy Statement has included the "materiality" standard since 2006, as a general matter, application of this standard has not resulted in many bank holding companies being excluded from the Policy Statement. After considering the concerns raised by the commenter, the Board is adopting the Qualitative Requirements unchanged.

<sup>10</sup> See, e.g., Pub. L. 113-250, sec. 2(b).

<sup>11</sup> For purposes of applying the Policy Statement to savings and loan holding companies, the term "nonbank subsidiary" as used in the Policy Statement refers to a subsidiary of a savings and loan holding company other than a savings association or a subsidiary of a savings association.

<sup>12</sup> See Proposed Rule, 80 FR 5695; 2006 Final Rule, 71 FR 9899-9900.

<sup>13</sup> 2006 Final Rule, 71 FR 9900.

<sup>14</sup> 2006 Final Rule, 71 FR 9899.

<sup>7</sup> Public Law 113-250.

<sup>8</sup> 12 U.S.C. 5371, as amended.

<sup>9</sup> See 12 U.S.C. 1841(c)(2)(B), 1841(j), and 1843(i)(1).

### Regulation Q Change

When the Board proposed the Proposed Rule, the Board separately revised Regulation Q, 12 CFR part 217, through issuance of an interim final rule (Interim Final Rule), to exclude a qualifying savings and loan holding company from consolidated regulatory capital requirements.<sup>15</sup> The Interim Final Rule gave effect to the Act, which immediately excepted savings and loan holding companies that complied with the Policy Statement then in effect from the provisions of section 171 of the Dodd-Frank Act.<sup>16</sup> At that time, the Policy Statement applied to firms with less than \$500 million in total consolidated assets so the Interim Final Rule contained the same limit. In the Proposed Rule, the Board proposed further revisions to Regulation Q that would expand the scope of the exclusion for savings and loan holding companies to firms with less than \$1 billion in total consolidated assets that also meet the Qualitative Requirements. The proposed revisions to Regulation Q in the Proposed Rule would supersede the changes to Regulation Q from the Interim Final Rule. The Board did not receive any comments concerning the proposed change to Regulation Q. The Board is adopting as final the proposed revisions to Regulation Q that conform it to reflect the revised Policy Statement.

### Conforming Amendments

A number of filing and other provisions in Regulations Y and LL are triggered by the asset size established in the Policy Statement. The Board is adopting as final the proposed changes that enable qualifying small bank holding companies and savings and loan holding companies to take advantage of the streamlined informational, notice, and other regulatory requirements. These technical and conforming amendments provide relief to most bank holding companies and savings and loan holding companies with less than \$1 billion of total consolidated assets. The Final Rule includes the following technical and conforming amendments:

- In section 217.1(c)(1)(iii), Regulation Q (12 CFR part 217) excludes savings and loan holding companies that are subject to the Policy Statement through operation of section 238.9 of the Board's Regulation LL (12 CFR part 238).

- In section 225.2(r), footnote 2, the footnote describing the application of the definition of "well-capitalized" in the Board's Regulation Y (12 CFR part

225) applies to entities with less than \$1 billion of total assets.

- In section 225.4(b)(2)(iii), different *pro forma* financial information is required of smaller bank holding companies with less than \$1 billion in total assets than for larger bank holding companies under section 225.4(b)(1) of the Board's Regulation Y.

- In section 225.14(a)(1)(v), different *pro forma* financial information is required of smaller bank holding companies with less than \$1 billion in total assets than for larger bank holding companies under section 225.14 of the Board's Regulation Y.

- In section 225.17(a)(6), footnote 6, a bank holding company with less than \$1 billion in assets can satisfy the debt requirement if it complies with the Policy Statement.

- In section 225.23(a)(1)(iii), different *pro forma* financial information is required of smaller bank holding companies with less than \$1 billion in total assets than for larger bank holding companies under section 225.23 of the Board's Regulation Y.

## IV. Administrative Law Matters

### A. Regulatory Flexibility Act Analysis

The Board is providing a final regulatory flexibility analysis with respect to the Final Rule. As discussed above, the Final Rule reduces regulatory burden on small entities by excluding many bank holding companies and savings and loan holding companies with total consolidated assets of less than \$1 billion that meet the Qualitative Requirements from the application of Regulation Q.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires that an agency provide a final regulatory flexibility analysis in connection with a final rule. Under regulations issued by the Small Business Administration, a small bank holding company, bank, or savings and loan holding company is defined as having assets of \$550 million or less (collectively, small banking organizations).<sup>17</sup> As of December 31, 2014, there were approximately 3,862 small bank holding companies and 275 small savings and loan holding companies.

The Board received no comments from the public or from the Chief Counsel for Advocacy of the Small Business Administration in response to the initial regulatory flexibility analysis provided with the notice of proposed

rulemaking. Thus, no issues were raised in public comments related to the Board's initial regulatory flexibility act analysis and no changes are being made in response to such comments.

The Final Rule impacts small bank holding companies and small savings and loan holding companies with total consolidated assets of \$500 to \$550 million that meet the Qualitative Requirements by providing an exclusion for these companies from Regulation Q. The Board believes that most affected small banking organizations already hold more capital than is required under Regulation Q, so the burden reduction from the exclusion from Regulation Q is primarily related to compliance and systems necessary to comply with Regulation Q. In addition, affected small bank holding companies will now be able to take advantage of the applications processing procedures provided to qualifying companies under the Policy Statement.

There are no significant alternatives to the Final Rule that have less economic impact on small banking organizations, and the Final Rule significantly reduces burden on nearly all small banking organizations.

### B. Paperwork Reduction Act

At this time, the Board is not adopting as final the changes to reporting requirements in the Proposed Rule. The comment period for the proposed changes to the reporting requirements in the Proposed Rule runs through April 6, 2015. Once the comment period for the proposed reporting requirements closes, the Board will consider any and all reporting and Paperwork Reduction Act-related comments before finalizing any reporting changes.

### C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the Final Rule in a simple and straightforward manner. The Board sought to present the Proposed Rule in a simple and straightforward manner and solicited comment on how to make the Proposed Rule easier to understand. No comments were received on the use of plain language.

## List of Subjects

### 12 CFR Part 217

Administrative practice and procedure, Banks, banking, Capital, Federal Reserve System, Holding

<sup>15</sup> 80 FR 5666 (February 3, 2015).

<sup>16</sup> See Pub. L. 113–250.

<sup>17</sup> See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to \$550 million in assets from \$500 million in assets. 79 FR 33647 (June 12, 2014).

companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 238

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

**PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)**

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. In § 217.1, revise paragraph (c)(1)(iii) to read as follows:

**§ 217.1 Purpose, applicability, reservations of authority, and timing.**

(c) \* \* \*  
(1) \* \* \*

(iii) A covered savings and loan holding company domiciled in the United States, other than a savings and loan holding company that has total consolidated assets of less than \$1 billion and meets the requirements of 12 CFR part 225, appendix C, as if the savings and loan holding company were a bank holding company and the savings association were a bank. For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file the FR Y–9C should follow the instructions to the FR Y–9C.

\* \* \* \* \*

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

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

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 4. In § 225.2, paragraph (r), revise footnote 2 to read as follows:

**§ 225.2 Definitions.**

(r) \* \* \*

Footnote 2: For purposes of this subpart and subparts B and C of this part, a bank holding company with consolidated assets of less than \$1 billion that is subject to the Small Bank Holding Company Policy Statement in appendix C of this part will be deemed to be “well-capitalized” if the bank holding company meets the requirements for expedited/waived processing in appendix C.

■ 5. In § 225.4, revise paragraph (b)(2)(iii) to read as follows:

**§ 225.4 Corporate practices.**

(b) \* \* \*  
(2) \* \* \*

(iii)(A) If the bank holding company has consolidated assets of \$1 billion or more, consolidated *pro forma* risk-based capital and leverage ratio calculations for the bank holding company as of the most recent quarter, and, if the redemption is to be debt funded, a parent-only *pro forma* balance sheet as of the most recent quarter; or

(B) If the bank holding company has consolidated assets of less than \$1 billion, a *pro forma* parent-only balance sheet as of the most recent quarter, and, if the redemption is to be debt funded, one-year income statement and cash flow projections.

\* \* \* \* \*

■ 6. In § 225.14, revise paragraph (a)(1)(v) to read as follows:

**§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.**

(v)(A) If the bank holding company has consolidated assets of \$1 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

(B) If the bank holding company has consolidated assets of less than \$1 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted

sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

\* \* \* \* \*

■ 7. In § 225.17, in paragraph (a)(6), revise footnote 6 to read as follows:

**§ 225.17 Notice procedure for one-bank holding company formations.**

(a) \* \* \*  
(6) \* \* \*

Footnote 6—For a banking organization with consolidated assets, on a *pro forma* basis, of less than \$1 billion (other than a banking organization that will control a de novo bank), this requirement is satisfied if the proposal complies with the Board’s Small Bank Holding Company Policy Statement (appendix C of this part).

■ 8. In § 225.23, revise paragraph (a)(1)(iii) to read as follows:

**§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.**

(a) \* \* \*  
(1) \* \* \*

(iii) If the proposal involves an acquisition of a going concern:

(A) If the bank holding company has consolidated assets of \$1 billion or more, an abbreviated consolidated *pro forma* balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(B) If the bank holding company has consolidated assets of less than \$1 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted



assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis;

\* \* \* \* \*

■ 9. In appendix C to part 225, revise the heading and, under section 1, revise the first undesignated paragraph to read as follows:

**Appendix C to Part 225—Small Bank Holding Company and Savings and Loan Holding Company Policy Statement**

\* \* \* \* \*

**1. Applicability of Policy Statement**

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than \$1 billion that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.<sup>1</sup> With the exception of section 4 (Additional Application Requirements for Expedited/Waived Processing), the policy statement applies to savings and loan holding companies as if they were bank holding companies.

\* \* \* \* \*

**PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)**

■ 10. The authority citation for part 238 continues to read as follows:

**Authority:** 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78l.

■ 11. Add § 238.9 to subpart A to read as follows:

**§ 238.9 Small Bank Holding Company Policy Statement.**

(a) The Board’s Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C) (Policy Statement) applies to savings and loan holding companies as if they were bank holding companies. To qualify or rely on the Policy Statement, savings and loan holding companies must meet all qualifying requirements in the Policy Statement as if they were a bank holding company. For purposes of applying the Policy Statement, the term “nonbank subsidiary” as used in the Policy

Statement refers to a subsidiary of a savings and loan holding company other than a savings association or a subsidiary of a savings association.

(b) The Board may exclude any savings and loan holding company, regardless of asset size, from the Policy Statement under paragraph (a) of this section if the Board determines that such action is warranted for supervisory purposes.

By order of the Board of Governors of the Federal Reserve System, April 9, 2015.

**Margaret McCloskey Shanks,**  
*Deputy Secretary of the Board.*

[FR Doc. 2015-08513 Filed 4-14-15; 8:45 am]

**BILLING CODE 6210-01-P**

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4022**

**Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation’s regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in May 2015. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective May 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** PBGC’s regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC’s Web site (<http://www.pbgc.gov>).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine

whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC’s historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for May 2015.<sup>1</sup>

The May 2015 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit’s placement in pay status. In comparison with the interest assumptions in effect for April 2015, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during May 2015, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 4022**

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

<sup>1</sup> Appendix B to PBGC’s regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

<sup>1</sup> Footnote 1: [Reserved]

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

■ 1. The authority citation for part 4022 continues to read as follows:

■ 2. In appendix B to part 4022, Rate Set 259, as set forth below, is added to the table.

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
259	5-1-15	6-1-15	0.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 259, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
259	5-1-15	6-1-15	0.75	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of April 2015.

**Judith Starr,**  
General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2015-08636 Filed 4-14-15; 8:45 am]

BILLING CODE 7709-02-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 3 and 141**

[Docket No. USCG-2013-0491]

RIN 1625-AB88

**Consolidation of Officer in Charge, Marine Inspection for Outer Continental Shelf Activities; Eighth Coast Guard District; Technical, Organizational, and Conforming Amendments**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule establishing a consolidated Officer in Charge, Marine Inspection (OCMI) for the purposes of inspecting mobile offshore drilling units, and fixed and floating facilities, engaged in OCS activities in the Eighth Coast Guard District. This final rule also addresses comments submitted in response to our

notice and request for comments related to the consolidation of the OCMI, for OCS activities, and makes other non-substantive changes. This rule will have no substantive effect on the regulated public.

**DATES:** This rule is effective May 1, 2015.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket, are part of docket USCG-2013-0491 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also view the docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2013-0491 in the "Search" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Commander Steven Keel, U.S. Coast Guard Headquarters, Office of Commercial Vessel Compliance; telephone (202) 372-1230, email [steven.r.keel@uscg.mil](mailto:steven.r.keel@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:**

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**I. Abbreviations**

- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- E.O. Executive Order
- FR Federal Register
- NCOE National Center of Expertise
- OCMI Officer in Charge, Marine Inspection
- OMB Office of Management and Budget
- OCS Outer Continental Shelf
- Pub. L. Public Law
- § Section Symbol
- U.S.C. United States Code

**II. Regulatory History and Information**

This rule reflects the internal organization of the Coast Guard's Eighth District, and affects administrative procedures such as contact information. It is a rule of agency organization,

procedure, and practice within the meaning of 5 U.S.C. 553(b)(A) and under that section no prior notice or opportunity to comment is required. Also, the Coast Guard finds for good cause that notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B) because this final rule consists only of administrative, organizational, and conforming amendments that will have no substantive effect on the public. Therefore, we did not publish a notice of proposed rulemaking for this final rule, although we did provide for public comment as described below.

Because this is a rule of internal agency organization with no substantive impact on the public, we find that good cause exists under 5 U.S.C. (d)(3) for making this final rule effective immediately upon the date specified in the **DATES** section above.

On August 7, 2013 we published a notice and request for comments (78 FR 48180) informing the public that the Eighth Coast Guard District in New Orleans was considering consolidating its OCS marine inspection function from six offices to one and invited public comment on making such a change. The duties of an OCMI are found in 33 CFR 1.01–20 and include inspection of vessels in order to determine that they comply with the applicable laws, rules, and regulations relating to safe construction, equipment, manning, and operation and that they are in a seaworthy condition for the services in which they are operated. Currently, the six OCMI field offices in the Eighth District that handle OCS matters are located in the following cities: Mobile, Alabama; New Orleans, Louisiana; Morgan City, Louisiana; Port Arthur, Texas; Houston, Texas, and Corpus Christi, Texas.

In addition to requesting comments on the efficacy of combining the OCS OCMI function, the request offered four different ways in which the consolidated Eighth District OCS OCMI could be established using the existing organizational structure of the Eighth District. We also asked for comments on which city a consolidated Eighth District OCS OCMI should be physically located.

With input received in response to our request, we have decided to consolidate OCMI functions for the purposes of inspecting fixed and floating facilities, and mobile offshore drilling units (MODUs), in the Eighth Coast Guard District, into a single OCMI that will serve as the Chief, Outer Continental Shelf Division, on the Eighth District staff (hereafter referred to as “Eighth District OCS OCMI”). For

simplicity, we have included every Eighth District Marine Inspection Zone defined in Title 33, Code of Federal Regulations, Part 3, Subpart 3.40 in the consolidation even though offshore inspections are not usually carried out in the inland rivers.

### III. Basis and Purpose

The legal basis for this rule is provided by 14 U.S. Code (U.S.C.) 92 and DHS Delegation No. 0170.1(II)(23). Section 92 authorizes the Secretary of DHS to “establish, change the limits of, consolidate, discontinue, and re-establish Coast Guard districts” and “do any and all things necessary to carry out the purposes of” title 14, pertaining to the Coast Guard. The DHS Delegation delegates the Secretary’s functions to the Commandant of the Coast Guard.

The purpose of this rule is to make conforming amendments and technical corrections specific to agency organization, procedure, and practice. These conforming amendments and technical corrections consolidate the existing individual OCMI authorities currently within the Eighth Coast Guard District into a single OCMI authority.

### IV. Discussion of Comments Received

We received 12 comments on the docket addressing the specific questions raised in the request for comments and we also received additional comments beyond the scope of those questions. No adverse or opposing comments were made and 11 comments expressed support for consolidation. An analysis of those comments is as follows:

*a. Should the OCMI function be consolidated?* Of the 12 comments received, 11 supported the consolidation and one did not comment on this question. The reasons cited for supporting the consolidation included the belief that doing so would make more efficient use of inspection personnel and provide more consistency since decisions affecting the regulated industry would be made by one OCMI instead of six. Additionally, several commenters suggested that consolidation be carried out as promptly as possible, and three responses suggested that proper staffing would be critical to the success of the consolidated Eighth District OCMI.

*b. Where should the consolidated Eighth District OCMI be placed in the organization?* Seven commenters made recommendations related to location and the remainder had none. The majority recommended that the consolidated Eighth District OCS OCMI be located in Houston, Texas or New Orleans, Louisiana and one commenter recommended Morgan City or Houma,

Louisiana. One commenter suggested that desirability of the location should be taken into consideration to encourage recruitment and retention. The Coast Guard is opting to establish the Eighth District OCS OCMI as a staff element of the Eighth District, in New Orleans, Louisiana. We believe this provides the most efficient means of consolidation and places the Eighth District OCS OCMI in close proximity with the Eighth District Commander, increasing the visibility of the OCS inspection mission.

*c. Other comments:* In addition to providing responses to the questions we asked in the notice, several commenters provided concerns and recommendations should the OCMI function be consolidated. Several commenters expressed concern that the success of an Eighth District OCS OCMI would depend on proper staffing levels. We agree. Workforce capacity was taken into consideration when determining whether to consolidate the OCS function or not. Our workload analysis of the Eighth District OCS OCMI model identified a gain in labor efficiency equivalent to hiring 1.5 new full time employees creating more workload capacity with existing inspectors. Through consolidation, qualified marine inspectors from each of the six current OCMI staffs have been designated as dedicated OCS inspectors under the new Eighth District OCS OCMI with OCS inspection as their primary duty. We believe that focusing a core capacity of OCS inspectors will improve service delivery to the regulated industry. Additionally, we will continue to analyze workload levels for OCS inspection activities and make workforce adjustments as necessary.

Some comments also expressed concern for OCS marine inspector proficiency. We believe that overall proficiency under the Eighth District OCS OCMI will improve for two reasons. First, the consolidation will facilitate movement of OCS inspectors within the Eighth District between the MI zones that existed before the consolidation to either meet spot workloads or gain experience more quickly than they otherwise would have. Second, the Eighth District OCS OCMI can serve as a single champion for all OCS inspectors in the District and will be better placed to track and improve their proficiency development. One commenter also recommended longer tour lengths for active duty OCS inspectors and perhaps the addition of more long term civilian OCS inspectors to improve proficiency. We agree with this comment and are considering its potential future adoption. One

commenter suggested that OCS marine inspector proficiency could be improved by using only Coast Guard civilian personnel who do not serve tours like military personnel who regularly rotate out once their tour is up. We believe using active duty military personnel provides long term benefits to the Coast Guard by forming future leaders who will serve in Headquarters where important program decisions impacting the offshore energy sector are made.

One commenter suggested that the OCS National Center of Expertise (NCOE) be consolidated into the Eighth District OCS OCMI. We do not intend to do so at this time. The NCOE is a Coast Guard Headquarters unit that focuses on programmatic issues such as policy and standardized training development. We believe that their current position in the organization is better aligned with achieving those goals than it would be if moved into the OCS OCMI organization within the Eighth District.

One commenter was uncertain as to which office would be responsible for conducting marine casualty investigations for reportable incidents occurring offshore. The Eighth District OCS OCMI will be responsible for investigating marine casualties on fixed and floating OCS facilities, and MODUs in the Eighth Coast Guard District.

One commenter expressed confusion over which vessels and facilities the Eighth District OCS OCMI would be responsible for inspecting. The Eighth District OCS OCMI will be responsible for inspecting a specific fleet of fixed or floating OCS facilities or mobile offshore drilling units defined in 33 CFR 140.10. Any other vessel or OCS unit type will continue to be inspected by the OCMI described in 33 CFR part 3.40 as stated prior to the consolidation. For example, a well intervention vessel that is not certificated as a mobile offshore drilling unit will continue to be inspected by the cognizant Sector or Marine Safety Unit OCMI.

Vessels and facilities overseen by the Eighth District OCS OCMI are fleet specific; any vessel meeting the description above will fall under the purview of the Eighth District OCS OCMI regardless of where in the Eighth Coast Guard District it may be located.

One commenter observed that the consolidation of the OCMI function fulfills a recommendation of the Coast Guard's Report of Investigation in the Circumstances Surrounding the Explosion, Fire, Sinking, and Loss of Eleven Crew Members Aboard the Mobile Offshore Drilling Unit DEEPWATER HORIZON in the Gulf of

Mexico April 20–22, 2010 (Volume I pages 110–111).

One commenter positively noted that the plan to consolidate the Eighth District OCS OCMI function could be accomplished in a resource neutral way thus gaining efficiency with no additional government expense.

#### V. Discussion of the Rule

As discussed in Section II above, this rule constitutes a non-substantive organization change. Beginning May 1, 2015, vessels meeting the description set out by this rulemaking will apply to the Eighth District OCS OCMI for required inspections instead of the Sector OCMIs as was previously the case. The Eighth District OCS OCMI will also carry out other traditional OCMI activities such as inspection of damage and repairs, as well as unannounced inspections. This rule also amends 33 CFR 141.15 to clarify when determinations that affect restrictions on employment of persons other than United States citizens may be made by the Eighth District OCS OCMI. To apply for an inspection after April 30, 2015, or to learn more about the business rules of the Eighth District OCS OCMI, please visit their Web site at [www.uscg.mil/d8/ocsocmi.asp](http://www.uscg.mil/d8/ocsocmi.asp), available beginning on April 27, 2015.

#### VI. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Two additional E.O.s were recently published to promote the goals of E.O. 13563: E.O. 13609 (“Promoting International Regulatory Cooperation”) and E.O. 13610 (“Identifying and Reducing Regulatory Burdens”). E.O. 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in

regulatory requirements. E.O. 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The provisions of this final rule are administrative, technical, and non-substantive; they will have no substantive effect on the public and will impose no additional costs. This final rule consolidates the functions and requirements for six existing individual OCMI authorities into a single OCMI authority within the Eighth Coast Guard District known as the Eighth District OCS OCMI. OCS units meeting the description set out by this rulemaking are already required to contact an OCMI for mandatory inspections and LODs related to citizenship. Under this final rule, such vessels will now contact the Eighth District OCS OCMI for these same requirements rather than applying to one of six different OCMIs within the Eighth District. Information on applying for inspections or receiving an LOD from the Eighth District OCS OCMI after April 30, 2015, and more about the business rules of the Eighth District OCS OCMI, may be accessed at [www.uscg.mil/d8/ocsocmi.asp](http://www.uscg.mil/d8/ocsocmi.asp), which will be available beginning on April 27, 2015. This rule does not establish any new regulatory requirements impacting the public. Therefore, this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866.

##### 2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), rules exempt from the notice and comment requirements of the Administrative Procedure Act are not required to examine the impact of the rule on small entities. Nevertheless, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There is no cost to this final rule, and we do not expect it to have an impact on small entities because the provisions of this rule will have no substantive effect on the public and will impose no additional costs. 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. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Mugo Macharia by phone at 202–372–1472 or via email at [Mugo.Macharia@uscg.mil](mailto:Mugo.Macharia@uscg.mil).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

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

### 5. Federalism

A rule has implications for federalism under E.O. 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 is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

### 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 1 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 final rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

### 8. Civil Justice Reform

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

### 9. Protection of Children

We have analyzed this final rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). This final 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.

### 10. Indian Tribal Governments

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

### 11. Energy Effects

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

### 12. Technical Standards

This final 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(a), (b), and (d) of the Instruction. This final rule involves regulations that are editorial or procedural, or that concern internal agency functions or organizations. An environmental analysis checklist and a categorical exclusion determination are available in the docket for this final rule where indicated under **ADDRESSES**.

### List of Subjects

#### 33 CFR Part 3

Organization and functions (Government agencies).

#### 33 CFR Part 141

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Chapter I as follows:

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

**Authority:** 14 U.S.C. 92 and 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

### PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

■ 2. Add § 3.40–5 to read as follows:

#### § 3.40–5. Eighth District Outer Continental Shelf Marine Inspection Zone.

(a) A separate marine inspection zone, with an office located in New Orleans, Louisiana, performs the OCMI functions defined in 33 CFR 1.01–20 for all MODUs and fixed and floating OCS facilities, as those terms are defined in 33 CFR 140.10, engaged in OCS activities wherever located in the Eighth Coast Guard District.

(b) Notwithstanding the OCMI inspection authority held by Eighth Coast Guard District Sector Commanders and Marine Safety Unit Commanders in § 3.01–1(d), the Chief, Outer Continental Shelf Division at the Eighth Coast Guard District, shall serve as the Officer in Charge, Marine Inspection, for this Marine Inspection

Zone and shall be known as the Eighth District Outer Continental Shelf Officer in Charge, Marine Inspection. The District Commander resolves any conflict between the functions of this marine inspection zone and any geographically based marine inspection zones described in 33 CFR 3.40–10, 3.40–15, 3.40–28, 3.40–35, 3.40–40, 3.40–60, or 3.40.65.

**§§ 3.40–10, 3.40–15, 3.40–28, 3.40–35, 3.40–40, 3.40–60, 3.40–65 [Amended]**

- 3. Add the words the words “Subject to the overriding provisions of § 3.40–5,” in the following places:
  - a. In § 3.40–10, at the beginning of the second sentence;
  - b. In §§ 3.40–15 and 3.40–28, at the beginning of the first sentence in paragraph (a);
  - c. In §§ 3.40–35, 3.40–40, and 3.40–60 at the beginning of the second sentence; and
  - d. In § 3.40–65, at the beginning of the first sentence in paragraph (a).

**PART 141—PERSONNEL**

- 4. The authority for part 141 continues to read as follows:

**Authority:** 43 U.S.C. 1356; 46 U.S.C. 70105; 49 CFR 1.46(z).

- 5. In § 141.15, redesignate paragraph (c) as paragraph (c)(1) and add paragraph (c)(2) to read as follows:

**§ 141.15 Restrictions on employment.**

\* \* \* \* \*

(c) \* \* \*

(2) Determinations in paragraph (c)(1) of this section for all MODUs and fixed and floating OCS facilities, as those terms are defined in 33 CFR 140.10, operating within the Eighth District Outer Continental Shelf Marine Inspection Zone will be made by the Eighth District Outer Continental Shelf Officer in Charge, Marine Inspection, as defined and described in § 3.40–5 of this chapter.

Dated: April 9, 2015.

**J.C. Burton,**

*Captain, U.S. Coast Guard, Director of Inspections and Compliance.*

[FR Doc. 2015–08533 Filed 4–14–15; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG–2015–0222]**

**Drawbridge Operation Regulations; Piscataqua River, Kittery, ME**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Sara M. Long Bridge, mile 2.5, across the Piscataqua River between Portsmouth, New Hampshire and Kittery, Maine. This deviation is necessary to facilitate bridge construction. This deviation allows the secondary draw at the Sara M. Long Bridge to remain closed to marine traffic during construction.

**DATES:** This deviation is effective from May 15, 2015 through October 31, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2015–0222] is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, contact Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, [judy.k.leung-yee@uscg.mil](mailto:judy.k.leung-yee@uscg.mil). If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The Sara M. Long Bridge across the Piscataqua River, mile 2.5, between Portsmouth, New Hampshire and Kittery, Maine, has a vertical clearance in the closed position of 8 feet at mean high water and 18 feet at mean low water.

The secondary draw section will remain closed during construction. The existing bridge operating regulations are found at 33 CFR 117.531(c).

The waterway is transited by seasonal recreational vessels and commercial vessels of various sizes.

The bridge owner, Maine Department of Transportation, requested a

temporary deviation from the normal operating schedule to facilitate bridge construction.

Under this temporary deviation the Sara M. Long Bridge secondary draw may remain in the closed position from May 15, 2015 through October 31, 2015.

There is an alternate route for vessel traffic under the main span of the Sara M. Long Bridge. Vessels are advised to remain clear of the secondary draw and related construction activities during this closure. The secondary draw may be opened in the event of an emergency.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: April 6, 2015.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2015–08660 Filed 4–14–15; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG–2015–0202]**

**RIN 1625–AA00**

**Safety Zone, Eastern Branch Elizabeth River; Norfolk, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the Eastern Branch of the Elizabeth River in support of the Old Dominion University (ODU) versus University of Virginia (UVA) Baseball Game fireworks event. This safety zone will restrict vessel movement in the specified area during the fireworks display. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks display.

**DATES:** This rule is effective and enforced from 9:30 p.m. to 10:30 p.m. on April 28, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2015–0202]. To view documents mentioned in this preamble as being available in the docket, go to <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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668–5580, email [HamptonRoadsWaterway@uscg.mil](mailto:HamptonRoadsWaterway@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. Regulatory History and Information**

The Coast Guard is issuing this temporary 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 written notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the short time period between event planners notifying the Coast Guard of details concerning the event, on March 19, 2015, and publication of this safety zone. As such, it is impracticable for the Coast Guard to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this safety zone would be contrary to the public interest as immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected

waterway via marine information broadcasts and local notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone’s intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

**B. Basis and Purpose**

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 33 CFR 1.05–1, 6.04–1, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The purpose of this safety zone is to protect the event participants, patrol vessels, spectator craft and other vessels transiting navigable waters of the Eastern Branch of the Elizabeth River from hazards associated with a fireworks display. The potential hazards to mariners within the safety zone include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

**C. Discussion of the Final Rule**

On April 28, 2015, the Harbor Park Stadium will be hosting the ODU versus UVA baseball game which will include a fireworks display on the bank of the Eastern Branch of the Elizabeth River in Norfolk, VA. The fireworks debris fallout area will extend over the navigable waters of the Eastern Branch of the Elizabeth River.

The Captain of the Port of Hampton Roads is establishing a safety zone on specified waters of the Eastern Branch of the Elizabeth River in Norfolk, VA. The fireworks will be launched from the shoreline of the Eastern Branch of the Elizabeth River located behind the Harbor Park Stadium. The safety zone will encompass all navigable waters within a 210 foot radius of the fireworks launching location at position 36°50′29.8896″ N, 076°16′43.662″ W and 36°50′30.3678″ N, 076°16′39.936″ W. This safety zone will be established and enforced from 9:30 p.m. to 10:30 p.m. on April 28, 2015. Access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port of his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This includes publication in the Local Notice to Mariners and Marine Information Broadcasts.

**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 and 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone restricts vessel traffic through the regulated area, the effect of this rule will not be significant because: (i) This rule will only be enforced for the limited size and duration of the event; and (ii) the Coast Guard will make extensive notification to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

*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 affects the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in waters of the Eastern Branch of the Elizabeth River during the enforcement period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is of limited size and duration, and

(ii) Sector Hampton Roads will issue maritime advisories widely available to users of the Eastern Branch of the Elizabeth River allowing mariners to adjust their plans accordingly.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### 8. Taking of Private Property

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

### 9. Civil Justice Reform

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

### 10. Protection of Children

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

### 11. Indian Tribal Governments

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

### 12. Energy Effects

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

### 13. Technical Standards

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

### 14. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined 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 establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34–(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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 amends 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0202 to read as follows:

#### § 165.T05–0202 Safety Zone, Eastern Branch Elizabeth River; Norfolk, VA.

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector Hampton Roads. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port. *Participants* mean individuals responsible for launching the fireworks.

(b) *Locations.* The following area is a safety zone:

(1) All waters of the Eastern Branch of the Elizabeth River within a 210 foot radius of the fireworks display in approximate position 36°50'29.8896" N, 076°16'43.662" W and 36°50'30.3678" N, 076°16'39.936" W, located near the Harbor Park Stadium, Norfolk, Virginia.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by



the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668-5555.

(5) The Coast Guard vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the safety zone except participants and vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) *Enforcement Period.* This rule will be enforced from 9:30 p.m. to 10:30 p.m. on April 28, 2015.

Dated: April 3, 2015.

**Christopher S. Keane,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2015-08659 Filed 4-14-15; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2014-0612; FRL-9925-32-Region-9]

#### Determination of Attainment of the 1-Hour Ozone National Ambient Air Quality Standard in the Southeast Desert Nonattainment Area in California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Southeast Desert nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard. This determination is based on complete, quality-assured, and certified data for the most recent three-year period (2011-2013). Preliminary data available through December 2014 are consistent with continued attainment.

**DATES:** This final rule is effective on May 15, 2015.

**ADDRESSES:** The EPA has established a docket for this action, identified by

Docket ID Number EPA-R09-OAR-2014-0612. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3856, [kelly.thomasp@epa.gov](mailto:kelly.thomasp@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

#### Table of Contents

- I. Background
- II. Public Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

#### I. Background

On August 25, 2014 (79 FR 50574), the EPA proposed to determine that the Southeast Desert 1-hour ozone nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS or “standard”), based on complete, quality-assured and certified ambient air quality data for the 2011 to 2013 monitoring period. The Southeast Desert 1-hour ozone nonattainment area covers the Victor Valley/Barstow region in San Bernardino County, the Coachella Valley region in Riverside County, and the Antelope Valley portion of Los Angeles County (see 40 CFR 81.305 for the precise boundaries of the 1-hour ozone nonattainment area).

Our proposed rule provides background information on the 1-hour ozone standard; the designations and classifications of the Southeast Desert under the Clean Air Act (CAA or “Act”) for the 1-hour ozone standard; EPA’s prior determination that the Southeast Desert failed to attain the 1-hour ozone standard by the 2007 applicable attainment date based on 2005-2007 ozone data; and the recent request by the State of California to make a finding of attainment of the 1-hour ozone standard for the Southeast Desert in light of improved ozone conditions in the area. See 79 FR 50574, at 50575. We also described how we determine whether an area’s air quality meets the 1-hour ozone standard; identified the relevant air monitoring agencies in the

Southeast Desert and their respective ozone monitoring networks and monitoring network plans; and documented our previous review of the networks and network plans, the agencies’ annual certifications of ambient air monitoring data, and our determination of completeness for 2011-2013 data from the eight monitoring sites within the Southeast Desert. See 79 FR 50574, at 50576. Please see our proposed rule for more information concerning these topics.

Our proposed rule included a table of “expected exceedances” for the Southeast Desert nonattainment area. See 79 FR 50574, at 50577. As explained in our proposed rule, an area is considered to have attained the 1-hour ozone standard if there are no violations of the standard, in accordance with 40 CFR 50.9 and based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A violation occurs when the “expected number” of days per calendar year with maximum hourly average concentrations above 0.12 ppm is greater than one (1.0) at any site in the area, when averaged over three consecutive calendar years.<sup>1</sup> An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see “National 1-hour primary and secondary ambient air quality standards for ozone” (40 CFR 50.9) and “Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone” (40 CFR part 50, appendix H). Based on our review of the monitoring data, and taking into account the extent and reliability of the applicable ozone monitoring network, we proposed to determine that the Southeast Desert has attained the 1-hour ozone standard based on complete, certified and quality-assured data for the 2011-2013 period. In our proposed rule, we indicated that we would review preliminary data for 2014 prior to taking final action. We have now done so and find that preliminary data for 2014, from January through December, for the ozone monitoring sites in the Southeast Desert are consistent with continued attainment.

<sup>1</sup> An “expected number” of exceedances is a statistical term that refers to an arithmetic average. An “expected number” of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. See, 40 CFR part 50, appendix H. Because, in this context, the term “exceedances” refers to days (during which the daily maximum hourly ozone concentration exceeded 0.124 ppm), the maximum possible number of exceedances in a given year is 365 (or 366 in a leap year).

## II. Public Comments

EPA received no comments on the proposed action during the comment period.

## III. Final Action

EPA is determining that the Southeast Desert nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard, based on complete, quality-assured and certified ambient air quality monitoring data for the 2011 to 2013 monitoring period. Preliminary data available for 2014, from January through December, are consistent with continued attainment.

## IV. Statutory and Executive Order Reviews

This action makes a determination based on air quality data and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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 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 June 15, 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 section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: April 6, 2015.

**Jared Blumenfeld**,

*Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart F—California

- 2. Section 52.282 is amended by adding paragraph (g) to read as follows:

### § 52.282 Control strategy and regulations: Ozone.

\* \* \* \* \*

(g) *Determination of attainment.* EPA has determined that, as of May 15, 2015, the Southeast Desert 1-hour ozone nonattainment area has attained the 1-hour ozone standard, based upon complete, quality-assured and certified ambient air quality monitoring data for 2011–2013.

[FR Doc. 2015–08582 Filed 4–14–15; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1515 and 1552

[EPA–HQ–OARM–2015–0182; FRL 9923–85–OARM]

### Environmental Protection Agency Acquisition Regulation (EPAAR); Source Selection and Payments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to remove source selection guidance and clauses that are not consistent with current EPA internal operating procedures for source selections. Additionally, EPA is deleting a clause for Payments—Fixed Rate Services Contracts because it is inconsistent with sections in the Federal Acquisition Regulation (FAR). EPA does not anticipate any adverse comments.

**DATES:** This rule is effective on June 15, 2015 without further notice, unless adverse comment is received May 15, 2015. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2015–0182 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* [docket.oei@epa.gov](mailto:docket.oei@epa.gov)
- *Fax:* (202) 566–1753
- *Mail:* EPA–HQ–OARM–2015–0182, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of three (3) copies.
- *Hand Delivery:* EPA Docket Center—Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave. NW., Washington DC 20004. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OARM-2015-0182. 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 information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the 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 Government Property—Contract Property Administration Docket, EPA/DC, EPA West, Room 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 EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Staci Ramrakha, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-564-2017; email address: [ramrakha.staci@epa.gov](mailto:ramrakha.staci@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

1. Do not submit Classified Business Information (CBI) to EPA Web site <http://www.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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

##### Background

The EPA has recently issued new internal guidance for conducting source selections in accordance with Federal Acquisition Regulation (FAR) Part 15. As a result of the new guidance, existing EPAAR subsection 1515.3, Source Selection, is no longer pertinent. The new source selection guidance does not have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. Therefore, this subpart and its related clauses are being removed in their entirety. Additionally, the EPA is removing EPAAR 1552.232-73, Payments—Fixed Rate Services Contracts, because it is inconsistent with FAR 52.232-7.

##### Final Rule

This final rule makes the following changes:

1. Amend EPAAR 1515.209 to delete source selection clauses that are no longer applicable to EPA source selections.
2. Remove EPAAR Subpart 15.3, Source Selection, in its entirety.
3. Remove EPAAR 1552.215-70, EPA Source Evaluation and Selection Procedures—Negotiated Procurements, in its entirety.
4. Remove EPAAR 1552.215-71, Evaluation Factors for Award, in its entirety.
5. Remove EPAAR 1552.232-73, Payments—Fixed Rate Services Contracts, in its entirety.
6. Amend EPAAR 1552.215-72(b)(1)(iii) to delete reference to EPAAR 1552.232-73 which has been removed from the EPAAR.

##### Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO 12866 and 13563 (76 FR 3821, January 21, 2011).

##### *B. Paperwork Reduction Act*

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

*C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" 5 U.S.C. 503 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action revises current EPAAR clauses and will not have a significant economic impact on substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal

governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under EO 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to EO 13045 because it is not an economically significant rule as defined by EO 12866, and because it does not have a proportionate effect on children.

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

This action is not subject to Executive Order 13211 (66 FR 28335 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act of 1995 (NTTAA)*

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

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules

of Agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects**

*48 CFR Part 1515*

Environmental protection,  
Government procurement.

*48 CFR Part 1552*

Environmental protection,  
Government procurement, Reporting  
and recordkeeping requirements.

Dated: April 2, 2015.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

For the reasons stated in the preamble, EPA amends 48 CFR Chapter 15, parts 1515 and 1552 as set forth below:

**PART 1515—CONTRACTING BY NEGOTIATION**

■ 1. The authority citation for part 1515 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Revise 1515.209 to read as follows:

**1515.209 Solicitation provisions and contract clauses.**

The contracting officer shall insert the clause at 1552.215–75, Past Performance Information, or a clause substantially the same as 1552.215–75, in all competitively negotiated acquisitions with an estimated value in excess of the simplified acquisition threshold.

**Subpart 1515.3 [Removed]**

■ 3. Remove subpart 1515.3.

**PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. The authority citation for part 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

**1552.215–70 and 1552.215–71 [Removed]**

■ 5. Remove 1552.215–70 and 1552.215–71.

■ 6. Amend 1552.215–72 by revising paragraph (b)(1)(iii) to read as follows:

**1552.215–72 Instructions for the Preparation of Proposals.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) If the contract includes the clause at FAR 52.232–7, “Payments Under Time and Materials and Labor-Hour Contracts,” include in the cost proposal the estimated costs and burden rate to be applied to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

\* \* \* \* \*

**1552.232–73 [Removed]**

■ 7. Remove 1552.232–73.

[FR Doc. 2015–08665 Filed 4–14–15; 8:45 am]

**BILLING CODE 6560–50–P**

# Proposed Rules

Federal Register

Vol. 80, No. 72

Wednesday, April 15, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC–2014–0261]

RIN 3150–AJ50

#### List of Approved Spent Fuel Storage Casks: NAC International, Inc., MAGNASTOR® System, Certificate of Compliance No. 1031, Amendment No. 5

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International, Inc., MAGNASTOR® System listing within the “List of approved spent fuel storage casks” to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1031. Amendment No. 5 makes numerous changes to the Technical Specifications (TSs) including adding a new damaged fuel assembly, revising the maximum or minimum enrichments for three fuel assembly designs, adding four-zone preferential loading for pressurized-water reactor fuel assemblies and increasing the maximum dose rates in limiting condition for operation 3.3.1, and other editorial changes to Appendices A and B of the TSs.

**DATES:** Submit comments by May 15, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to: <http://www.regulations.gov> and search for Docket ID NRC–2014–0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–

3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3781; email: [Solomon.Sahle@nrc.gov](mailto:Solomon.Sahle@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC–2014–0261 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to: <http://www.regulations.gov> and search for Docket ID NRC–2014–0261.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):*

You may access publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR)

reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

###### B. Submitting Comments

Please include Docket ID NRC–2014–0261 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

##### II. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 5 to CoC No. 1031 and does not include other aspects of the NAC International, Inc., MAGNASTOR® System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on June 29, 2015. However, if the NRC receives significant adverse comments on this proposed rule by May 15, 2015, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC

will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

**III. Background**

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that “the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the NWPA states, in part, that “[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic:

218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc., MAGNASTOR® System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No.1031.

**IV. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

**V. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ web link/ Federal Register citation
Proposed CoC No. 1031, Amendment No. 5 .....	ML14216A197
Proposed TS, Appendix A ....	ML14216A257
Proposed TS, Appendix B ....	ML14216A270
Preliminary SER .....	ML14216A310
Request to Amend Reference 1 Dated December 19, 2013 .....	ML13361A144
Request to Amend Reference 3 Dated March 19, 2014 .....	ML14079A525
Request for Additional Information (RAI) Dated May 15, 2014 .....	ML14140A239

Document	ADAMS accession No./ web link/ Federal Register citation
Supplemental Information for Proposed Action Dated June 13, 2014 .....	ML14170A032

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC–2014–0261. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0261); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d)

(42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1031 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

\* \* \* \* \*

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

Amendment Number 2 Effective Date: January 30, 2012.

Amendment Number 3 Effective date: July 25, 2013.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72-1031. Certificate Expiration Date: February 4, 2029.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

\* \* \* \* \*

Dated at Rockville, Maryland, this 29th day of January, 2015.

For the Nuclear Regulatory Commission.

**Mark A. Satorius,**

*Executive Director for Operations.*

[FR Doc. 2015-08677 Filed 4-14-15; 8:45 am]

**BILLING CODE 7590-01-P**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

[Docket ID FFIEC-2014-0001]

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**12 CFR Chapter II**

[Docket No. R-1510]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Chapter III**

**Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996**

**AGENCIES:** Office of the Comptroller of the Currency (“OCC”), Treasury; Board of Governors of the Federal Reserve System (“Board”); and Federal Deposit Insurance Corporation (“FDIC”).

**ACTION:** Notice of outreach meeting.

**SUMMARY:** The OCC, Board, and FDIC (“Agencies”) announce the third in a series of outreach meetings on the Agencies’ interagency process to review their regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”).

**DATES:** An outreach meeting will be held in Boston, Massachusetts on Monday, May 4, 2015, beginning at 9:00 a.m. Eastern Daylight Time (EDT). Online registrations will be accepted through April 27, 2015, or until all seats are filled, whichever is earlier. If seats are available after the close of online registration, individuals may register in person at the Federal Reserve Bank of Boston on the day of the meeting. Additional outreach meetings are scheduled for August 4, 2015, in Kansas City, Missouri (focusing on rural insured depository institutions); October 19, 2015, in Chicago, Illinois; and December 2, 2015, in Washington, DC.

**ADDRESSES:** The Agencies will hold the May 4, 2015, outreach meeting at the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02210. Live video of this meeting will be streamed at <http://egrpra.ffiec.gov/>. All participants should register at <http://egrpra.ffiec.gov/outreach/outreach-index.html>.

Any interested individual may submit comments through the EGRPRA Web site during open comment periods at:

<http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html>. On this site, click “Submit a Comment” and follow the instructions. Alternatively, comments also may be submitted through the Federal eRulemaking Portal “Regulations.gov” at: <http://www.regulations.gov>. Enter “Docket ID FFIEC-2014-0001” in the Search Box, click “Search,” and click “Comment Now.” Those who wish to submit their comments by an alternate means may do so as indicated by each agency below.

OCC:

The OCC encourages commenters to submit comments through the Federal eRulemaking Portal, Regulations.gov, in accordance with the previous paragraph. Alternatively, comments may be emailed to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov) or sent by mail to Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W-11, 400 7th Street SW., Washington, DC 20219. Comments also may be faxed to (571) 465-4326 or hand delivered or sent by courier to 400 7th Street SW., Washington, DC 20219. For comments submitted by any means other than Regulations.gov, you must include “OCC” as the agency name and “Docket ID FFIEC-2014-0001” in your comment.

In general, the OCC will enter all comments received into the docket and publish them without change on Regulations.gov. Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not include any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the OCC at 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect or photocopy comments. You may make an appointment by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening.

Board:

The Board encourages commenters to submit comments regarding the Board’s regulations by any of the following methods:

- Agency Web site: <http://www.federalreserve.gov/apps/foia/>



*proposedregs.aspx*. Follow the instructions for submitting comments on the Agency Web site.

- Federal eRulemaking Portal, in accordance with the directions above.

- Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include "EGRPRA" and Docket No. R-1510 in the subject line of the message.

- FAX: (202) 452-3819.

- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

In general, the Board will enter all comments received into the docket and publish them without change on the Board's public Web site,

[www.federalreserve.gov](http://www.federalreserve.gov);

[regulations.gov](http://regulations.gov); and <http://egrpra.ffiec.gov>.

Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure.

Therefore, please do not enclose any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the Board at 20th Street and Constitution Avenue NW., Washington, DC 20551. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may make an appointment by calling (202) 452-3000. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening.

FDIC:

The FDIC encourages commenters to submit comments through the Federal eRulemaking Portal, "Regulations.gov," in accordance with the directions above. Alternatively, you may submit comments by any of the following methods:

- Agency Web site: <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web site.

- Email: [Comments@FDIC.gov](mailto:Comments@FDIC.gov).

Include "EGRPRA" in the subject line of the message.

- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on

business days between 7 a.m. and 5 p.m. (EDT).

The FDIC will post all comments received to <http://www.fdic.gov/regulations/laws/federal> without change, including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EDT) on business days. Paper copies of public comments may be ordered from the Public Information Center by calling (877) 275-3342.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Heidi M. Thomas, Special Counsel, (202) 649-5490; for persons who are deaf or hard of hearing, TTY (202) 649-5597.

Board: Kevin Wilson, Financial Analyst, (202) 452-2362; Claudia Von Pervieux, Counsel (202) 452-2552; for persons who are deaf or hard of hearing, TTY (202) 263-4869.

FDIC: Ruth R. Amberg, Assistant General Counsel, (202) 898-3736; for persons who are deaf or hard of hearing, TTY 1-800-925-4618.

**SUPPLEMENTARY INFORMATION:** EGRPRA<sup>1</sup> directs the Agencies, along with the Federal Financial Institutions Examination Council (Council), not less frequently than once every ten years, to conduct a review of their regulations to identify outdated or otherwise unnecessary regulations imposed on insured depository institutions. As part of this review, the Agencies are holding a series of six outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to senior management and staff of the Agencies on any of 12 specific categories of the Agencies' regulations, as further described below. The Agencies held the first of these outreach meetings on December 2, 2014, in Los Angeles, California, and the second outreach meeting on February 4, 2015, in Dallas, Texas.<sup>2</sup> Additional details about the first two outreach meetings, including the agendas, are available on the EGRPRA Web site at <http://egrpra.ffiec.gov/outreach/outreach-index.html>.

The third outreach meeting will be held on May 4, 2015, in Boston, Massachusetts and will be streamed live at <http://egrpra.ffiec.gov/>. Senior agency staff from the Board, OCC, and FDIC are scheduled to attend. The meeting will

<sup>1</sup> Public Law 104-208 (1996), 110 Stat. 3009-414, codified at 12 U.S.C. 3311.

<sup>2</sup> Recorded videos of these outreach meetings are available on the EGRPRA Web site at <http://egrpra.ffiec.gov/outreach/outreach-index.html>.

consist of panels of bankers and consumer and community groups who will present particular issues. There will be limited time after each panel for comments from meeting attendees. In addition, there will be a session at the end of the meeting during which audience members may present views on any of the regulations under review. The Agencies reserve the right to limit the time of individual commenters, if needed, in order to accommodate the number of persons desiring to speak.

Comments made by panelists and audience members at this meeting will be reflected in the public comment file. Audience members who do not wish to comment orally may submit written comments at the meeting. As noted above, any interested person may submit comments through the EGRPRA Web site during open comment periods at: <http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html> or directly to the Agencies through any of the other manners specified above.

All participants should register for the Boston outreach meeting at <http://egrpra.ffiec.gov/outreach/outreach-index.html>. Because of space constraints, on-site attendance will be limited. Online registrations will be accepted through April 27, 2015, or until all seats are filled, whichever is earlier. If seats are available, individuals may register in person at the Federal Reserve Bank of Boston on the day of the meeting. Individuals do not need to register to view the live-stream broadcast.

We note that the meeting will be video-recorded and publicly webcast in order to increase education and outreach. By participating in person at the meeting, you consent to appear in such recordings.

**Additional Background on EGRPRA**

Section 2222 of EGRPRA directs the Agencies, along with the Council, to conduct a review of their regulations not less frequently than once every ten years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the Agencies are required to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome. The statute requires the Agencies to publish in the **Federal Register** a summary of the comments received, identifying significant issues raised and commenting on these issues. The statute also directs the Agencies to

eliminate unnecessary regulations to the extent that such action is appropriate. Finally, section 2222 requires the Council, of which the Agencies are members, to submit a report to Congress that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report also must include an analysis of whether the Agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

For purposes of this review, the Agencies have grouped our regulations into 12 categories: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. On June 4, 2014, we published a **Federal Register** notice announcing the start of the EGRPRA review process and also asking for public comment on three of these categories—Applications and Reporting; Powers and Activities; and International Operations regulations.<sup>3</sup> In that notice we published a chart, listing the Agencies' regulations in the 12 categories included in the EGRPRA review. On February 13, 2015, we published a **Federal Register** notice asking for public comment on three additional categories—Banking Operations; Capital; and the Community Reinvestment Act.<sup>4</sup> The comment period for the current **Federal Register** notice closes on May 14, 2015.

Recently, the Agencies have decided to expand the scope of the EGRPRA review in order to be as inclusive as possible. Accordingly, the Agencies will take comment on all of our regulations issued in final form up to the date that we publish our last EGRPRA notice for public comment and report back to the Congress on all such regulations.

Dated: April 8, 2015.

**Thomas J. Curry**,  
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 7, 2015.

**Robert deV. Frierson**,  
Secretary of the Board.

Dated: April 6, 2015.

Federal Deposit Insurance Corporation by  
**Robert E. Feldman**,  
Executive Secretary.

[FR Doc. 2015-08619 Filed 4-14-15; 8:45 am]

**BILLING CODE 6210-01P; 6714-01-P; 4810-33-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-0826; Directorate Identifier 2014-NM-221-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, and A320 series airplanes modified by a particular supplemental type certificate (STC). This proposed AD was prompted by reports of cracks found during inspections of the in-flight entertainment system radome assembly. This proposed AD would require repetitive detailed inspections for cracks in the radome assembly, and replacement of the radome if necessary. We are proposing this AD to detect and correct cracks in the radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by June 1, 2015.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Live TV, 7415 Emerald Dunes Drive, Orlando, FL 32822; telephone 407-812-2643; email: [CertificationEngineering@livetv.net](mailto:CertificationEngineering@livetv.net); Internet: <http://www.LiveTV.net>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0826; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Barry Culler, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5546; fax: 404-474-5605; email: [william.culler@faa.gov](mailto:william.culler@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-0826; Directorate Identifier 2014-NM-221-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

We received reports of cracks in the in-flight entertainment system radomes of certain Airbus airplanes. The cracks were found during inspections of the radome assembly on various Airbus Model A318, A319, and A320 series airplanes that had in-flight entertainment systems installed using a certain STC issued to Live TV (STC number ST00788SE, [http://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/\\$FILE/ST00788SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/$FILE/ST00788SE.pdf)). Investigation of the cause of the cracks revealed that radome manufacturing variation, due to a lack of dimensional

<sup>3</sup> 79 FR 32172.

<sup>4</sup> 80 FR 7980.

controls on the radome manufacturing drawings, can result in the introduction of preload stress on the radome during its assembly with the skirt fairing. Preload stress combined with flight or handling stress, such as maintenance personnel stepping on the radome fairing assembly, might initiate a crack. The radome manufacturing drawings were revised on September 13, 2010, to add a control dimension, which was incorporated into production at radome serial number 498. Cracks in the radome, if not corrected, could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

**Related Service Information Under 1 CFR Part 51**

We reviewed Live TV Service Bulletin A320-53-006, Rev 01, dated September 10, 2014. The service information describes procedures for repetitive detailed inspections for cracks in the outer ply of the radome, and replacement of the radome with a new or serviceable radome, if any crack is found. This service information is reasonably available; see ADDRESSES for ways to access this service information.

**FAA’s Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information described previously. In addition, if any crack is found in a radome during an inspection, this proposed AD would require sending the inspection results to Live TV.

**Explanation of “RC” Steps in Service Information**

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner’s/operator’s understanding of

crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

Steps that are identified as RC in any service information must be done to comply with the proposed AD. However, steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC will require approval of an AMOC.

**Costs of Compliance**

We estimate that this proposed AD affects 120 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections .....	1 work-hour × \$85 per hour = \$85, per inspection cycle.	N/A	\$85, per inspection cycle .....	\$10,200, per inspection cycle.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspections. We have no way

of determining the number of aircraft that might need this replacement:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Replacement .....	8 work-hours × \$85 per hour = \$680 .....	\$0	\$680

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120-0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and

reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES-200.

**Authority for This Rulemaking**

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

detail the scope of the Agency’s authority.

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2015–0826; Directorate Identifier 2014–NM–221–AD.

#### (a) Comments Due Date

We must receive comments by June 1, 2015.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the airplane models identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, with Live TV radomes having part number (P/N) 5063–100–XX (XX designates the color option) and a serial number in the range of 001 through 497 inclusive, and modified by supplemental type certificate (STC) STC ST00788SE, [http://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/\\$FILE/ST00788SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/$FILE/ST00788SE.pdf).

(1) Airbus Model A318–111 and –112 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–111, 211, –212, –214, –231, –232, and –233 airplanes.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by reports of cracks found during inspections of the radome assembly. We are issuing this AD to detect and correct cracks in the in-flight entertainment system radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

#### (f) Compliance

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

#### (g) Repetitive Inspections and Corrective Actions

Within 3,900 flight hours after the effective date of this AD: Perform a detailed inspection for cracks of the radome assembly, in accordance with the Accomplishment Instructions of Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014. Repeat the inspection thereafter at intervals not to exceed 3,900 flight hours. If any crack is found during any inspection required by this paragraph, before further flight, replace the radome with a new or serviceable radome, in accordance with the Accomplishment Instructions of Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014.

#### (h) Reporting Requirement

If any crack is found during any inspection required by paragraph (g) of this AD, submit a report of the findings to Live TV, Attn: Oscar Hernandez, email: [CertificationEngineering@livetv.net](mailto:CertificationEngineering@livetv.net); at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the information specified in the service bulletin reporting form provided in Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014.

(1) If the inspection was accomplished on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

#### (i) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

#### (j) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to

a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

#### (k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

#### (l) Related Information

(1) For more information about this AD, contact Barry Culler, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5546; fax: 404–474–5605; email: [william.culler@faa.gov](mailto:william.culler@faa.gov).

(2) For service information identified in this AD, contact Live TV, 7415 Emerald Dunes Drive, Orlando, FL 32822; telephone 407–812–2643; email: [CertificationEngineering@livetv.net](mailto:CertificationEngineering@livetv.net); Internet: <http://www.LiveTV.net>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 6, 2015.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-08465 Filed 4-14-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-0828; Directorate Identifier 2014-NM-146-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2013-23-03, which applies to certain The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SR series airplanes. AD 2013-23-03 currently requires doing a detailed inspection of certain attach fittings for a cylindrical defect and replacing if necessary. Since we issued AD 2013-23-03, we received a report that a machining defect was also found on some of the actuator assemblies inspected during manufacture. This defect could lead to fatigue cracking and subsequent fracture. For certain airplanes, this proposed AD would mandate new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. This proposed AD would also limit the compliance time for doing the replacement for certain other airplanes. We are proposing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by June 1, 2015.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0828.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0828; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6428; fax: 425-917-6590; email: [nathan.p.weigand@faa.gov](mailto:nathan.p.weigand@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-0828; Directorate Identifier 2014-NM-146-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will

consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On October 31, 2013, we issued AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013), for certain The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SR series airplanes. AD 2013-23-03 requires inspecting to determine the part number of the inboard actuator attach fittings of the outboard flap. For affected attach fittings, AD 2013-23-03 requires doing a detailed inspection of the attach fittings for a cylindrical defect and replacing if necessary. As an option to the detailed inspection, AD 2013-23-03 allows replacement of affected attach fittings. AD 2013-23-03 resulted from a report of the fracture of an inboard actuator attach fitting of the outboard flap. An inspection of the attach fitting revealed that it was incorrectly machined with a cylindrical profile instead of a conical profile, resulting in reduced wall thickness. We issued AD 2013-23-03 to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

#### Actions Since AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013) Was Issued

The preamble to AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013), specified that we considered the requirements "interim action." AD 2013-23-03 explained that we might consider further rulemaking to require a minimum thickness inspection of inboard actuator attach fittings that are conically machined. Since we issued AD 2013-23-03, we received a report that a machining defect was also found on some of the actuator assemblies inspected during manufacture at the point where the tapered machining transitioned to the hemispherical machining at the top of the inner surface. Revised service information has been issued and, for certain airplanes, this proposed AD would mandate new

inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. This proposed AD would also limit the compliance time for doing the replacement, for certain other airplanes.

**Related Service Information Under 1 CFR part 51**

We reviewed Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014. The service information describes procedures for new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

**FAA’s Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Related AD**

This proposed AD is related to AD 2005-20-18, Amendment 39-14312 (70 FR 57740, October 4, 2005), for Model 747-100, -200B, -200F, -200C, -100B, -300 series airplanes. AD 2005-20-18 required inspecting and overhauling, replacing, or repairing (as applicable) the actuator attach fittings on the inboard and outboard flaps of the wing. The replacement was done in accordance with Boeing Service Bulletin 747-57A2316.

**Proposed AD Requirements**

This proposed AD would retain all of the requirements of AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013). For certain airplanes, this proposed AD would mandate new inspections of the inboard actuator attach fittings for machining defects, and overhaul or replacement, if necessary. This proposed AD would also limit the compliance time for doing the replacement for certain other airplanes. This proposed AD would also require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD affects 184 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspection for part number in AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013).	7 work-hours × \$85 per hour = \$595.	\$0	\$595	\$109,480.
New proposed inspections for machining defect.	8 work-hours × \$85 per hour = \$680.	0	680	125,120.
Replacement for airplanes without any defect ..	6 work-hours × \$85 per hour = \$510.	13,720	14,230	14,230 per airplane.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013), and adding the following new AD:

**The Boeing Company:** Docket No. FAA-2015-0828; Directorate Identifier 2014-NM-146-AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by June 1, 2015.

**(b) Affected ADs**

This AD replaces AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013).

**(c) Applicability**

This AD applies to The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by a report of the fracture of an inboard actuator attach fitting of the outboard flap. An inspection of the attach fitting revealed that it was incorrectly machined with a cylindrical profile instead of a conical profile, resulting in reduced wall thickness. A machining defect was also found on some actuator assemblies inspected during manufacture at the point where the tapered machining transitioned to the hemispherical machining at the top of the inner surface. This defect could lead to fatigue cracking and subsequent fracture. We are issuing this AD to detect and correct defective inboard actuator attach fittings which, combined with loss of the outboard actuator load path, could result in uncontrolled retraction of the outboard flap, damage to flight control systems, and consequent reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Part Number Inspection**

This paragraph restates the requirements of paragraph (g) of AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013), with revised service information. Within 90 days after November 29, 2013 (the effective date of AD 2013-23-03): Inspect to determine the part number of the inboard actuator attach fittings of the outboard flaps, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013; or Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014. As of the effective date of this AD, only Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014, may be used.

**(h) Retained Actions for Certain Attach Fittings**

This paragraph restates the requirements of paragraph (h) of AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013), with revised service information. If, during the inspection required by paragraph (g) of this AD, any inboard actuator attach fitting having part number (P/N) 65B08564-7 is found, before further flight, do the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Do a detailed inspection of the inboard actuator attach fitting for a cylindrical defect, in accordance with Part 2 of the

Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013; or Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014. As of the effective date of this AD, only Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014, may be used. For airplanes on which the detailed inspection is done before the effective date of this AD: If any cylindrical defect is found, before further flight, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Do a minimum thickness inspection of the inboard actuator attach fitting to determine minimum wall thickness of the actuator fitting assembly, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013; or Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014. If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013.

(ii) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013.

**(i) New Actions for Certain Airplanes on Which Any Cylindrical Defect Is Found**

For airplanes on which the detailed inspection required by paragraph (h)(1) of this AD is done on or after the effective date of this AD: If any cylindrical defect is found during any inspection required by paragraph (h)(1) of this AD, before further flight, do the actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) Determine the minimum wall thickness of the actuator attach fitting either by doing an ultrasonic inspection or by mechanically measuring the thickness and do a detailed inspection of the inner conical section to determine if the machining defect is present, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(i) If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(ii) If the minimum thickness of the wall is 0.140 inch or greater and the machining defect is present, before further flight, do the actions specified in paragraph (i)(1)(ii)(A) or (i)(1)(ii)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin

747-57A2343, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iii) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is not present, within 48 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iv) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is present, before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

**(j) New Actions for Airplanes on Which No Cylindrical Defects Are Found**

If no cylindrical defect is found during any inspection required by paragraph (h)(1) of this AD, within 24 months after the effective date of this AD, do the actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) Determine the minimum wall thickness of the actuator attach fitting either by doing an ultrasonic inspection or by mechanically measuring the thickness and do a detailed inspection of the inner conical section to determine if the machining defect is present, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(i) If the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(ii) If the minimum thickness of the wall is 0.140 inch or greater and the machining defect is present, before further flight, do the actions specified in paragraph (j)(1)(ii)(A) or (j)(1)(ii)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iii) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is not present, within 48 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iv) If the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch and the machining defect is present, before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

#### **(k) New Inspection or Replacement for Certain Fittings That Were Previously Inspected**

For airplanes with any inboard actuator attach fitting having P/N 65B08564-7 installed and the fitting was inspected in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013: Within 24 months after the effective date of this AD, do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Do a detailed inspection of the inner conical section for machining defects only, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(i) If any machining defect is found and the minimum thickness of the wall is 0.140 inch or greater: Before further flight, do the actions specified in paragraph (k)(1)(i)(A) or (k)(1)(i)(B) of this AD.

(A) Overhaul the inboard actuator attach fitting of the outboard flap, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(B) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(ii) If any machining defect is found and the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iii) If no machining defect is found and the minimum thickness of the wall is 0.130 inch or greater and less than 0.140 inch: Within 48 months or 3,000 flight cycles after

the effective date of this AD, whichever occurs first, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(iv) If a machining defect is or is not found and the minimum thickness of the wall is less than 0.130 inch: Before further flight, replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

(2) Replace the inboard actuator attach fitting of the outboard flap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2343, Revision 1, dated June 23, 2014.

#### **(l) Part Installation Limitation**

As of the effective date of this AD, no actuator attach fitting having P/N 65B08564-7 that meets the requirements of CONDITION 5 or CONDITION 6 defined in Boeing Alert Service Bulletin 747-57A2343, dated September 12, 2013, may be installed on any airplane unless the inspection specified in paragraph (k)(1) of this AD is done and the applicable actions in paragraphs (k)(1)(i), (k)(1)(ii), (k)(1)(iii), and (k)(1)(iv) are done within the applicable times specified in paragraphs (k)(1)(i), (k)(1)(ii), (k)(1)(iii), and (k)(1)(iv) of this AD.

#### **(m) Alternative Methods of Compliance (AMOCs)**

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

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

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

(4) If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining

approval of an AMOC provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

(5) AMOCs approved for AD 2013-23-03, Amendment 39-17658 (78 FR 68345, November 14, 2013) are approved as AMOCs for the corresponding provisions of this AD.

#### **(n) Related Information**

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6428; fax: 425-917-6590; email: [nathan.p.weigand@faa.gov](mailto:nathan.p.weigand@faa.gov).

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

Issued in Renton, Washington, on April 6, 2015.

**John P. Piccola, Jr.,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-08464 Filed 4-14-15; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA-2015-0827; Directorate Identifier 2014-NM-008-AD]

**RIN 2120-AA64**

#### **Airworthiness Directives; Bombardier, Inc. Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2011-07-10, for certain Bombardier, Inc. Model BD-100-1A10 (Challenger 300) airplanes. AD 2011-07-10 currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness; doing detailed visual inspections; removing discrepant material; cleaning the surfaces of the valves, the plug of the sensing port, and the cabin pressure-sensing port plug; securing the insulation; installing a new safety valve,



and replacing certain cabin pressure-sensing port plugs. Since we issued AD 2011-07-10, we have received reports of in-flight loss of cabin pressurization that was attributed to partial blockage of a safety valve cabin pressure-sensing port in conjunction with a failed safety valve manometric capsule. This proposed AD would retain all requirements of AD 2011-07-10. This proposed AD would also require a detailed visual inspection of both safety valves and the surrounding area for foreign material, room temperature vulcanizing (RTV) silicone, contamination, foam on the bulkhead structure, tape or insulation, and loose material; and corrective actions if necessary. We are proposing this AD to detect and correct blockage of a safety valve cabin pressure-sensing port, which could result in loss of cabin pressure.

**DATES:** We must receive comments on this proposed AD by June 1, 2015.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0827; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments

received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

### FOR FURTHER INFORMATION CONTACT:

Luke Walker, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, NY Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7363; fax 516-794-5531.

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-0827; Directorate Identifier 2014-NM-008-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On March 21, 2011, we issued AD 2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011). AD 2011-07-10 requires actions intended to address an unsafe condition on certain Bombardier, Inc. Model BD-100-1A10 (Challenger 300) airplanes. AD 2011-07-10 superseded AD 2010-10-18, Amendment 39 16297 (75 FR 27406, May 17, 2010).

Since we issued AD 2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011), we have received reports of in-flight loss of cabin pressurization that were attributed to partial blockage of a safety valve cabin pressure-sensing port in conjunction with a failed safety valve manometric capsule.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2010-06R1, dated August 8, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Investigation of a high altitude loss of cabin pressurization on a BD-100-1A10 aeroplane determined that it was caused by a partial blockage of a safety valve cabin pressure-sensing port, in conjunction with a dormant failure/leakage of the safety valve manometric capsule. The blockage, caused by accumulation of lint/dust on the grid of the port plug, did not allow sufficient airflow through the cabin pressure-sensing port to compensate for the rate of leakage from the manometric capsule, resulting in the opening of the safety valve. It was also determined that failure of the manometric capsule alone would not result in the opening of the safety valve.

The original issue of this [Canadian] AD mandated a revision of the maintenance schedule, the cleaning of the safety valves, the removal of material from the area surrounding the safety valves and the modification of the safety valves with a gridless cabin pressure-sensing port plug.

Since the original issue of this [Canadian] AD, there have been two additional reported events of in-flight loss of cabin pressurization that were attributed to partial blockage of a safety valve cabin pressure-sensing port in conjunction with a failed safety valve manometric capsule.

Bombardier Aerospace has determined that aeroplanes with a particular interior installation require improved instructions to clean the safety valves and their surrounding area. In addition, Aircraft Maintenance Manual tasks have been updated to ensure that inspection of the safety valves and their surrounding is carried out after any maintenance action.

Revision 1 of this [Canadian] AD is issued to mandate inspection and cleaning of the safety valves and their surrounding area on the affected aeroplanes.

Corrective actions include removing foreign material, cleaning surfaces of the safety valve and bulkhead, installing a new safety valve, removing loose tape, and trimming insulation. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0827.

### Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 100-25-21, Revision 02, dated July 25, 2013. The service information describes procedures for a detailed visual inspection of both safety valves and the surrounding area for foreign material, RTV silicone, contamination, foam on the bulkhead structure, tape or insulation, and loose material, and applicable corrective actions. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

## FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

### Costs of Compliance

We estimate that this proposed AD affects 67 airplanes of U.S. registry.

The actions required by AD 2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011), and retained in this proposed AD take about 10 work-hours per product, at an average labor rate of \$85 per work-hour. Required parts cost \$0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2011-07-10 is \$850 per product.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$22,780, or \$340 per product.

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

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directives (AD)

2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011), and adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA-2015-0827; Directorate Identifier 2014-NM-008-AD.

### (a) Comments Due Date

We must receive comments by June 1, 2015.

### (b) Affected ADs

This AD replaces AD 2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011).

### (c) Applicability

This AD applies to Bombardier, Inc. Model BD-100-1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20001 through 20274.

### (d) Subject

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

### (e) Reason

This AD was prompted by reports of in-flight loss of cabin pressurization that were attributed to partial blockage of a safety valve cabin pressure-sensing port in conjunction with a failed safety valve manometric capsule. We are issuing this AD to detect and correct blockage of a safety valve cabin pressure-sensing port, which could result in loss of cabin pressure.

### (f) Compliance

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

### (g) Retained Revision

This paragraph restates the requirements of paragraph (g) of AD 2011-07-10, Amendment 39-16647 (76 FR 17758, March 31, 2011), with no changes. For all airplanes: Within 30 days after June 1, 2010 (the effective date of AD 2010-10-18, Amendment 39-16297 (75 FR 27406, May 17, 2010)), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Tasks 21-31-09-101 and 21-31-09-102 in the Bombardier Temporary Revision (TR) 5-2-53, dated October 1, 2009, to Section 5-10-40, "Certification Maintenance Requirements," in Part 2 of Chapter 5 of Bombardier Challenger 300 BD-100 Time Limits/Maintenance Checks.

(1) For the new tasks identified in Bombardier TR 5-2-53, dated October 1, 2009: For airplanes identified in the "Phase-in" section of Bombardier TR 5-2-53, dated October 1, 2009, the initial compliance with the new tasks must be carried out in accordance with the phase-in schedule detailed in Bombardier TR 5-2-53, dated October 1, 2009, except where that TR specifies a compliance time from the date of the TR, this AD requires compliance within the specified time after June 1, 2010 (the effective date of AD 2010-10-18, Amendment 39-16297 (75 FR 27406, May 17, 2010)).

Thereafter, except as provided by paragraph (n)(1) of this AD, no alternative to the task intervals may be used.

(2) When information in Bombardier TR 5–2–53, dated October 1, 2009, has been included in the general revisions of the applicable Airworthiness Limitations section, that TR may be removed from that Airworthiness Limitations section of the Instructions for Continued Airworthiness.

**(h) Retained Inspection, Removal, Cleaning, and Installation**

This paragraph restates the requirements of paragraph (h) of AD 2011–07–10, Amendment 39–16647 (76 FR 17758, March 31, 2011), with certain clarified compliance times. For airplanes having S/Ns 20003 through 20173 inclusive, 20176, and 20177: Within 50 flight hours after June 1, 2010 (the effective date of AD 2010–10–18, Amendment 39–16297 (75 FR 27406, May 17, 2010)), do a detailed visual inspection of the safety valves and surrounding areas for discrepant material (e.g., foreign material surrounding the safety valves, room temperature vulcanizing (RTV) sealant on safety valves, RTV excess on the bulkhead, tape near the safety valve opening, and, on certain airplanes, insulation near the safety valve opening, and foam in the area surrounding the safety valves) and a detailed visual inspection for contamination (e.g., RTV, dust, or lint) in the safety valve pressure ports, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146, 20148 through 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 to 20133 inclusive, 20135 to 20138 inclusive, 20140 through 20142 inclusive, 20144, 20145, and 20147).

(1) If any discrepant material is found during the detailed visual inspection, before further flight, remove the discrepant material, clean the surfaces of the valves, and secure the insulation, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146, 20148 through 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 through 20133 inclusive, 20135 through 20138 inclusive, 20140 through 20142 inclusive, 20144, 20145, and 20147).

(2) If contamination (e.g., RTV, dust, or lint) is found on the safety valve pressure sensing ports, before further flight, do a detailed visual inspection of the outside and inside diameters of the pressure sensing port conduit for the presence of RTV; and before further flight do the actions specified in paragraph (h)(2)(i) and (h)(2)(ii) of this AD, as applicable; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146,

20148 through 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 through 20133 inclusive, 20135 through 20138 inclusive, 20140 through 20142 inclusive, 20144, 20145, and 20147).

(i) If no RTV is found, clean the plug of the sensing port.

(ii) If any RTV is found, install a new safety valve.

**(i) Retained Cleaning for Certain Airplanes**

This paragraph restates the requirements of paragraph (i) of AD 2011–07–10, Amendment 39–16647 (76 FR 17758, March 31, 2011), with no changes. For airplanes having S/Ns 20174, 20175, 20178 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256 and 20259: Within 50 flight hours after June 1, 2010 (the effective date of AD 2010–10–18, Amendment 39–16297 (75 FR 27406, May 17, 2010)), clean the cabin pressure-sensing port plug in both safety valves, in accordance with Paragraph 2.B., “Part A—Modification—Cleaning,” of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18, 2009.

**(j) Retained Cleaning for Certain Other Airplanes**

This paragraph restates the requirements of paragraph (j) of AD 2011–07–10, Amendment 39–16647 (76 FR 17758, March 31, 2011), with no changes. For airplanes having S/Ns 20003 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256, and 20259: Within 50 flight hours after June 1, 2010 (the effective date of AD 2010–10–18, Amendment 39–16297 (75 FR 27406, May 17, 2010)), clean the cabin pressure-sensing port plug in both safety valves, in accordance with Paragraph 2.B., “Part A—Modification—Cleaning,” of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18, 2009. Repeat the cleaning thereafter at intervals not to exceed 50 flight hours until the actions specified by paragraph (k) of this AD are completed.

**(k) Retained Replacement**

This paragraph restates the requirements of paragraph (k) of AD 2011–07–10, Amendment 39–16647 (76 FR 17758, March 31, 2011), with no changes. For airplanes having S/Ns 20003 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256, and 20259: Within 12 months after May 5, 2011 (the effective date of AD 2011–07–10), replace the cabin pressure-sensing port plug having part number (P/N) 2844–060 in both safety valves with a new gridless plug having P/N 2844–19 and re-identify the safety valves, in accordance with Paragraph 2.C., “Part B—Modification—Replacement,” of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18,

2009. Doing the actions in paragraph (k) of this AD terminates the repetitive cleanings required by paragraph (j) of this AD.

**(l) New Requirement of This AD: Inspection and Cleaning**

For airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 through 20133 inclusive, 20135 through 20138 inclusive, 20140 through 20142 inclusive, 20144, 20145, and 20147: Within 500 flight hours or 15 months after the effective date of this AD, whichever occurs first, do a detailed visual inspection of both safety valves and the surrounding area for foreign material, RTV silicone, contamination, foam on the bulkhead structure, tape or insulation, and loose material, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–21, Revision 02, dated July 25, 2013. Do all applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–21, Revision 02, dated July 25, 2013.

**(m) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 100–25–21, Revision 01, dated February 26, 2013, which is not incorporated by reference in this AD.

**(n) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer*: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(o) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2010–06R1, dated August 8, 2013, for related information.

This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0827.

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

Issued in Renton, Washington, on April 6, 2015.

**John P. Piccola, Jr.,**

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-08463 Filed 4-14-15; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR 1910, 1926

[Docket No. OSHA-2014-0018]

RIN 1218-AC90

#### Communication Tower Safety

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for Information (RFI).

**SUMMARY:** OSHA is aware of employee safety risks in communication tower construction and maintenance activities and is requesting information from the public on these risks. This RFI requests information that will assist the Agency in determining what steps, if any, it can take to prevent injuries and fatalities during tower work.

**DATES:** Comments and other information must be submitted (postmarked, sent, or received) by June 15, 2015. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments and additional materials, identified by Docket No. OSHA-2014-0018, using any of the following methods:

*Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Facsimile:* Commenters may fax submissions, including attachments, that are no longer than 10 pages in length to the OSHA Docket Office at

(202) 693-1648; OSHA does not require hard copies of these documents. Commenters must submit lengthy attachments that supplement these documents (e.g., studies, journal articles), by the applicable deadline, to the OSHA Docket Office, Technical Data Center, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. These attachments must clearly identify the commenter's name, the date of submission, the title of this RFI (Communication Tower Safety), and the docket number (OSHA-2014-0018) so the Agency can attach them to the appropriate facsimile submission.

*Regular mail, express delivery, hand (courier) delivery, or messenger service:* Submit a copy of comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA-2014-0018, Technical Data Center, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may significantly delay the Agency's receipt of comments and other written materials sent by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.—4:45 p.m., E.T.

*Instructions:* All submissions must include the Agency's name (OSHA), the title of this RFI (Communication Tower Safety), and the docket number (OSHA-2014-0018). The Agency places all submissions, including any personal information provided, in the public docket without change; this information will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting materials that they do not want made available to the public or that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

*Docket:* To read or download submissions or other material in the docket, go to: <http://www.regulations.gov>, or to the OSHA Docket Office at the address above. While the electronic docket at <http://www.regulations.gov> lists documents in the docket, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket

Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this Request for Information is available from the following sources:

*Press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov); telephone: (202) 693-1999.

*General and technical information:* Contact Erin Patterson or Jessica Douma, Office of Construction Standards and Guidance, OSHA Directorate of Construction, Room N-3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; emails: [Patterson.Erin@dol.gov](mailto:Patterson.Erin@dol.gov) or [Douma.Jessica@dol.gov](mailto:Douma.Jessica@dol.gov); telephone: (202) 693-2020; fax: (202) 693-1689.

*Copies of this Federal Register notice:* Electronic copies are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at <http://www.osha.gov>.

#### SUPPLEMENTARY INFORMATION:

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##### I. Exhibits Referenced in This RFI

Documents referenced by OSHA in this request for information, other than OSHA standards and **Federal Register** notices, are in Docket No. OSHA-2014-0018 (Communication Tower Safety). The docket is available at <http://www.regulations.gov>, the Federal eRulemaking Portal. For additional information on submitting items to, or accessing items in, the docket, please refer to the Addresses section of this RFI.

##### II. Background

###### A. Introduction

Communication towers are tall structures that carry antennas for wireless, cellular, radio, or broadcast television communications. There are three common types of communication towers: free-standing or lattice towers, guyed towers, and monopole towers.

Communication towers can range from 100 to over 1000 feet tall.

Increasingly, antennas are being installed on structures other than communication towers, *e.g.*, on water towers, on electrical and telephone poles, and on the roofs of buildings. These alternative structures are often used in more densely populated areas where the construction of large communication towers is impractical or impossible, *e.g.*, due to zoning restrictions.

The construction and maintenance of communication towers is highly specialized work. This work often involves workers climbing the towers via ladders or being hoisted to workstations on the towers via base-mounted drum hoists. To erect new towers, workers lift tower sections or structural parts using a base-mounted drum hoist, with or without a gin pole. Workers can also use cranes to raise tower sections. Towers are constructed piece by piece; workers bolt each section or piece into place before raising the next section. Non-erection construction activities can include reinforcing the structure, upgrading antennas, and installing new antennas on existing towers (referred to as colocation). Workers also climb towers to perform maintenance activities such as painting structural steel members, changing light bulbs, and troubleshooting malfunctioning equipment. During the performance of work activities involving communication towers, workers are exposed to a variety of serious hazards, including fall hazards, hazards associated with structural collapses, struck-by hazards, hazards associated with worker fatigue, radio frequency hazards, hazards associated with inclement weather (including extreme heat and cold), electrical hazards, and cut and laceration hazards due to the use of sharp, heavy tools and materials.

Work on communication towers often involves complex business relationships among multiple companies. Many communication towers are owned by dedicated tower companies, rather than broadcast or cell phone companies (carriers). The tower companies then lease space on the towers to wireless carriers. When a carrier needs to undertake a large-scale installation or upgrade project, it will contract with a construction management company (called a "turbing vendor"). The turbing vendor typically hires specialized subcontractors to perform specific elements of the project, and those subcontractors may further contract with other companies to perform some of the work. It is not uncommon to have

as many as six or seven layers of subcontractors between the carrier and the company that employs the workers who actually perform the work (or certain parts of the work). This business structure poses challenges to setting and enforcing safety rules and ensuring the well-being of employees.

In this RFI, OSHA is seeking information about the causes of the employee injuries and fatalities that are occurring among employees working on communication towers. The Agency is also seeking comments on safe work practices for communication tower activities, training and certification practices for communication tower workers, and potential approaches the Agency might take to address the hazards associated with work on communication towers.

### *B. Hazards and Incidents*

A search of OSHA's Integrated Management Information System (IMIS) database for both fatal and non-fatal incidents involving communication towers revealed 107 incidents from 2003 through 2013 (Docket ID OSHA-2014-0018-01).<sup>1</sup> These incidents resulted in 91 fatalities and 17 injuries. Most of the fatalities (79) were due to falls. Structural collapses killed an additional eight people. Three fatalities involved electrocutions, and the last fatality was due to an employee being struck by a load while working on the tower. According to the IMIS data, falls were also the leading cause of injuries among communication tower workers, with 13 of 17 injuries resulting from falls (Docket ID OSHA-2014-0018-01).

2013 was the deadliest year for communication tower workers since 2006. According to 2013 OSHA incident investigation reports, there were a total of 15 incidents resulting in 13 fatalities (as well as 3 injuries that required hospitalization). Of the 15 incidents identified in the 2013 reports, 11 involved falls, and of those falls, 9 were fatal. Structural collapses accounted for two fatalities, and two fatalities were the result of employees being struck by suspended materials while working on

<sup>1</sup> This data includes incidents that occurred as a direct result of working on or with a communication tower. Incidents at communication tower worksites resulting from unrelated factors, such as a crane tipping over due to bad ground conditions, are not included. Moreover, these figures probably do not include all incidents that occurred in the relevant time period, as they are derived solely from OSHA investigation data. The IMIS database, for example, will not include incidents that involve individuals not covered by OSHA, *e.g.*, the self-employed. The current IMIS database generally includes incidents only when they involve at least one fatality or three or more hospitalizations.

a tower (Docket ID OSHA-2014-0018-01).

The leadership of the Department of Labor, OSHA, and the Federal Communications Commission (FCC) recently organized and participated in a workshop on communication tower work for industry stakeholders and government agencies. The event, held on October 14, 2014, included two panel discussions with representatives from tower climber advocacy organizations, the owner of a tower erection company, media representatives, carrier representatives, a tower owner representative, and a government relations liaison for a wireless infrastructure industry group. The first panel focused on the causes of tower climber fatalities and ways employers can prevent such fatalities. The second panel focused on industry-wide solutions that can be implemented by carriers, tower owners, and turbing vendors. Chairman Thomas Wheeler of the FCC and Secretary of Labor Thomas Perez spoke at the event and called for the agencies and industry stakeholders to collaborate in an effort to identify best practices and steps that the industry can take to address the hazards faced by communication tower workers. A video recording of the event can be found at <http://www.fcc.gov/events/workshop-tower-climber-safety-and-injury-protection>.

### *C. Training and Certification*

Given the highly specialized and dangerous nature of the work that tower workers perform, employee training and preparation are critical. Many companies provide training to tower climbers. These training courses typically last two to five days and consist of a classroom component and a practical training component, with a final assessment of skills and knowledge. Topics covered during these courses typically include: fall protection procedures, climbing safety and planning, hazard assessments, and basic emergency and rescue protocols. Upon successful completion of these courses, participants receive a certification card from the company that provided the training. Although there is no standard threshold for certification, most companies that issue certification cards assert that their certifications meet standards in the National Association of Tower Erectors (NATE) Tower Climber Fall Protection Training Standard as well as other applicable standards from OSHA, the American National Standards Institute (ANSI) and the American Society of Safety Engineers (ASSE).

Recently, there have been some developments in employee training and preparation resulting from government and industry collaboration. The Department of Labor's Employment and Training Administration (ETA) has developed a registered apprenticeship program for tower climbers in collaboration with a board of stakeholders. The goal of the Tower Industry Registered Apprenticeship Program (TIRAP) is to provide an industry-wide standard of training and employee development. The founding documents for TIRAP were signed on October 14, 2014.

#### *D. Applicable OSHA Standards*

At present, OSHA standards do not provide comprehensive coverage of communication tower construction activities. OSHA's standards for fall protection in construction (29 CFR 1926, subpart M), which generally require the use of fall protection at heights of six feet and greater, will apply in some situations, although those standards do not cover the erection of new communication towers (see 29 CFR 1926.500(a)(2)(v)). Fall protection requirements for the construction of new communication towers can be found in 29 CFR 1926.105, which requires the use of safety nets when workplaces are more than 25 feet above the ground or water surface, or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical (see 29 CFR 1926.105(a)). Additionally, communication tower construction activities are exempt from OSHA's requirements for steel erection activities (29 CFR 1926, subpart R); subpart R does not cover electrical transmission towers, communication and broadcast towers, or tanks (29 CFR 1926.750(a)).

Maintenance work on communication towers is governed by OSHA's general industry standards at 29 CFR part 1910. There are a number of general industry standards that apply to communication tower maintenance activities. Most specifically, the telecommunications standard at 29 CFR 1910.268 applies to the work conditions, practices, means, methods, operations, installations and processes performed at telecommunications field installations, such as communication towers (see 29 CFR 1910.268(a)(1)). A key provision in the telecommunications standard is § 1910.268(c), which addresses training. That provision requires employers to provide training in the various precautions and safe practices described in § 1910.268 and insure that employees do not engage in the activities to which

§ 1910.268 applies until such employees have received proper training. The telecommunications standard also contains requirements for fall protection (see 29 CFR 1910.268(g)). Paragraph (g) of § 1910.268 generally requires employers to provide, and ensure the use of, safety belts and straps when work is performed at positions more than 4 feet above ground, on poles, and on towers (see 29 CFR 1910.268(g)(1)).

When existing standards do not apply to a particular hazard at a communication tower worksite, employers still have a duty to protect employees under the General Duty Clause (section 5(a)(1)) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654(a)(1)), which requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." OSHA has used the General Duty Clause in some cases involving accidents on communication towers. For example, in March of 2014 OSHA issued a General Duty Clause citation in a case involving a double fatality caused by improper rigging on a communication tower. OSHA found that the employer was aware of, but failed to follow, industry standards and practices for safely rigging the jump line block for the gin pole.

#### *E. Consensus Standards and State Standards*

There are several consensus standards that address hazards in the erection, construction, and maintenance of communication towers. The Telecommunications Industry Association standard TIA-222-G, *Structural Standard for Antenna Supporting Structures and Antennas* (Docket ID OSHA-2014-0018-04), addresses the structural design elements associated with the fabrication of new, and the modification of existing, antenna-supporting structures. The TIA-1019-A standard, *Standard for Installation, Alteration and Maintenance of Antenna Supporting Structures and Antennas* (Docket ID OSHA-2014-0018-05), addresses the loading of communication towers under construction and the use of specialized equipment, including gin poles, hoists, and temporary guys. There is an ANSI standard currently under development, ANSI A10.48, which will address safety practices for the construction and maintenance of communication towers. This standard may be approved within the next two years.

Two states have dedicated standards governing communication tower construction and maintenance. These states, North Carolina and Michigan, promulgated communication tower standards following multi-fatality incidents. North Carolina's standard (Docket ID OSHA-2014-0018-03), which became effective in 2005, covers the construction, alteration, repair, operation, inspection and maintenance of communication towers (see 13 NCAC 07F.0600 *et seq.*). It includes provisions for employer responsibilities, fall protection and fall protection systems, non-ionizing radiation, hoists and gin poles, and employee training. The Michigan standard (Docket ID OSHA-2014-0018-02), promulgated in 2009, governs construction, alteration, repair, operation, inspections, maintenance, and demolition activities on communication towers (see Michigan Administrative Code R 408.42901 *et seq.*). It contains provisions on fall protection, emergency response protocols, training, training certification, hazard identification, hoists, hoisting personnel, gin poles, catheads, and capstans. Washington State is planning to update its telecommunications standard and held stakeholder meetings on the subject in July, 2014.

#### **III. Request for Data, Information, and Comments**

OSHA is seeking information to aid it in evaluating the hazards that workers face on communication towers. The Agency seeks information on: the types of hazards that communication tower workers encounter; the types of incidents (both fatal and non-fatal) that occur as a result of exposure to those hazards; and the best methods employers can use to address those hazards. The Agency identifies specific issues on which it is seeking comment later in this section of this RFI.

OSHA requests comments from wireless carriers and all parties involved in the contracting chain, including turfing vendors, engineering firms, tower owners, tower construction and maintenance companies, and field staff, e.g., tower technicians who perform work on the towers. Based on its review of the information provided by the public in response to this RFI—and other OSHA research activities—the Agency will determine what additional actions, if any, to take to address hazards associated with work on communication towers. Commenters should identify the role they play with respect to the performance of work on communication towers and be as detailed as possible in their comments.

Also, to the extent possible, commenters should identify the specific question(s) they are addressing (e.g., by referring to the questions being answered using the numbers provided in the list below).

#### Questions for Tower Climbers <sup>2</sup>

1. As a tower climber, what are the most significant hazards that you encounter on the job? What circumstances or conditions create or contribute to these hazards?

2. What steps do you take, at this time, to complete your work safely? What safety-related work practices do you think should be in place?

3. What safety rules and work practices are provided to you, and who provides you with that information?

4. Who assigns and oversees your work? Who provides your training and checks your equipment? When at a jobsite, to whom would you report a potential safety issue?

5. What specific steps do you think employers can take to make tower work safer?

6. How, and to what extent, does the design or configuration of towers, and equipment installed on towers, affect your ability to complete your work safely?

#### Training and Certification

7. Tower hands/climbers, please describe the training and certification required for your job. Employers, please describe the types of training and certification you require for your employees.

8. What commercial training programs are currently available? What are the topics covered by the programs? Are the programs adequate to prepare employees to work safely on communication towers?

9. Is there a need for a standardized, industry-wide training or certification program?

10. From your perspective given your role in the contracting chain, what does a tower climber need to know to do his or her job safely?

11. How do employers evaluate employees to ensure that they have been adequately trained, especially when employees receive their training or certification elsewhere? How do companies determine if employees are proficient in the topics covered by the training or if re-training is necessary? Do employers offer site-specific training that addresses specific types of towers and equipment?

12. For employers who contract out work (e. g., carriers, turfing vendors), what contract language or oversight mechanisms do you use to ensure that work is done by trained and/or certified workers?

#### Suitability for Work

13. Are employees directly engaged in tower work assessed for physical fitness? If so, how? Are physical fitness requirements and assessments addressed in contracting agreements?

14. What physical limitations should employers be aware of when assigning an employee communication tower work? What hazards might be associated with such limitations, and how could those hazards be mitigated?

#### Hazards and Incidents

15. Falls: Falls are currently the leading cause of fatalities among communication tower workers. OSHA believes that many falls result from the improper use of fall protection equipment or the failure to use any fall protection equipment at all.

a. How are employers addressing fall hazards?

b. Are employers providing appropriate fall protection equipment to employees? Is it maintained and replaced when necessary?

c. What factors contribute to employees failing to use fall protection while climbing or working?

d. Are there situations in which conventional fall protection (safety nets or personal fall arrest systems) is infeasible? What alternatives can employees use for fall protection in those situations?

e. What are the ways in which fall protection systems or anchorage points on communication towers can fail? How can these failures be prevented?

f. Should OSHA require built-in fall protection measures on new towers? Existing towers? Would such a requirement enhance worker safety?

16. Structural issues: When new equipment is added to communication towers, the additional loading of the tower has the potential to overload or destabilize the structure. Older towers may need additional reinforcements to maintain their structural integrity as new equipment is added to them. Communication tower collapses have resulted in numerous fatalities in the past two years. Which contractual party bears responsibility for ensuring that any structural work on the tower—such as modification or demolition—is done safely from a structural perspective? What steps are employers currently taking to prevent collapses?

17. Hoisting materials and personnel: Base-mounted drum hoists are often used to hoist materials and personnel to working heights on communication towers. Hazards arise if hoists that are not rated for lifting personnel are used for that purpose. OSHA is aware of incidents in which hoists have failed under such conditions. Also, overloading material hoists and improper rigging procedures can result in loads striking the tower structure or workers located on the tower. OSHA knows of several deaths in the past two years that have resulted from these types of incidents.

a. When are personnel hoists used?

b. What types of hazards are associated with personnel and material hoists? What are the best practices for safely managing those hazards?

c. How are capstan hoists used in tower work? In what types of operations can they be used safely?

d. What are the most common types of rigging hazards that occur on communication tower worksites? What can employers do to eliminate or minimize those hazards?

e. Are there methods, other than the use of a hoist or a crane, that can be used to lift material and personnel at a communication tower? Which methods and procedures are the safest?

f. What are the roles of different levels of the contracting chain in managing rigging and hoisting activities?

18. Radio Frequency Hazards: Much research has been done on the health effects of overexposure to radio frequencies. General health effects reviews have found that high levels of exposure to radio frequencies may result in burns. In addition, the link between exposure to radio frequencies and cancer, reproductive diseases, and neurological effects has not been thoroughly explored.

a. What methods are employers using to protect workers from overexposure to radio frequency?

b. Is there a need for employers to institute comprehensive radio frequency monitoring programs on communication tower worksites? What would a good program look like?

19. Weather: Communication tower workers work outside during all seasons, and in all climates. They can be exposed to heat, cold, wind, snow, and ice. Storm conditions can quickly arise when workers are at elevation, and it can be difficult to descend the tower quickly.

a. What are the specific weather-related hazards to which communication tower workers are exposed?

<sup>2</sup> While the questions under this heading are specific to tower climbers, OSHA strongly encourages tower climbers to consider and respond to all questions in this Request for Information.

b. How does a crew monitor and respond to changing weather conditions, including storms?

20. Fatigue: OSHA believes that fatigue can affect communication tower workers in several ways. Climbing a communication tower is physically demanding, and OSHA is concerned that fatigue due to exertion can be hazardous for tower workers. Accelerated work timelines can also result in tower workers working very long hours. And OSHA understands that communication tower workers may travel long distances to reach remote worksites, which can result in workers being fatigued before they even begin work.

a. What hazards are faced by a worker who finds it physically challenging to perform expected tasks, such as climbing a tower or performing a self-rescue? What impact can this have on other crew members?

b. What are the common causes of worker fatigue at communication tower worksites?

c. What are the effects of fatigue on tower worker safety, and what types of incidents occur as a result of worker fatigue?

21. Other common hazards:

a. What other hazards are present in communication tower work, and what types of incidents are resulting from those hazards? What can be done to protect employees from those hazards?

b. What are some health and safety considerations involved in working with communications equipment installed on non-dedicated tower structures, such as water towers, buildings, silos, electrical transmission towers, etc.?

### Contracting and Work Oversight

22. Describe your role in the contract chain and the key safety-related provisions typically included in your contracts. How do contracting parties oversee or enforce those provisions? What are the consequences if a party fails to fulfill those contractual requirements?

23. What characteristics of past safety performance does your company use in selecting potential contractors and subcontractors? What safety-related criteria does your company use in this selection process?

24. Are safety-related factors considered in determining whether to remove a contractor/subcontractor from an ongoing project or from future selection processes? If so, what specific factors are considered?

25. What are the ways in which the multi-leveled contracting environment (*i.e.*, where entities such as the carrier,

tower owner, turfing vendor, subcontractor, and contractors hired by the subcontractor all have some role in the project) impacts employee safety at communication tower worksites?

26. What practices might companies in the contracting chain adopt to encourage communication and coordination among employers at tower work sites? What obstacles stand in the way of communication and coordination between different parties in the contracting chain?

### Economic Issues

27. The Agency seeks information on the number and size of firms that are engaged in communication tower work and on the number of employees employed by those firms.

28. The Agency seeks information about wage and turnover rates for employees who work on communication towers. The Agency is also interested in information about the experience possessed by workers currently doing communication tower work. Are they usually experienced in this type of work? Are there many new or inexperienced employees working on communication towers?

29. What types of equipment are used in tower work and how often is this equipment repaired and/or replaced?

30. The Agency seeks information from all employers in the contracting chain about the extent to which employees directly engaged in tower work are covered by workers' compensation and/or an employer liability insurance policy.

### Tower Design

31. Can towers be designed and built with elevators for lifting personnel or materials? Can towers be built with booms or davits aloft to aid in hoisting materials?

32. How would elevators or davits affect productivity/efficiency, *e.g.*, the amount of time spent on the tower? How would elevators or davits address or cause any safety hazards at the site? For example, would elevators or davits address hazards related to employee fatigue?

33. What are the industry standards for providing fall protection anchor points on new towers?

### Regulatory/Non-Regulatory Approaches

34. What would be the advantages and disadvantages of an OSHA standard that covers both construction and maintenance activities on communication towers?

35. What effects have the North Carolina and Michigan regulatory

approaches had on work practices and climber safety in those states?

36. Should an OSHA standard be limited to work performed on communication towers, or should it also cover towers used for other purposes?

37. If OSHA does not initiate a dedicated rulemaking for work on communication towers, what other types of regulatory actions might be necessary and appropriate?

38. What non-regulatory approaches could OSHA take to address hazards faced by employees working on communication towers?

### Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 3704 *et seq.*, Public Law 107-217, 116 STAT. 1062 (40 U.S.C. 3704 *et seq.*); sections 4, 6, and 8, Public Law 91-596, 84 STAT. 1590 (29 U.S.C. 653, 655, 657); 29 CFR part 1911; and Secretary of Labor's Order No. 1-2012 (77 FR 3912 (Jan. 25, 2012)).

Signed at Washington, DC, on March 27, 2015.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2015-08633 Filed 4-14-15; 8:45 am]

BILLING CODE 4510-26-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2015-0011; FRL-9925-29-OEI]

RIN 2025-AA41

### Addition of 1-Bromopropane; Community Right-To-Know Toxic Chemical Release Reporting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to add 1-bromopropane to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. 1-Bromopropane has been classified by the National Toxicology Program in their 13th Report on Carcinogens as "reasonably anticipated to be a human carcinogen." EPA believes that 1-bromopropane meets the EPCRA section



313(d)(2)(B) criteria because it can reasonably be anticipated to cause cancer in humans. Based on a review of the available production and use information, 1-bromopropane is expected to be manufactured, processed, or otherwise used in quantities that would exceed the EPCRA section 313 reporting thresholds.

**DATES:** Comments must be received on or before June 15, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-TRI-2015-0011, by one of the following methods:

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

- *Email:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- *Mail:* Office of Environmental Information (OEI) Docket,

Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-TRI-2015-0011. 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](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 [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 [www.regulations.gov](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, avoid 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](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; email: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov), for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/superfund/contacts/infocenter/>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this notice apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use 1-bromopropane. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.</p> <p>*Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (corresponds to SIC 4953, Refuse Systems).</p> <p>Federal facilities.</p>
Federal Government ..	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Introduction

### A. What is the statutory authority for this proposed rule?

This rule is issued under EPCRA section 313(d) and section 328, 42 U.S.C. 11023 *et seq.* EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

### B. What is the background for this action?

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the listing criteria in Section 313(d)(2)(A) through (C) are met. The EPCRA section 313(d)(2)(A) through (C) criteria are:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans:
  - Cancer or teratogenic effects; or
  - Serious or irreversible—
    - Reproductive dysfunctions,
    - Neurological disorders,
    - Heritable genetic mutations; or
    - Other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of:
  - Its toxicity;
  - Its toxicity and persistence in the environment; or
  - Its toxicity and tendency to bioaccumulate in the environment, a

significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432), a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

## III. Background Information

### A. What is the NTP and the report on carcinogens?

The National Toxicology Program (NTP) is an interagency program within the Department of Health and Human Services (DHHS) headquartered at the National Institute of Environmental Health Sciences (NIEHS) of the National Institutes of Health (NIH). The mission of the NTP is to evaluate chemicals of public health concern by developing and applying tools of modern toxicology and molecular biology. The NTP program maintains an objective, science-based approach in dealing with critical issues in toxicology and is committed to using the best science available to prioritize, design, conduct, and interpret its studies. The mission of the NTP includes the evaluation of chemicals for their potential to cause cancer in humans.

As part of their cancer evaluation work, the NTP periodically publishes a Report on Carcinogens (RoC) document. The RoC was mandated by the U.S. Congress, as part of the Public Health Service Act (Section 301(b)(4), as amended). The NTP describes the RoC as an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a hazard to human health by virtue of their carcinogenicity. The NTP RoC serves as a meaningful and useful compilation of data on (1) the carcinogenicity (ability to cause cancer), genotoxicity (ability to damage genes), and biologic mechanisms (modes of action in the body) of the RoC-listed substances in humans and/or in animals, (2) the potential for human exposure to these substances, and (3) the regulations and guidelines promulgated by Federal agencies to limit exposures to RoC-listed substances. The NTP RoC is published

periodically, with the most recently published 13th RoC having been released on October 2, 2014 (79 FR 60169, October 6, 2014). The 13th RoC contains the NTP cancer classifications from the most recent chemical evaluations, as well as the classifications from previous versions of the RoC (Reference (Ref.) 1).

### B. What are the NTP cancer classifications and criteria?

The NTP RoC classifies chemicals as either “known to be a human carcinogen” or “reasonably anticipated to be a human carcinogen.” The criteria that the NTP uses to list an agent, substance, mixture, or exposure circumstance under each classification in the RoC (Ref. 2) are as follows:

*Known To Be Human Carcinogen:* There is sufficient evidence of carcinogenicity from studies in humans \*, which indicates a causal relationship between exposure to the agent, substance, or mixture, and human cancer.

*Reasonably Anticipated To Be Human Carcinogen:* There is limited evidence of carcinogenicity from studies in humans \*, which indicates that causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding factors, could not adequately be excluded, or there is sufficient evidence of carcinogenicity from studies in experimental animals, which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors (1) in multiple species or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site, or type of tumor, or age at onset, or there is less than sufficient evidence of carcinogenicity in humans or laboratory animals; however, the agent, substance, or mixture belongs to a well-defined, structurally related class of substances whose members are listed in a previous Report on Carcinogens as either known to be a human carcinogen or reasonably anticipated to be a human carcinogen, or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to, dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive sub-populations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals, but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

\* This evidence can include traditional cancer epidemiology studies, data from clinical studies, and/or data derived from the

study of tissues or cells from humans exposed to the substance in question, which can be useful for evaluating whether a relevant cancer mechanism is operating in humans.

The NTP classifications for the potential for a chemical to cause cancer are very similar to the EPCRA section 313(d)(2)(B) statutory criteria for listing a chemical on the list of toxic chemicals subject to reporting under EPCRA section 313: “(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—(i) cancer . . .” The specific data used by the NTP to classify a chemical as “Known To Be Human Carcinogen” or “Reasonably Anticipated To Be Human Carcinogen” are consistent with data used by EPA to evaluate chemicals for their potential to cause cancer and classify chemicals as either “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” (Ref. 3).

#### C. What is the review process for the RoC?

Specific details of the nomination and review process for the development of the 13th RoC are described in the Process for Preparation of the Report on Carcinogens section of the 13th RoC (Ref. 4). In general, the RoC review process includes evaluations by scientists from the NTP, other Federal health research and regulatory agencies (including EPA), and nongovernmental institutions. The RoC review process includes external peer review and several opportunities for public comment. For the 13th RoC, during the entire nomination, selection, and review process there were seven opportunities for public comment. For each candidate substance, an expert panel was convened to peer review the NTP monograph document prepared for each candidate substance. The RoC Monograph on 1-Bromopropane consists of the following components: (Part 1) the cancer evaluation component that reviews the relevant scientific information, assesses its quality, applies the RoC listing criteria to the scientific information, and gives the RoC listing status for 1-bromopropane, and (Part 2) the RoC monograph’s substance profile containing the NTP’s listing status decision, a summary of the scientific evidence considered key to reaching that decision, and data on properties, use, production, exposure, and Federal regulations and guidelines to reduce exposure to 1-bromopropane. The expert panel members had the following major responsibilities in reviewing the draft RoC monograph:

(1) to comment on the draft cancer evaluation components for 1-bromopropane,

specifically, whether they are technically correct and clearly stated, whether the NTP has objectively presented and assessed the scientific evidence, and whether the scientific evidence is adequate for applying the RoC listing criteria, and (2) to comment on the draft substance profile for 1-bromopropane, specifically, whether the scientific justification presented in the substance profile supports the NTP’s preliminary policy decision on the RoC listing status of 1-bromopropane. The panel was also asked to vote on the following questions: (1) Whether the scientific evidence supports the NTP’s conclusion on the level of evidence for carcinogenicity from experimental animal studies on 1-bromopropane and (2) whether the scientific evidence supports the NTP’s preliminary listing decision for 1-bromopropane in the RoC. The panel agreed with the NTP conclusions that 1-bromopropane should be listed in the RoC based on sufficient evidence of carcinogenicity from studies in experimental animals, which found skin tumors in male rats, large intestine tumors in female and male rats, and lung tumors in female mice.” (Ref. 5)

Based upon the peer-review comments, the Office of the Report on Carcinogens (ORoC) prepared a revised draft RoC Monograph, which was then reviewed by the NTP Board of Scientific Counselors. The ORoC, in concert with the NTP Director, then finalized the RoC monographs and submitted the newly reviewed substances to the NTP Executive Committee for consultation. The final draft of the 13th RoC was then submitted to the Secretary of Health and Human Services (HHS) for review and approval. Once approved, the Secretary submitted the 13th RoC to the U.S. Congress as a final document and published the document on the RoC Web site (<http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html>).

#### IV. EPA’s Review of the 13th RoC

##### A. How did EPA select the NTP RoC chemical being proposed for addition?

The most recent version of the NTP RoC that EPA previously reviewed for possible additions to the EPCRA section 313 list was the 12th RoC (March 13, 2013, 78 FR 15913). Each new version of the RoC adds newly classified chemicals to the existing list. EPA’s present review of the 13th RoC identified 1-bromopropane as the only newly listed chemical that is not on the EPCRA section 313 list.

EPA reviewed the NTP 13th RoC chemical profile and supporting materials for 1-bromopropane (Ref. 6). Given the extensive scientific reviews conducted by the NTP for their RoC documents, EPA’s review focused on ensuring that there were no inconsistencies with how the Agency would consider the available data.

EPA’s review of the 1-bromopropane chemical profile and supporting material found no inconsistencies between how the data were interpreted by the NTP and how that same data would be interpreted under EPA’s Guidelines for Carcinogen Risk Assessment (Ref. 3). Therefore, EPA agrees with the hazard conclusions of the NTP 13th RoC for 1-bromopropane.

##### B. What technical data supports the NTP RoC classification and EPA’s proposed addition of 1-bromopropane to the EPCRA section 313 list?

This section presents the data that supported the NTP 13th RoC classification of 1-bromopropane and why EPA believes the data support the addition of this chemical to the EPCRA section 313 list. The RoC 1-Bromopropane Profile document (Ref. 7), the RoC Monograph on 1-Bromopropane (Ref. 5), and the available references cited within the portion of the 13th RoC chemical profile quoted here, are all included in the docket for this rulemaking. While they are contained in the docket and are part of the rulemaking record, the references within the quotation cited below from the 13th RoC 1-Bromopropane Profile document are not included in the list of references in Unit VI. of this **Federal Register** notice. The full citations for the references contained in the quotation can be found in the NTP 13th RoC 1-Bromopropane Profile document (Ref. 7).

1. *1-Bromopropane* (Chemical Abstracts Service Registry Number 106–94–5) (Refs. RoC Monograph and Profile documents (Refs. 5 and 7)). The NTP has classified 1-bromopropane as “reasonably anticipated to be a human carcinogen.” The classification is based on sufficient evidence of carcinogenicity in experimental animals and supporting data on mechanisms of carcinogenesis. The RoC substance profile for 1-bromopropane (Ref. 7) included the following summary information of the evidence of carcinogenicity:

##### Carcinogenicity

1-Bromopropane is *reasonably anticipated to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in experimental animals. 1-Bromopropane, either directly or via reactive metabolites, causes molecular alterations that typically are associated with carcinogenesis, including genotoxicity, oxidative stress, and glutathione depletion. These alterations, observed mainly *in vitro* and in toxicity studies in rodents, are relevant to possible mechanisms of human carcinogenicity and support the relevance of the cancer studies in experimental animals to human carcinogenicity.

### Cancer Studies in Experimental Animals

Inhalation exposure to 1-bromopropane caused tumors in two rodent species and at several different tissue sites, including one tissue site in rats at which tumors are rare (NTP 2011).

In male rats, 1-bromopropane caused significant dose-related increases in the incidences of several types of benign and/or malignant skin tumors (keratoacanthoma; keratoacanthoma and squamous-cell carcinoma combined; and keratoacanthoma, squamous-cell carcinoma, basal-cell adenoma, and basal-cell carcinoma combined). Both female and male rats showed an increased incidence of large-intestine tumors (adenoma of the colon and rectum), which are rare tumors in rats. In females, the incidence was dose-related and statistically significantly higher than in concurrent controls, and it exceeded the historical control range for all routes of exposure used in studies, including inhalation exposure. In males, the incidence of large-intestine adenoma was not significantly increased, but exceeded the historical control range for inhalation-exposure studies, and its occurrence was considered to be biologically significant because of the rarity of these tumors (which occurred in less than 0.2% of the historical controls). Although no carcinoma of the large intestine was observed in male or female rats in this study, adenoma of the large intestine has been shown to progress to carcinoma in other studies, and forms a morphologic continuum with carcinoma (Deschner 1983, Chang 1984, Nigro 1985).

In female mice, 1-bromopropane caused significant dose-related increases in the incidence of benign and malignant lung tumors combined (alveolar/bronchiolar adenoma and carcinoma).

These findings are supported by the observation of additional tumors in rats that may have been related to 1-bromopropane exposure, including malignant mesothelioma of the abdominal cavity and pancreatic islet tumors in males and skin tumors (squamous-cell papilloma, keratoacanthoma, and basal-cell adenoma or carcinoma) in females.

### Other Relevant Data

1-Bromopropane is well absorbed following ingestion, inhalation, or dermal exposure. Occupational exposure occurs primarily by inhalation and dermal contact. Unmetabolized 1-bromopropane has been detected in the urine of exposed workers at levels significantly correlated with exposure to 1-bromopropane in air (Kawai *et al.* 2001, Ichihara *et al.* 2004).

1-Bromopropane is metabolized via several pathways; 16 urinary metabolites have been detected in rodents, and several other metabolites have been proposed (Jones and Walsh 1979, Ishidao *et al.* 2002, Garner *et al.* 2006). The primary metabolic pathways in rodents are oxidation reactions catalyzed by cytochrome P450 (primarily CYP2E1) and glutathione conjugation. The available data on human metabolism of 1-bromopropane, although limited, suggest that some of its metabolic pathways in humans are similar to those observed in rodents. Four mercapturic conjugates identified in the urine of rodents

were also identified in the urine of workers exposed to 1-bromopropane (Hanley *et al.* 2009). The major metabolite, *N*-acetyl-*S*-(*n*-propyl)-L-cysteine, has been detected in the urine of exposed workers at levels that increased with increasing levels of 1-bromopropane in ambient air (Hanley and Dunn 2006, Valentine *et al.* 2007, Hanley *et al.* 2009, 2010). This metabolite is produced in humans by conjugation of 1-bromopropane with glutathione, and that reaction also releases free bromide ions, another useful biomarker for human exposure to 1-bromopropane (Jones and Walsh 1979, Hanley *et al.* 2006). No studies were identified that tested for the occurrence in humans of the oxidative metabolites that are obligate intermediates to the measured conjugates.

### Studies on Mechanisms of Carcinogenesis

The mechanism(s) by which 1-bromopropane causes cancer is not known. However, exposure to 1-bromopropane has been shown to cause molecular alterations related to carcinogenicity, including genotoxicity (mutations and DNA damage), oxidative stress, glutathione depletion, and immunomodulation.

Studies have shown that 1-bromopropane can bind to macromolecules; it formed *S*-propylcysteine-globin adducts in exposed animals and humans (Valentine *et al.* 2007). Although 1-bromopropane did not induce mutations in bacteria under standard assay conditions, it did induce mutations in bacteria both with and without exogenous mammalian metabolic activation in the only reported study whose design was appropriate for testing a highly volatile chemical (Barber *et al.* 1981). It also caused mutations in cultured mammalian cells with or without mammalian metabolic activation (Elf Atochem 1996, as reviewed in NTP 2003) and DNA damage in cultured human cells without metabolic activation (Toraason *et al.* 2006). In addition, there is limited evidence of DNA damage in leukocytes from 1-bromopropane-exposed workers (Toraason *et al.* 2006). In rodents exposed *in vivo*, 1-bromopropane did not increase micronucleus formation in bone marrow (Kim *et al.* 1998, as reviewed in NTP 2003) or peripheral blood erythrocytes (Elf Atochem 1996, cited in NTP 2003, NTP 2011) or cause dominant lethal mutations. However, the dominant lethal mutation assay is generally regarded as relatively insensitive for the detection of mutagenic agents (Saito-Suzuki *et al.* 1982, Yu *et al.* 2008).

There is evidence that metabolic activation plays a role in the genotoxicity and toxicity of 1-bromopropane. Several reactive metabolites (or intermediates) of 1-bromopropane have been identified in rodents, including glycidol and  $\alpha$ -bromohydrin, and propylene oxide has been proposed as a metabolite (Garner *et al.* 2006). These compounds cause genotoxic effects *in vitro*, including DNA adduct formation, mutations, and DNA or chromosome damage (Stolzenberg and Hine 1979, IARC 1994, 2000). Glycidol and propylene oxide cause cytogenetic effects *in vivo* and are carcinogenic in experimental animals, and both substances are listed in the Report on

Carcinogens as *reasonably anticipated to be human carcinogens*. These reactive and genotoxic metabolites may be responsible for at least some of the carcinogenic effects of 1-bromopropane. As with 1-bromopropane, oral exposure to glycidol caused rare tumors of the large intestine in rats, as did oral exposure to two halogenated alkane analogues of 1-bromopropane, tribromomethane and bromodichloromethane (NTP 1987, 1989, 1990).

Chronic exposure to 1-bromopropane may produce levels of oxidative metabolites that exceed the glutathione-conjugating capacity or may inhibit enzymes required for glutathione synthesis. Because glutathione is an important cellular defense mechanism, reduced levels can lead to oxidative stress, increased toxicity, and carcinogenicity. Numerous studies have shown that 1-bromopropane induces both oxidative stress and glutathione depletion (Lee *et al.* 2005, 2007, 2010a, Liu *et al.* 2009, 2010, Huang *et al.* 2011). Studies with Cyp2e1<sup>-/-</sup> knockout mice, cytochrome P450 inhibitors, or a glutathione synthesis inhibitor showed that this metabolic activation pathway is involved in 1-bromopropane-induced toxicity, including neurological and reproductive effects, hepatotoxicity, and immunosuppression (NTP 2003, 2011, Lee *et al.* 2007, 2010a,b). Neurological effects of 1-bromopropane exposure have also been reported in humans (Li *et al.* 2010, Ichihara *et al.* 2012).

It is unclear whether induction of immunotoxicity by 1-bromopropane plays a role in tumor development. Recent studies have shown that 1-bromopropane causes immunosuppression in rodents (Lee *et al.* 2007, Anderson *et al.* 2010). In particular, it reduced the numbers of T cells and T-cell subpopulations. In addition, there is evidence that 1-bromopropane causes an inflammatory response. It induced dose-related increases in gene expression and production of proinflammatory cytokines in mouse macrophages (Han *et al.* 2008) and an inflammatory response in rats (NTP 2011). However, chronic respiratory inflammation and lung tumors were not associated in rodents; respiratory inflammation occurred in rats but not mice, whereas lung tumors occurred in mice but not rats.

### Cancer Studies in Humans

No epidemiological studies or case reports were identified that evaluated the relationship between human cancer and exposure specifically to 1-bromopropane.

EPA has reviewed the NTP assessment for 1-bromopropane and agrees that 1-bromopropane can reasonably be anticipated to cause cancer in humans. EPA believes that the evidence is sufficient for listing 1-bromopropane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

### V. Rationale for Listing

The NTP RoC document undergoes significant scientific review and public

comment. The NTP review mirrors the review EPA has historically done to assess chemicals for listing under EPCRA section 313 on the basis of carcinogenicity. The conclusions regarding the potential for chemicals in the NTP RoC to cause cancer in humans are based on established sound scientific principles. EPA believes that the NTP RoC is an excellent and reliable source of information on the potential for chemicals covered in the NTP RoC to cause cancer in humans (see Unit III). Based on EPA's review of the data contained in the NTP 13th RoC, EPA has determined that 1-bromopropane can reasonably be anticipated to cause cancer (Ref. 6). Therefore, EPA believes that the evidence is sufficient for listing 1-bromopropane on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data presented in the NTP 13th RoC.

EPA considers chemicals that can reasonably be anticipated to cause cancer to have moderately high to high chronic toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (59 FR 61432), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether 1-bromopropane meets the criteria of EPCRA section 313(d)(2)(B).

## VI. References

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-TRI-2015-0011. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section. For convenience, the docket also includes all of the **Federal Register** documents cited in this action.

1. NTP, 2014. National Toxicology Program. Report on Carcinogens, Thirteenth Edition. Released October 2, 2014. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709. (<http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html>)
2. NTP, 2014. National Toxicology Program. Report on Carcinogens, Thirteenth Edition, Introduction section. Released October 2, 2014. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.
3. USEPA. Guidelines for Carcinogen Risk Assessment. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC, March 2005.
4. NTP, 2014. National Toxicology Program. Report on Carcinogens, Thirteenth Edition, Process for Preparation of the Report on Carcinogens section. Released October 2, 2014. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.
5. NTP, 2013. Report on Carcinogens Monograph on 1-Bromopropane. Office of the Report on Carcinogens, Division of the National Toxicology Program, National Institute of Environmental Health Sciences, U.S. Department of Health and Human Services. NIH Publication No. 13-5982, September 25, 2013
6. USEPA, OEI. Memorandum from Jocelyn Hospital, Toxicologist, Analytical Support Branch to Sandra Gaona, Acting Chief, Analytical Support Branch. November 3, 2014. Subject: Review of National Toxicology Program (NTP) Cancer Classification Data for 1-bromopropane.
7. NTP, 2014. National Toxicology Program. Report on Carcinogens, Thirteenth Edition, Profile for 1-Bromopropane. Released October 2, 2014. U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, Research Triangle Park, NC 27709.
8. USEPA, OEI. Economic Analysis of the Proposed Rule to add 1-Bromopropane to the EPCRA Section 313 List of Toxic Chemicals. February 17, 2015.

## VII. What are the Statutory and Executive Order reviews associated with this action?

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act*

This action does not contain any new information collection requirements that

require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025-0009 and 2050-0078. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use either the EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350-1), or the EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025-0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050-0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

*C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The Agency has determined that of the 140 entities estimated to be impacted by this action, 136 are small businesses; no small

governments or small organizations are expected to be affected by this action. All 136 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Facilities eligible to use Form A (those meeting the appropriate activity threshold which have 500 pounds per year or less of reportable amounts of the chemical) will have a lower burden. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document (Ref. 8).

*D. Unfunded Mandates Reform Act*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531 through 1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements. EPA's economic analysis indicates that the total cost of this action is estimated to be \$531,002 in the first year of reporting (Ref. 8).

*E. Executive Order 13132 (Federalism)*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not

subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained below.

This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

**List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: April 8, 2015.  
**Gina McCarthy,**  
*Administrator.*

Therefore, 40 CFR part 372 is proposed to be amended as follows:

**PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW**

■ 1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, paragraph (a) is amended by adding in the table the entry for "1-Bromopropane" in alphabetical order and in paragraph (b) by adding in the table the entry for "106-94-5" in numerical order to read as follows:

**§ 372.65 Chemicals and chemical categories to which this part applies.**

\* \* \* \* \*  
 (a) \* \* \*

Chemical name	CAS No.	Effective date
* * * * *		
1-Bromopropane .....	106-94-5	1/1/16
* * * * *		

(b) \* \* \*

CAS No.	Chemical name	Effective date
* * * * *		
106-94-5 ..	1-Bromopropane	1/1/16
* * * * *		

\* \* \* \* \*  
 [FR Doc. 2015-08664 Filed 4-14-15; 8:45 am]  
**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[**MB Docket No. 15-88, RM-11747; DA 15-444**]

**Television Broadcasting Services; Bend, Oregon**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by TDS Broadcasting LLC ("TDS"), the licensee of KOHD, channel 51, Bend, Oregon, requesting the substitution of channel

18 for channel 51 at Bend. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. TDS has entered into such a voluntary relocation agreement with T-Mobile USA, Inc. and states that operation on channel 18 would remove any potential interference with authorized wireless operations in the adjacent Lower 700 MHz A Block.

**DATES:** Comments must be filed on or before April 30, 2015, and reply comments on or before May 11, 2015.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: F. William LeBeau, Esq., Holland & Knight LLP, 800 17th Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, *Joyce.Bernstein@fcc.gov*, Media Bureau, (202) 418-1647.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 15-88, adopted April 10, 2015, and

released April 10, 2015. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.). To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47

CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Barbara A. Kreisman,**  
*Chief, Video Division, Media Bureau.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Oregon, is amended by removing channel 51 at Bend and adding channel 18 at Bend.

[FR Doc. 2015-08751 Filed 4-14-15; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 80, No. 72

Wednesday, April 15, 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 COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Telecommunications and Information Administration (NTIA).

*Title:* Computer and Internet Use Supplement to the Census Bureau's Current Population Survey (CPS).

*OMB Control Number:* 0660-0021.

*Form Number(s):* None.

*Type of Request:* Regular submission (Revision of a currently approved collection).

*Estimated Number of Respondents:* 54,000 households.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 9,000.

*Needs and Uses:* NTIA proposes to add 61 questions to the U.S. Census Bureau's July 2015 CPS to gather reliable data on broadband (also known as high-speed Internet) use by U.S. households. President Obama has established a national goal of universal, affordable broadband access for all Americans.<sup>1</sup> To that end, the Administration is working with Congress, the Federal Communications Commission (FCC), and other stakeholders to develop and advance economic and regulatory policies that foster broadband deployment and adoption. Collecting current, systematic, and comprehensive information on broadband use and non-use by U.S.

households is critical to allow policymakers not only to gauge progress made to date, but also to identify problem areas with a specificity that permits carefully targeted and cost-effective responses.

The Census Bureau ("the Bureau") is widely regarded as a superior collector of data based on its centuries of experience and its scientific methods. Collection of NTIA's requested broadband usage data, moreover, will occur in conjunction with the Bureau's scheduled July 2015 Current Population Survey (CPS), thereby significantly reducing the potential burdens on the Bureau and on surveyed households. Questions on broadband and Internet use have been included in 12 previous CPS surveys.

The U.S. government has an increasingly pressing need for comprehensive broadband data. The General Accountability Office (GAO), NTIA, and the FCC have issued reports noting the lack of useful broadband adoption data for policymakers, and Congress passed legislation—the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009—to address this challenge. The Organization for Economic Co-operation and Development (OECD) looks to Census Bureau data as an important input into their inter-country benchmark analyses. Modifying the July CPS to include NTIA's requested broadband data will allow the Commerce Department and NTIA to respond to congressional concerns and directives, and to work with the OECD on its broadband methodologies with more recent data.

*Affected Public:* Individuals and households.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Sections 131, 182, and 193.

This information collection request may be viewed at [www.reginfo.gov](http://www.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](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

Dated: April 10, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015-08645 Filed 4-14-15; 8:45 am]

**BILLING CODE 3510-06-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-912]

#### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** On October 10, 2014, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC").<sup>1</sup> The period of review ("POR") is September 1, 2012, through August 31, 2013. This review covers the following exporters of subject merchandise: Mandatory respondents, Double Coin Holdings Ltd. ("Double Coin") and Guizhou Tyre Co., Ltd./ Guizhou Tyre Import and Export Co., Ltd. (collectively, "GTC"), and non-examined respondents Zhongce Rubber Group Company Limited ("Zhongce"), Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei"), and Trelleborg Wheel System (Xingtai) China, Co. Ltd. ("Trelleborg"). We continue to find that GTC made sales of subject merchandise at less than normal value; that Zhongce and Zhongwei are eligible for separate rates; that Double Coin failed to demonstrate eligibility for separate rate status and thus has been included in the PRC-wide entity, and that Trelleborg had no shipments during the POR. The final dumping margins for this review are listed in the "Final Results" section below.

**DATES:** *Effective:* April 15, 2015.

<sup>1</sup> See Remarks by President Obama on the State of the Union (Jan. 20, 2015) at <https://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-state-union-address-january-20-2015>.

<sup>1</sup> See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 61291 (October 10, 2014) ("Preliminary Results").



**FOR FURTHER INFORMATION CONTACT:**

Andrew Medley or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4987 and (202) 482-5848, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On October 10, 2014, the Department published its *Preliminary Results* of the antidumping duty administrative review of OTR tires from the PRC and invited interested parties to comment on the preliminary results. We granted parties an extension of time to submit case and rebuttal briefs.<sup>2</sup> On December 11, 2014, we received case briefs from Petitioners,<sup>3</sup> GTC, and Double Coin. On December 19, 2014, we received a rebuttal brief from Trelleborg. On December 23, 2014, we received rebuttal briefs from Petitioners, GTC, Double Coin, and Zhongce. On December 30, 2014, the Department extended the deadline for the final results until April 8, 2015.<sup>4</sup> In accordance with timely requests from parties, on February 25, 2015, the Department held a public hearing.<sup>5</sup> We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the "Act").

**Scope of the Order**

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25,

4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.<sup>6</sup>

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS").<sup>7</sup> ACCESS is available to registered users at <http://access.trade.gov> and it is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/enforcement/>. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

**Final Determination of No Shipments**

As noted in the *Preliminary Results*, we received a no-shipment certification from Trelleborg.<sup>8</sup> Consistent with its practice, the Department asked U.S. Customs and Border Protection ("CBP") to conduct a query on potential shipments made by Trelleborg during

<sup>6</sup> For a complete description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled, "Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2012-2013," dated concurrently with this notice ("Issues and Decision Memorandum").

<sup>7</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

<sup>8</sup> See *Preliminary Results*, 79 FR at 61292.

the POR; CBP did not provide any evidence that contradicts Trelleborg's claim of no shipments.<sup>9</sup> Based on Trelleborg's certification, our analysis of CBP information, and analysis of interested parties' comments, we determine that Trelleborg did not have any reviewable transactions during the POR.<sup>10</sup>

**Final Determination of Affiliation and Collapsing**

We continue to find that Double Coin Group Jiangsu Tyre Co., Ltd., Double Coin Group Shanghai Donghai Tyre Co., Ltd., and Double Coin Holdings, Ltd. are affiliated pursuant to section 771(33)(E) of the Act and should be collapsed together and treated as a single company (collectively, "Double Coin"), pursuant to the criteria laid out in 19 CFR 351.401(f).<sup>11</sup>

**Separate Rates**

In the *Preliminary Results*, we determined that GTC, Zhongce, and Zhongwei are eligible for separate-rate status; we also determined that Double Coin was part of the PRC-wide Entity.<sup>12</sup> We made no changes to these determinations for the final results.<sup>13</sup>

**Rate for Non-Examined Companies Which Are Eligible for a Separate Rate**

Normally, the Department's practice is to look for guidance from section 735(c)(5)(A) of the Act, to assign to separate rate companies that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available.<sup>14</sup> In this case, we found one mandatory respondent, Double Coin, to be part of the PRC-wide entity. The other mandatory respondent, GTC, is receiving a separate rate calculated from its own sales and production data. To determine a rate for the unselected separate rate companies, we find it

<sup>9</sup> See CBP Message Number 3352302, dated December 18, 2013.

<sup>10</sup> See Issues and Decision Memorandum at Comment 2.

<sup>11</sup> See *Preliminary Results*, 79 FR at 61292. No party commented on this issue in their case briefs.

<sup>12</sup> *Id.*, and accompanying Preliminary Decision Memorandum at the "Separate Rates" section.

<sup>13</sup> See Issues and Decision Memorandum at Comments 1 and 3.

<sup>14</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

<sup>2</sup> See Letters from the Department titled "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Time for Case Briefs and Rebuttal Briefs," dated October 31, 2014, and "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Second Extension of Time for Case Briefs and Rebuttal Briefs," dated December 5, 2014. See also "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Time for Rebuttal Briefs," dated December 15, 2014.

<sup>3</sup> Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (collectively, "Petitioners").

<sup>4</sup> See Memorandum titled "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated December 30, 2014.

<sup>5</sup> See Hearing Transcript, filed onto the record by Lisa Dennis Court Reporting on March 25, 2015.

appropriate to use the margin calculated for GTC, which was also found to be separate from the PRC-wide entity with respect to its export activities, and which rate is not zero or *de minimis* nor based entirely on facts available. Therefore, we are assigning GTC's calculated margin as the rate assigned to non-examined entities which demonstrated their eligibility for a separate rate.

### PRC-Wide Entity

Double Coin, one of the companies that the Department selected as a mandatory respondent in this administrative review, failed to demonstrate absence of *de facto* government control over export activities due to the fact that its controlling shareholder is wholly-owned by the State-owned Assets Supervision and Administration Commission of the State Council and the significant level of control this majority shareholder wields over the respondent's Board of Directors.<sup>15</sup> As a result, we determine that Double Coin is part of the PRC-wide entity.

Because Double Coin provided the Department with its verified sales and production data, we are able to calculate a margin for an unspecified portion of a single PRC-wide entity, but cannot do so for the remaining unspecified portion of the entity. As the Department must calculate a single margin for the PRC-wide government controlled entity and there is insufficient information on the record with respect to the composition of the PRC-wide entity, as facts available pursuant to section 776(a)(1) of the Act, we calculated a simple average of the previously assigned PRC-wide rate (210.48 percent)<sup>16</sup> and Double Coin's calculated margin (0.14 percent) as the rate applicable to the PRC-wide entity. Accordingly, the Department revised the PRC-wide entity rate to 105.31 percent for these final results.<sup>17</sup>

<sup>15</sup> See *Preliminary Results*, 79 FR at 61292–93 and accompanying Preliminary Decision Memorandum at the “Separate Rates” section. See also Issues and Decision Memorandum at Comment 1.

<sup>16</sup> See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40489 (July 15, 2008).

<sup>17</sup> See Memorandum to the File titled “2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Double Coin,” dated April 8, 2015 (“Double Coin Final Analysis Memorandum”). See also Issues and Decision Memorandum at Comment 1.

### Changes Since the Preliminary Results

Based on an analysis of the comments received, we made certain calculation programming changes and revisions to the valuation of certain factors of production. For further details on the changes we made for these final results, see the Issues and Decision Memorandum. See also Memorandum to the File titled “Final Results of the 2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum,” dated April 8, 2015; Memorandum to the File titled “2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Guizhou Tyre Co., Ltd.,” dated April 8, 2015; and Double Coin Final Analysis Memorandum.

### Final Results

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period September 1, 2012, through August 31, 2013:

Exporter	Weighted average dumping margin
Guizhou Tyre Co., Ltd./ Guizhou Tyre Import and Export Co., Ltd .....	11.34
Zhongce Rubber Group Company Limited .....	11.34
Weihai Zhongwei Rubber Co., Ltd .....	11.34
PRC-Wide Entity <sup>18</sup> .....	105.31

### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).<sup>19</sup> The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For customers or importers of GTC for which we do not have entered value, we calculated importer- (or customer-) specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated

<sup>18</sup> The PRC-Wide Entity includes Double Coin.

<sup>19</sup> See *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103 (February 14, 2012) (“NME Antidumping Proceedings”).

for the examined sales of subject merchandise to the total sales quantity of those same sales.<sup>20</sup> For customers or importers of GTC for which we received entered-value information, we have calculated importer- (or customer-) specific antidumping duty assessment rates based on importer- (or customer-) specific *ad valorem* rates.<sup>21</sup> For the non-examined separate rate companies, we will instruct CBP to liquidate all appropriate entries at 11.34 percent. For the PRC-wide entity, including Double Coin, we will instruct CBP to liquidate all appropriate entries at 105.31 percent.

The Department recently announced a refinement to its assessment practice in non-market economy (“NME”) cases.<sup>22</sup> Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the NME-wide rate.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin identified in the “Final Results” section; (2) for previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in a previous segment, the cash deposit rate will continue to be the exporter-specific rate (or exporter-producer chain rate) published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 105.24 percent; and (4) for all non-PRC exporters of subject merchandise which have not received

<sup>20</sup> See 19 CFR 351.212(b)(1).

<sup>21</sup> *Id.*

<sup>22</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. The cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

#### Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), 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.

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 8, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### Issues and Decision Memorandum

Summary

Background

Scope of the Order

Discussion of the Issues

Comment 1: Whether To Include Double Coin in the PRC-Wide Entity and Adjust the Entity Rate

Comment 2: Whether To Assign a Margin to Trelleborg

Comment 3: Whether To Assign a Margin to Zhongce

Comment 4: Whether To Adjust U.S. Prices for Un-refunded Value-Added Tax ("VAT")

Comment 5: Use of Adverse Facts Available in Calculating Double Coin's Margin

Comment 6: Use of PT Gajah Tunggal's Financial Statement for the Surrogate Financial Ratio Calculation

Comment 7: Surrogate Value ("SV") for Coal

Comment 8: Valuation of Labor

Comment 9: Valuation of Domestic Truck Freight

Comment 10: Valuation of Electricity

Comment 11: Container Weight Used in Ocean Freight and Brokerage and Handling Surrogate Value Calculations

Comment 12: Whether To Exclude Certain Ocean Freight Charges When Calculating a Surrogate Value for Ocean Freight

Comment 13: Whether To Deflate the Surrogate Value for GTC's Warehouse Costs

Comment 14: Whether To Calculate Region-Specific U.S. Delivery Charges for GTC's U.S. Inland Freight Surrogate Value

Comment 15: Surrogate Values for GTC's Tackifier Inputs

Comment 16: Freight Distance Applied to GTC's Inputs

Comment 17: Calculation of Double Coin's Truck Freight and Distance

Comment 18: Whether Truck Freight Costs are Over-Counted

Comment 19: Surrogate Value for Double Coin's Polyester Cord Inputs

Comment 20: Surrogate Values for Double Coin's Cinder and Calcium Oxide By-products

Comment 21: Calculation of Double Coin's Warranty Costs

Comment 22: Conversion of the Truck Freight Surrogate Value Applied to Double Coin's Coal Consumption

Comment 23: Calculation of Credit Costs for Double Coin's Drop-Shipped Sales

Comment 24: Calculation of Inventory Carrying Costs for Double Coin's Warehouse Sales

Comment 25: Differential Price Calculation Recommendation

[FR Doc. 2015-08673 Filed 4-14-15; 8:45 am]

**BILLING CODE P**

#### CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

##### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burdens (time and financial resources) are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed AmeriCorps Child Care Program Information Collection. The AmeriCorps Child Care Benefit Program is available for qualified, active, full-time AmeriCorps State and National, VISTA and NCCC (including FEMA Corps) Members who need the Child Care benefit to serve. Child Care benefits are paid directly to qualified child care providers for all or part of the member's child care costs during their active time of service with AmeriCorps. The information collection is requested of AmeriCorps Members who are applying for the benefit; information collected is used to determine a member's eligibility based upon statutory, regulatory, and program eligibility requirements. In addition, the information collection is requested of the child care providers; information collection is used to determine a child care provider's eligibility. Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 15, 2015.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attention Jennifer Veazey, Project Manager, Room 9506A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through [www.regulations.gov](http://www.regulations.gov).

Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Veazey, (202) 606-6770, or by email at [jveazey@cns.gov](mailto:jveazey@cns.gov).

**SUPPLEMENTARY INFORMATION:** CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

#### Background

The information collection is requested of AmeriCorps Members who are applying for the benefit (or in some cases, member of their households); information collected is used to determine a member's eligibility based upon statutory, regulatory, and program eligibility requirements. In addition, the information collection is requested of the child care providers to determine a child care provider's eligibility to provide the child care service.

Information is collected via hardcopy and electronically through an online application system.

#### Current Action

CNCS seeks to renew the current AmeriCorps Child Care Application and add four new instruments: The AmeriCorps Member Application, Attendance Sheet, Member Update Form, and Statement of Work Activities.

The information collection will otherwise be used in the same manner as the existing application. The current application is due to expire on 7/31/2015.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* AmeriCorps Child Care Program Forms.

*OMB Number:* 3045-0142.

*Agency Number:* None.

*Affected Public:* AmeriCorps Members and Child Care Providers.

*Total Respondents:* 1,400 total: 700 AmeriCorps Members and 700 Child Care Providers.

*Frequency:* Annual.

*Average Time per Response*

*AmeriCorps Member Application:* 60 minutes.

*Member Update Form:* 5 minutes.

*Statement of Work Activities Form (completed by Member):* 10 minutes.

*AmeriCorps Child Care Provider Application:* 40 minutes.

*Attendance Sheet (completed by Provider and signed by Member):* 20 minutes.

*Estimated Total Burden Hours:* 1,575 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 14, 2015.

**Erin Dahlin,**

*Deputy Chief of Program Operations.*

[FR Doc. 2015-08657 Filed 4-14-15; 08:45 am]

**BILLING CODE 6050-28-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Inland Waterways Users Board Meeting Notice

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's Web site at <http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx>.

**DATES:** The Army Corps of Engineers, Inland Waterways Users Board will meet from 9:00 a.m. to 1:00 p.m. on May 14, 2015. Public registration will begin at 8:15 a.m.

**ADDRESSES:** The Board meeting will be conducted at the San Luis Resort Hotel and Conference Center, 5222 Seawall

Boulevard, Galveston, TX 77551 at 409-744-1500 or 800-445-0090, or <http://www.sanluisresort.com>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR-GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315-3868; by telephone at 703-428-6438; and by email at [Mark.Pointon@usace.army.mil](mailto:Mark.Pointon@usace.army.mil). Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR-GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315-3868; by telephone at 703-428-8083; and by email at [Kenneth.E.Lichtman@usace.army.mil](mailto:Kenneth.E.Lichtman@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

*Purpose of the Meeting:* The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

*Proposed Agenda:* At this meeting the agenda will include the status of funding for inland navigation projects and studies, the status of the Inland Waterways Trust Fund, the status and path forward for the Olmsted Locks and Dam Project, the Locks and Dams 2, 3, and 4 Monongahela River Project; status of Chickamauga Lock Project; status of Inner Harbor Navigation Canal (IHNC) Lock General Re-evaluation Report; an update on the Inland Marine Transportation System (IMTS) Investment Program (Capital Investment Strategy); Lock Performance Monitoring System (LPMS) Data and Reporting Process; and a summary of the Board's advice and recommendations submitted to the Congress regarding the Fiscal Year 2016 President's Budget.

*Availability of Materials for the Meeting.* A copy of the agenda or any updates to the agenda for the May 14, 2015 meeting will be available at the meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

*Public Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

*Special Accommodations:* The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Written Comments or Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the

meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

*Verbal Comments:* Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015–08561 Filed 4–14–15; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, U.S. Army Corps of Engineers

#### Notice To Conduct a Public Meeting for Preparation of a Preliminary Assessment and Dredged Material Management Plan for Petaluma River, City of Petaluma, Sonoma County, CA

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Public Notice.

**SUMMARY:** The purpose of this notice is to initiate the scoping process for an evaluation of whether there is adequate capacity at existing placement sites for

placement/disposal of projected maintenance dredged material from Petaluma River. This evaluation will be conducted in a two-step process: First a preliminary assessment (PA) will make projections of the volume of dredged material, estimate the existing capacity for placement/disposal of the material, and verify that continued maintenance dredging is economically justified. If the PA concludes that continued maintenance dredging is justified and that the existing placement/disposal capacity is not adequate, then a Dredged Material Management Plan (DMMP) will be prepared to identify additional placement/disposal sites with adequate capacity for the next 20 years of federal and non-federal maintenance dredging.

**DATES:** A public meeting will be held on April 30, 2015, at 7:00 p.m. (PDT). Submit comments concerning this project on or before May 18, 2015.

**ADDRESSES:** The public meeting will be held at the Petaluma Community Center, 320 North McDowell Boulevard, Petaluma, CA 94954. Mail written comments concerning this notice to: U.S. Army Corps of Engineers, San Francisco District, Engineering and Technical Services Division, ATTN: Roxanne Grillo, 1455 Market Street, 17th Floor, San Francisco, CA 94103–1398. Comment letters should include the commenter's physical mailing address and the project title, Petaluma River federal navigation project, in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Roxanne Grillo, U.S. Army Corps of Engineers, San Francisco District, Environmental Section A, 1455 Market Street, 17th Floor, San Francisco, CA 94103–1398, (415) 503–6859, [Roxanne.Grillo@usace.army.mil](mailto:Roxanne.Grillo@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** If the Corps determines that preparation of a DMMP is necessary, an accompanying Environmental Assessment in accordance will be prepared in accordance with the National Environmental Policy Act (NEPA). The primary federal actions under consideration are dredging, dredged material placement/disposal, and transport of dredged material for the purpose of aquatic disposal and/or upland beneficial reuse. The City of Petaluma is the non-federal sponsor (NFS). An Environmental Assessment is intended to be sufficient in scope to address the federal, state and local requirements and environmental issues concerning the proposed activities and permit approvals.

*Project Site and Background Information:* The Petaluma River federal navigation project is located on the

Northern California coast about 35 miles to the north of San Francisco. It consists of two portions: The Upper Channel that begins in Petaluma City and extends 14 miles to the mouth of Petaluma River at San Pablo Bay (near the Highway 37 Bridge); and the Across the Flats (ATF) portion that continues southeast of the Highway 37 Bridge and extends 5 miles into the deeper water of San Pablo Bay. It is a shallow draft navigation project that supports light commercial and sport fishing, and recreational boating.

Both the channel width and depth vary throughout the entire length of the federal project. An 8 foot depth is authorized for the five miles of the ATF portion extending into San Pablo Bay (200 foot wide channel) and as far upstream as Western Avenue in the City of Petaluma (100 foot wide channel). This includes a 300 foot by 400 foot turning basin. The channel then reduces to 50 feet wide with a 4 foot depth until the Washington Street Bridge and from there it reduces to a 40 foot width and a 4 foot depth for an additional 935 linear feet.

Historically, dredged sediment from the Upper Channel was placed at an upland disposal site located downstream of the turning basin. The dredged sediment from the ATF portion has historically been placed at the San Pablo in-bay disposal site SF-10.

**Proposed Action(s):** The San Francisco District, US Army Corps of Engineers, is evaluating whether there is sufficient placement/disposal capacity and verifying economic justification to support continued federal and non-federal maintenance dredging over the next 20 years.

**Issues:** Potentially significant issues associated with the project may include: air quality emissions, biological resource impacts, hazards and hazardous materials, hydrology and water quality, noise, traffic and transportation, and cumulative impacts from past, present and reasonably foreseeable future projects.

**Scoping Process:** The U.S. Army Corps of Engineers is seeking participation and input of all interested federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals through this public notice. The purpose of the public meeting is to solicit comments regarding the potential impacts and environmental issues associated with the proposed action to be considered. A meeting will be held on April 30, 2015, at 7:00 p.m. (PDT). The draft PA is expected to be available

for public review and comment in late summer of 2015.

**John C. Morrow,**

*Lieutenant Colonel, U.S. Army, District Engineer.*

[FR Doc. 2015-08723 Filed 4-14-15; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Education Research and Special Education Research Grant Programs

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice.

#### Overview Information

##### *Education Research and Special Education Research Grant Programs*

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.305A, 84.305B, 84.305C, 84.305D, 84.305H, 84.305N, 84.324A, and 84.324B.

**DATES:** The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice.

**SUMMARY:** The Acting Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2016 competitions for grants to support education research and special education research. The Acting Director takes this action under the Education Sciences Reform Act of 2002. The Institute's purpose in awarding these grants is to provide national leadership in expanding fundamental knowledge and understanding of (1) developmental and school readiness outcomes for infants and toddlers with or at risk for disability, and (2) education outcomes for all students from early childhood education through postsecondary and adult education.

#### Full Text of Announcement

##### I. Funding Opportunity Description

**Purpose of Program:** The central purpose of the Institute's research grant programs is to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all students. These interested individuals include parents, educators, students, researchers, and policymakers. In carrying out its grant programs, the Institute provides support

for programs of research in areas of demonstrated national need.

**Competitions in This Notice:** The Institute will conduct eight research competitions in FY 2016 through two of its centers:

The Institute's National Center for Education Research (NCER) will hold six competitions: one competition for education research, one competition for education research training, one competition for education research and development centers, one competition for statistical and research methodology in education, one competition for partnerships and collaborations focused on problems of practice or policy, and one competition for research networks.

The Institute's National Center for Special Education Research (NCSER) will hold two competitions: one competition for special education research and one competition for special education research training.

#### NCER Competitions

**The Education Research Competition.** Under this competition, NCER will consider only applications that address one of the following ten education research topics:

- Cognition and Student Learning.
- Early Learning Programs and Policies.
- Education Technology.
- Effective Teachers and Effective Teaching.
- English Learners.
- Improving Education Systems: Policies, Organization, Management, and Leadership.
- Mathematics and Science Education.
- Postsecondary and Adult Education.
- Reading and Writing.
- Social and Behavioral Context for Academic Learning.

**The Research Training Programs in the Education Sciences.** Under this competition, NCER will consider only applications that address the following topic:

- Pathways to the Education Sciences Research Training.

#### *The Education Research and Development Centers Competition.*

Under this competition, NCER will consider only applications that address the following topic:

- Virtual Learning.

#### *The Statistical and Research Methodology in Education Competition.*

Under this competition, NCER will consider only applications that address the following topic:

- Early Career Statistical and Research Methodology Grants.

#### *Partnerships and Collaborations Focused on Problems of Practice or*

*Policy Competition.* Under this competition, NCER will consider only applications that address the following topic:

- Researcher-Practitioner Partnerships in Education Research.

*The Research Networks Focused on Critical Problems of Education Policy and Practice Competition.* Under this competition, NCER will consider only applications that address one of the following two topics:

- Supporting Early Learning from Preschool through Early Elementary Grades.
- Scalable Strategies to Support College Completion.

#### *NCSEER Competitions*

*The Special Education Research Competitions.* Under this competition, NCSEER will consider only applications that address one of the following eleven topics:

- Autism Spectrum Disorders.
- Cognition and Student Learning in Special Education.
- Early Intervention and Early Learning in Special Education.
- Families of Children with Disabilities.
- Mathematics and Science Education.
- Professional Development for Teachers and Related Services Providers.
- Reading, Writing, and Language Development.
- Social and Behavioral Outcomes to Support Learning.
- Special Education Policy, Finance, and Systems.
- Technology for Special Education.
- Transition Outcomes for Secondary Students with Disabilities.

*The Research Training Programs in Special Education Competition.* Under this competition, NCSEER will consider only applications that address one of the following three topics:

- Postdoctoral Research Training Program.
- Early Career Development and Mentoring.
- Methods Training Using Single Case Designs.

**Program Authority:** 20 U.S.C. 9501 *et seq.*

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a) through (c), 75.219, 75.220, 75.221, 75.222, and 75.230. (b) The

Office of Management and Budget 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.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Types of Awards:* Discretionary grants and cooperative agreements.

*Fiscal Information:* Although Congress has not yet enacted an appropriation for fiscal year 2016, the Institute is inviting applications for these competitions now so that we may give applicants adequate time to prepare their applications. The Department may announce additional topics later in 2015. The actual award of grants will depend on the availability of funds. The size of the awards will depend on the scope of the projects proposed. The number of awards made under each competition will depend on the quality of the applications received for that competition, the availability of funds, and the following limits on awards for specific competitions and topics set by the Institute.

The Institute may waive any of the following limits on awards for a specific competition or topic in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, the Institute may make a larger number of awards to include all applications of the same rank.

For the NCER's Research Training Programs in the Education Sciences competition, we will award no more than four grants under the Pathways to the Education Sciences Research Training topic.

For the NCER's Education Research and Development Center competition, we will award no more than one grant under the Virtual Learning topic.

For the NCER's Statistical and Research Methodology in Education competition, we will award no more than four grants under the Early Career Statistical and Research Methodology Grants topic.

For the NCER's Partnerships and Collaborations Focused on Problems of

Practice or Policy competition, we will award no more than five grants under the Researcher-Practitioner Partnerships in Education Research topic.

For the NCER's Research Networks Focused on Critical Problems of Education Policy and Practice competition, we will award no more than four grants under the Supporting Early Learning from Preschool through Early Elementary Grades topic and no more than four grants under the Scalable Strategies to Support College Completion topic.

For the NCSEER's Research Training Programs in Special Education competition, we will award no more than two grants under the Postdoctoral Research Training topic, no more than five grants under the Early Career Development and Mentoring topic, and no more than one grant under the Methods Training Using Single Case Designs topic.

The Director of the Institute may change the maximum number of awards per competition through a notice in the **Federal Register**. Contingent on the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from the FY 2016 competitions.

## III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

## IV. Application and Submission Information

1. *Request for Applications and Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSEER Requests for Applications (RFAs), which will be available on the Institute's Web site at: <http://ies.ed.gov/funding/>. Each competition will have its own application package.

*RFAs Available:* The RFAs for all eight competitions announced in this notice will be available at the Web site listed above on or before April 30, 2015. The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

The selection criteria and review procedures for the competitions are

contained in the RFAs. The RFAs also include information on the maximum award available under each grant competition. Applications that include proposed budgets higher than the relevant maximum award will not be considered for an award. The Director of the Institute may change the maximum amount through a notice in the **Federal Register**.

**2. Content and Form of Application Submission:** Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

**3. Submission Dates and Times:** The deadline date for transmittal of applications invited under this notice is indicated in the chart at the end of this notice and in the RFAs for the competitions.

Application packages for grants under these competitions must be obtained from and submitted electronically using the Grants.gov Apply site ([www.Grants.gov](http://www.Grants.gov)). For information (including dates and times) about how to submit your application package electronically, or in paper format by mail or hand delivery if you qualify 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 and the chart at the end 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 competition is not subject to Executive Order 12372 and the regulations in 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—

- Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

- 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;

- Provide your DUNS number and TIN on your application; and

- 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](http://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](http://www2.ed.gov/fund/grant/apply/sam-faqs.html).

In addition, if you are submitting your application via Grants.gov, you must: (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the

following Grants.gov Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

**7. Other Submission Requirements:** Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

**a. Electronic Submission of Applications**

Applications for grants under the Education Research, Research Training Programs in the Education Sciences, Education Research and Development Centers, Statistical and Research Methodology in Education, the Partnerships and Collaborations Focused on Problems of Practice or Policy, Research Networks Focused on Critical Problems of Education Policy and Practice, Special Education Research, and Research Training Programs in Special Education competitions, CFDA numbers 84.305A, 84.305B, 84.305C, 84.305D, 84.305H, 84.305N, 84.324A, and 84.324B, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify 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*.

You may access the electronic grant applications for the Education Research, Special Education Research, Research Training Programs in the Education Sciences, Research Training Programs in Special Education, Education Research and Development Centers, Statistical and Research Methodology in Education, Partnerships and Collaborations Focused on Problems of Practice or Policy, and Research Networks Focused on Critical Problems of Education Policy and Practice competitions at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for each



competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.305, not 84.305A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide 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.

- You must upload any narrative sections and all other attachments to your 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.

- Your electronic application must comply with any page-limit requirements described in the relevant RFA for your application.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the

Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; *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), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your 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 your statement to: Ellie Pelaez, U.S. Department of Education, 555 New Jersey Avenue NW., Room 600e, Washington, DC 20208. FAX: (202) 219-1466.

Your 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 you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your 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: [Identify the CFDA number, including suffix letter, for the competition under which you are applying.]), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You 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 you mail your 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 your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

### c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your 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: [Identify the CFDA number, including suffix letter, for the competition under which you are applying.]), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 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 you mail or hand deliver your application to the Department—

(1) You 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 you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your

grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are provided in the RFAs.

2. *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).

3. *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 your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

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 your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual two-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, 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. 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](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

5. *Performance Measures:* To evaluate the overall success of its education research grant program, the Institute annually assesses the percentage of projects that result in peer-reviewed publications, the number of newly developed or modified interventions with evidence of promise for improving student education outcomes, and the number of Institute-supported interventions with evidence of efficacy in improving student outcomes including school readiness outcomes for young children and student academic outcomes and social and behavioral competencies for school-age students. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Student academic outcomes include learning and achievement in core academic content areas (reading, writing, math, and science) and outcomes that reflect students' successful progression through the education system (e.g., course and grade completion; high school graduation; postsecondary enrollment, progress, and completion). Social and behavioral competencies include social skills, attitudes, and behaviors that may be important to student's academic and post-academic success. Additional

education outcomes for students with or at risk of disability include developmental outcomes for infants and toddlers (birth to age three) with or at risk for a disability pertaining to cognitive, communicative, linguistic, social, emotional, adaptive, functional, or physical development; and developmental and functional outcomes that improve education outcomes, transition to employment, independent living, and postsecondary education for students with disabilities.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in meeting the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has met the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable

to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** The contact person associated with a particular research competition is listed in the chart at the end of this notice, in the relevant RFA, and in the relevant application package. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period ranges are also listed in the chart and in the RFAs that are posted at the following Web sites: <http://ies.ed.gov/funding/> and [www.ed.gov/about/offices/list/ies/programs.html](http://www.ed.gov/about/offices/list/ies/programs.html).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the RFA in an accessible format (e.g., braille, large print,

audiotape, or compact disc) on request to the appropriate program contact person listed in the chart at the end 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](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2015.

**Sue Betka,**

*Acting Director, Institute of Education Sciences.*

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
<b>National Center for Education Research (NCER)</b>					
84.305A Education Research ..... <ul style="list-style-type: none"> <li>■ Cognition and Student Learning.</li> <li>■ Early Learning Programs and Policies.</li> <li>■ Education Technology.</li> <li>■ Effective Teachers and Effective Teaching.</li> <li>■ English Learners.</li> <li>■ Improving Education Systems: Policies, Organization, Management, and Leadership.</li> <li>■ Mathematics and Science Education.</li> <li>■ Postsecondary and Adult Education.</li> <li>■ Reading and Writing.</li> <li>■ Social and Behavioral Context for Academic Learning.</li> </ul>	May 21, 2015 ..	August 6, 2015 .....	\$100,000 to \$760,000 ....	Up to 5 years .....	Rebecca McGill-Wilkinson, <i>Rebecca.McGill@ed.gov.</i>
84.305B Research Training Programs in the Education Sciences. <ul style="list-style-type: none"> <li>■ Pathways to the Education Sciences Research Training.</li> </ul>	May 21, 2015 ..	August 20, 2015 .....	\$50,000 to \$240,000 .....	Up to 5 years .....	Katina Stapleton, <i>Katina.Stapleton@ed.gov.</i>
84.305C Education Research and Development Center Program. <ul style="list-style-type: none"> <li>■ Virtual Learning.</li> </ul>	May 21, 2015 ..	August 20, 2015 .....	\$1,000,000 to \$2,000,000	Up to 5 years .....	Erin Higgins, <i>Erin.Higgins@ed.gov.</i>
84.305D Statistical and Research Methodology in Education. <ul style="list-style-type: none"> <li>■ Early Career Statistical and Research Methodology Grants.</li> </ul>	May 21, 2015 ..	August 6, 2015 .....	\$40,000 to \$100,000 .....	Up to 2 years .....	Phill Gagne, <i>Phill.Gagne@ed.gov.</i>
84.305H Partnerships and Collaborations Focused on Problems of Practice or Policy. <ul style="list-style-type: none"> <li>■ Researcher-Practitioner Partnerships in Education Research.</li> </ul>	May 21, 2015 ..	August 6, 2015 .....	\$50,000 to \$200,000 .....	Up to 2 years .....	Allen Ruby, <i>Allen.Ruby@ed.gov.</i>

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
84.305N Research Networks Focused on Critical Problems of Education Policy and Practice. <ul style="list-style-type: none"> <li>Supporting Early Learning from Preschool through Early Elementary Grades</li> <li>Scalable Strategies to Support College Completion</li> </ul>	May 21, 2015 ..	August 6, 2015 .....	\$500,000—\$1,100,000 ...	Up to 5 years .....	Caroline Ebanks (Supporting Early Learning), <i>Caroline.Ebanks@ed.gov</i> . James.Benson (Scalable Strategies), <i>James.Benson@ed.gov</i> .
<b>National Center for Special Education Research (NCSEER)</b>					
84.324A Special Education Research ... <ul style="list-style-type: none"> <li>Autism Spectrum Disorders.</li> <li>Cognition and Student Learning in Special Education.</li> <li>Early Intervention and Early Learning in Special Education.</li> <li>Families of Children with Disabilities.</li> <li>Mathematics and Science Education.</li> <li>Professional Development for Teachers and Related Services Providers.</li> <li>Reading, Writing, and Language Development.</li> <li>Social and Behavioral Outcomes to Support Learning.</li> <li>Special Education Policy, Finance, and Systems.</li> <li>Technology for Special Education.</li> <li>Transition Outcomes for Secondary Students with Disabilities.</li> </ul>	May 21, 2015.	August 6, 2015 .....	\$100,000 to \$800,000 ....	Up to 5 years .....	Jacquelyn Buckley, <i>Jacquelyn.Buckley@ed.gov</i> .
84.324B Research Training Programs in Special Education. <ul style="list-style-type: none"> <li>Postdoctoral Research Training Program</li> <li>Early Career Development and Mentoring</li> <li>Methods Training Using Single Case Designs</li> </ul>	May 21, 2015 ..	August 20, 2015 .....	\$50,000 to \$233,000 .....	Up to 5 years .....	Kristen Rhoads (Postdoctoral and Early Career), <i>Kristen.Rhoads@ed.gov</i> . Robert Ochsendorf (Methods Training), <i>Robert.Ochsendorf@ed.gov</i> .

\* These estimates are annual amounts.

**Note:** The Department is not bound by any estimates in this notice.

**Note:** If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

[FR Doc. 2015-08627 Filed 4-14-15; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2015-ICCD-0043]

### Agency Information Collection Activities; Comment Request; National Household Education Survey 2016 (NHES:2016) Full-Scale Data Collection

**AGENCY:** Institute of Education Sciences (IES)/National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection

**DATES:** Interested persons are invited to submit comments on or before June 15, 2015.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2015-ICCD-0043 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L-OM-2-2E319, Room 2E103, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Kashka Kubzdela, (202) 502-7411.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the

Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* National Household Education Survey 2016 (NHES:2016) Full-scale Data Collection.

*OMB Control Number:* 1850-0768.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* Individuals.

*Total Estimated Number of Annual Responses:* 187,536.

*Total Estimated Number of Annual Burden Hours:* 30,373.

*Abstract:* The National Household Education Surveys Program (NHES) is conducted by the National Center for Education Statistics' (NCES). NHES is NCES's principal mechanism for addressing education topics appropriate for households rather than establishments. Such topics cover a wide range of issues, including early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult education and training, parent involvement in education, school choice, homeschooling, and civic involvement. The NHES consists of a series of rotating surveys using a two-stage design in which a household screener collects household membership and key characteristics for sampling and then appropriate topical survey(s) are mailed to sample members. Data from the NHES are used to provide national cross-sectional estimates on populations of special interest to education researchers and policymakers. NHES surveys were conducted approximately every other year from 1991 through 2007 using random digit dial (RDD) methodology; beginning in 2012 NHES began collecting data by mail to improve response rates. This submission seeks clearance to conduct NHES:2016, which will repeat the child topical surveys conducted in 2012: the Parent and Family Involvement in Education (PFI) and the Early Childhood Program Participation (ECPP), and will include the first adult topical survey in NHES since 2005, the Adult Training and

Education Survey (ATES). The adult survey was developed in conjunction with the Interagency Working Group on Expanded Measures of Enrollment and Attainment (GEMEnA) and was pilot tested in the 2014 NHES Feasibility Study.

Dated: April 10, 2015.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2015-08634 Filed 4-14-15; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board Quarterly Board Meeting

**AGENCY:** National Assessment Governing Board, U.S. Department of Education.

**ACTION:** Notice of a closed teleconference meeting of the National Assessment Governing Board.

**DATES:** April 15, 2015.

**SUMMARY:** The National Assessment Governing Board is announcing a teleconference scheduled on April 15, 2015 from 3:00 p.m. to 3:30 p.m. EST to discuss proposed candidates for the vacant position of National Assessment Governing Board Executive Director. Following discussions, the full Board will take action on selection of the final candidate for the position of Executive Director. This notice is being published less than the 15-days due to the urgent need to ensure full Board participation in the selection of a new Executive Director for NAGB.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (FACA).

The teleconference will be closed to the public because it is concerned with recommending applicants for a vacancy. Discussions will require full and frank advice from Governing Board members. This advice will involve professional judgments on the relative merits and qualifications of the proposed candidate and respective work experience. Such personnel matters involve the discussion of information that is of a personal nature, the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, is protected from disclosure by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Minutes of the closed teleconference will be certified by the Board Chairman and retained in the public record.

### FOR FURTHER INFORMATION CONTACT:

Munira Mwalimu, Executive Officer, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357-6938, fax: (202) 357-6945.

**SUPPLEMENTARY INFORMATION:** *Statutory Authority and Function:* The National Assessment Governing Board is established under Title III—National Assessment of Educational Progress Authorization Act, Public Law 107-279. Information on the Board and its work can be found at [www.nagb.gov](http://www.nagb.gov).

The Board is established to formulate policy for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public. Section 302 (6) of P.L. 107-279 provides the legislative authority for appointment of Governing Board staff.

*Access to Records of the Meeting:* Pursuant to FACA requirements, the public may inspect the outcomes of Board action via an announcement of the appointment that will be posted at [www.nagb.gov](http://www.nagb.gov) approximately two weeks after the teleconference meeting.

*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](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Authority:** Pub. L. 107-279, Title III—National Assessment of Educational Progress § 301 and § 302.

Dated: April 10, 2015.

**Mary Crovo,**

*Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.*

[FR Doc. 2015-08658 Filed 4-14-15; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION**

**Applications for New Awards; Investing in Innovation Fund—Development Grants; Correction**

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice; correction.

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.411P (Development grants Pre-Application) and 84.411C (Development grants Full Application).*

**SUMMARY:** On March 30, 2015, we published in the **Federal Register** (80 FR 16648) a notice inviting applications for new awards under the Investing in Innovation Fund (i3) Development grants. This correction notice changes the deadline date for transmittal of pre-applications from April 29, 2015, to May 5, 2015.

**DATES:** Effective April 15, 2015.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of March 30, 2015 (80 FR 16648), on page 16648, in the middle of the third column under the heading *Overview Information*, and on page 16656, in the middle of the first column, under 3. *Submission Dates and Times*, we change the deadline date for transmittal of pre-applications from “April 29, 2015,” to “May 5, 2015.”

**Program Authority:** American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Pub. L. 111-5.

**FOR FURTHER INFORMATION CONTACT:** Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4C107, Washington, DC 20202-5930. Telephone: (202) 453-7122. FAX: (202) 205-5631 or by email: [i3@ed.gov](mailto:i3@ed.gov).

If you use a telecommunications device (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

**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, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal**

**Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at 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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2015.

**Nadya Chinoy Dabby,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2015-08631 Filed 4-14-15; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY**

**Proposed Agency Information Collection**

**AGENCY:** U.S. Department of Energy.  
**ACTION:** Notice and request for OMB review and comment.

**SUMMARY:** The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will require annual reports from power companies that voluntarily join the Department's new *Partnership for Energy Sector Climate Resilience*. The goal of this partnership is for the Department and power company participants to work cooperatively to enhance the energy security of the nation's electricity infrastructure. The annual reports required of partners will include summaries of activities undertaken during the proceeding year including, for example, vulnerability assessments, resilience strategies, information on costs and benefits of actions taken, and best practices. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the department; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the

burden of the proposed collection on the respondents, including through the use of automated collection techniques.

**DATES:** Comments regarding this collection must be received on or before May 15, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202-395-4718.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to Dr. Craig Zamuda, U.S. Department of Energy, EPSA-20, 1000 Independence Avenue SW., Washington, DC 20585, or by fax 202 586-5345, or by email at [craig.zamuda@hq.doe.gov](mailto:craig.zamuda@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Craig Zamuda, U.S. Department of Energy, EPSA-20, 1000 Independence Avenue SW., Washington, DC 20585, or by fax 202 586-5345, or by email at [craig.zamuda@hq.doe.gov](mailto:craig.zamuda@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) *OMB No.:* “New”; (2) *Information Collection Request Title:* Partnership for Energy Sector Climate Resilience; (3) *Type of Request:* New collection; (4) *Purpose:* To enhance the resilience of the nation's power sector to extreme weather and climate change, the Department of Energy is establishing a partnership program with power sector companies. On an annual basis, participating companies are asked to report on activities they have undertaken to improve their resilience to extreme weather and climate change. This information will help facilitate improved resilience throughout the sector and better inform the Department's activities in support of these efforts. (5) *Annual Estimated Number of Respondents:* 25; (6) *Annual Estimated Number of Total Responses:* 50 (first year, 25 thereafter). (7) *Annual Estimated Number of Burden Hours:* 212 hours; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$8,959 total program-wide annual costs.

**Statutory Authority:** Title XIII of the Energy Independence and Security Act of 2007 calls for a variety of activities to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure. In addition, Executive

Orders, 13514 (Federal Leadership in Environmental, Energy and Economic Performance) and 13653 (Preparing the United States for the Impacts of Climate Change) also set forth a number of activities that would be supported by the information collected under this request.

Issued in Washington, DC, on April 8, 2015.

**Judith M. Greenwald,**

*Deputy Director, Office of Climate, Environment and Efficiency, Office of Energy Policy and Systems Analysis, U.S. Department of Energy.*

[FR Doc. 2015-08643 Filed 4-14-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-132-000]

#### Kern River Gas Transmission Company; Notice of Application

Take notice that on March 26, 2015, Kern River Gas Transmission Company (Kern River), 2755 E. Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to replace 1.56-miles of its 36-inch diameter A-line in Clark County, Nevada with thicker walled pipe to comply with a U.S. Department of Transportation class location change, 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.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director, Certificates, phone: (402) 398-7103, facsimile: (402) 398-7592, or by email at: [mike.loeffler@nngco.com](mailto:mike.loeffler@nngco.com) located at Kern River Gas Transmission Company, P.O. Box 3330, Omaha, Nebraska 68103-0330.

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings

associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* April 29, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08551 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14660-000]

#### Cascade Water Alliance: Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 4, 2015, the Cascade Water Alliance filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the White River-Lake Tapps Reservoir Ancillary Hydroelectric Project (White River Project or project) to be located on the White River, in Pierce County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or

otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following existing facilities from a previously licensed project: (1) A 352-foot-long, 4-foot-high rock-filled, timber crib barrier structure with 7-foot-high flashboards; (2) headworks consisting of two slide gates; (3) a 7.75-mile-long flowline from the headworks to Lake Tapps which consists of a concrete flume, five settling basins, a concrete canal, an unlined earthen canal, and two concrete pipes; (4) a fish recovery pond and a fish screen facility along the flowline; (5) a valve house with a new 5 megawatts (MW) turbine/generating unit; (6) a new transmission line from the valve house to a new substation near the valve house; (7) Lake Tapps with a surface area of 2,740 acres and storage capacity of 46,700 acre-feet at elevation 542.5 feet above mean sea level; (8) an intake structure on Lake Tapps; (9) a 12-foot-diameter, 2,842-foot-long concrete lined tunnel; (10) a concrete and steel forebay; (11) four riveted steel penstocks with varying diameters up to 8 feet and lengths up to 1,619 feet; (12) a 225-foot-long, 85-foot-wide, 55-foot-high concrete-framed powerhouse containing an existing 27 MW Francis generating unit and a new 5 MW unit with a total installed capacity of 32 MW; (13) a concrete and timber tailbay; (14) a 3,250-foot-long open channel tailrace; (15) a new 4,181-foot-long, 115-kilovolt transmission line connecting to a nearby substation; and (16) appurtenant facilities. The estimated annual generation of the project would be 50 gigawatt-hours.

*Applicant Contact:* Chuck Clark, Chief Executive Officer, Cascade Water Alliance, 520 112th Avenue NE., Suite 400, Bellevue, Washington 98004; phone: (425) 453-0930.

*FERC Contact:* John Matkowski; phone: (202) 502-8576.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your

name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14660-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14660) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 9, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-08649 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-138-000; PF14-8-000]

#### Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on March 31, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, TX 77251-1396 filed an application pursuant to section 7 (c) of the Natural Gas Act requesting authorization to construct and operate its Atlantic Sunrise Project to provide 1,700,002 dekatherms per day of capacity from northern Pennsylvania to Alabama. Specifically, Transco requests authorization to construct (i) 57.3 miles of 30-inch diameter pipeline and 125.2 miles of 42-inch diameter pipeline in Pennsylvania; (ii) two new compressor stations totaling 70,000 horsepower (hp) in Pennsylvania; (iii) the addition of 62,000 hp at three existing compressor stations in Pennsylvania and Maryland; and (iv) to modify its existing system to enable north-to-south flow, all as more fully set forth in the application. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. There is an "eSubscription" link on the Web site that enables subscribers to receive email

notification when a document is added to a subscribed docket(s). For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any questions regarding the proposed project should be directed to Bill Hammons at Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, TX 77251 or at (713) 215-2130 or Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, TX 77251-1396 or at (713) 215-3391(phone), or [scott.c.turkington@williams.com](mailto:scott.c.turkington@williams.com).

On April 4, 2014, the Commission staff granted Transco's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF14-8-000 to staff activities involving the project. Now, as of the filing of this application on March 31, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15-138-000, as noted in the caption of this Notice.

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 impact statement (EIS) 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 EIS for this proposal. The filing of the EIS 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 EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18



CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* April 29, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08553 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL15-44-000]

#### Sage Grouse Energy Project, LLC (Complainant) v. PacifiCorp (Respondent); Notice of Amended Complaint

Take notice that on April 2, 2015, Sage Grouse Energy Project LLC (Sage Grouse) filed an answer in response to PacifiCorp's March 11, 2015 filed answer to complaint and request for waiver; thereby, Sage Grouse amended its original complaint filed on February 9, 2015, as more fully explained in its amendment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 22, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08556 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP15-855-000.

*Applicants:* Gulf Crossing Pipeline Company LLC.

*Description:* Section 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (BP37-20) to be effective 4/8/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407-5023.

*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15-857-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Section 4(d) rate filing per 154.204: Expired Agreements Removal to be effective 5/8/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407-5086.

*Comments Due:* 5 p.m. ET 4/20/15.

*Docket Numbers:* RP15-858-000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Section 4(d) rate filing per 154.204: Amendments to Neg Rate Agmts (FPL 41619-3, 41618-5) to be effective 4/7/2015.

*Filed Date:* 4/7/15.

*Accession Number:* 20150407-5227.

*Comments Due:* 5 p.m. ET 4/20/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings

can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-reg.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 08, 2015.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2015-08535 Filed 4-14-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 4362-007]

#### Inman Mills; Notice of Termination of License (Minor Project) by Implied Surrender and Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding*: Termination of license by implied surrender.

b. *Project No.*: 4362-007.

c. *Date Initiated*: April 7, 2015.

d. *Licensee*: Inman Mills.

e. *Name and Location of Project*: The Riverdale Hydroelectric Project, located on the Enoree River near Enoree, in Spartanburg and Laurens counties, South Carolina.

f. *Filed Pursuant to*: Standard Article 16.

g. *Licensee Contact Information*: Mr. Keith Woods, Corporate Technical Director Inman Mills, P.O. Box 207, Inman, SC 29439, (864) 472-2121.

h. *FERC Contact*: M. Joseph Fayyad, (202) 502-8759, [mo.fayyad@ferc.gov](mailto:mo.fayyad@ferc.gov).

i. Deadline for filing comments and protests is 30 days from the issuance date of this notice by the Commission. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under <http://www.ferc.gov/docs-filing/efiling.asp> and filing instructions in the Commission's Regulations at 18 CFR 385.2001(a)(1)(iii). To assist you with eFilings you should refer to the submission guidelines document at <http://www.ferc.gov/help/submission-guide/user-guide.pdf>. In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these "qualified documents" at <http://www.ferc.gov/docs-filing/efiling/filing.pdf>. You must include your name and contact information at the end of your comments. Please include the project number (4362-007) on any documents or motions filed. The

Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of any submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ-12, 888 First Street NE., Washington, DC 20426.

j. *Description of Project Facilities*: (1) A reinforced concrete dam approximately 14 feet high and 425 feet long; (2) a 9-foot-diameter penstock, approximately 110 feet long; (3) a powerhouse containing one generating Unit with a capacity of 1,240 kW; (4) a reservoir with a surface area of 9 acres at a normal pool elevation of 512 feet, and a gross storage capacity of 22 acre-feet; and (5) appurtenant facilities.

k. *Description of Proceeding*: The licensee is in violation of Article 16 of its license, which was granted September 29, 1982 (20 FERC ¶ 62,586). Article 16 states in part: If the Licensee shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission, the Commission will deem it to be the intent of the Licensee to surrender the license.

Commission records show that the project has not been operational since January 2001 and the licensee (Inman Mills) has failed to retain sufficient rights to operate the project. Inman Mills transferred the property rights to another party without securing an effective transfer approval from the Commission, which is a continuing violation of standard article 5 of the license. The current project license expired on August 31, 2012, and the project remains authorized under an annual license. Inman Mills failed to file a notice of intent to seek a subsequent license, which the Commission deemed as notice that Inman Mills does not intend to file an application for subsequent license. Then on August 31, 2010, Lockhart Power Company, Inc., filed a license application for the project; however, the application was withdrawn on October 1, 2014. On November 26, 2014, staff sent the licensee a letter pursuant to the Commission's regulations at 18 CFR 16.26(b), requiring the licensee to file a schedule for the filing of a surrender application for the project license for Commission approval within 90 days from the date of the letter. The letter required that any application must be filed in accordance with 18 CFR 16.8 and Part 6 of the Commission's regulations. The letter stated that if no response is filed, the Commission will take action to terminate license by implied surrender. On February 3, 2015,

the licensee filed a response but failed to file a surrender application in accordance with 18 CFR 16.8 and Part 6 of the Commission's regulations.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number (P-4362-007) excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments and Protests*—Anyone may submit comments or protests in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title "COMMENTS," "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments or protests must set forth their evidentiary basis. All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of license. A copy of any protest or motion to intervene must be served upon each representative of the licensee specified in item "g" above. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: April 7, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08559 Filed 4-14-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL15-58-000]

#### Louisiana Generating LLC; Notice of Filing

Take notice that on April 7, 2015, Louisiana Generating LLC, pursuant to Midcontinent Independent System Operator, Inc.'s FERC Electric Tariff Schedule 24 and Schedule 24-A, submitted a request to recover costs associated with acting as a Local Balancing Authority, which includes expenses for providing transmission services related to load dispatching, scheduling and system control for the year ending December 31, 2014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington,

DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on April 28, 2015.

Dated: April 7, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08557 Filed 4-14-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD15-7-000]

#### Reliability Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a Technical Conference on Thursday, June 4, 2015 from 10 a.m. to 4 p.m.. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The conference will be open for the public to attend. Advance registration is not required, but is encouraged. Attendees may register at the following Web page: <https://www.ferc.gov/whats-new/registration/06-04-15-form.asp>.

The purpose of the conference is to discuss policy issues related to the reliability of the Bulk-Power System. A more formal agenda will be issued at a later date.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, [www.ferc.gov](http://www.ferc.gov), prior to the event. The conference will also be Webcast. Anyone with Internet access who desires to listen to this event can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or call 703-993-3100.

This conference will also be transcribed. Interested persons may obtain a copy of the transcript for a fee

by contacting Ace-Federal Reporters, Inc. at (202) 347-3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8368, [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

Dated: April 9, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-08646 Filed 4-14-15; 08:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CD15-21-000]

#### North Gooding Main Hydro LLC; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On March 24, 2015, the North Gooding Main Hydro LLC filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed North Gooding Main Hydroelectric Project would have an installed capacity of 1,220 kilowatts (kW) and would be located on the existing North Gooding Main Canal, which transports water for agricultural consumption. The project would be located near the Town of Gooding in Lincoln County, Idaho.

*Applicant Contact:* Nicholas E. Josten, North Gooding Main Hydro LLC, 2742 St. Charles Ave., Idaho Falls, ID 83404, (208) 522-8069 or (208) 528-6152

*FERC Contact:* Robert Bell, Phone No. (202) 502-6062, email: [robert.bell@ferc.gov](mailto:robert.bell@ferc.gov).

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) A proposed intake gate structure; (2) a proposed 1,600-foot-long, 50-foot-wide, 8-foot-deep feeder canal; (3) a proposed 1,010-foot-long, 10-foot-diameter steel penstock; (4) a proposed 35- by 45-foot

powerhouse that contains one turbine-generator unit with a total installed capacity of 1,220 kW; (5) a proposed 200-foot-long, 50-foot-wide, 8-foot-deep

discharge bay; and (6) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 4,440 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA .....	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA .....	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA .....	The facility has an installed capacity that does not exceed 5 megawatts .....	Y
FPA 30(a)(3)(C)(iii), as amended by HREA .....	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

*Preliminary Determination:* Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the “COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY” or “MOTION TO INTERVENE,” as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission’s regulations.<sup>1</sup> All comments contesting Commission staff’s preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>.

[www.ferc.gov/docs-filing/efiling.asp](http://www.ferc.gov/docs-filing/efiling.asp). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (e.g., CD15-21-000) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

Dated: April 6, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015-08555 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC-15-5-000]

#### Commission Information Collection Activities (FERC-552); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-552, Annual Report of Natural Gas Transactions.

**DATES:** Comments on the collection of information are due June 15, 2015.

**ADDRESSES:** You may submit comments (identified by Docket No. IC-15-5-000) by either of the following methods:

- *eFiling at Commission’s Web site:* <http://www.ferc.gov/docs-filing/efiling.asp>

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

<sup>1</sup> 18 CFR 385.2001-2005 (2014).

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202) 502-8663, and fax at (202) 273-0873.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Three-year extension of the FERC-552 information collection requirements with no changes to the current reporting requirements.

**FERC-552, Annual Report of Natural Gas Transactions**

*OMB Control No.:* 1902-0242.

*Abstract:* The Commission uses the information collected within the FERC-552 to provide greater transparency concerning the use of indices to price natural gas and how well index prices reflect market forces. The collection also includes transactions that contribute to, or may contribute to natural gas price indices. Many market participants rely on indices as a way to reference market prices without taking on the risks of active trading.

FERC-552 had its genesis in the Energy Policy Act of 2005<sup>1</sup>, which

added section 23 of the Natural Gas Act (NGA). Section 23 of the NGA, among other things, directs the Commission “to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers.”<sup>2</sup>

*Type of Respondents:* Wholesale natural gas market participants

*Estimate of Annual Burden:*<sup>3</sup> The Commission estimates the total Public Reporting Burden for this information collection as:

**FERC-552—ANNUAL REPORT OF NATURAL GAS TRANSACTIONS**

	Number of respondents <sup>6</sup>	Number of responses per respondent	Total number of responses	Average burden hours per response	Estimated total annual burden
	(A)	(B)	(A) × (B) = (C)	(D)	(C) × (D)
Wholesale natural gas market participants .....	666	1	666	10	6,660

The total estimated annual cost burden to respondents is \$478,652 [6,660 hours ÷ 2,080<sup>4</sup> hours/year = 3.201923 \* \$149,489/year<sup>5</sup> = \$478,652].

The estimated annual cost of filing the FERC-552 per response is \$719 [\$478,652 ÷ 666 responses = \$719/response]

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 9, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-08648 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket Nos. ER15-861-000; EL15-53-000]

**California Independent System Operator Corporation; Supplemental Notice Concerning Post Technical Conference Comments**

By order issued in this proceeding on March 16, 2015,<sup>1</sup> the Federal Energy Regulatory Commission directed its staff to convene a technical conference to develop a record regarding issues related to imbalance energy price spikes experienced in PacifiCorp’s balancing authority areas subsequent to PacifiCorp’s full activation in the California Independent System Operator Corporation’s Energy Imbalance Market, and to facilitate the development of a long-term solution. Parties wishing to file post-technical conference comments should do so on or before April 23, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-08558 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>1</sup> Pub. L. 109-58.  
<sup>2</sup> 15 U.S.C. 717t-2.

<sup>3</sup> Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information

collection burden, reference 5 Code of Federal Regulations 1320.3(b)(1).

<sup>4</sup> 2,080 hours = 40 hours/week \* 52 weeks (1 year).

<sup>5</sup> Average annual salary per FERC employee in 2015. We are using FERC cost (salary and benefits) as it fairly reflects an estimate for the industry cost.

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status**

Old Mill Solar, L.L.C	EG15-36-000
Joliet Battery Storage LLC.	EG15-38-000
West Chicago Battery Storage LLC.	EG15-39-000
Baffin Wind LLC .....	EG15-40-000
RE Barren Ridge 1 LLC.	EG15-41-000
RE Tranquillity LLC	EG15-42-000
RE Roserock LLC .....	EG15-43-000
Malaga Power, LLC ..	EG15-44-000
Goshen Wind, LP .....	FC15-5-000

Take notice that during the month of March 2015, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission’s regulations. 18 CFR 366.7(a).

Dated: April 8, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-08554 Filed 4-14-15; 8:45 am]

**BILLING CODE 6717-01P**

<sup>6</sup>Number of respondents as of the 2013 Form 552 survey.

<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,191 (2015).

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP15–133–000]

**Columbia Gas Transmission, LLC; Notice of Application**

Take notice that on March 27, 2015, Columbia Gas Transmission, LLC (Columbia), filed an application with the Federal Energy Regulatory Commission pursuant to sections 7(b) of the Natural Gas Act (NGA) requesting authority to abandon by sale to Mountaineer Gas Company certain natural gas facilities located in Cabell and Putnam Counties West Virginia. Specifically, Columbia requests authority to abandon by sale approximately 16.15 miles of its Line SM–108 and associated appurtenances as well as the service currently provided through the facilities. Additionally, Columbia requests that the Commission find the facilities, once sold, exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to counsel for Columbia, Tyler R. Brown, Senior Counsel, Columbia Gas Transmission LLC, 5151 San Felipe Suite 2500, Houston, TX 77056 by telephone at (713) 386–3797 or by email at [tbrown@nisource.com](mailto:tbrown@nisource.com).

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: April 29, 2015.

Dated: April 8, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–08552 Filed 4–14–15; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. PF15–10–000; PF15–11–000]

**NEXUS Gas Transmission, LLC, Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Nexus Gas Transmission Project and Texas Eastern Appalachian Lease Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the NEXUS Gas Transmission (NEXUS) Project and Texas Eastern Appalachian Lease (TEAL) Project involving construction and operation of facilities by NEXUS Gas Transmission, LLC (NEXUS) in Ohio and Michigan and Texas Eastern Transmission, LP (Texas Eastern) in Ohio. The projects are separate, but connected, interstate natural gas transmission pipeline projects. The environmental impacts of both projects will be considered in one EIS, which will be used by the Commission in its decision-making process to determine whether the NEXUS and TEAL Projects are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine what issues they need to

evaluate in the EIS. We<sup>1</sup> ask you to focus your comments on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. Please note that the scoping period will close on May 22, 2015.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. If you sent comments on the NEXUS or TEAL Projects to the Commission before the opening of the dockets on January 9 and 26, 2015, respectively, you will need to file those comments under Docket No. PF15–10–000 or PF15–11–000 to ensure they are considered as part of this proceeding. In lieu of or in addition to sending written comments, the Commission invites you to attend any of the public scoping meetings scheduled as follows:

Date and time	Location
Tuesday April 28, 2015, 6:00 p.m.	Midview Middle School, 12865 Grafton Road, Grafton, OH 44044, (404) 748–5331.
Wednesday April 29, 2015, 6:00 p.m.	Wadsworth High School, 625 Broad Street, Wadsworth, OH 44281, (330) 335–1400, x5.
Thursday April 30, 2015, 6:00 p.m.	Louisville High School, 1201 S. Nickelplate, Louisville, OH 44641, (330) 875–1438.
Tuesday May 5, 2015, 6:00 p.m.	Tecumseh Center for the Arts, 400 North Maumee, Tecumseh, MI 49286, (517) 423–6617.
Wednesday May 6, 2015, 6:00 p.m.	Swanton High School, 601 North Main Street, Swanton, OH 43558, (419) 826–3045, x1.
Thursday May 7, 2015, 6:00 p.m.	Fremont Ross High School, 1100 North Street, Fremont, OH 43420, (419) 334–5434.

We will begin our sign up of speakers at 5 p.m. The scoping meetings will begin at 6 p.m. with a presentation by Commission staff on our environmental review process, after which speakers will be called. The meeting will end once all speakers have provided their comments or at 10 p.m., whichever

comes first. Please note that there may be a time limit of three minutes to present comments, and speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings are recorded by a stenographer to ensure comments are accurately recorded. Transcripts will be entered into the formal record of the Commission proceeding. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally at the scoping meeting.

NEXUS and/or Texas Eastern representatives will be present one hour prior to the start of the scoping meetings to provide additional information about the projects and answer questions.

This notice is being sent to the Commission's current environmental mailing list for the NEXUS and TEAL Projects. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

NEXUS and/or Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)).

### Summary of the Planned Projects

NEXUS and Texas Eastern plan to construct and operate about 256 miles of interstate natural gas transmission pipeline and associated facilities in Ohio and Michigan. The general

location of the NEXUS and TEAL Projects are shown in Appendix 1.<sup>2</sup>

NEXUS is proposing to construct the following Project components:

- About 200 miles of new 36-inch-diameter natural gas pipeline in Columbiana, Stark, Summit, Wayne, Medina, Loraine, Erie, Sandusky, Wood, Lucas, and Fulton counties, Ohio;
- about 50 miles of new 36-inch-diameter natural gas pipeline in Lenawee, Monroe, and Washtenaw counties, Michigan;
- about 1.2 miles of new 36-inch-diameter interconnecting pipeline<sup>3</sup> in Columbiana and Carroll counties, Ohio;
- about 0.2 mile of new 30-inch diameter interconnecting pipeline in Columbiana County, Ohio;
- installation of up to 130,000 horsepower (hp) of compression at four new gas turbine compressor stations, one each in Columbiana, Medina, Sandusky, and Lucas counties, Ohio;
- a total of 4 metering and regulation stations, three in Columbiana County, Ohio and one in Washtenaw County, Michigan; and
- various launchers, receivers, mainline valves, and other appurtenant facilities at assorted locations along the planned system in Ohio and Michigan.

Texas Eastern is proposing to construct the following Project components:

- About 4.5 miles of new 36-inch-diameter natural gas loop pipeline<sup>4</sup> in Monroe County, Ohio;
- one new compressor station with 18,800 hp in Columbiana County, Ohio;
- additional 9,400 hp of compression and piping modifications at one existing compressor station (Colerain Compressor Station) in Belmont County, Ohio; and
- launchers, receivers, and various piping modifications at 2 existing regulating and receiver sites in Monroe County, Ohio.

According to the applicants, the projects would provide up to 1.5 million dekatherms per day of natural gas to various markets in the U.S. Midwest and Canada. The Project would tie into existing infrastructure and include

<sup>2</sup> The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

<sup>3</sup> An interconnecting pipeline is a shorter pipeline that connects one natural pipeline system to another natural gas pipeline system or a customer.

<sup>4</sup> A loop pipeline is a pipeline that is constructed adjacent to another pipeline and is connected to it at both ends.

<sup>1</sup> "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

capacity on existing pipeline systems to serve customers in Ohio and Michigan, as well as customers in Illinois (the Chicago area) and Ontario, Canada (the Dawn area). If approved, NEXUS and Texas Eastern propose to commence construction in the first quarter 2017 and place facilities in service on November 1, 2017.

### Land Requirements for Construction

Construction of the planned facilities would disturb about 3,200 acres of land for the pipeline and aboveground facilities. The typical construction right-of-way for pipeline facilities would be 100 feet wide, with additional workspace needed in some locations due to site-specific conditions. Following construction, the applicants would maintain about 1,600 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses. About 60 percent of the pipeline route parallels existing utility rights-of-way. Land affected by construction but not required for operation would generally be allowed to revert to former uses.

### The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned projects under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- migratory birds and endangered and threatened species;
- land use and cumulative impacts;
- socioeconomic;
- cultural resources;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the planned projects or portions of the projects, and make recommendations on how to lessen or

avoid impacts on the various resource areas.

Although no formal applications have been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 7.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to these projects to formally cooperate with us in the preparation of the EIS.<sup>5</sup> Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, no agencies have expressed their intention to participate as a cooperating agency in the preparation of the EIS.

### Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Ohio and Michigan State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.<sup>6</sup> We will define the Project-specific Area of Potential Effects in consultation with the SHPOs as the Project develops. On

<sup>5</sup> The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

<sup>6</sup> The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

natural gas facility projects, the Area of Potential Effects at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, meter stations, and access roads). Our EIS for these projects will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

### Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by NEXUS and Texas Eastern. This preliminary list of issues may change based on your comments and our analysis:

- Impacts on residents and property values in close proximity to the planned pipeline and compressor station sites, including the exercise of eminent domain and future land use restrictions;
- impacts on agricultural land, particularly from constructing across drain-tiled land;
- impacts on surface water resources including springs, seeps, and wetlands;
- impacts on groundwater resources and wells;
- impacts on threatened, endangered, and candidate species (including the Indiana bat, northern long-eared bat, and eastern massasauga) and other sensitive species (including the eastern hellbender);
- safety issues, such as construction and operation of the planned facilities near existing residences, schools, and businesses;
- socioeconomic issues, such as job creation; and
- alternatives, including routing to avoid or minimize impacts on Oak Openings, fruit farms, a Girl Scout Camp, soccer fields used by the Green Soccer Association, and a southern route to avoid residential areas in and around the City of Green, Ohio.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before the end of



the scoping period, which will close on May 22, 2015. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the appropriate project docket number(s) (PF15-10-000 for the NEXUS Project or PF15-11-000 for the TEAL Project) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on "*eRegister*." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

#### Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the projects. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities

interested in and/or potentially affected by the planned projects.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

#### Becoming an Intervenor

Once NEXUS and Texas Eastern file applications with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

#### Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, PF15-10 or PF15-11). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called *eSubscription* which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Finally, public meetings or site visits will be posted on the Commission's calendar located at [www.ferc.gov/](http://www.ferc.gov/)

[EventCalendar/EventsList.aspx](#) along with other related information.

Dated: April 8, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015-08560 Filed 4-14-15; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0022; FRL-9924-89]

### Pesticide Product Registration; Receipt of Applications for New Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before May 15, 2015.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov). The mailing address is: Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](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 preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

### II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these

applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Numbers:* 100-811; 100-1317. *Docket ID number:* EPA-HQ-OPP-2015-0180. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27409. *Active ingredient:* Cyprodinil. *Product type:* Fungicide. *Proposed use:* Nut, tree, group 14-12, except almond, except pistachio. *Contact:* RD.

2. *EPA Registration Numbers:* 100-791; 100-799. *Docket ID Number:* EPA-HQ-OPP-2015-0014. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27409. *Active ingredient:* Mefenoxam. *Product type:* Fungicide. *Proposed use:* Rapeseed crop subgroup 20A. *Contact:* RD.

3. *EPA Registration Numbers:* 4787-55; 4787-61; 67760-75. *Docket ID Number:* EPA-HQ-OPP-2015-0179. *Applicant:* Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209-2510. *Active ingredient:* Flutriafol. *Product type:* Fungicide. *Proposed use:* Hops, dried cones. *Contact:* RD.

4. *EPA Registration Numbers:* 10163-6414 and 10163-6415. *Docket ID Number:* EPA-HQ-OPP-2014-0922. *Applicant:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366. *Active ingredient:* Zoxamide. *Product type:* Fungicide. *Proposed use:* Ginseng, Tomato Subgroup 8-10A, Small Fruit Vine Climbing except fuzzy kiwifruit Subgroup 13-07F, and Tuberous and Corm Subgroup 1C. *Contact:* RD.

5. *EPA Registration Numbers:* 66222-35 and 11678-57. *Docket ID Number:* EPA-HQ-OPP-2014-0232. *Applicant:* Makhteshim-Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. *Active ingredient:* Novaluron. *Product type:* Insecticide. *Proposed use:* Avocado; Carrot; Succulent Bean; Vegetable, Fruiting, Crop Group 8-10; Fruit, Pome, Crop Group 11-10; Cherry Subgroup 12-12A; Peach Subgroup 12-12B; and Plum Subgroup 12-12C. Revisions to the Label to Include Uses on Greenhouse-Grown Cucumber. *Contact:* RD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: April 2, 2015.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2015-08478 Filed 4-14-15; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA-2015-0219, FRL-9926-35-OSWER]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; NESHAP for Hazardous Waste Combustors; Renewal

**AGENCY:** Environmental Protection Agency, EPA.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors (40 CFR part 63, subpart EEE) (Renewal) (EPA ICR No. 1773.11, OMB Control No. 2050-0171) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before June 15, 2015.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA-HQ-RCRA-2015-0171, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** John Sager, Office of Resource Conservation and Recovery (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703-308-7256; fax number: 703-308-0514; email address: [sager.john@epa.gov](mailto:sager.john@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEE. Hazardous waste combustors include: hazardous waste incinerators, hazardous waste cement kilns, hazardous waste lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, notification of exceedances,

notification of performance test and continuous monitoring system evaluation, notification of intent to comply, notification of compliance, notification if the owner or operator elects to comply with alternative requirements, initial performance tests, and periodic reports and results.

**Form Numbers:** None.

**Respondents/affected entities:**

Business or other for-profit as well as State, Local, or Tribal governments.

**Respondent's obligation to respond:** mandatory (40 CFR part 63, subpart EEE).

**Estimated number of respondents:** 192.

**Frequency of response:** Occasionally.

**Total estimated burden:** 142,447

Hours. Burden is defined at 5 CFR 1320.03(b).

**Total estimated cost:** \$4,392,804, which includes \$340,955 annualized labor costs and \$4,051,849 annualized capital or O&M costs.

**Changes in Estimates:** The burden hours are likely to stay substantially the same.

Dated: April 8, 2015.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2015-08661 Filed 4-14-15; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL ELECTION COMMISSION

[Notice 2015-07]

### Filing Dates for the Illinois Special Elections in the 18th Congressional District

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special elections.

**SUMMARY:** Illinois has scheduled special elections on June 8, 2015, and July 24, 2015, to fill the U.S. House of Representative seat in the 18th Congressional District vacated by Representative Aaron Schock.

Committees required to file reports in connection with the Special Primary Election on June 8, 2015, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on July 24, 2015, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report and a Post-General Report.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

## SUPPLEMENTARY INFORMATION:

### Principal Campaign Committees

All principal campaign committees of candidates who participate in the Illinois Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on May 27, 2015; a 12-day Pre-General Report on July 12, 2015; and a Post-General Report on August 23, 2015. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on May 27, 2015. (See charts below for the closing date for each report.)

### Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2015 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Illinois Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Illinois Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Illinois Special Elections may be found on the FEC Web site at [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml).

### Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of \$17,600 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

## CALENDAR OF REPORTING DATES FOR ILLINOIS SPECIAL ELECTIONS

Report	Close of books <sup>1</sup>	Reg./cert. & overnight mailing deadline	Deadline filing
<b>Quarterly Filing Campaign Committees Involved in <i>Only</i> the Special Primary (06/08/15) Must File:</b>			
Pre-Primary .....	05/19/15	05/24/15 <sup>2</sup>	05/27/15
July Quarterly .....	06/30/15	07/15/15	07/15/15
<b>Semi-Annual Filing Committees Involved in <i>Only</i> the Special Primary (06/08/15) Must File:</b>			
Pre-Primary .....	05/19/15	05/24/15 <sup>2</sup>	05/27/15
Mid-Year .....	06/30/15	07/31/15	07/31/15
<b>Quarterly Filing Campaign Committees Involved in Both the Special Primary (06/08/15) and Special General (07/24/15) MUST FILE:</b>			
Pre-Primary .....	05/19/15	05/24/15 <sup>2</sup>	05/27/15
Pre-General .....	07/04/15	07/09/15	07/12/15 <sup>3</sup>
July Quarterly .....	—WAIVED—		
Post-General .....	08/13/15	08/23/15	08/23/15 <sup>3</sup>
October Quarterly .....	09/30/15	10/15/15	10/15/15
<b>Semi-Annual Filing Committees Involved in Both the Special Primary (06/08/15) and Special General (07/24/15) Must File:</b>			
Pre-Primary .....	05/19/15	05/24/15 <sup>2</sup>	05/27/15
Pre-General & Mid-Year <sup>4</sup> .....	07/04/15	07/09/15	07/12/15 <sup>3</sup>
Post-General .....	08/13/15	08/23/15	08/23/15 <sup>3</sup>
<b>Quarterly Filing Campaign Committees Involved in <i>Only</i> the Special General (07/24/15) Must File:</b>			
Pre-General .....	07/04/15	07/09/15	07/12/15 <sup>3</sup>
July Quarterly .....	—WAIVED—		
Post-General .....	08/13/15	08/23/15	08/23/15 <sup>3</sup>
October Quarterly .....	09/30/15	10/15/15	10/15/15
<b>Semi-Annual Filing Committees Involved in <i>Only</i> the Special General (07/24/15) Must File:</b>			
Pre-General & Mid-Year <sup>4</sup> .....	07/04/15	07/09/15	07/12/15 <sup>3</sup>
Post-General .....	08/13/15	08/23/15	08/23/15 <sup>3</sup>

<sup>1</sup> The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

<sup>2</sup> Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

<sup>3</sup> Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail or electronically, must be received before the Commission's close of business on the last business day before the deadline.

<sup>4</sup> Committees will file a consolidated Pre-General and Mid-Year Report by the filing date of the Pre-General Report.

Dated: April 8, 2015.

On behalf of the Commission.

**Ann M. Ravel,**

*Chair, Federal Election Commission.*

[FR Doc. 2015-08564 Filed 4-14-15; 8:45 am]

**BILLING CODE 6715-01-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the

agreements are available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 010979-061.

*Title:* Caribbean Shipowners

Association.

*Parties:* CMA CGM, S.A.; Crowley Caribbean Services LLC; Hybur Ltd.; King Ocean Services Limited; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Company Limited; and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW., Washington, DC 20006.

*Synopsis:* The amendment deletes U.S. Lines Limited as a party to the agreement.

*Agreement No.:* 012234-001.

*Title:* NYKCool/Trans Global Shipping Space Charter Agreement.

*Parties:* NYKCool AB and Trans Global Shipping NV.

*Filing Party:* David F. Smith, Esq.;

Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The amendment changes the name of NYKCool AB to Cool

Carriers AB and makes related conforming changes.

*Agreement No.:* 012235-001.

*Title:* NYKCool/Trans Global Shipping/CSVV West Coast Agreement.

*Parties:* CSAV Sud Americana de Vapores S.A.; Cool Carriers AB; and Trans Global Shipping NV.

*Filing Party:* David F. Smith, Esq.;

Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The amendment changes the name of NYKCool AB to Cool Carriers AB and makes related conforming changes.

*Agreement No.:* 012326.

*Title:* CSCL/HSD Slot Charter Agreement

*Parties:* China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); and Hamburg Sud.

*Filing Party:* Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave., NW., Washington, DC 20037.

*Synopsis:* The agreement authorizes Hamburg Sud to charter slots on services operated by CSCL in the trade between China and Korea, on the one hand, and the U.S. West Coast on the other hand.

*Agreement No.:* 012327.

*Title:* "K" Line/WHL/WHS/PIL Space Charter and Sailing Agreement

*Parties:* Kawasaki Kisen Kaisha, Ltd.; Wan Hai Lines (Singapore) PTE Ltd.; Wan Hai Lines Ltd.; Pacific International Lines (PTE) Ltd.

*Filing Party:* Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW, Suite 900; Washington, DC 20004.

*Synopsis:* The agreement authorizes the parties to operate a joint service in the trade between the U.S. West Coast on the one hand, and China (including Hong Kong) and Japan on the other hand.

By Order of the Federal Maritime Commission.

Dated: April 10, 2015.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2015-08644 Filed 4-14-15; 8:45 am]

**BILLING CODE 6731-AA-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 30, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Christian David Heitzman, Minneapolis, Minnesota*, to retain 25 percent or more of the shares of First BancShares, Inc., of Cold Spring, Cold Spring, Minnesota, and thereby indirectly retain control of Granite Community Bank, Cold Spring, Minnesota.

Board of Governors of the Federal Reserve System, April 9, 2015.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2015-08623 Filed 4-14-15; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting Requirements for the Older American Act Title VI Grant Program

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Aging Office (AoA), within the Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed extension of an existing collection of information by the agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Performance Reports for Title VI grants.

**DATES:** Submit written or electronic comments on the collection of information by June 15, 2015.

**ADDRESSES:** Submit electronic comments on the collection of information to: *Cynthia.Lacounte@acl.hhs.gov*. Submit written comments on the collection of information to Cynthia Lacounte, ACL/Administration

on Aging, Washington, DC 20201 or by fax at (202-357-3560).

#### FOR FURTHER INFORMATION CONTACT:

Margaret Graves at (202) 357-3502 or *Margaret.Graves@acl.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** 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. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL/AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL/AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL/AoA's functions, including whether the information will have practical utility; (2) the accuracy of ACL/AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. ACL/AoA estimates the burden of this collection of information as follows: Annual submission of the Program Performance Reports are due 90 days after the end of the budget period and final project period.

*Respondents:* Federally Recognized Tribes, Tribal and Native Hawaiian Organizations receiving grants under Title VI, Part A, Grants for Native Americans; Title VI, Part B, Native Hawaiian Program and Title VI, Part C, Native American Caregiver Support Program.

*Estimated Number of Responses:* 266.

*Total Estimated Burden Hours:* 731.5.

Dated: April 9, 2015.

**Kathy Greenlee,**

*Administrator and Assistant Secretary for Aging.*

[FR Doc. 2015-08654 Filed 4-14-15; 8:45 am]

BILLING CODE 4154-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-E-0688]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; AUBAGIO—Patent No. 5,679,709

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for AUBAGIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to <http://www.regulations.gov> at Docket No. FDA-2013-S-0610.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus Rm. 3180, Silver Spring, MD 20993, 301-796-7900.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis

for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product AUBAGIO (teriflunomide). AUBAGIO is indicated for treatment of patients with relapsing forms of multiple sclerosis. Subsequent to this approval, the USPTO received a patent term restoration application for AUBAGIO (U.S. Patent No. 5,679,709) from sanofi-aventis Deutschland GMBH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 31, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of AUBAGIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AUBAGIO is 2,940 days. Of this time, 2,542 days occurred during the testing phase of the regulatory review period, while 398 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 27, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 27, 2004.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* August 12, 2011. FDA has verified the applicant's

claim that the new drug application (NDA) for AUBAGIO (NDA 202992) was submitted on August 12, 2011.

3. *The date the application was approved:* September 12, 2012. FDA has verified the applicant's claim that NDA 202992 was approved on September 12, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 15, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 13, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to <http://www.regulations.gov>, Docket No. FDA-2013-S-0610.

Comments and petitions that have not been made publicly available on <http://www.regulations.gov> may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-08615 Filed 4-14-15; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-E-0687]

**Determination of Regulatory Review Period for Purposes of Patent Extension; AUBAGIO—Patent No. 6,794,410**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for AUBAGIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to <http://www.regulations.gov> at Docket No. FDA-2013-S-0610.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301-796-7900.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval

phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product AUBAGIO (teriflunomide). AUBAGIO is indicated for treatment of patients with relapsing forms of multiple sclerosis. Subsequent to this approval, the USPTO received a patent term restoration application for AUBAGIO (U.S. Patent No. 6,794,410) from Aventis Pharmaceuticals Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 31, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of AUBAGIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AUBAGIO is 2,940 days. Of this time, 2,542 days occurred during the testing phase of the regulatory review period, while 398 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 27, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 27, 2004.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* August 12, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for AUBAGIO (NDA 202992) was submitted on August 12, 2011.

3. *The date the application was approved:* September 12, 2012. FDA has verified the applicant's claim that NDA 202992 was approved on September 12, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,625 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 15, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 13, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to <http://www.regulations.gov>, Docket No. FDA-2013-S-0610. Comments and petitions that have not been made publicly available on <http://www.regulations.gov> may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-08616 Filed 4-14-15; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2008-N-0543]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles**

**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 May 15, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0575. 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](mailto: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.

**Waiver of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles—21 CFR 514.1(b)(7-8) (OMB Control Number 0910-0575)—Extension**

The Center for Veterinary Medicine (CVM) issued guidance for industry (GFI) #171 entitled “Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles” to describe the procedures that the Agency recommends for the review of requests for waiver of in vivo demonstration of bioequivalence for generic soluble powder oral dosage form products and Type A medicated articles.

The Generic Animal Drug and Patent Term Registration Act (GADPTRA) of 1988 (Pub. L. 100-670) permitted generic animal drug manufacturers to copy those pioneer animal drug products that were no longer subject to patent or other marketing exclusivity protection. The approval for marketing these generic products is based, in part, upon a demonstration of bioequivalence between the generic product and pioneer product. This guidance clarifies circumstances under which FDA believes the demonstration of bioequivalence required by the statute does not need to be established on the basis of in vivo studies for soluble powder oral dosage form products and Type A medicated articles. The data submitted in support of the waiver request are necessary to validate the waiver decision. The requirement to establish bioequivalence through in vivo studies (blood level bioequivalence or

clinical endpoint bioequivalence) may be waived for soluble powder oral dosage form products or Type A medicated articles in either of two alternative ways. A biowaiver may be granted if it can be shown that the generic soluble powder oral dosage form product or Type A medicated article contains the same active and inactive ingredient(s) and is produced using the same manufacturing processes as the approved comparator product or article. Alternatively, a biowaiver may be granted without direct comparison to the pioneer product’s formulation and manufacturing process if it can be shown that the active pharmaceutical ingredient(s) (API) is the same as the pioneer product, is soluble, and that there are no ingredients in the formulation likely to cause adverse pharmacologic effects. For the purpose of evaluating soluble powder oral dosage form products and Type A medicated articles, solubility can be demonstrated in one of two ways: “USP definition” approach or “Dosage adjusted” approach. The respondents for this collection of information are pharmaceutical companies manufacturing animal drugs. FDA estimates the burden for this collection of information as follows in Tables 1 and 2 of this document. The source of the above data is records of generic drug applications over the past 10 years.

In the **Federal Register** of January 12, 2015 (80 FR 1506), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received, however it did not respond to any of the four information collection topics solicited and is therefore not addressed by the Agency.

FDA estimates the burden of this collection of information as follows:

**TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR WATER SOLUBLE POWDERS <sup>1</sup>**

CVM Guidance for industry #171	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Same formulation/manufacturing process approach .....	1	1	1	5	5
Same API/solubility approach .....	5	5	5	10	50
<b>Total .....</b>					<b>55</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

**TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR TYPE A MEDICATED ARTICLES <sup>1</sup>**

CVM Guidance for industry #171	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Same formulation/manufacturing process approach .....	2	2	2	5	10



TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR TYPE A MEDICATED ARTICLES <sup>1</sup>—Continued

CVM Guidance for industry #171	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Same API/solubility approach .....	10	10	10	20	200
Total .....					210

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 8, 2015.  
**Leslie Kux,**  
*Associate Commissioner for Policy.*  
 [FR Doc. 2015-08635 Filed 4-14-15; 8:45 am]  
**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2014-N-2347]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Cosmetic Export Certificate Application Process**

**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 May 15, 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-NEW and title “Food and Cosmetic Export Certificate Application Process (21 U.S.C. 381(e)).” 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 Road; 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.

**Food and Cosmetic Export Certificate Application Process (21 U.S.C. 381(e)) (OMB Control Number 0910-NEW)**

Some foreign countries require manufacturers of FDA-regulated products to provide an export certificate for the products they wish to export to that country. A Certificate of Free Sale is a certificate (not pertaining to a particular production lot or export consignment) that indicates that the particular product is marketed in the United States or eligible for export, and that the particular manufacturer has no unresolved enforcement actions pending before or taken by FDA. FDA’s Center for Food Safety and Applied Nutrition (CFSAN) issues such certificates for food, food additives, seafood, dietary supplements, and cosmetics. Interested persons may request a certificate by using the electronic CFSAN Certificate Application Process, which is part of FDA Unified Registration and Listing System, or by submitting a paper Form FDA 3613d for cosmetic products or a paper Form FDA 3613e for food products. We use the information submitted to determine whether to issue the requested certificate.

OMB has approved the submission of requests for export certificates on paper Forms FDA 3613d and FDA 3613e and, electronically, via the CFSAN Certificate Application Process under OMB control number 0910-0498. This notice announces that, to ensure the efficient review of the information collection by OMB under the PRA, we are seeking to obtain a new OMB Control Number for Forms FDA 3613d and FDA 3613e and the CFSAN Certificate Application Process to reflect that the electronic submission system for food and cosmetic export certificates is separate from the electronic submission system associated with export certificates for other FDA-regulated products approved under OMB control number 0910-0498. Upon OMB approval of this information collection request, we will adjust the burden hours associated with Forms

FDA 3613d and FDA 3613e and the CFSAN Certificate Application Process approved under OMB control number 0910-0498.

We request the following information on Form FDA 3613d and the CFSAN Certificate Application Process, as currently approved by OMB: The name of and contact information for the requester; the name of and contact information for the exporting company (if different from requester); a designation of the type of certificate requested (“general” or “product-specific”); if product-specific, a list of the exact brand names of the products; the contact person, company name and address where the requested certificate should be sent; and, the name and account number (if applicable) of the requester’s preferred carrier for delivery of the certificate. Finally, Form FDA 3613d and the CFSAN Certificate Application Process requires the requester’s signature, the name and title of the person signing the form, as well as the date signed.

We request the following information on Form FDA 3613e and the CFSAN Certificate Application Process, as currently approved by OMB: The name of and contact information for the manufacturer, as well as the manufacturer’s state license or registration number; the name of and contact information for the exporting company (if different from manufacturer), as well as the exporting company’s state license or registration number; a description of the shipment including the product, the common name, the manufacturer, and a description or additional comments; the name of the country to which the requester of the certificate intends to ship the product; the contact person, firm name and address where the requested certificate should be sent; and, the name and account number (if applicable) of the requester’s preferred carrier for delivery of the certificate. Form FDA 3613e and the CFSAN Certificate Application Process requires the requestor to submit an original or copy of the applicable product label or labels. Finally, Form FDA 3613e and the CFSAN Certificate Application Process

requires the submitter's signature, the name and title of the person signing the form, as well as the date signed.

*Description of Respondents:* The respondents to this collection of information are firms interested in exporting U.S.-manufactured food and cosmetic products to foreign countries that require export certificates.

In the **Federal Register** of January 9, 2015 (80 FR 1422), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received four comments in response to the notice. The comments generally supported the necessity and practical utility of the information collected during the export certificate application process for food, however no comments were received regarding the export certificate application process for cosmetics. Our responses to the comments are discussed below.

One comment had concerns about our request for the manufacturer's (and exporter's, if different from manufacturer) state license or registration number on Form FDA 3613e, stating that doing so could allow third parties unnecessary and/or

unauthorized access to confidential commercial information. We appreciate this comment and note that we do not place the firm's state license or registration numbers on the certificates we issue. In addition, confidential commercial information is protected from disclosure under the Freedom of Information Act under sections 552(a) and (b) (5 U.S.C. 552(a) and (b)), and under our regulations at 21 CFR part 20. At the same time, the state license or registration number is necessary for our review of the application. We verify the license or registration and investigate inspection data on the listed products.

One comment suggested ways we might modify the electronic submission system, including expanding the number of characters that may be entered per data field; developing corporate identification numbers and passwords, permitting a product label to be submitted electronically through the CFSAN Certificate Application Process; and, permitting a submitter to pay the application fees electronically within the CFSAN Certificate Application Process. Similarly, another comment discussed possible changes to the content of the Export Certificates or the

Certificates of Free Sale that we issue for food, including incorporating pagination to indicate the number of sequential pages that would be part of the certificate; adding statements that the product is fit for human consumption, may be freely sold or exported in the United States, and, is produced in a manner consistent with good manufacturing practice; and providing the applicant the ability to request the type of certificate referenced on the header of the document and to request additional services, such as a notarized certificate document or expedited processing. While we are not able to accommodate the suggested modifications at this time, we will consider them as we contemplate future revisions to the relevant forms and solicit additional comments at that time through a notice published in the **Federal Register**.

Finally, one comment was received that did not respond to any of the four information collection topics solicited and is therefore not addressed by the Agency.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Category	FDA form No. <sup>2</sup>	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cosmetics .....	3613d	600	1	600	1.5	900
Conventional Food (Including Seafood) ..	3613e	398	1	398	1.5	597
Dietary Supplements, Food for Special Dietary Use, Infant Formula, & Medical Foods .....	3613e	2,129	4	2,129	1.5	3,194
Food Additives and Food Contact Substances .....	3613e	167	1	167	1.5	251
<b>Total</b> .....						<b>4,942</b>

<sup>1</sup> There are no operating and maintenance costs associated with this collection of information.

<sup>2</sup> Forms FDA 3613d and FDA 3613e may be submitted electronically via the Certificate Application Process.

For the purpose of this information collection request, we are basing our estimate of the average burden per response in column 6 of table 1 on the estimates previously submitted to and approved by OMB under control number 0910-0498. Our estimate of the average burden per response in column 6 of table 1 varies according to the product category for which the certificate is requested. We base our estimates of the total annual responses in column 5 of table 1 on our experience with certificate applications received in the past 2 fiscal years. Some respondents send in requests as often as three or four times a month while others may submit only periodic requests.

We expect that most if not all firms requesting export certificates in the next 3 years will choose to take advantage of the option of electronic submission via the CFSAN Certificate Application Process. Thus, our burden estimates in table 1 are based on the expectation of 100 percent participation in the electronic submission process. The opportunity to provide the information in electronic format could reduce the Agency's previous estimates for the time to prepare each submission. However, as a conservative approach for the purpose of this analysis, we are assuming that the opportunity to submit the information in electronic format will have no effect on the average time to prepare a submission.

Dated: March 8, 2015.

**Leslie Kux,**  
Associate Commissioner for Policy.  
[FR Doc. 2015-08617 Filed 4-14-15; 8:45 am]  
**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2012-N-0471]

**Agency Information Collection Activities: Proposed Collection; Comment Request; User Fee Cover Sheet; Form FDA 3397**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Form FDA 3397, User Fee Cover Sheet, that must be submitted along with certain drug and biologic product applications and supplements.

**DATES:** Submit either electronic or written comments on the collection of information by June 15, 2015.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the 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](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** 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. "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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**User Fee Cover Sheet; Form FDA 3397 (OMB Control Number 0910-0297)—Extension**

Under the prescription drug user fee provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (sections 735 and 736 (21 U.S.C. 379g and 379h)), as amended, FDA has the authority to assess and collect user fees for certain drug and biologics license applications (BLAs) and supplements to

those applications. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications (NDAs), BLAs, or supplements submitted to the Agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. The Prescription Drug User Fee Cover Sheet, Form FDA 3397, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of NDAs, BLAs, and/or supplemental applications to those applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2014, there are an estimated 290 manufacturers of products subject to the Prescription Drug User Fee Act (Pub. L. 105-115). The total number of annual responses is based on the number of submissions received by FDA in FY 2014. CDER received 3,005 annual responses that include the following submissions: 128 NDAs; 7 BLAs; 1,586 manufacturing supplements; 1,081 labeling supplements; and 203 efficacy supplements. CBER received 705 annual responses that include the following submissions: 11 BLAs; 611 manufacturing supplements; 64 labeling supplements; and 19 efficacy supplements. The estimated hours per response are based on past FDA experience with the various submissions.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3397 .....	290	12.79	3,710	0.5 (30 min.)	1,855

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-08618 Filed 4-14-15; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-N-0001]

#### Joint Workshop on Drug Transporters in Absorption, Distribution, Metabolism, and Excretion: From the Bench to the Bedside

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled “Drug Transporters in Absorption, Distribution, Metabolism, and Excretion (ADME): From the Bench to the Bedside.” The public workshop is an American Association of Pharmaceutical Scientists/International Transporter Consortium (AAPS/ITC) Joint Workshop, cosponsored with AAPS, the American Society for Clinical Pharmacology and Therapeutics, and the European Federation for Pharmaceutical Sciences. The goals of this public workshop are to provide an opportunity for scientists in academia, industry, and regulatory agencies to exchange ideas about the cutting edge science in transporters, and to facilitate and enhance translational applications of new development in transporter research in drug development and regulatory review of new therapeutics.

**Date and Time:** The public workshop will be held on April 20, 2015, from 8:15 a.m. to 7 p.m.; April 21, 2015, from 8 a.m. to 6:30 p.m.; and April 22, 2015, from 8 a.m. to 3:45 p.m.

**Location:** The public workshop will be held at the Renaissance Baltimore Harborplace Hotel, 202 East Pratt St., Baltimore, MD 21202. The hotel’s phone number is 410-547-1200.

**Contacts:** FDA: Lei Zhang, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 3196, Silver Spring, MD 20993, 301-796-1635, email: [leik.zhang@fda.hhs.gov](mailto:leik.zhang@fda.hhs.gov). AAPS: For questions related to this event, please contact AAPS at [registration@aaps.org](mailto:registration@aaps.org).

**Registration:** Workshop information and the registration link are posted at the AAPS meetings and professional development conference site. To register for the workshop, please visit [http://www.aaps.org/Meetings\\_and\\_Professional\\_Development/Conference\\_Mini\\_Sites/AAPS\\_WS\\_Transporters15/Registrar/](http://www.aaps.org/Meetings_and_Professional_Development/Conference_Mini_Sites/AAPS_WS_Transporters15/Registrar/). The cost of registration is as follows:

*www.aaps.org/Meetings\_and\_Professional\_Development/Conference\_Mini\_Sites/AAPS\_WS\_Transporters15/Registrar/*. The cost of registration is as follows:

AAPS Member .....	\$1,815
Nonmember .....	2,190
Government .....	675
Academic .....	880
Student .....	110

The registration fee will be waived for 50 FDA employees. If you need special accommodations because of a disability, please contact AAPS at [registration@aaps.org](mailto:registration@aaps.org). Onsite registration on the day of the workshop will be available.

**Additional Information About the Workshop:** The workshop agenda and additional background materials will be accessible at <http://www.fda.gov/Drugs/NewsEvents/ucm439157.htm> to all registrants.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Transporters serve an important role in the ADME of drugs, and in turn could affect their safety or efficacy. The AAPS/ITC joint transporter workshop in 2015 aims to continue on the success of preceding AAPS workshops on Drug Transporters meetings (2003, 2005, 2007, 2009, 2011, 2013) and ITC transporter workshops (2008 and 2012) to provide an opportunity for scientists in academia, industry, and regulatory agencies to exchange ideas about the cutting-edge science. Key areas of focus will include the following:

- Transporter tools of the future (*e.g.*, organs-on-a-chip, humanized mouse models, and transporter imaging);
- Interplay of drug metabolism and transporters;
- “State of the art” sessions on:
  - Emerging transporters,
  - Endogenous biomarkers to assess transporter-mediated drug efficacy and toxicity or to predict drug-drug interactions, and
  - Quantitative transporter proteomics in translational drug metabolism and pharmacokinetics;
- “Hot Topics” in the translation of transporter data to the clinic;
- Prospective transporter substrate modeling; and
- Review of comments related to transporters following recent guidances issued from the regulatory agencies, including FDA, European Medicines Agency, and Pharmaceuticals and Medical Devices Agency (Japan).

##### II. Goals and Objectives

- To provide a forum for open interchange, dissemination, and

discussion of cutting edge science in transporters among scientists from academia, industry, and regulatory agencies.

- To develop a mutual understanding on what needs to be done in transporter research and how to translate knowledge obtained from the bench to bedside.

- To facilitate and enhance translational applications of new development in transporter research in drug development and regulatory review of new therapeutics.

Dated: April 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-08614 Filed 4-14-15; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-N-0001]

#### Request for Nomination for Industry Representatives and Participation From Industry Organizations on Public Advisory Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER’s public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by May 15, 2015, (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by May 15, 2015.

**ADDRESSES:** All statements of interest from interested industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be

sent to Cicely Reese (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993-0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site <http://www.fda.gov/AdvisoryCommittees/default.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Cicely Reese, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, email: [Cicely.Reese@fda.hhs.gov](mailto:Cicely.Reese@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Agency intends to add a nonvoting industry representative to the following advisory committees:

**I. CDER Advisory Committees**

*A. Advisory Committee for Pharmaceutical Science and Clinical Pharmacology:* Reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases.

*B. Anesthetic and Analgesic Drug Products Advisory Committee (formerly Anesthetic and Life Support Drugs Advisory Committee):* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

*C. Anti-Infective Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

*D. Antiviral Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), HIV-related illnesses, and other viral, fungal, and mycobacterial infections. (Terminated February 15, 2015).

*E. Arthritis Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment

of arthritis, rheumatism, and related diseases.

*F. Bone, Reproductive, and Urologic Drugs Advisory Committee (formerly Advisory Committee for Reproductive Health Drugs):* Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of osteoporosis and metabolic bone disease, obstetrics, gynecology, urology, and related specialties.

*G. Cardiovascular and Renal Drugs Advisory Committee:* Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

*H. Dermatologic and Ophthalmic Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

*I. Drug Safety and Risk Management Advisory Committee:* Reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use.

*J. Endocrinologic and Metabolic Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

*K. Gastrointestinal Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

*L. Medical Imaging Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

*M. Nonprescription Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

*N. Oncologic Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and

investigational human drug products for use in the treatment of cancer.

*O. Peripheral and Central Nervous System Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

*P. Pharmacy Compounding Advisory Committee:* Provides advice on scientific, technical, and medical issues concerning drug compounding.

*Q. Psychopharmacologic Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

*R. Pulmonary-Allergy Drugs Advisory Committee:* Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

**II. Selection Procedure**

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

**III. Application Procedure**

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this

document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 9, 2015.

**Jill Hartzler Warner,**

*Associate Commissioner for Special Medical Programs.*

[FR Doc. 2015-08620 Filed 4-14-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-N-1083]

#### Innovations in Medical Evidence Development and Surveillance-Methods Research Agenda

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of Center for Drug Evaluation and Research (CDER). The goal of the CDER is to support the development of appropriate methodologies to conduct medical product safety surveillance in large electronic databases. Innovations in Medical Evidence Development and Surveillance (IMEDS)-Methods is a program within the Reagan-Udall Foundation that supports FDA's scientific mission of serving public health needs by initiating and facilitating research into the methods of safety evaluation in large databases.

**DATES:** 1. The application due date is June 15, 2015.

2. The anticipated start date is July 15, 2015.

3. The opening date is April 13, 2015.

4. The expiration date is June 16, 2015.

**ADDRESSES:** Submit the electronic application to: <http://www.grants.gov>. For more information, see section III of

the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Patrick Archdeacon, Food and Drug Administration, Bldg. 51 Rm.6314, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-3952; or Vieda Hubbard, Division of Acquisition Support and Grants (HFA-500), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 240-402-7588.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at: <http://www.grants.gov/>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Funding Opportunity Description**

RFA-FD-15-010 93.103

###### *A. Background*

Section 905 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-85) mandates FDA to develop an enhanced ability to monitor the safety of drugs after these products reach the market. In response to this mandate, FDA launched its Sentinel Initiative, a long-term program designed to build and implement an electronic system for monitoring the safety of medical products in the post market setting. FDA has already created significant infrastructure on which to operate such a system: Through its Mini-Sentinel pilot, a distributed database with access to more than 150 million patient records has been created (the Sentinel Distributed Database). In order to optimally leverage these data, however, new analytic methodologies will be required. IMEDS-Methods is a program within the Reagan-Udall Foundation that supports FDA's scientific mission of serving public health needs by initiating and facilitating research into the methods of safety evaluation in large databases. IMEDS-Methods aims to improve the tools for conducting post-marketing safety surveillance using automated healthcare data and to foster their adoption.

###### *B. Research Objectives*

IMEDS plans to conduct methods research in five core areas: (1) Addressing bias in estimates from observational studies; (2) better understanding uses and limitations of the data; (3) applying lessons learned from earlier IMEDS projects to FDA surveillance activities; (4) expanding the surveillance question to continuous risk/benefit assessment; and (5) continuing to support qualified investigators in industry, government,

and academic settings by providing access to de-identified electronic healthcare data and computing resources through the IMEDS Research Laboratory.

###### *C. Eligibility Information*

Eligibility is limited to the Reagan-Udall Foundation. The Reagan-Udall Foundation has established the IMEDS-Methods program, which is uniquely positioned to develop the new methodologies required for FDA to conduct effective active post market safety surveillance of medical products using large electronic health care data. The IMEDS organization has developed a network of statisticians, epidemiologists, data scientists, and clinicians who have experience operating in both the IMEDS research laboratory and also familiarity with the Sentinel Distributed Database. In addition, through the Reagan-Udall Foundation public-private partnership, the IMEDS-Methods program has a unique ability to convene FDA, patients, academics, government, and industry so that the findings and tools developed through its research agenda will be promulgated and adopted.

##### **II. Award Information/Funds Available**

###### *A. Award Amount*

FDA/CDER intends to fund up to \$1,000,000 in fiscal year 2015 in support of this program project. It is anticipated that only one award will be made, not to exceed \$1,000,000 (direct plus indirect) for total costs.

###### *B. Length of Support*

There is a one year period of performance beginning on June 15, 2015 or the date of award.

##### **III. Electronic Application, Registration, and Submission**

Only one electronic application will be accepted. To submit an electronic application in response to this FOA, the applicant should first review the full announcement located at <http://www.grants.gov/>. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

For the electronically submitted application, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Obtain Username & Password

- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at [http://www07.grants.gov/applicants/organization\\_registration.jsp](http://www07.grants.gov/applicants/organization_registration.jsp). Step 6, in detail, can be found at <https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp>. After you have followed these steps, submit the electronic application to: <http://www.grants.gov>.

Dated: April 8, 2015.

**Leslie Kux,**

Associate Commissioner for Policy.

[FR Doc. 2015-08613 Filed 4-14-15; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

[Document Identifier: HHS-OS-0990-0382-30-D]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request**

AGENCY: Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990-0382, scheduled to expire on May 31, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before May 15, 2015.

**ADDRESSES:** Submit your comments to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or via facsimile to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, [Information.CollectionClearance@hhs.gov](mailto:Information.CollectionClearance@hhs.gov) or (202) 690-6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB control number 0990-0382 and document identifier HHS-OS-30D for reference.

**Information Collection Request Title: Evaluation of Pregnancy Prevention Approaches—First Follow-up**

*Abstract:* The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting an extension without change of a currently approved information collection request by OMB. The purpose of the extension is to complete the ongoing follow-up data collection for the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA), a multi-site random assignment evaluation of promising approaches to teen pregnancy prevention.

*Need and Proposed Use of the Information:* The PPA study is being conducted in seven program sites around the country. The proposed extension is necessary to complete ongoing follow-up data collection in five of the seven study sites. The resulting data will be used in a rigorous program impact analysis to assess the effectiveness of each program in reducing rates of teen pregnancy and associated sexual risk behaviors.

*Likely Respondents:* The 1484 youth participants who agreed to participate in the study upon sample enrollment in 5 impact study sites.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Oklahoma Institute for Child Advocacy (OICA) .....	294	2	42/60	412
Ohio Health .....	148	3	42/60	310
Children's Hospital Los Angeles .....	254	2	36/60	305
EngenderHealth .....	240	2	36/60	288
Princeton Center for Leadership Training .....	548	2	36/60	658
Total .....				1,973

**Terry S. Clark,**

Assistant Information Collection Clearance Officer.

[FR Doc. 2015-08541 Filed 4-14-15; 8:45 am]

BILLING CODE 4150-30-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Eunice Kennedy Shriver National Institute of Child Health and Human Development 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 section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as

amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel PDB-P2C\_Infrastructure/Center Grants.

*Date:* June 29, 2015.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: CARLA T. WALLS, Ph.D., Scientific Review Officer, Scientific Review Branch, EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT, NIH, 6100 EXECUTIVE BOULEVARD, ROOM 5B01, BETHESDA, MD 20892-9304, (301) 435-6898, [wallsc@mail.nih.gov](mailto:wallsc@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 9, 2015.

**Carolyn Baum,**

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-08572 Filed 4-14-15; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### List of Environmentally Responsive Human Genes Selected for Use in Screening Large Numbers of Substances Using Toxicogenomic Approaches

*Request for Comments:* The National Institute of Environmental Health Sciences/National Toxicology Program requests comments on a list of environmentally responsive human genes selected for use in screening large numbers of substances using toxicogenomic approaches.

**SUMMARY:** The National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) requests comments on a set of human genes that have been identified and prioritized as environmentally responsive genes. These genes will be used in toxicogenomics approaches to screen cells or tissues obtained from humans against large numbers of chemicals. The goal was to generate a set of approximately 1500 human genes to evaluate transcriptional changes in response to chemical exposures. Similar gene sets will be developed for screening cells or tissues from other species such as rats, mice, zebrafish, and *Caenorhabditis elegans*. The human gene set should provide maximal toxicogenomic information on effects from chemical exposures that reflect general cellular responses, independent of cell type or species, and gene expression changes that are specific by organ and/or cell type. Such a list of

environmentally responsive genes may also be useful in biomarker development and basic research efforts. This list of genes, referred to as the “S1500” gene list, or gene set, is available for public comment.

**DATES:** The deadline for receipt of comments is May 15, 2015.

**ADDRESSES:** Comments on the human S1500 gene set should be submitted electronically in Microsoft Excel or Word formats to [Genelist@niehs.nih.gov](mailto:Genelist@niehs.nih.gov). Nominations for genes to be added to the S1500 must be accompanied with a strong scientific justification for inclusion.

**FOR FURTHER INFORMATION CONTACT:** Dr. Elizabeth Maull, NIEHS, P.O. Box 12233 (MD K2-17), Research Triangle Park, NC 27709; email: [maull@niehs.nih.gov](mailto:maull@niehs.nih.gov).

**SUPPLEMENTARY INFORMATION:**

*Background:* In 2008, NIEHS/NTP, the U.S. Environmental Protection Agency’s (EPA) National Center for Computational Toxicology (NCCT), and the National Human Genome Research Institute (NHGRI)/NIH Chemical Genomics Center (NCGC) (now located within the National Center for Advancing Translational Sciences (NCATS)) entered into a formal agreement to develop a vision and devise an implementation strategy to shift the assessment of chemical hazards from traditional, experimental animal, toxicology studies to target-specific, mechanism-based, biological observations largely obtained using *in vitro* assays. In mid-2010, the U.S. Food and Drug Administration (FDA) joined the collaboration that is known informally as Tox21.

Tox21 partner agencies collaborate to research, develop, validate, and translate innovative testing methods for characterization of toxicity pathways; identify compounds, assays, informatic analyses, and targeted testing needed to support the development of new methods; identify patterns of compound-induced biological response(s) in order to characterize toxicity pathways; facilitate cross-species and low-dose extrapolation; prioritize compounds for more extensive toxicological evaluation; and develop predictive models for biological response in humans. The primary activity of Tox21 Phase I was the development of a quantitative high throughput screening (qHTS) approach for toxicology. The goal of Phase II was the implementation of the qHTS approach in screening a 10,000 compound library through a variety of nuclear receptor agonist/antagonist and stress response pathway assays, utilizing primarily reporter gene

platforms. In Phase III, the focus is on assaying chemicals in high-content screens and mid to high throughput transcriptomic screens. High throughput gene expression changes will be the primary metric that is employed in Phase III to measure biological effects from chemical exposures.

To conduct Tox21 Phase III, Tox21 partners initiated the “S1500 Genes High Throughput Transcriptomics” project to capture information from the whole transcriptome (*i.e.*, the entirety of all expressed RNA molecules in a cell or biological sample). This project will use a targeted subset of genes in a HTS or semi-HTS platform to gain insight into how biological systems respond to chemical exposures. Neither the actual number of genes to be utilized, nor the specific transcriptomics platform(s) needed to carry out the project, have been finalized.

In an effort to select an appropriate subset of key representative or “sentinel” genes, the NTP previously requested input from the scientific community (78 FR 45542, July 29, 2013) on the “Nomination and Prioritization of Environmentally Responsive Genes for Use in Screening Large Numbers of Substances Using Toxicogenomic Technologies.” An interagency working group composed of members of the Tox21 partnership considered the input provided in response to the **Federal Register** notice as they developed a consensus strategy to select appropriate genes.

The working group’s goal was to select the most relevant and biologically diverse set of sentinel genes to represent transcriptomic responses to injury. Criteria for the selection and evaluation of an appropriate gene set are: (1) Representative of highly diverse gene expression changes reported to date, (2) capable of predicting the gene expression changes observed across the transcriptome, and (3) coverage of all major biological pathways.

The current version of the human S1500 gene set can be found at <http://ntp.niehs.nih.gov/go/S1500>. This site will be updated as changes to the list are made. The consensus strategy for selection of an appropriate sentinel gene set can be accessed at the same site.

Comments on the human S1500 gene set should be submitted electronically in Microsoft Excel or Word format to [Genelist@niehs.nih.gov](mailto:Genelist@niehs.nih.gov).

Respondents to this request are asked to provide their name, affiliation, address, and contact information (including telephone and fax numbers, and email address). The deadline for receipt of comments is May 15, 2015.



Responses to this request are voluntary. This notice does not obligate the U.S. Government to award a contract or otherwise pay for the information provided in response to this request. The U.S. Government reserves the right to use information provided by respondents for any purpose deemed necessary and legally appropriate. Any organization responding to this request should ensure that its response is complete and sufficiently detailed. Respondents are advised that the U.S. Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response.

**Background Information on the NTP:** The NTP is an interagency program established in 1978 (43 FR 53060) to strengthen the Department's activities in toxicology research and testing and to develop and validate new and better testing methods. Other activities of the program focus on strengthening the science base in toxicology and providing information about potentially toxic chemicals to health-regulatory and research agencies, scientific and medical communities, and the public. The NTP is located administratively at the NIEHS. Information about NTP and NIEHS is available at <http://ntp.niehs.nih.gov> and <http://www.niehs.nih.gov>, respectively.

Dated: April 8, 2015.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

[FR Doc. 2015-08529 Filed 4-14-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Aging.

*Date:* May 12-13, 2015.

*Closed:* May 12, 2015, 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building—Building 45, P2 Level, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Open:* May 13, 2015, 8:00 a.m. to 1:00 p.m.

*Agenda:* Call to order and report from the Director; discussion of future meeting dates; consideration of minutes of last meeting; reports from Task Force on Minority Aging Research, Council of Councils, NACA Physician Scientist Working Group, Working Group on Program; Council Speaker; Program Highlights.

*Place:* National Institutes of Health, Natcher Building—Building 45, P2 Level, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, [barr@nia.nih.gov](mailto:barr@nia.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: [www.nih.gov/nia/naca/](http://www.nih.gov/nia/naca/), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 9, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-08569 Filed 4-14-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; AHHC Review.

*Date:* May 14, 2015.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301-496-8683, [yangshi@nidcd.nih.gov](mailto:yangshi@nidcd.nih.gov).

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translational—VSL.

*Date:* June 1, 2015.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301-402-3587, [rayk@nidcd.nih.gov](mailto:rayk@nidcd.nih.gov).

*Name of Committee:* Communication Disorders Review Committee.

*Date:* June 18-19, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Eliane Lazar-Wesley, Scientific Review Officer, Division of

Extramural Activities, National Institute on Deafness and other Communication Disorders/NIH, 6001 Executive Blvd., MSC 9670, Bethesda, MD 20892-8401, 301-496-8683, [el6r@nih.gov](mailto:el6r@nih.gov).

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translational—Hearing and Balance.

*Date:* July 9, 2015.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301-402-3587, [rayk@nidcd.nih.gov](mailto:rayk@nidcd.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 9, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-08527 Filed 4-14-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Open Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

*Date:* July 8, 2015.

*Time:* 9:00 a.m. to 12:00 p.m.

*Agenda:* Strategic Discussion of NCI's Clinical and Translational Research Programs.

*Place:* National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 9 and 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Sheila A. Prindiville, MD, MPH Director, Coordinating Center for Clinical Trials, National Cancer Institute,

National Institutes of Health, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240-276-6173, [prindivs@mail.nih.gov](mailto:prindivs@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/ctac/ctac.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: April 9, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-08571 Filed 4-14-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5831-N-18]

### 30-Day Notice of Proposed Information Collection: CDBG Urban County Qualification/Requalification Process

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment. **DATES:** *Comments Due Date:* May 15, 2015.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 9, 2015 at 80 FR 7028.

#### A. Overview of Information Collection

*Title of Information Collection:* Community Development Block Grant (CDBG) Urban County Qualification/Requalification Processes.

*OMB Approval Number:* 2506-0170.

*Type of Request:* Revision of currently approved collection.

*Form Numbers:* N/A.

*Description of the need for the information and proposed use:* The Housing and Community Development Act of 1974, as amended, at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may enter into a cooperation agreement to participate in the CDBG program as part of the county. Section 102(d) of the statute specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county is used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York towns undertook a similar process every three years. However,

after consultation with program counsel, it was determined that a requalification process for New York towns is unnecessary because the units of general local government in New York towns do not have the same statutory notice rights (under Section 102(e) of the Housing and Community Development Act of 1974) as units of general local government participating in an urban county. In addition, each New York town has automatic renewing agreements with the incorporated units of general local governments contained within their boundaries. Therefore, it is presumed that all incorporated units of general local government will continue to participate in the New York towns in

which they are located unless Headquarters is notified to the contrary.  
**Respondents:** Urban counties that are eligible as entitlement grantees of the CDBG program.  
**Estimation Number of Respondents:** There are currently 185 qualified urban counties participating in the CDBG program that must requalify every three years.  
**Frequency of Response:** On average, two new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 100 hours to review instructions, contact communities in the county, prepare and review agreements,

obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 60 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability to use agreements with no specified end date. Use of such "renewable" agreements enables the grantee to merely notify affected participating UGLs in writing that their agreement will automatically be renewed unless the UGL terminates the agreement in writing, rather than executing a new agreement every three years.

Average of 2 new urban counties qualify per year .....	2 × 100 hrs = 200 hrs.
185 grantees requalify on triennial basis; average annual number of respondents = 62 .....	62 × 60 hrs. = 3,720 hrs.
<b>Total combined burden hours .....</b>	<b>3,920 hours.</b>

This total number of combined burden hours can be expected to increase annually by 200 hours, given the average of two new urban counties becoming eligible entitlement grantees each year.

Information collection 2506-0170	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
	2	2	2	100	200	.....	.....
	185	1	62	60	3,720	.....	.....
<b>Total .....</b>					<b>3,920</b>	<b>\$18.00</b>	<b>\$70,560</b>

**Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 9, 2015.  
**Colette Pollard,**  
*Department Reports Management Officer,*  
*Office of the Chief Information Officer.*  
 [FR Doc. 2015-08655 Filed 4-14-15; 8:45 am]  
**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**[Docket No. FR-5831-N-17]**  
**30-Day Notice of Proposed Information Collection: Community Development Block Grant Entitlement Program**  
**AGENCY:** Office of the Chief Information Officer, HUD.  
**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.  
**DATES:** *Comments Due Date:* May 15, 2015.  
**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: *OIRA\_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 9, 2015 at 80 FR 7027.

**A. Overview of Information Collection**

*Title of Information Collection:* Community Development Block Grant Entitlement Program.

*OMB Approval Number:* 2506-0077.

*Type of Request:* Revision of currently approved collection.

*Form Numbers:* N/A.

*Description of the need for the information and proposed use:* This request identifies the estimated reporting burden associated with information that CDBG entitlement grantees will report in IDIS for CDBG-assisted activities, recordkeeping requirements, and reporting requirements. Grantees are encouraged to update their accomplishments in IDIS

on a quarterly basis. In addition, grantees are required to retain records necessary to document compliance with statutory and regulatory requirements, Executive Orders, applicable OMB Circulars, and determinations required to be made by grantees as a determination of eligibility. Grantees are required to prepare and submit their Consolidated Annual Performance and Evaluation Reports, which demonstrate the progress grantees make in carrying out CDBG-assisted activities listed in their consolidated plans. This report is due to HUD 90 days after the end of the grantee's program year. The information required for any particular activity is generally based on the eligibility of the

activity and which of the three national objectives (benefit low- and moderate-income persons; eliminate/prevent slums or blight; or meet an urgent need) the grantee has determined that the activity will address.

*Respondents:* Grant recipients (metropolitan cities and urban counties) participating in the CDBG Entitlement Program.

*Estimation Number of Respondents:* 1,164.

*Estimation Number of Responses:* The proposed frequency of the response to the collection is on an annual basis.

*Frequency of Response:* Annually.

*Total Estimated Burdens:* The total estimated burden is 544,984.

Information Collection 2506-0077	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Recordkeeping .....	1,164	1	1,164	129.2	150,388	.....	.....
Reporting .....	1,164	4	4,656	78.50	365,496	.....	.....
Maintain Documenta- tion .....	1,164	1	1,164	25	29,100	.....	.....
Total .....	.....	.....	6,984	42	544,984	\$36.60	\$1,789,300.80

*Solicitation of Public Comment*

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 9, 2015.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2015-08656 Filed 4-14-15; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R2-ES-2015-N034;  
FXES1113010000C4-156-FF01E00000]**

**Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of Black-Lace Cactus, Bone Cave Harvestman, Pima Pineapple Cactus, Texas Snowbells, and Walker's Manioc in the Southwest Region**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of reviews; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of the endangered black-lace cactus (*Echinocereus reichenbachii* var. *albertii*), the endangered Bone Cave harvestman (*Texella reyesi*), the endangered Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*), the endangered Texas snowbells (*Styrax texanus*), and the endangered Walker's manioc (*Manihot walkerae*). A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since our original listing of these five species or since the last 5-year review.

**DATES:** To ensure consideration, we are requesting submission of new information no later than June 15, 2015. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** For how to submit information, see Request for Information and How Do I Ask Questions or Provide Information? in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For information on a particular species, contact the appropriate person or office listed in the table in the **SUPPLEMENTARY INFORMATION** section.

**SUPPLEMENTARY INFORMATION:**

**Why do we conduct a 5-year review?**

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, refer to our factsheet at <http://www.fws.gov/endangered/what-we-do/recovery-overview.html>.

**What information do we consider in our review?**

A 5-year review considers all new information available at the time of the review. For all five of these species, this will be the second 5-year review developed for each species. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends,

distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to

taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

**Which species are under review?**

This notice announces our active review of the species listed in the table below.

Common name	Scientific name	Listing status	Where listed	Final listing rule (Federal Register citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Cactus, black-lace	<i>Echinocereus reichenbachii</i> var. <i>albertii</i> .	Endangered .....	U.S.A. (TX)	41 FR 24524; June 16, 1976.	Field Supervisor, 281-286-8282 (phone); <i>David_Hoth@fws.gov</i> (email).	U.S. Fish and Wildlife Service, Coastal Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058.
Cactus, Pima pineapple.	<i>Coryphantha scheeri</i> var. <i>robustispina</i> .	Endangered .....	U.S.A (AZ)	58 FR 49875; September 23, 1993.	Field Supervisor, 602-242-0210 (phone); <i>Steve_Spangle@fws.gov</i> (email).	U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Attention 5-Year Review, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.
Harvestman, Bone Cave.	<i>Texella reyesi</i> .....	Endangered .....	U.S.A. (TX)	53 FR 36029; September 16, 1988.	Field Supervisor, 512-490-0057 (phone); <i>Adam_Zerrener@fws.gov</i> (email).	U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, Attention 5-Year Review, 10711 Burnet Road, Suite 200, Compass Bank Building, Austin, TX 78758.
Manioc, Walker's ...	<i>Manihot walkerae</i> ..	Endangered .....	U.S.A. (AZ)	56 FR 49850; October 2, 1991.	Field Supervisor, 281-286-8282 (phone); <i>David_Hoth@fws.gov</i> (email).	U.S. Fish and Wildlife Service, Coastal Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058.
Snowbells, Texas ..	<i>Styrax texanus</i> .....	Endangered .....	U.S.A. (TX)	49 FR 40036; October 12, 1984.	Field Supervisor, 512-490-0057 (phone); <i>Adam_Zerrener@fws.gov</i> (email).	U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, Attention 5-Year Review, 10711 Burnet Road, Suite 200, Compass Bank Building, Austin, TX 78758.

### Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

### How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

### Completed and Active Reviews

A list of all completed and currently active 5-year reviews addressing species for which the Southwest Region of the Service has lead responsibility is available at [http://www.fws.gov/southwest/es/ElectronicLibrary\\_Main.cfm](http://www.fws.gov/southwest/es/ElectronicLibrary_Main.cfm) (under “Select a Document Category,” select “5-Year Review”).

### Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 19, 2015.

### Joy E. Nicholopoulos,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015-08624 Filed 4-14-15; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

#### Announcement of USGS National Geospatial Program (NGP) 3D Elevation Program (3DEP) FY15 Public Meetings in Preparation for the Upcoming Release of the USGS Broad Agency Announcement for 3D Elevation

**ACTION:** Notice of Meeting(s).

**SUMMARY:** The 3D Elevation Program (3DEP) initiative is being developed to respond to needs for high-quality topographic data and for a wide range of other three-dimensional representations of the Nation’s natural and constructed features. The primary goal of 3DEP is to systematically collect enhanced elevation data in the form of high-quality light detection and ranging (lidar) data over the conterminous United States, Hawaii, and the U.S. territories, as well as interferometric synthetic aperture radar (ifsar) data over Alaska. The 3DEP initiative is based on the results of the National Enhanced Elevation Assessment (NEEA), which indicated an optimal benefit to cost ratio for Quality Level 2 (QL2) data collected over 8-years to complete national coverage. The implementation model for 3DEP is based on multi-agency partnership funding for acquisition, with the USGS acting in a lead program management role to facilitate planning and acquisition for the broader community, through the use of government contracts and partnership agreements. The annual Broad Agency Announcement (BAA) is a competitive solicitation issued to facilitate the collection of lidar and derived elevation data for the 3D Elevation Program (3DEP). Federal agencies, state and local governments, tribes, academic institutions and the private sector are eligible to submit proposals. The 3DEP public meetings will introduce this opportunity to the broadest stakeholder community possible and provide a forum for interested parties to discuss elevation data collection needs of mutual interest that could be addressed by a coordinated investment.

Advanced Registration is required for meeting attendance. National Webinars will be recorded and made available for viewing.

**DATES:** USGS Broad Agency Announcement (BAA) for 3D Elevation Program (3DEP) FY15 National Webinars—Notice of Proposed Public Acquisition Opportunity: April 24th 12:00–1:00 ET, April 29th 2:00–3:00 ET. Virtual meeting information posted on

<https://www.geoplatform.gov/elevation/3DEP>.

3DEP Public Workshops in support of upcoming BAA: To be held throughout the US between May 4th and June 26th. Locations, Dates, Times and Registration Information posted on: <https://www.geoplatform.gov/elevation/3DEP>. Registration available beginning May 1st.

USGS Broad Agency Announcement for 3D Elevation Program FY15 National Webinars—Instructions for proposal submissions: July 23rd 12:00–1:00 ET, July 28th 2:00–3:00 ET. Virtual meeting information posted on <https://www.geoplatform.gov/elevation/3DEP>.

**FOR FURTHER INFORMATION CONTACT:** 3D Elevation Program, [gs\\_baa@usgs.gov](mailto:gs_baa@usgs.gov).

**SUPPLEMENTARY INFORMATION:** The BAA is issued under the provisions of FAR Part 35. Proposals selected for eventual award are considered to be the result of full and open competition and in full compliance with the provision of Public Law 98–369, “The Competition in Contracting Act of 1984” and subsequent amendments. For additional information on the 3DEP program <http://nationalmap.gov/3DEP/index.html>.

Dated: April 10, 2014.

### Julia Fields,

Deputy Director, National Geospatial Program.

[FR Doc. 2015-08668 Filed 4-14-15; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR01113000, XXXR0680R1, RR.R0336A1R.7WRMP0032]

#### Notice To Reopen the Public Comment Period and Notice of Additional Public Meetings for the Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance Draft Environmental Impact Statement, Kittitas and Yakima Counties, Washington

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation is reopening the public comment period for the Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance Draft Environmental Impact Statement (EIS) for another 60 days to allow the public more time to comment. We are also announcing four additional public meetings to be held in May 2015.

**DATES:** Submit written comments on the scope of the Draft EIS on or before June 15, 2015.

Four public meetings will be held on the following dates and times:

- Monday, May 4, 2015, 1:30 p.m. to 3:30 p.m., and 5 p.m. to 7 p.m., Ellensburg, Washington
- Tuesday, May 5, 2015, 1:30 p.m. to 3:30 p.m., and 5 p.m. to 7 p.m., Cle Elum, Washington

**ADDRESSES:** Send written comments on the scope of the Draft EIS to Ms. Candace McKinley, Bureau of Reclamation, 1917 Marsh Road, Yakima, WA 98901; or via email to [kGBT@usbr.gov](mailto:kGBT@usbr.gov). The Draft EIS is accessible on the following Web sites: <http://www.usbr.gov/pn/programs/eis/kdrpp/index.html>; and <http://www.usbr.gov/pn/programs/eis/kkc/index.html>.

The public meetings will be held at the following locations:

- Ellensburg—Hal Holmes Community Center, 209 N. Ruby Street, Ellensburg, Washington 98926
- Cle Elum—U.S. Forest Service, Cle Elum Ranger District, Tom Craven Conference Room, 803 W. 2nd Street, Cle Elum, Washington 98922

**FOR FURTHER INFORMATION CONTACT:** Ms. Candace McKinley, 509-575-5848, ext. 603; or by email at [kGBT@usbr.gov](mailto:kGBT@usbr.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation published a notice of availability in the **Federal Register** on January 9, 2015 (80 FR 1431). The public comment period ended on March 10, 2015. We received numerous comments from the public requesting more time to comment on the project. In response to those comments, we are reopening the public comment period for an additional 60 days.

**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.

Dated: March 9, 2015.

**Lorri J. Lee,**  
Regional Director, Pacific Northwest Region.  
[FR Doc. 2015-08626 Filed 4-14-15; 8:45 am]

**BILLING CODE 4332-90-P**

**INTERNATIONAL TRADE COMMISSION**

[Investigation Nos. 701-TA-432 and 731-TA-1024-1028 (Second Review) and AA1921-188 (Fourth Review)]

**Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico, and Thailand**

**Determinations**

On the basis of the record<sup>1</sup> 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 countervailing duty order on prestressed concrete steel wire strand (“PC strand”) from India, the antidumping duty orders on PC strand from Brazil, India, Korea, Mexico, and Thailand, as well as the antidumping duty finding on PC strand from Japan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Background**

The Commission instituted these reviews on November 3, 2014 (79 FR 65246) and determined on February 6, 2015, that it would conduct expedited reviews (80 FR 9747, February 24, 2015).

The Commission completed and filed its determinations in these reviews on April 10, 2015. The views of the Commission are contained in USITC Publication 4527 (April 2015), entitled *Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand: Investigation Nos. 701-TA-432 and 731-TA-1024-1028 (Second Review) and AA1921-188 (Fourth Review)*.

By order of the Commission.  
Issued: April 10, 2015.

**Lisa R. Barton,**  
Secretary to the Commission.  
[FR Doc. 2015-08671 Filed 4-14-15; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup>The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act**

On April 9, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Wisconsin in the lawsuit entitled *United States and the State of Wisconsin v. NCR Corp., et al.*, Case No. 10-cv-910 (E.D. Wis.).

In 2010, the United States and the State of Wisconsin filed a lawsuit against multiple defendants that had contributed to polychlorinated biphenyl (“PCB”) contamination in sediment at the Lower Fox River and Green Bay Superfund Site in northeastern Wisconsin (the “Site”). That lawsuit—brought under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9601-75—sought enforcement of a U.S. Environmental Protection Agency order requiring cleanup work at the Site, reimbursement of response costs that the United States and the State have incurred in addressing the PCB contamination at the Site, and recovery of damages for injuries to natural resources resulting from the PCB contamination. The proposed Consent Decree is a partial settlement that requires two defendants, NCR Corporation and Georgia-Pacific Consumer Products LP, to fund and perform an estimated \$67 million in sediment remediation work at the Site in 2015. This partial settlement does not resolve all aspects of the ongoing lawsuit or all potential liabilities of NCR Corporation or Georgia-Pacific Consumer Products LP.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Wisconsin v. NCR Corp., et al.*, D.J. Ref. No. 90-11-2-1045/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a>

<i>To submit comments:</i>	<i>Send them to:</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: <http://www.usdoj.gov/enrd/ConsentDecrees.html>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs (at 25 cents per page). Please mail your request and a check or money order payable to the United States Treasury to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

The cost for a paper copy is \$2.75 for the Consent Decree alone or \$40.00 for the Consent Decree and its Appendix.

**Randall M. Stone,**

*Acting Assistant Section Chief,  
Environmental Enforcement Section,  
Environment and Natural Resources Division.*

[FR Doc. 2015–08637 Filed 4–14–15; 8:45 am]

**BILLING CODE 4410–15–P**

**DEPARTMENT OF JUSTICE**

[Docket No. ODAG 153]

**Notice of Federal Advisory Committee Meeting**

**AGENCY:** Department of Justice.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** This notice announces a forthcoming public meeting of the National Commission on Forensic Science.

**DATES:** The meeting will be held on April 30, 2015 from 12 p.m. to 5 p.m. and May 1, 2015 from 9 a.m. to 5 p.m. Online registration for the meeting must be completed on or before 5 p.m. (EST) April 25, 2015. Electronic comments on draft work products will be accepted through the electronic Federal Docket Management System (FDMS) for a 30 day public comment period.

**ADDRESSES:** *Location:* House of Sweden: 2900 K Street NW., Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Brette Steele, Senior Advisor on Forensic Science and Senior Counsel to the Deputy Attorney General, 950 Pennsylvania Avenue NW, Washington, DC 20530, by email at [Brette.L.Steele@usdoj.gov](mailto:Brette.L.Steele@usdoj.gov), or by phone at (202) 305–0180.

**SUPPLEMENTARY INFORMATION:**

**Agenda:** On April 30, the Commission will receive opening remarks from the Co-Chairs and a briefing on issues related to evidence preservation and retention. The Commission will also receive status reports from the subcommittees on Reporting and Testimony and Accreditation and Proficiency Testing. The public comment period will begin at 5 p.m. On May 1, the Commission will receive status reports from the subcommittees on Interim Solutions, Medicolegal Death Investigation, Training on Science and Law, and Human Factors. The Commission will receive priority action reports from each of the five Scientific Area Committee Chairs and will receive a briefing on the role of forensic science in mass fatality management. Note: Agenda items, including designation of presentation dates are subject to change. A final agenda will be posted to the Commission's Web site in advance of the meeting.

**Procedures:** Draft work products to be introduced at the Commission meeting will be made available on the Commission's Web site: <http://www.justice.gov/ncfs>. The meeting will be webcast at: <http://stream.sparkstreetdigital.com/player-ce.html?id=doj-apr30>. The meeting will also be open to the public. Seating in the meeting room is limited and will be available on a first-come, first-served basis. All persons who are interested in being on-site for the meeting must register on-line by clicking the registration link found at: <http://www.justice.gov/ncfs/meetings#s6>.

Members of the public may present oral comments on issues pending before the Commission. Those individuals interested in making oral comments should indicate their intent through the on-line registration form and time will be allocated on a first-come, first-served basis. Time allotted for an individual's comment period will be limited to no more than 3 minutes. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled public comment periods, written comments can be submitted through FDMS in lieu of oral comments.

**Posting of Public Comments:** To ensure proper handling of comments, please reference "Docket No. ODAG 153" on all electronic and written correspondence. The Department encourages all comments on subcommittee work products be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. Paper comments that duplicate

the electronic submission are not necessary as all comments submitted to <http://www.regulations.gov> will be posted for public review and are part of the official docket record.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at <http://www.regulations.gov>. The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this meeting. Nevertheless, if you want to submit personally identifiable information (such as your name, address, etc.) as part of your comment, but do not want it to be made available for public inspection and posted online, you must include the phrase "PERSONALLY IDENTIFIABLE INFORMATION" in the first paragraph of your comment. You must also place all the personally identifiable information you do not want made available for public inspection or posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made available for public inspection and posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made available for public inspection or posted online.

Personally identifiable information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be made available for public inspection and posted on <http://www.regulations.gov>.

The Department of Justice 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, please indicate your requirements on the online registration form.



Dated: April 10, 2015.

**Brette Steele,**

*Designated Federal Officer, National Commission on Forensic Science.*

[FR Doc. 2015-08680 Filed 4-14-15; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D-11726, Rock Wool Manufacturing Company; L-11784, Eli Lilly and Company and Elco Insurance Company Limited; D-11798, Robert A. Handelman Roth IRA No. 2; and, D-11809 and L-11810, Roofers Local 195 Pension Fund and Roofers Local 195 Joint Apprenticeship Training Fund.

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or

hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov*, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue NW., Washington, DC 20210.

**Warning:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

#### SUPPLEMENTARY INFORMATION:

##### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>1</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

<sup>1</sup> The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

#### Rock Wool Manufacturing Company Salaried Retirement Plan (the Plan) Located in Leeds, AL

[Application No. D-11726]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).<sup>2</sup> If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code, shall not apply to the proposed in-kind contribution (the Contribution) to the Plan of a parcel of unimproved real property (the Property) by Rock Wool Manufacturing Company (Rock Wool or the Company), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan:

(1) Determines that the Contribution is in the interests of the Plan and protective of the Plan's participants and beneficiaries; and

(2) Determines that the Property is valued for purposes of the Contribution at the Property's fair market value as of the date of the Contribution, as determined by a qualified independent appraiser (the Independent Appraiser);

(b) The Independent Fiduciary performs the following steps in order to make the determinations described above in paragraph (a):

(1) Reviews, negotiates, and approves the specific terms of the Contribution; and

(2) Ensures, for the purposes of the Contribution, that the appraisal report (the Appraisal Report) is consistent with sound principles of valuation;

(c) As of the date of the Contribution, the Independent Fiduciary monitors compliance by Rock Wool with respect to the terms of the Contribution and with the conditions of this exemption, if granted, to ensure that such terms and conditions are satisfied at all times;

(d) The Plan does not pay any commissions, costs or other expenses, including any fees that are currently charged or accrued in the future by the Independent Fiduciary and the

<sup>2</sup> For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Independent Appraiser, in connection with the Contribution; and

(e) The terms and conditions of the Contribution are no less favorable to the Plan than the terms that would be negotiated at arm's length between unrelated third parties under similar circumstances.

(f) The contributed value of the Property is equal to the Property's fair market value, as determined by the Independent Appraiser on the transaction date, less a 35 percent discount to account for certain marketability limitations.

### Summary of Facts and Representations

1. Rock Wool, headquartered in Leeds, Alabama, was founded in 1943. The current Chairman and CEO of Rock Wool is Sylvester Minter III and the current Vice President of Operations is Gerald Miller. Rock Wool operates as a manufacturer of residential blowing wool insulation and high temperature pipe insulation fabrication. During the 1970's, Rock Wool began to incorporate into its product line certain materials containing asbestos. When the harmful effects of asbestos were later discovered, Rock Wool was named as the defendant in numerous lawsuits. Following the exhaustion of its insurance coverage, Rock Wool filed for Chapter 11 bankruptcy protection. Subsequent to Rockwool's bankruptcy filing, plaintiff attorneys reached a settlement agreement under which Rockwool's owners relinquished ownership rights and contributed Company stock to an asbestos settlement fund (the Settlement Fund). Pursuant to the terms of the settlement agreement, any profits earned by Rock Wool are to be deposited into the settlement fund to pay claimants on a periodic basis. As of September 30, 2014, Rock Wool had total assets of \$5,706,884.62 and total liabilities of 3,108,653.82.

2. The Plan, which was adopted by Rock Wool on May 1, 1974, is structured as a defined benefit plan. The Plan's trustees are Sylvester Minter III and Gerald Miller (the Trustees), and the Plan's investment manager is Lee Robertson of Legg Mason Investment Counsel. As the Plan's investment manager, Mr. Robertson exercises discretion over the Plan's assets, and as such, qualifies as a fiduciary under section 3(38) of the Act.<sup>3</sup>

<sup>3</sup> Section 3(38) of the Act provides, in relevant part, that the term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102(a)(2) of this title)—(A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940, and (ii) is a bank,

As of January 28, 2015, the Plan covered 27 participants and held assets valued at approximately \$2,537,114. The Plan has been frozen to new participants since December 31, 2001, and to benefit accruals since August 31, 2008.

3. Rock Wool contributed \$26,675 to the Plan during the year ending December 31, 2012, and \$134,428 for the year ending December 31, 2013. As of September 1, 2012 and September 1, 2013, the adjusted funding target attainment percentage (AFTAP) for the Plan was 80.82% and 81.09%, respectively. Pursuant to section 302 of the Act, Rock Wool is obligated to make a required minimum cash contribution to the Plan of \$134,000 on or before May 15, 2015 for the 2014 Plan year (the Required Contribution).

4. Rock Wool proposes to make an in-kind contribution to the Plan of certain unimproved real property, in lieu of cash, due to its current cash flow restrictions. Currently, Rock Wool is experiencing restricted cash flow problems due to, among other things, its inability to obtain third party financing and its funding obligations with respect to the Settlement Fund.

In effect, the in-kind contribution of the Property to the Plan will offset the minimum funding amount due to the Plan under section 302 of the Act, as the contribution value of the Property (the fair market value of the Property minus the marketability discount) will exceed the \$134,000 Required Contribution. Thus, the contribution of the Property will allow Rock Wool to forego making a \$134,000 cash payment to the Plan.<sup>4</sup> Accordingly, Rock Wool requests an administrative exemption from the Department because the proposed Contribution would otherwise violate several provisions of the Act.

5. Section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Section 3(14)(A) of the Act defines the term "party in interest" to include a fiduciary. Section 3(14)(C) of the Act also defines the term party in interest to include an employer, any of whose employees are covered by such plan. The Trustees, who are principals of Rock Wool, together with Mr.

as defined in that Act; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

<sup>4</sup> It is within the Plan's investment policy to allow in-kind contributions that are made by Rock Wool.

Robertson, are parties in interest with respect to the Plan, as fiduciaries. In addition, Rock Wool is a party in interest with respect to the Plan as an employer whose employees are covered by the Plan.

With respect to a defined benefit plan, such as the Plan, an employer assumes an obligation to make cash contributions to the plan in order to fund promised benefits. Rock Wool's proposed Contribution of the Property to the Plan would thus constitute a discharge of Rock Wool's legal obligation with respect to the Required Contribution, as noted above, as well as, depending on the Plan's funding status in future years, Rock Wool's obligation to make cash contributions to the Plan in the future. As such, the Plan would, in effect, be exchanging its legal right to receive a cash contribution for the receipt of real property. Thus, Rock Wool's proposed Contribution of the Property to the Plan constitutes a prohibited sale or exchange in violation of section 406(a)(1)(A) of the Act.

The Contribution would also violate section 406(b)(1) and (b)(2) of the Act. Section 406(b)(1) prohibits a fiduciary from dealing with the assets of the plan in such fiduciary's own interests or for such fiduciary's personal account. In determining that it would be appropriate for the Plan to receive the Contribution of the Property from Rock Wool instead of cash, the Trustees would effectively be releasing Rock Wool from, at minimum, its \$134,000 cash obligation to the Plan. Due to the fact that the Trustees hold executive positions at Rock Wool, each Trustee would be dealing with the assets of the Plan for his own interest or personal account.

In addition, section 406(b)(2) of the Act prohibits a fiduciary from acting in such fiduciary's individual or other capacity in any transaction involving the plan on behalf of a party (or from representing a party) whose interests are adverse to the interests of the plan, or the interests of the Plan participants and beneficiaries. As Trustees and Rock Wool principals, Messrs. Minter and Miller may have divided loyalties in representing both the interests of the Plan and Rock Wool with respect to the Contribution of the Property.

6. The Property that is the subject of the Contribution was purchased for \$36,175 in 1947 by the Cusick Family, the original owners of Rock Wool. The Cusicks incorporated Rock Wool in July of 1958, at which time the Property became the Company's primary manufacturing and warehouse facility.

The Property is located at 8200 Thorton Avenue, Leeds, Alabama, and

currently consists of 2.67 acres of unimproved vacant land that is not encumbered by a mortgage. The Property is located approximately 1.3 miles from Rock Wool's manufacturing plant. The land is not presently used by Rock Wool, nor will it be used in the future by Rock Wool, its affiliates, or members of the Cusick Family. The only ongoing expenses associated with the Property are real estate taxes, which amount to approximately \$1,800 per year.

7. The Property was appraised on August 4, 2014, by James P. Sumners, a State Certified Real Property Appraiser in the State of Alabama (License # G00037) (the Independent Appraiser). Mr. Sumners is employed by the real estate appraisal firm of Providence Company (Providence), located in Birmingham, Alabama. Mr. Sumners has certified that he "has no present or prospective interest in the [P]roperty that is the subject of this report, and has no personal interest or bias with respect to the parties involved." Further, Mr. Sumners represents that his fees derived from Rock Wool are equal to less than 1% of Providence's revenues, from all sources.

Due to the fact that the Property is a parcel of vacant land, Mr. Sumners based his valuation solely on the Market Approach. Mr. Sumners reported his conclusion in a summary appraisal report, dated August 6, 2014, and formulated his opinion and conclusion in accordance with Standard Rule 1 of the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Report was written in compliance with USPAP and Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) guidelines. After inspecting the Property and analyzing all relevant data, Mr. Sumners determined the "AS-IS" Fee Simple Market Value of the Property to be \$325,000.00, as of August 4, 2014.

8. On August 21, 2013, the Trustees hired Layton Engineering of Birmingham, Alabama (Layton), an unrelated party, to conduct an environmental engineering report (the Environmental Report) on the Property. In its Environmental Report, Layton tested soil at the Property for heightened levels of chromium. The tests were compared with a previous soil assessment conducted at the Property by Layton in 2002, as well as against four background samples that were obtained from a nearby property. Each nearby property was reasonably expected to be unaffected by current or historical processes and within depositional environments similar to those at the Property. Based on the tests, Layton

concluded that the results of the analysis demonstrated that the levels of chromium at the Property site were well within the range of natural background concentrations of chromium in the unaffected adjacent soils. Thus, Layton has confirmed that the Property is environmentally clean.

9. The Trustees have selected Lubbock National Bank (LNB) to serve on behalf of the Plan as the Independent Fiduciary with respect to the proposed Contribution. Specifically, LNB has designated Christopher L. Robinson, Senior Vice President and Senior Trust Officer of LNB, to prepare the Independent Fiduciary Report and to assume the duties and responsibilities of the Independent Fiduciary for the Plan. Mr. Robinson's qualifications include thirteen years of experience as an ERISA attorney and graduate and undergraduate degrees in Finance. Mr. Robinson represents that he is knowledgeable as to the duties and responsibilities of an ERISA fiduciary by virtue of his educational background and his experience as an official with LNB. Mr. Robinson has also served as a fiduciary for other qualified plans.

10. Mr. Robinson represents that the only revenue received by LNB from any party in interest to the Plan are those fees derived from Rock Wool in connection with Mr. Robinson's duties as the Plan's Independent Fiduciary, and that these fees are equal to less than 1% of LNB's revenues from all sources, for both 2013 and 2014. In addition, Mr. Robinson states that neither he nor any officer, board member, or shareholder of LNB is related in any way to Rock Wool, or its principals, through ownership, common officers or directors, debt relationships, business dealings, or family relationships. Mr. Robinson further represents that neither Rock Wool nor any of its principals have deposited any funds in checking accounts, savings accounts, or certificates of deposit maintained by LNB.

11. In his role as Independent Fiduciary, Mr. Robinson represents that he will confirm that the Property has been properly titled in the name of the Plan by reviewing the title records and by ensuring that the Contribution to the Plan has in fact been made. Further, Mr. Robinson will ensure that the Plan does not pay any fees or commissions with respect to the Contribution.

12. Mr. Robinson has expressed his views in support of the Contribution, stating that the Contribution is favorable to the Plan. In determining whether the in-kind contribution would be in the interests of the Plan, Mr. Robinson reviewed and considered: (a)

Representations made by Rock Wool regarding the Plan and the Property; (b) the value conclusions and related analysis presented by the Independent Appraiser; (c) discussions with certain members of Rock Wool's senior management regarding the Plan and the related investment policy, the nature of the Property, and future prospects for the usefulness and marketability of such Property<sup>5</sup>; (d) the Plan's investment objectives, policies, and related Plan documents; (e) whether the terms and conditions of the Contribution are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties; and (f) other analyses and investigations.

13. Based on his review, Mr. Robinson determined that the Contribution of the Property is appropriate and in the interest of the Plan's participants and beneficiaries. In this regard, Mr. Robinson concluded that the Contribution will substantially increase the funded status of the Plan, and will place the Plan in a more secure actuarial and financial position, with both a higher funding percentage and a larger funding standard account balance. Additionally, Mr. Robinson concluded that the Plan's acquisition of the Property will improve the diversification of Plan investments and further Plan investment policies and objectives. Further, Mr. Robinson stated that the Contribution presents the Plan with the added benefit of a potential future stream of cash flow, in the event that the Property is leased to third parties.

14. With regard to potential alternatives to the proposed Contribution, Mr. Robinson considered a sale of the Property to an unrelated third party. Mr. Robinson asserted that such a sale would be beneficial to neither the Plan nor Rock Wool, due to the fact that: (a) The Property likely would have to be sold at a discounted amount, approximately 25% to 35% below fair market value; and (b) the sale would likely take between 36 and 48 months to complete.

Based upon Mr. Robinson's representations, the Applicant subsequently determined that a 35%

<sup>5</sup> Mr. Robinson represents that during the course of his due diligence, he had conversations with the Plan Trustees and Rock Wool management as to the potential benefit of the Property to the Plan. During such conversations, Rock Wool management expressed its belief that the Property could generate revenue in the future, either from a sale or through leasing. On the basis of his conversations with Rock Wool management, Mr. Robinson concluded that the Property should serve the Plan well in terms of growth of asset value and, potentially, as a current income stream through a leasing strategy.

discount should be applied to the Property's fair market value to account for marketability limitations.

Accordingly, the Applicant has agreed that the Property's contribution value, after applying the 35% discount, is \$211,250, subject to any fair market value adjustments made by the Appraiser on the transaction date. Thus, the contributed value of the Property would represent 7.69% of the Plan's assets.

15. Rock Wool represents that the Contribution is administratively feasible because the transaction would require a simple re-deeding of the Property to the Plan and would not require the Plan to pay any fees or commissions. Further, Rock Wool believes the Contribution would be in the interests of the Plan and its participants and beneficiaries and protective of their rights because the Contribution would increase the value of the Plan's assets.

16. In summary, it is represented that the proposed transaction satisfies or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary, acting on behalf of the Plan:

(1) Has determined that the Contribution is in the interests of the Plan and protective of the Plan's participants and beneficiaries; and

(2) Will determine that the Property is valued for purposes of the Contribution at the Property's fair market value as of the date of the Contribution, as determined by the Independent Appraiser;

(b) The Independent Fiduciary has performed the following steps in order to make his determinations, described above in paragraph (a):

(1) Reviewed, negotiated, and approved the specific terms of the Contribution; and

(2) Ensured, for purposes of the Contribution, that the Appraisal Report is consistent with sound principles of valuation;

(c) As of the date of the Contribution, the Independent Fiduciary will monitor compliance by Rock Wool with respect to the terms of the Contribution and with the conditions of this exemption, if granted, to ensure that such terms and conditions are satisfied at all times;

(d) The Plan will not pay any commissions, costs or other expenses, including any fees that are currently charged or accrued in the future by the Independent Fiduciary and the Independent Appraiser, in connection with the Contribution; and

(e) The terms and conditions of the Contribution will not be less favorable to the Plan than the terms that would be

negotiated at arm's length between unrelated third parties under similar circumstances.

(f) The contributed value of the Property will be equal to the Property's fair market value, as determined by the Independent Appraiser on the transaction date, less a 35 percent discount to account for certain marketability limitations.

#### Notice to Interested Parties

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plan. It is represented that such interested persons will be notified of the publication of the Notice by first class mail to such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

**Eli Lilly and Company (Lilly) and Elco Insurance Company Limited (Elco) (Together, the Applicants) Located in Indianapolis, IN and North Charleston, SC, Respectively**

[Application No. L-11784]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

#### Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Elco, an affiliate of Lilly, as the term "affiliate" is defined in Section III(a)(1) below, in connection with insurance contracts sold by American United Life Insurance Company (AUL) or any successor insurance company (a Fronting Insurer) to provide optional group term life insurance benefits (Optional Group Life) to participants in the Eli Lilly and Company Life Insurance and Death Benefit Plan (the Life Insurance Plan), a component of the Eli Lilly and Company Employee Welfare Plan (the Plan), provided the conditions set forth in Section II, below, are satisfied.

#### Section II. Conditions

(a) Elco—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Lilly that is described in section 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one state as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this proposed exemption, if granted; or

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance (SCDI) within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by South Carolina, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Life Insurance Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Life Insurance Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) Effective January 1, 2012, there was an immediate and objectively determined benefit to Plan participants and beneficiaries in the form of increased benefits. Any modification to such benefits will at least approximate the increase in benefits that are effective January 1, 2012, as described in the Notice of Proposed Exemption (the Notice) and will continue in all subsequent years of each contract of reinsurance involving Elco and a Fronting Insurer and in every renewal of each contract of reinsurance involving Elco and a Fronting Insurer;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable optional life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of "A" or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Elco will be indemnity insurance only (*i.e.*, the Fronting Insurer will not be relieved of liability to the Life Insurance Plan should Elco be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(g) The Life Insurance Plan retains an independent, qualified fiduciary, as defined in Section III(c) (the Independent Fiduciary) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this proposed exemption have been satisfied;

(h) Participants and beneficiaries in the Plan will receive in subsequent years of every contract of reinsurance involving Elco and the Fronting Insurer the benefit increases effective January 1, 2012, as described in the Notice, or benefit increases no less in value, as determined by the Independent Fiduciary, than the objectively determined increased benefits such participants and beneficiaries received effective January 1, 2012;

(i) The Independent Fiduciary will monitor the transactions proposed herein on behalf of the Plan on a continuing basis to ensure such transactions remain in the interest of the Plan; take all appropriate actions to safeguard the interests of the Plan; and

enforce compliance with all conditions and obligations imposed on any party dealing with the Plan; and

(j) In connection with the provision to participants in the Life Insurance Plan of the Optional Group Life which is reinsured by Elco, the Independent Fiduciary will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by Elco and must determine that the requirements of this proposed exemption, if granted, and the terms of the benefit enhancements continue to be satisfied.

### Section III. Definitions

(a) The term "affiliate" includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Independent Fiduciary" means a person who:

(1) Is not an affiliate of Lilly or Elco and does not hold an ownership interest in Lilly, Elco, or affiliate of Lilly or Elco;

(2) is not a fiduciary with respect to the Plan prior to its appointment to serve as the Independent Fiduciary;

(3) has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) it has appropriate technical training or experience to perform the services contemplated by the exemption, if granted;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year in which the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Lilly, Elco, or affiliates of Lilly or Elco, (including amounts received for services as an independent fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds two percent (2%) of such organization's or individual's gross income from all sources for the prior fiscal year;

(5) No organization or individual which is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent (10%) or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Lilly, Elco, or affiliates of Lilly or Elco during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, there should be no lapse in time between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

### Summary of Facts and Representations<sup>6</sup>

#### Background

1. Eli Lilly and Company (Lilly), headquartered in Indianapolis, IN, is one of the world's largest manufacturers and distributors of pharmaceuticals. Lilly also engages in research and development. Lilly employs over 17,000 employees in the United States and over 38,000 employees worldwide. In 2012, Lilly had net income of approximately \$4.1 billion and revenue of \$22.6 billion.

2. Elco Insurance Company Limited (Elco) is a captive insurance and reinsurance corporation and a wholly-owned subsidiary of Eli Lilly International Corporation, which itself is a wholly-owned subsidiary of Lilly. Elco was incorporated in Bermuda on July 10, 1975, to provide direct coverage to Lilly for various exposures. On June 15, 2011, the State of South Carolina Department of Banking, Insurance, Securities and Health Care Administration issued a Certificate of Authority permitting a branch of Elco to transact the business of a captive insurance company. JLT Insurance Management (Bermuda) Ltd. performs the accounting functions, records retention, and other management and administrative services for Elco. Wilmington Trust performs the same services for the Elco branch. Elco is

<sup>6</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

subject to regulation by the South Carolina Department of Insurance and is required to maintain \$500,000 of capital and surplus at all times. Elco currently provides the following insurance coverage to Lilly and its subsidiaries: Property, Transit, Workers' Compensation, Auto, General Liability, and Product Liability. As of December 31, 2012, Elco had total assets of \$141,923,761 and the gross written premium was \$18,303,690.

3. Lilly sponsors the Eli Lilly and Company Employee Welfare Plan (the Plan), which provides eligible employees with medical, life insurance, dental, disability, death benefits, and other welfare benefits. As of December 31, 2011, the Plan provided benefits to approximately 25,334 active and retired participants. The total gross assets of the Plan as of December 31, 2011, were \$1,372,933,491.

4. The Applicants represent that Lilly currently provides life insurance and death benefits to eligible employees through the Eli Lilly and Company Life Insurance and Death Benefits Plan (the Life Insurance Plan), which is a component of the Plan. Benefits under the Life Insurance Plan include basic life insurance, for which Lilly pays 100 percent of the cost, and optional group term life insurance benefits (Optional Group Life), for which employee participants pay 100 percent of the cost. According to the Applicants, participants in the Life Insurance Plan may elect, at their own discretion, Optional Group Life that includes Supplemental and Dependent Coverage.<sup>7</sup> Supplemental Coverage is equal to one, two, three, four, or five times a participant's base salary. The maximum Supplemental Coverage amount is \$3 million. Dependent Coverage is equal to \$10,000 per child (\$2,000 for children under 6 months of age) and \$10,000, \$20,000, or \$50,000 for a spouse or domestic partner. The Applicants represent that policy premiums are determined by American United Life Insurance Company (AUL), which insures the Optional Group Life. The Applicants state that participants who elect dependent spouse or domestic partner coverage pay premiums based on age and amount of coverage; participants pay child coverage premiums at a fixed rate (currently, \$0.375 per month).

5. The Applicants represent that the Supplemental and Dependent coverages include an Accelerated Benefit Option which allows part of a participant's or

dependent's Optional Group Life benefit to be paid while the participant or dependent is still living if the participant or dependent is terminally ill and has a limited life expectancy.

The Applicants represent that "terminally ill" or "a limited life expectancy" means an injury or sickness that, despite appropriate medical care, is reasonably expected to result in the person's death within twelve months from the date of payment of the Accelerated Life Benefit, as determined by AUL. The Applicants represent that AUL may require that the person be examined at AUL's expense by AUL's choice of physician. The Applicants further explain that utilizing the Accelerated Benefit Option reduces the benefit that would otherwise be payable upon the participant's or dependent's death.

6. The Applicants represent that Lilly reached an agreement with AUL,<sup>8</sup> a party unrelated to Lilly and its affiliates, for AUL to serve prospectively as the direct insurer for the Optional Group Life coverage of the Life Insurance Plan and then contract with Elco to reinsure a portion of such coverage.

#### Past Reinsurance Arrangement With Elco

7. According to the Applicants, the Department recently investigated the Plan with respect to a prior reinsurance transaction that began in 1993 in which Elco had been reinsuring certain Optional Group Life coverage for Lilly that were provided under the Plan. According to the Applicants, after counsel advised Lilly and Elco that, absent an individual exemption, the Department might take the position that the reinsurance arrangement could involve one or more prohibited transactions, reinsurance payments to Elco ceased and Lilly and Elco began a process of correcting the prior transactions. According to the Applicants, Lilly paid correction expenses and took a number of steps to correct the transactions, as described below.

8. The Applicants represent that, as part of Lilly's corrective actions, Keith A. Dall, a principal with Milliman Actuarial Services (Milliman) reviewed the transactions. In a written report, Mr. Dall determined that the premiums paid by the Life Insurance Plan for the optional dependent and life insurance coverages during the period from March 14, 2005, through October 2010,<sup>9</sup> were

within the range of premiums that would have been charged for comparable coverage by insurers comparable to AUL.

9. In addition to the review by Mr. Dall, the Applicants represent that Elco made restorative payments for the Life Insurance Plan's benefit, which represented Elco's profits during the relevant period.<sup>10</sup> The Applicants state that Elco used the Department's Voluntary Fiduciary Correction Program Online Calculator (the Online Calculator) to determine the appropriate amount. The Applicants further represent that in order to ensure that Elco's restorative payments could only be used for the benefit of participants and beneficiaries in the Life Insurance Plan, the payments were made to AUL to be credited to a Premium Pre-Payment Account (the Account) established for the Plan's benefit. According to the Applicants, the Account will pay 25 percent of each premium payment due under the Optional Group Life policies until the Account is exhausted, and during such time, participants electing Optional Group Life will have their premiums reduced by a corresponding 25 percent.<sup>11</sup> The Applicants represent that AUL agreed to credit interest on the Account monthly at a rate equal to the two-year U.S. Treasury Bond rate as of July 27, 2011. The Applicants further represent that, under a written agreement, Elco, AUL, and the Employee Benefits Committee of Eli Lilly and Company (the Committee), acting as plan administrator, recognize that the amounts credited to the Account and any earnings credited thereto are the assets of the Plan, which may not be used for any purposes other than to provide benefits and pay reasonable expenses in accordance with the terms of the Plan. Thus, according to the Applicants, Elco's total restorative payment to the Account was \$3,929,834.64.<sup>12</sup> The Applicants

October 2010, at which time they put the reinsurance arrangement on hold pending the issuance of an individual exemption.

<sup>10</sup> The Applicants explain that profits were measured as the sum of all payments received by Elco from AUL in connection with Elco's reinsurance of the relevant coverages, plus the total interest earned on the premiums received by Elco.

<sup>11</sup> Under the Life Insurance Plan, all premiums for Optional Group Life are paid by participants who elect such coverage.

<sup>12</sup> The Applicants state that the total amount received by Elco from AUL in premiums for reinsurance during the period was \$3,073,906.00. The Applicants explain that total interest earned on the premiums was determined using the Online Calculator, and as of August 1, 2011, lost earnings totaled \$854,878.11. According to the Applicants, on August 1, 2011, Elco made a payment to AUL

<sup>7</sup> The Applicant represents that approximately 68% of employees who are eligible for Optional Group Life purchase such coverage.

<sup>8</sup> The Applicants represent that AUL's overall financial strength is rated A+ by A. M. Best.

<sup>9</sup> According to the Applicants, Lilly and Elco became aware of the prohibited transactions in

represent that the restorative payment did not involve any transaction that could be prohibited within the meaning of section 406(a) or (b) of the Act. In this regard, according to the Applicants, (i) Elco made the restorative payment to AUL for the Plan's benefit and there was no transfer of assets from the Life Insurance Plan or the Plan, or use of assets of the Life Insurance Plan or other Plan assets for the benefit of Elco or Lilly or another party in interest, and (ii) neither the Committee nor any other person made a waiver of remedies that might be available to the Life Insurance Plan or the Plan with respect to the prohibited reinsurance transaction. Furthermore, the Applicant states that, to the extent that AUL's administration of the Account may be deemed to constitute a provision of services to the Life Insurance Plan or the Plan by AUL, such services should be exempted by virtue of the statutory exemption under section 408(b)(2) of the Act.<sup>13</sup>

10. The Applicants represent that the past prohibited reinsurance transactions were reported on the Plan's 2009 Form 5500, filed with the Department in October 2010, and the correction was disclosed on the Plan's 2010 Form 5500. According to the Applicants, the Department examined the prohibited reinsurance transactions as a part of an investigation and determined that it would take no further actions with respect to the matter because Lilly had made the corrective payments described above. The Department issued a final closing letter on December 12, 2012.

#### Proposed Reinsurance Arrangement With Elco

11. The Applicants explain that if this proposed exemption is granted, AUL will serve as the direct insurer for the Optional Group Life part of the Life Insurance Plan and then contract with Elco to provide reinsurance coverage for 75 percent of Optional Group Life risks within the \$250,000 to \$600,000 band of exposure.<sup>14</sup> The Applicants state that

for credit to the Account in the amount of \$3,928,784.11. However, because AUL did not receive this payment until August 2, 2011, a supplementary interest payment was made on August 3, 2011, in the amount of \$1,050.53.

<sup>13</sup> The Department is expressing no view herein as to the Applicants' assertions regarding the absence of prohibited transactions in connection with payment of the restorative payment to AUL for the benefit of the Life Insurance Plan and the Plan. Furthermore, the Department is expressing no view herein as to whether AUL's administration of the Account may be deemed to constitute a provision of services or whether section 408(b)(2) would be applicable to such transaction.

<sup>14</sup> For example, the Applicants explain that if there is a claim on the Optional Group Life policy for \$450,000, AUL will be responsible for 100% of the first \$250,000. Elco would cover 75% of the

the reinsurance agreement with AUL does not have a set term, but either Elco or AUL can terminate the agreement no sooner than 60 days after mailing notice to the other party. AUL may also terminate the agreement: (1) If annual premiums payable for the Optional Group Life drop below \$800,000 or if Lilly ceases to own more than 50 percent of Elco; (2) upon insolvency, bankruptcy, receivership, rehabilitation, or liquidation of Elco; or (3) if Elco is unable or unwilling to meet one or more of its obligations under the agreement and fails to cure the default within 30 days of notification from AUL. The Applicants represent that the benefits to Lilly and Elco of this reinsurance arrangement include eliminating the insurer's margins (in this case AUL), more control over the life insurance program, access to data about the Life Insurance Plan, and the possibility that it could write other employer-specific coverages in the captive.

12. The Applicants state that AUL's reinsurance agreement with Elco (the Reinsurance Agreement) will be "indemnity only"—that is, AUL will not be relieved of its liability for benefits under the Life Insurance Plan if Elco is unable or unwilling to satisfy the liabilities arising from the reinsurance arrangement. The Applicants further represent that the reinsurance arrangement is a "quota share" arrangement, meaning that Elco will receive 75 percent of the premium applicable to the reinsured risk less ceding commission and risk charges.<sup>15</sup> The Applicants represent that although Elco is entitled to a share of the premium, Elco has no discretion with respect to denying a claim made by Lilly's Life Insurance Plan participants and beneficiaries. Finally, the Applicants note that AUL does not insure, and Elco does not reinsure, the basic life insurance benefits under the Life Insurance Plan.

13. The Applicants represent that Elco is a party in interest with respect to the Plan pursuant to section 3(14)(G) of the Act. Therefore, the reinsurance transaction would result in the indirect transfer of Life Insurance Plan premium payments, which are plan assets, to Elco, in violation of ERISA section

remaining \$200,000 (\$150,000) with AUL remaining responsible for 25% of that \$200,000 (\$50,000). So in this scenario, AUL's total exposure is \$300,000 and Elco's total exposure is \$150,000. Additionally, the Applicants represent that in the event Elco becomes insolvent, AUL would be responsible for the entire \$450,000.

<sup>15</sup> The Applicants note that in Fiscal Year 2012, Lilly would have received 51.4% of the total premium. However all premiums to which Elco is entitled continue to be paid to AUL until an individual exemption is issued.

406(a)(1)(D), which prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Additionally, the Applicants represent that the transactions could constitute violations of section 406(b)(1) of the Act, which prohibits a fiduciary from dealing with the assets of a plan in his interest or for his own account, and section 406(b)(3) of the Act, which prohibits a fiduciary from receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving plan assets. In this regard, the Applicants suggest that the Benefits Committee could be found to have used plan assets for the benefit of Lilly's affiliate, Elco, by causing the Life Insurance Plan to pay premiums to AUL under insurance contracts they know will be reinsured by Elco. The Applicants also indicate that the proposed reinsurance transaction could violate section 406(b)(2) of the Act, which prohibits a fiduciary from acting in any transaction involving a plan on behalf of a party whose interests are adverse to the interests of the Plan. In this regard, the Applicants note that, in connection with the subject reinsurance transactions, Elco has an interest that is adverse to the interests of the Plan. Therefore, Lilly could be found to have acted in a transaction involving the Life Insurance Plan on behalf of a party whose interests are adverse to the interests of the Life Insurance Plan by causing Elco to reinsure the Plan's contract with AUL for Optional Group Life. Accordingly, this proposed exemption, if granted, will provide relief from the prohibitions set forth in sections 406(a)(1)(D) and 406(b) of the Act for the reinsurance transactions and the corresponding premiums that Elco will receive.

#### Enhancements

14. The Applicants note that, since January 1, 2012, in anticipation of the proposed exemptive relief described herein, certain enhancements (the Enhancements) have been provided to participants in the Eli Lilly Health Plan (the Health Plan), which is a component of the Plan. In this regard, the Applicants state that the Enhancements described below would not have been added to the Health Plan but for the proposed arrangement that is the subject of this notice. The Applicants state that Lilly is bearing the entire cost of such Enhancements. The Applicants explain that all programs are voluntary and consist of the following:

(a) Enhanced Coaching Program— provides additional coaching for health conditions not previously covered. The

program also provides a new predictive model to identify participants who would most likely benefit from coaching;

(b) Biometric Screenings—participants have multiple options in which to participate in the voluntary screenings. The screenings include data on height, weight, waist circumference, full lipid panel, and glucose testing. Each participant can obtain a well-being report through a web portal and then share it with his or her personal physician, health coach, or employee health services practitioner to help detect health risks earlier. If a participant receives a result that is critically abnormal, the participant receives a follow-up call to explain the results and any available Plan or wellness program resources for that particular condition or risk factor; and

(c) Enhanced Health Risk Assessment/Well-Being Assessment—a more comprehensive voluntary health and wellness assessment will combine questions on physical and emotional health, productivity, work environment, and healthy behaviors. This assessment is intended to help employees better understand their health risks and areas where behaviors may hinder their health. It will be used in connection with the biometric screenings to communicate with individuals about voluntary coaching programs that would be medically beneficial to such individuals based on their particular condition or risk factors.<sup>16</sup>

15. The Applicants represents that Lilly has incurred substantial costs related to the enhanced wellness program. The Applicants represent that, although it is difficult to break down in its entirety, the following costs are associated with the enhanced wellness program: On-site health coach for Indianapolis sites (\$200,000 per year); Web site portal (\$250,000 per year); On-site biometric screenings for all U.S. employees (approx. \$50/employee); and Counseling, support groups, one-on-one coaching, and smoking cessation products (approx. \$12,000 per year).

16. The Applicants represent that if the Enhancements are modified, alternative enhancements of at least the same approximate value, as determined by an independent, qualified fiduciary will continue in all subsequent years of the reinsurance arrangement.

#### Independent Fiduciary

17. In connection with this exemption request, the Applicants represent that

they have retained Keith A. Dall, from Milliman, to act as the Independent Fiduciary (the Independent Fiduciary) on behalf of the Plan for the purpose of evaluating, and if appropriate, approving the subject transactions.<sup>17</sup> In this regard, Mr. Dall is responsible for conducting a due diligence review and analysis of the proposed transactions and for providing a written opinion explaining why he believes the arrangement meets the Department's requirements for an administrative exemption. The Applicants represent that Mr. Dall will also determine whether the conditions of the proposed exemption and the terms of the benefits enhancements continue to be satisfied.

18. Mr. Dall certifies that he is qualified to serve as the Independent Fiduciary in that, among other things, he has appropriate training, experience, and facilities to act on behalf of the Plan in accordance with the fiduciary duties and responsibilities prescribed by the Act. Mr. Dall represents that he and Milliman are independent of the parties to the covered transactions because Milliman's gross income from Lilly for the prior fiscal year does not exceed two percent of Milliman's gross annual income. Mr. Dall also represents that neither he nor Milliman was a fiduciary with respect to the Plan prior to this appointment. Moreover, Mr. Dall represents that neither he nor Milliman is an affiliate, officer, director, employee, or partner of Elco, Lilly, or AUL. Furthermore, the Applicants state that Milliman is not a corporation or partnership in which Lilly or Elco has an ownership interest or is a partner and that Milliman does not, on its own account, own any shares or otherwise have an ownership interest in Lilly, Elco, or any of their affiliates. Finally, the Applicants represent that Milliman will acknowledge in writing its acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary. Moreover, neither Milliman, nor any partnership or corporation of which Milliman is an officer, director, or ten percent or more partner or shareholder, intends to acquire any property from, sell any property to, or borrow funds from Lilly, Elco, or their affiliates while serving as the Independent Fiduciary or for six months after serving as the Independent Fiduciary. If it becomes necessary in the future to appoint a successor Independent Fiduciary to

replace Milliman, the Applicants represent that they will notify the Department sixty (60) days in advance of such appointment. Any successor will have the same, or substantially similar, responsibilities, experience, and independence as Milliman. If such a successor is appointed, the Applicants represent there will be no lapse in time between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

19. The Applicants represent that in connection with the reinsurance transactions, Mr. Dall reviewed, among other things: A draft of Eli Lilly and Elco's request to the Department for an administrative exemption; Elco's audited financial statements for the year ending December 31, 2012; the insurance rates between Lilly and AUL; the reinsurance agreement between AUL and Elco; and documentation summarizing the Enhancements. Furthermore, Mr. Dall produced an Independent Fiduciary Report (the Independent Fiduciary Report) wherein he considered the covered transactions and made the following determinations:

Mr. Dall represents that Milliman compared the insurance rates between Lilly and AUL to rates for similar group supplemental life and dependent life benefits and found them to be competitive and within normal ranges. In addition to this, Mr. Dall represents that Milliman reviewed the premium rate history with the claims and expense history on this block of business and found the loss ratios to be reasonable relative to the industry and consistent with the intended loss ratio stated in the AUL actuarial memorandum provided by AUL. Mr. Dall represents that Milliman believes that other insurance carriers would offer similar rates given the experience on this block of business. Additionally, Mr. Dall confirmed that he received a copy of the reinsurance agreement between AUL and Elco and the Plan pays no commissions with respect to the reinsurance with Elco.

Mr. Dall also confirmed that Elco is licensed to conduct insurance transactions, including reinsurance transactions, in the State of South Carolina, which requires captive reinsurers to file an annual actuarial opinion prepared by an independent actuary. Additionally, Mr. Dall confirmed that AUL, the Fronting Insurer, received a rating of A+ from A.M. Best, as of May 8, 2013.

Finally, Mr. Dall determined that the Enhancements described above will result in an immediate and objectively determined benefit to the Plan's participants and beneficiaries through,

<sup>16</sup> The Applicants note that the Plan may offer more incentives to encourage participants to undergo biometric screenings and complete the Well-Being Assessment.

<sup>17</sup> The Applicants state that Mr. Dall, or such other Independent Fiduciary as shall be retained, shall be paid by Lilly.



among other things, the offer of coaching, biometric screenings, and a well-being assessment.

#### Statutory Findings

20. The Applicants represent that the proposed exemption is administratively feasible. The reinsurance of the Optional Group Life contracts is governed by a reinsurance agreement between AUL and Elco that is subject to review by the Independent Fiduciary and can be audited to determine compliance with the conditions of this proposed exemption, if granted. Furthermore, the proposed exemption will not require continued monitoring or other involvement by the Department.

21. The Applicants also represent that the proposed exemption is in the interest of the Plan because it will include a material increase in Plan benefits for participants and beneficiaries through the Enhancements, described above. Specifically, Lilly amended the Plan effective January 1, 2012, to, among other things: (a) Enhance the Coaching Program offered under the Health Plan's wellness programs; (b) provide new biometric screenings under the wellness programs; and (c) enhance the Health Risk Assessment offered under the wellness programs. Additionally, the Applicants represent that captive reinsurance results in lower premiums because the captive does not charge "margin." According to the Applicants, this, in turn, allows Lilly to create additional value in the Plan or lower its costs and those of its employees in contributory arrangements.

22. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because this proposed exemption, if granted, will require an Independent Fiduciary to review and approve the reinsurance transaction and the Enhancements. Moreover, the Applicants state that the Independent Fiduciary will monitor the covered transactions on a continuing basis to ensure such transactions remain in the interests of the Plan, take all appropriate actions to safeguard the interests of the Plan, and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan. Specifically, this proposed exemption will require that the Independent Fiduciary analyze the subject transactions and render an opinion regarding whether certain conditions in this proposed exemption were satisfied, including that: The Life Insurance Plan pays no more than adequate consideration for the Optional

Group Life contracts; the Plan pays no commissions with respect to the direct sale or reinsurance of such contracts; as of January 1, 2012, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plan in the form of increased benefits, and if the benefits are materially modified, benefits of the same approximate value will continue in all future years of reinsurance and in every renewal of reinsurance; the reinsurance arrangement is indemnity insurance only; any Fronting Insurer will have a financial strength rating of "A" or better from A.M. Best; the Fronting Insurer calculates premiums according to formulae that are similar to formulae used by other insurers who provide comparable Optional Group Life coverage under similar programs; the premiums charged by the Fronting Insurer are reasonable and comparable to the premiums charged for the same coverage, under similar programs by the Fronting Insurer or its competitors who have the same or better rating from A.M. Best. Finally, the Independent Fiduciary will render an opinion about whether participants and beneficiaries in the Plan received, as of January 1, 2012, an immediate and objectively determined benefit through the Enhancements, and if the Enhancements are materially modified, Enhancements of the same approximate value in all future years of reinsurance and in every renewal of reinsurance.

#### Summary

23. In summary, the Applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act since, among other things:

(a) Elco meets the affiliation, licensure, certification, and examination requirements specified in Section II(a)(1)–(5) of this proposed exemption;

(b) The Life Insurance Plan will pay no more than adequate consideration for the insurance contracts;

(c) No commissions will be paid by the Life Insurance Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) Effective January 1, 2012, there was an immediate and objectively determined benefit to Plan participants and beneficiaries in the form of increased benefits. If the benefits are materially modified, benefit increases of the same approximate value, as determined by the Independent Fiduciary, will continue in all subsequent years and in every renewal of each contract of reinsurance involving Elco and a Fronting Insurer. Any such modification in benefits will

approximate the increase in benefits that are effective January 1, 2012;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of "A" or better from A.M. Best, and the reinsurance arrangement between the Fronting Insurer and Elco will be indemnity insurance only;

(g) The Life Insurance Plan retains an Independent Fiduciary or successor to such fiduciary to analyze the transactions and to render an opinion that certain requirements of the proposed exemption, if granted, have been satisfied;

(h) Participants and beneficiaries in the Plan will receive in subsequent years of every contract of reinsurance involving Elco and the Fronting Insurer the benefit increases effective January 1, 2012, or benefit increases no less in value, as determined by the Independent Fiduciary, than the objectively determined increased benefits such participants and beneficiaries received effective January 1, 2012;

(i) The Independent Fiduciary will monitor the transactions proposed herein on behalf of the Plan on a continuing basis to ensure such transactions remain in the interest of the Plan; take all appropriate actions to safeguard the interests of the Plan; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan; and

(j) The Independent Fiduciary will review any contract for, and any renewal of, the reinsurance of risks and the receipt of premiums therefrom by Elco and will determine whether the requirements of this proposed exemption and the terms of the Enhancements, as described herein, continue to be satisfied.

#### Notice to Interested Persons

Lilly will provide notice of the proposed exemption to all employees eligible to participate in the Plan within fourteen (14) calendar days of publication of the proposed exemption in the **Federal Register**. Lilly will

provide the notice to all employees eligible to participate in the Plan via first-class mail. In addition to the proposed exemption, as published in the **Federal Register**, Lilly will provide all employees eligible to participate in the Plan with a supplemental statement, as required, under 29 CFR 2570.43(a)(2). The supplemental statement will inform the employees eligible to participate in the Plan of their right to comment on and to request a hearing with respect to this proposed exemption. The Department must receive all written comments and/or requests for a hearing within 44 days of the publication of this proposed exemption in the **Federal Register**. The Department will make all comments available to the public.

**Warning:** If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Brown of the Department, telephone (202) 693-8352 (This is not a toll-free number.)

**Robert A. Handelman Roth IRA No. 2 (the New IRA) Located in Akron, Ohio**

[Application No. D-11798]

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the proposed purchase by the New IRA of a 100% ownership interest (the Interest) in RAH Properties Mill Street, Ltd. (the Company) from Robert A. Handelman (Mr. Handelman), the New IRA owner and a disqualified person with respect to the New IRA,<sup>18</sup> provided the following conditions are met:

(a) The purchase is a one-time transaction for cash;

(b) At the time of the purchase, the price paid by the New IRA for the Interest is equal to the fair market value of such Interest, as established by a qualified independent appraiser in an updated appraisal report as of the date of the purchase;

(c) The terms and conditions of the purchase are at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party;

(d) The New IRA does not pay any commissions or other expenses in connection with the purchase, including the rollover of the cash distribution from the Robert A. Handelman Roth IRA No. 1 (the Existing IRA) to the New IRA;

(e) Mr. Handelman pays all appropriate taxes that are associated with the rollover of the cash distribution from the Existing IRA to the New IRA in connection with the purchase; and

(f) Mr. Handelman receives no compensation from the New IRA or the Existing IRA for his role as manager of the Company.

### Summary of Facts and Representations

1. The Existing IRA is a Roth individual retirement account established under section 408(a) of the Code on May 1, 2012, by Robert A. Handelman, the IRA's sole participant. Beneficiaries of the Existing IRA are Mr. Handelman's children: Julie Wesel, Susan Masturzo, Sheryl Loudon, Lisa Handelman Jones, and Leslie Lopes. Fidelity Investments (Fidelity) is the Existing IRA's custodian. As of December 31, 2013, the Existing IRA had total assets of \$760,282.63.

2. The New IRA is also a Roth individual retirement account that was established under section 408(a) of the Code on May 1, 2012, by Robert A. Handelman, the New IRA's sole participant. Beneficiaries of the New IRA are Mr. Handelman's children. PENSICO Trust Company, a non-depository trust company, is the New IRA's custodian. Although the New IRA currently holds no assets, it will be funded within 60 days after the exemption is granted.

3. Mr. Handelman has a 100% ownership interest (the Interest) in the Company, a limited liability company formed on July 14, 1998, and located in Akron, Ohio. The Company's operations consist exclusively of leasing commercial office real estate in a building located at 55 East Mill Street, Akron, Ohio (the Property). The Property, which is the Company's sole asset, is improved by a two-story brick office building that contains 11,448

square feet of space. The building also includes a partially-finished basement. The Property is not subject to a mortgage.

As of December 31, 2013, the Company had total assets of \$431,984.25, as reported in the Company's unaudited financial statements.<sup>19</sup> The Property is carried on the Company's balance sheet at \$247,314. Mr. Handelman manages the Company but he receives no compensation from the Company.

4. Mr. Handelman purchased the Property in 1984 for \$375,000 from Community Federal Savings Loan Association, an unrelated party. On December 28, 1984, Mr. Handelman, as lessor, and Chemstress Consultant Company, a company owned by Mr. Handelman, as lessee, entered into a lease of the Property (the Chemstress Lease) commencing on January 1, 1985. The Chemstress Lease provided for an initial five-year term, with two five-year renewal options. On July 31, 1998, Mr. Handelman contributed the Property to the Company. At the expiration of the second lease renewal period, the Chemstress Lease was extended on a month-to-month basis from January 1, 2000 until May 31, 2005. The Property was vacant from June 1, 2005 until July 14, 2005.

5. Since July 14, 2005, the Company has leased the Property to the Akron Summit County Community Action, Inc. (ASCCA), an unrelated party.<sup>20</sup> The current lease is a three-year lease, which runs from May 1, 2013 through April 30, 2016. The current monthly rent is \$14,052.90. The lease is also subject to two three-year renewal options.

6. An individual exemption is requested from the Department to allow the New IRA to purchase the Interest from Mr. Handelman. The Interest consists of the Property and the Company's rights as lessor under the ASCCA lease. To enable the IRA to purchase the Interest, Mr. Handelman will take a distribution in cash from the Existing IRA in the amount of the purchase price and will roll over the full cash distribution into the New IRA. Mr. Handelman represents that he cannot use the Existing IRA for the purchase because Fidelity, the custodian, cannot hold real estate.

It is represented that Mr. Handelman hopes that the New IRA will continue for many years to provide for his children, whom he has designated as the beneficiaries of such IRA. Given

<sup>19</sup> It is represented that the Company does not have audited financial statements.

<sup>20</sup> The first lease between the Company and ASCCA expired on April 30, 2013.

<sup>18</sup> Pursuant to 29 CFR 2510.3-2(d), the New IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

these intentions, Mr. Handelman would like the New IRA to invest in an asset that will continue to generate income and appreciation for the benefit of his family for the long term. Thus, he believes the New IRA's ownership of the Interest will fulfill this goal. Further, Mr. Handelman notes that the stock market is very volatile and fixed income securities currently have very low yields with the potential for substantial principal depreciation as interest rates rise. Therefore, Mr. Handelman does not believe other assets such as these will provide the New IRA with the long-term stability and growth in value that he seeks for such IRA.

7. The New IRA will acquire the Interest for the fair market value of such Interest, as determined by a qualified independent appraiser in an appraisal that is updated on the date of the purchase. The New IRA will pay cash for the Interest and it will not pay any commissions or other expenses in connection with the purchase, or in connection with the rollover of the cash distribution from the Existing IRA to the New IRA. The terms and conditions of the purchase will be at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party. Finally, Mr. Handelman will pay all appropriate taxes that are associated with the transfer of any assets from the Existing IRA to the New IRA.

8. Section 4975(c)(1)(A) of the Code prohibits, in part, any direct or indirect sale of any property between a plan and a disqualified person. Section 4975(c)(1)(D) of the Code prohibits any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. The term "disqualified person" is defined under section 4975(e)(2)(A) of the Code to include a person who is a fiduciary. Section 4975(e)(3) of the Code defines the term "fiduciary" to include, in pertinent part, any person who exercises any discretionary authority or control respecting management or disposition of its assets. In addition, section 4975(c)(1)(E) of the Code prohibits a fiduciary from dealing with the income or assets of a plan in the fiduciary's own interest or for his or her own account. Finally, section 4975(e)(1)(B) of the Code defines the term "plan" to include an individual retirement account described in section 408(a) of the Code.

As a fiduciary with respect to the New IRA, Mr. Handelman is a disqualified person with respect to such IRA under section 4975(e)(2)(A) of the Code. Accordingly, because Mr. Handelman is a disqualified person with respect to the

New IRA, the proposed purchase by the New IRA of Mr. Handelman's 100% Interest in the Company would be a transaction prohibited by section 4975(c)(1)(A) of the Code, and constitute a direct transfer to Mr. Handelman of the assets of the New IRA in violation of section 4975(c)(1)(D) of the Code. In addition, the proposed purchase would violate section 4975(c)(1)(E) of the Code because, as a fiduciary, Mr. Handelman would be engaged in a prohibited act of self-dealing by dealing with the assets of the New IRA for his own interest or his own account in connection with the purchase. Accordingly, in the absence of an administrative exemption, the proposed transaction would violate the foregoing Code provisions.

9. The Property underlying the Interest has been appraised by Russell L. Kitzberger, GAA, RAA, Certified General Appraiser of Pointer Appraisal Services, LLC (Pointer), which is located in Akron, Ohio. Mr. Kitzberger represents that he has no familial or personal relationship with Mr. Handelman or the Company, and that Pointer derived less than 1% of its 2013 annual income and less than 1% of its 2014 annual income from Mr. Handelman.

In an independent appraisal report dated July 19, 2013 (the Property Appraisal), Mr. Kitzberger stated that he considered the Sales Comparison Approach, Income Approach and Cost Approach to valuation. Based on the sales data in the Property Appraisal, Mr. Kitzberger characterized the real estate market as a "buyer's market," with few properties trading due to poor economic and general real estate market conditions. Therefore, he gave the most weight in his valuation of the Property to the Income Approach, stating that the most probable price the Plan would receive on the Property would be determined by the purchasing party weighing the income production of the Property under the current market conditions for sale of leased fee estates. Based on this valuation, Mr. Kitzberger determined that, as of July 10, 2013, the Property had a leased fee value of \$610,000. As of the same date, Mr. Kitzberger also determined that the Property had a projected lease rate of \$13.00 per square foot for the first and second floor, and \$7.00 per square foot for the basement area, bringing the potential gross annual rental income to \$99,580 or \$8,298 per month.

In a letter addendum dated November 11, 2014, Mr. Kitzberger updated the Property Appraisal. Mr. Kitzberger represents that he completed the update to the Property Appraisal in a manner similar to the prior report by updating

the prior information with more recent sales, lease and cost data. Based on this more recent data, Mr. Kitzberger concluded that, as of November 10, 2014, the fair market value of the Property remained at \$610,000 and that the projected lease rates and rental income for the Property remained unchanged.

10. In addition to the Property valuation, the Interest has been appraised by Jason R. Bogniard, MBA, ASA, AVA, EA of Apple Growth Partners (Apple Growth), a regional business advisory firm of certified public accountants and industry experts, having expertise in business valuation, forensic accounting and litigation support services, and employee benefit planning. Apple Growth has offices in Akron and Independence, Ohio.

Mr. Bogniard certifies that he is independent of Mr. Handelman and the Company, and that the only services he has provided to either are the valuation services related to the appraisal of the Company. Further, Mr. Bogniard states that invoices and/or payment for services rendered to Mr. Handelman or the Company by Apple Growth represented less than 1% of Apple Growth's 2013 gross revenues and less than 1% of Apple Growth's 2014 gross revenues.

In rendering this valuation, Mr. Bogniard represents that he considered, among other things, the following relevant factors, which are specified in Revenue Ruling 59-60: (a) The history and nature of the business; (b) the economic outlook of the United States and that of the specific industry in particular; (c) the book value of the subject entity and the financial condition of the business; (d) the earning capacity of the entity; (e) the dividend-paying capacity of the entity; (f) whether or not the firm has goodwill or other intangible value; (g) sales of the stock and size of the ownership block to be valued; and (h) the market price of publicly-traded stocks of corporations engaged in similar industries or lines of business. In addition, Mr. Bogniard states that he examined the following documents in preparing the valuation of the Interest: (a) Federal income tax returns for Mr. Handelman and his wife for the years 2008 through 2012; (b) tax asset detail reports for 2012 and 2013; (c) the Property Appraisal; (d) the ASCCA lease; and (e) the real estate tax assessment for the Property.

11. In an appraisal report dated September 12, 2013 (the Company Appraisal), Mr. Bogniard took into consideration the Property Appraisal, among the other factors listed above, to

value the Interest. Using the Cost (*i.e.*, the Net Asset Value) Approach to valuation,<sup>21</sup> Mr. Bogniard concluded that the Interest had an equity value of \$610,000 as of July 31, 2013. Adjusting the value for lack of marketability, Mr. Bogniard determined that the fair market value of the Interest was \$580,000 (\$610,000 less a five percent discount for lack of marketability, rounded), as of the same date.

In a letter dated November 17, 2014, Mr. Bogniard updated the Company Appraisal. Based on his review of Company financial statements through October 31, 2014, Summit County Auditor tax appraised values for the Property, the most recent Property valuation by Pointer, regional economic indicators, and cost of capital rates of return as of November 17, 2014, Mr. Bogniard concluded that the fair market value of the Interest remained at \$580,000. Mr. Bogniard will again update the Company Appraisal on the date of the purchase.

12. It is represented that the proposed transaction is administratively feasible because it will be easy to implement and will not require oversight by the Department. Additionally, all distributions by the Company will be made to the New IRA which will have control of the distributed funds.

It is represented that the New IRA's purchase of the Interest is in the interest of such IRA, primarily because the acquisition would occur in a time of historically low commercial real estate values that are related to the current economic downturn. It is also represented that the rent owing to the Company under the ASCCA lease is favorable when compared to rents being collected on similar commercial properties.<sup>22</sup> Moreover, it is represented that the Property's location in downtown Akron should provide the New IRA assurance that either the current lessee or another lessee will lease the Property when the ASCCA lease expires on April 30, 2016 because market rent for commercial real estate has returned to the levels prevalent prior to the onset of the global economic crisis in late 2008.

Finally, it is represented that the proposed transaction is protective of the rights of the participants and

<sup>21</sup> Mr. Bogniard represented that on a going concern basis, earnings power, whether expressed in an income or market approach, is normally given the predominant consideration of the major factors. However, because the Company is a real estate holding company holding only a single parcel of commercial property, Mr. Bogniard represented that he utilized the value derived from the Net Asset Value method.

<sup>22</sup> See Representation 9 regarding comparable rental payments in the Akron, Ohio area.

beneficiaries of the New IRA because this is a permissible investment that has been properly valued through a recent valuation. Further, Mr. Handelman has agreed to pay the appropriate taxes in connection with the distribution of assets from the Existing IRA to the New IRA.

13. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The purchase will be a one-time transaction for cash;

(b) At the time of the purchase, the price paid by the New IRA for the Interest will be equal to the fair market value of such Interest, as established by a qualified, independent appraiser in an updated appraisal report as of the date of the purchase;

(c) The terms and conditions of the purchase will be at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party;

(d) The New IRA will not pay any commissions or other expenses in connection with the purchase, including the rollover of the cash distribution from the Existing IRA to the New IRA;

(e) Mr. Handelman will pay all appropriate taxes that are associated with the rollover of the cash distribution from the Existing IRA to the New IRA in connection with the purchase; and

(f) Mr. Handelman will receive no compensation from the New IRA or the Existing IRA for his role as manager of the Company.

#### Notice to Interested Persons

As Mr. Handelman is the sole participant of the New IRA, it has been determined that there is no need to distribute the Notice of Proposed Exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

All comments will be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

#### Roofers Local 195 Pension Fund (the Pension Fund) and Roofers Local 195 Joint Apprenticeship Training Fund (the Training Fund) Located in Cicero, NY

Exemption Application Nos. D-11809 and L-11810

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended, (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>23</sup> If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, shall not apply to the sale (the Sale) of a building located at 6200 NYS Route 31, Cicero, New York (the Building) by the Pension Fund to the Training Fund, provided that the following conditions have been met:

(a) At the time of the Sale, the Pension Fund receives a one-time cash payment in exchange for the Building, equal to the fair market value of the Building as established in an appraisal (the Appraisal) by a qualified, independent appraiser, updated on the date of the Sale, and provided to the Department no later than 60 days from the date of the Sale;

(b) The Training Fund does not finance more than 80% of the cost of its purchase of the Building, and any financing must be with an independent, third-party bank (the Bank);

(c) The Training Fund pays no fees, commissions or other expenses associated with the Sale, and no brokerage commissions associated with the Sale may be paid by either the Training Fund or the Pension Fund;

(d) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Training Fund, represents the Training Fund's interests for all purposes with respect to the Sale, including the financing of the Building, and must: Determine that it is in the best interest of the Training Fund to proceed with the Sale; review and approve the methodology used in the Appraisal; and ensure that such methodology is properly applied by the qualified, independent appraiser in determining the fair market value of the Building on the date of the Sale;

<sup>23</sup> For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(e) The Board of Trustees of the Pension Fund (the Pension Trustees), prior to entering the Sale, must determine that the Sale is feasible, in the interest of the Pension Fund, and protective of the rights of participants and beneficiaries of the Pension Fund;

(f) The Pension Fund is not a party to the commercial mortgage between the Training Fund and the Bank;

(g) Under the terms of the loan agreement between the Bank and the Training Fund, in the event of a default by the Training Fund, the Bank has recourse only against the Training Fund's interest in the Building and not against the general assets of the Training Fund; and

(h) The terms and conditions of the Sale are at least as favorable to each Fund as those obtainable in an arms-length transaction with an unrelated third party.

### Summary of Facts and Representations<sup>24</sup>

#### Background

1. The Roofers Local 195 Pension Fund (the Pension Fund) is a terminated qualified multiemployer defined benefit pension plan established by and between the Roofers Contractors' Association, Inc. and the United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 195 (the Union). The Pension Fund previously held investments with Madoff Investments, Inc. whereby the Pension Fund lost most of its value. Subsequently, the Pension Plan terminated in accordance with section 4041A(a)(2) of ERISA after finalizing a resolution with the Pension Benefit Guaranty Corporation (the PBGC). As of July 9, 2014, the Pension Fund had no active participants, 96 retired participants and 160 terminated vested participants. There are currently 18 beneficiaries receiving benefits from the Pension Fund. As of June 26, 2014, the Pension Fund had approximately \$857,049 in assets, and liabilities of \$2,156,354.

2. The Roofers Local 195 Joint Apprenticeship Training Fund (the Training Fund) is a multiemployer apprenticeship plan established pursuant to a collective bargaining agreement between the Roofing Contractors Association of Central New York and the Union for the purpose of providing necessary construction equipment, qualified instructors, books, models, sites where instruction and

practice on such equipment can be available to persons eligible under the Training Fund's program, and related benefits. As of July 9, 2014, the Training Fund had 223 participants and no beneficiaries, as it does not offer any kind of death benefits to participants. As of June 26, 2014, the Training Plan had \$949,860 (in cash and investments) in assets, and liabilities of \$5,212.

3. According to the Pension Fund and the Training Fund (together, the Funds), the current members of the boards of trustees (the Trustees, or the Applicant) of the Pension Fund and the Training Fund each include an equal number of employer-appointed trustees (Employer Trustees) and Union-appointed trustees (Union Trustees). Furthermore, the Applicant represents that five out of the six Trustees on the boards are common to each Fund. Finally, the Applicant represents that the Training Fund contributed to the Pension Fund on behalf of some of its employees.

4. The Applicant represents that the Pension Fund has been receiving funding for benefits from the PBGC since July 2009 in the form of loans. As of June 30, 2014, the outstanding loan amount, including principal and interest, totals \$2,178,863.80. The PBGC's involvement also includes an ongoing review of plan benefits and expenses that are paid with PBGC advances.<sup>25</sup> On July 28, 2010, the Applicant notified the PBGC that a plan termination by mass withdrawal had occurred as of June 28, 2010, and that employers had been assessed withdrawal liability. The Applicant represents that it has since reached a global resolution of funding issues with the PBGC and has received approval from the PBGC for the proposed transactions described herein.

5. The Pension Fund and the Training Fund have also been the subject of two investigations by the Department. In this regard, on March 26, 2009, the Pension Fund was notified that it was the subject of an investigation under Title I of ERISA by the Department's Boston Regional Office concerning investments related to the fraud perpetrated on the Pension Fund by Bernard L. Madoff Investment Securities LLC. The Department found that the Trustees of the Pension Fund had breached their fiduciary obligations to the Plan and violated several provisions of ERISA. The Trustees restored approximately \$34,712 to the Plan, representing certain administrative expenses, plus interest,

associated with the violations. On June 10, 2011, the Department indicated that it had concluded its investigation of the Pension Fund and of the activities of its Trustees based on their corrective actions.

6. On August 22, 2011, the Applicant was notified that the Training Fund was the subject of another investigation by the Department. In this regard, the Applicant voluntarily submitted itself to investigation by the Department's Boston Regional Office. The Department found that the Training Fund reimbursed medical service providers for asbestos related physical examinations in excess of the maximum \$125 limit provided in the Plan. By letter dated May 29, 2013, the Department indicated that it had concluded its investigation of the Training Fund and of its Trustees, and concluded further that based on the corrective actions taken by the Trustees, including restoration of \$8,177.68 to the Training Fund, no further action would be taken.

#### The Sale

7. The Applicant represents that the Pension Fund purchased the real property located at 6200 NYS Route 31, Cicero, New York (the Building), in 1999, from unrelated third parties at a price of \$230,000. The Applicant represents further that the Building was originally constructed as a State Police barracks in 1972. The Building sits on 1.28 acres of land and is comprised of 3,575 square feet of class B office space and meeting areas, a built-in garage and a class C finished basement. Other improvements to the property include an asphalt-paved parking lot, a chain-link fence enclosed storage area, and a one-story wood frame storage shed. According to the Applicant, the Building was renovated in 1999 by the Pension Fund for use as a union hall and administrative offices. As of July 29, 2013, the appraised value of the Building was \$505,000.

8. The Applicant represents that, in connection with the Pension Fund's financial losses and termination, the PBGC has indicated a preference that the Pension Fund sell the Building, as a sale of the Building would improve the liquidity of the Pension Fund and allow it to pay benefits. The Trustees of the Pension Fund considered PBGC's recommendation and agreed that the Building should be sold.

9. The Applicant represents that the Training Fund wishes to purchase the Building from the Pension Fund (the Sale) in order to maintain the current training facilities and avoid any disruption in training. Furthermore, the

<sup>24</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

<sup>25</sup> The Applicant states that, in the context of multiemployer plans, the PBGC permits the continued administration of the plan by its board of trustees.

Applicant states that, if the Pension Fund were forced to sell the Building to an unrelated third party, additional costs would be incurred by the Training Fund to construct or upgrade new property to meet the training needs of the roofing industry. Moreover, the Applicant states that the Pension Fund and other entities intend to lease office space in the Building from the Training Fund following the Sale, providing a stream of income to the Training Fund.<sup>26</sup> The Applicant represents that the proposed price for which the Training Fund will purchase the Building from the Pension Fund is equal to fair market value of the Building, as established in an appraisal conducted by a qualified independent appraiser and updated on the date of the Sale. An Independent Fiduciary, Syracuse Securities, Inc., is responsible for monitoring and approving the transaction on behalf of the Training Fund. The Independent Fiduciary recommends a down-payment of 20% of the purchase price with the remaining 80%, of an amount not to exceed \$400,000, financed by a commercial mortgage.

10. Section 406(a)(1)(A) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan. The Applicant states that, because the Pension Fund is a party in interest to the Training Fund under section 3(14)(C) of the Act, the Sale would constitute a prohibited transaction under sections 406(a)(1)(A) and (D) of the Act. Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or represent a party) whose

interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Because certain officers of the Pension Fund are also Trustees of the Training Fund, and they may have an interest in causing the Training Fund to engage in the transaction with the Pension Fund, the Sale may also constitute a prohibited transaction under sections 406(b)(1) and 406(b)(2) of the Act. Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act for the Sale.

#### The Appraisal

11. The Applicant represents that, in connection with the proposed Sale, a qualified, independent appraiser conducted an appraisal of the Building (the Appraisal). In its July 19, 2013, appraisal report, Pomeroy Appraisal Associates, Inc. (Pomeroy) valued the Building at \$505,000.

12. Pomeroy represents that Donald A. Fisher, the appraiser who signed its appraisal report, has worked as an appraiser for Pomeroy since 1974. Pomeroy represents that Fisher is a New York-certified General Appraiser, a Member of the Appraisal Institute (MAI), and an Accredited Rural Appraiser (ARA). Pomeroy represents that there is no relationship between Pomeroy and the Funds. Pomeroy represents and warrants that it meets the revenue test for a qualified independent appraiser for 2013, the year of the appraisal, as the fees received were less than 2% of its annual revenues for income tax year 2012.

13. Pomeroy represents that it utilized the Sales Comparison and Income Capitalization approaches, and arrived at a final estimate of value by calculating the weighted average of the two valuation methods. In using the Sales Comparison Approach, Pomeroy represents that it evaluated six recent sales similar in location, size, age and competitive class. Pomeroy adjusted those prices to account for the disparities in rights conveyed, financing terms, conditions of sale, market conditions, location, land area, building size, building condition and age, building utility and design, office space percentage, and other features. Based on its analysis, Pomeroy represents that it derived a value of \$140 per square foot for the subject property, or \$500,000.

14. In utilizing the Income Capitalization Approach, Pomeroy represents that it evaluated the leasing information from five tenant spaces within the North Syracuse marketplace which were negotiated within the previous five years. Based on its

analysis, Pomeroy represents that it derived a total value of \$512,000 for the subject property.

15. Pomeroy represents that based on the quality of the information provided by the two approaches, they assigned a weight of 60% to the Sales Comparison Approach and 40% to the Income Capitalization Approach, arriving at its valuation of the subject property at \$505,000.

#### The Independent Fiduciary's Report

16. Syracuse Securities, Inc., was retained to serve as the Independent Fiduciary to the Training Fund, with Laurence Smith as the Lead Consultant, pursuant to the Independent Fiduciary Services Agreement. The Applicant represents that Syracuse Securities has acted as a commercial mortgage analyst, broker, and mortgage banker since the mid-1980s. Syracuse Securities has also acted as a residential mortgage banker since 1974. The Applicant represents that the Independent Fiduciary was initially engaged in 2010 when the parties first began considering the Sale of the Building in accordance with a prohibited transaction exemption, and when the initial application for the corresponding prohibited transaction exemption was filed. However, the Independent Fiduciary has served the Training Fund only on an "as needed" basis in connection with the Sale of the Building. The Training Fund is paying for the services of the Independent Fiduciary.

17. Syracuse Securities represents that it previously served as an Independent Fiduciary for other ERISA plans in connection with real estate transactions. Syracuse Securities represents that it consulted with ERISA counsel in connection with this transaction regarding its fiduciary duties.

18. The Independent Fiduciary represents that, prior to this application, it had no relationship with the Pension Fund or Training Fund. Further, the Applicant represents that the Independent Fiduciary is not related in any way to the Funds, the Union, or any employer that contributes to the Funds. Syracuse Securities represented and warranted that for each year it has been retained, from 2010 through 2014, the company earned less than 1% of its total corporate income from the Applicant and any related party.

19. The Independent Fiduciary's Lead Consultant, Laurence Smith, represents that he is a mortgage banker with 32 years of experience specializing in commercial and residential real estate mortgages. The Independent Fiduciary represents that he has no present or

<sup>26</sup> The Applicant represents that although the Pension Fund is terminated, it continues to provide administrative services, including making benefit payments. Therefore, if this exemption is granted, the Pension Fund intends to hereafter lease space in the Building from the Training Fund in compliance with the requirements of Prohibited Transaction Exemption (PTE) 76-1 (41 FR 12740, March 26, 1976, as corrected at 41 FR 16620, April 20, 1976) and PTE 77-10 (42 FR 33918, July 1, 1977).

contemplated future interest in, or bias with respect to, the Building.

20. The Independent Fiduciary represents that the Training Fund is a current tenant in the Building, which serves an important purpose in the successful operation and financial well-being of the Training Fund. Given the Appraiser's valuation of the Building, the Independent Fiduciary represents that the Sale for a price of \$500,000 is fair, reasonable and beneficial to the Training Fund, its participants and beneficiaries.

21. The Independent Fiduciary represents that the Sale furthers the interest of the Training Fund and its participants and beneficiaries as the Training Fund's purpose is to "provide necessary construction equipment, qualified instructors, books, models [and] sites where instruction and practice on the equipment aforesaid can be available to persons eligible under this program . . ." Further, the Independent Fiduciary states that the space in the Building is already set up to serve the Training Fund's purposes and the Training Fund is a current tenant. The Applicant represents that if the Pension Fund is required to sell the property to a third party, the Training Fund will be forced to vacate the Building and find a new training location, possibly incurring further costs. The Independent Fiduciary represents that the Training Fund may spend more money retrofitting a new location for its specific needs than it would purchasing the Building. Also, the Building is centrally located to serve all of the Training Fund's participants. Further, by effectuating this purchase, there would be no disruption in services or training programs for staff, participants, apprentices, and contributing employers.

22. The Independent Fiduciary assessed the financials and investment portfolio of the Training Fund and determined that, based on the investment objectives and overall purpose of the Training Fund, a 100% cash purchase would hamper the overall diversification of the Training Fund's assets and adversely impact the liquidity of the Training Fund. Therefore, the Independent Fiduciary recommends a down-payment of 20% of the purchase price with the remaining 80%, of an amount not to exceed \$400,000, financed by a commercial mortgage. As of October 31, 2013, the 20% down payment constitutes approximately 8.74% of the Training Fund's assets. In contrast, if the total value of the Building were purchased in cash, it would represent approximately 44% of the Training Fund's assets. The

Independent Fiduciary represents that the Training Fund has sufficient liquidity and funding through hourly employer contributions and future rental income to support the investment in the Building as recommended. The Independent Fiduciary further represents that employer contributions and rental income are anticipated to exceed the Training Fund's monthly mortgage payment.

23. The Independent Fiduciary recommended that the new lease agreements be entered into for terms of at least three years between the current tenants and the Training Fund. The Independent Fiduciary further recommended that the leases contain language holding each tenant responsible for its percentage share of the Building's common expenses, in addition to its respective rent. The Independent Fiduciary specified that such common expenses do not need to include any real estate taxes or capital improvement expenses. The Independent Fiduciary recommended, in accordance with the Pomeroy Appraisal Report, that the rents be no less than \$12.00 per square foot for above-ground space and \$8.00 per square foot for below-ground space. Further, the Independent Fiduciary recommended that the Pension Fund be required to place with the Training Fund a security deposit of \$5,200, equivalent to four months' rent.

#### Statutory Findings

24. The Applicant represents that the requested exemption with respect to the Sale is administratively feasible because the Sale is a one-time transaction between the Pension Fund and the Training Fund, which will not require continuous or future monitoring by the Department.

The Applicant represents that the Sale is in the interest of the Pension Fund, the Training Fund, and their participants and beneficiaries because it will permit the Funds to maintain their offices and the training facilities at the present location with no disruption in services or training. The Applicant represents that, if the Pension Fund is forced to sell the property to a third party, the Training Fund will be forced to vacate the Building and find a new training location, putting the Union in a perilous state.

The Independent Fiduciary represents that the purchase of the Building is a prudent investment for the Training Fund as the Building should generate reasonable income in the form of rent. Further, amounts that the Training Fund previously expended for rent will now be invested in an asset that the Training

Fund owns and utilizes. Also, the purchase furthers the purpose of the Training Fund to provide necessary construction equipment, instructors, books, models and sites for instruction and practice on the equipment, as the existing facility has been upgraded to meet the Training Fund's specific needs.

Finally, the Sale will provide the Pension Fund with an infusion of cash without the payment of any real estate commissions, allowing it to pay benefits to participants as requested by the PBGC.

The Applicant represents that the Sale is protective of the rights of the Training Fund as an Independent Fiduciary, Syracuse Securities, Inc., has approved the Sale and will represent the interests of the Training Fund throughout the purchase of the Building, including additional length of time if warranted. Also, a Qualified Independent Appraiser appraised the Building for purposes of determining the purchase price. The Applicant represents that objective procedural safeguards, including service provider agreements, discussion of the merits of the Sale at trustees' meetings, and retention of separate counsel for the Sale, have also been instituted.

#### Summary

25. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the reasons stated above and for the following reasons, among others:

(a) At the time of the Sale, the Pension Fund receives a one-time payment of cash equal to the fair market value of the Building as established by a qualified independent appraiser in an Appraisal updated on the date of the Sale;

(b) The Training Fund may finance up to 80% of the purchase cost of the Building with an independent, third-party bank;

(c) The Training Fund pays no fees, commissions or other expenses associated with the Sale; and

(d) The Independent Fiduciary, acting on behalf of the Fund, represents the Training Fund's interests for all purposes with respect to the Sale, and: (1) Determines, among other things, that it is in the best interest of the Training Fund to proceed with the Sale; (2) reviews and approves the methodology used in the Appraisal; and (3) ensures that such methodology is properly applied by the Appraiser in determining the fair market value of the Building on the date of the Sale.

### Notice to Interested Persons

Notice of the proposed exemption will be given to all Union members within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals, and by posting in the Union hall in a prominent location. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

#### FOR FURTHER INFORMATION CONTACT:

Erica R. Knox of the Department, telephone (202) 693-8644. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the

exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of April, 2015.

**Lyssa E. Hall,**

*Director, Office of Exemption Determinations,  
Employee Benefits Security Administration.*

[FR Doc. 2015-08565 Filed 4-14-15; 8:45 am]

**BILLING CODE 4510-29-P**

### DEPARTMENT OF LABOR

#### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2015-06; Application No. D-11827]**

#### Notice of Exemption Involving BNP Paribas, S.A. (BNP or the Applicant); Located in Paris, France

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of Exemption.

**SUMMARY:** This document contains a notice of exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The exemption affects the ability of certain entities with specified relationships to BNP to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84-14.

**DATES:** *Effective Date:* This exemption is effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2)

Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

**FOR FURTHER INFORMATION CONTACT:** Scott Ness, telephone (202) 693-8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** On November 26, 2014, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 79 FR 70661, for certain entities with specified relationships to BNP to continue to rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14,<sup>1</sup> notwithstanding judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

The proposed exemption contains conditions described in the QPAM class exemption, as well as a set of additional conditions, that must be satisfied in order for asset managers with specified relationships to BNP to engage in the transactions described in the QPAM class exemption. The individual exemption was requested by BNP pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

<sup>1</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).



### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption published in the **Federal Register**. During the comment period, the Department received two written comments on the proposed exemption, one from Public Citizen (a public interest group) in opposition of the exemption, and the other from BNP.

A discussion of Public Citizen's comment and BNP's comment follows below. Any capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Summary of Facts and Representations in the notice of proposed exemption.

#### *Public Citizen's Comments Relating to Criminal Activity of BNP*

Public Citizen stated that legal tools, such as denial of the exemption, should be used to prevent criminal behavior. Public Citizen further asserted that convicted entities should not be permitted to engage in "[c]omplex or higher risk investments," and that the lack of a criminal record should be a prerequisite to manage investments. Public Citizen also questioned certain BNP representations that plans would incur substantial costs as a result of BNP Affiliated QPAMs and BNP Related QPAMs (collectively, the BNP QPAMs) losing their ability to rely upon the relief in PTE 84-14 due to the Convictions. Public Citizen stated further that while punishment that penalizes employees who did no wrong should be avoided, "collateral damage" cannot always justify an exemption. Instead, it argues that an appropriate inquiry should be whether plan clients of the affected BNP QPAMs receive better investment returns from investment activities requiring reliance on PTE 84-14 than they would otherwise receive.

#### *Department's Response*

The Department notes that PTE 84-14 was granted based on an effort to improve the administration of the prohibited transaction rules of ERISA. Those rules prohibit various transactions between plans and certain parties in interest. The prohibited transaction rules sweep very broadly and, in some circumstances, could work to prevent beneficial transactions. For example, large employers and funds necessarily engage in a wide range of transactions with parties in interest that pose little danger to plan participants. For example, all of the different service

providers to plans are technically parties in interest. Accordingly, Congress gave the Department authority to issue exemptions from the broad reach of the prohibited transaction rules where it has determined that such exemptions are in the interest of, and protective of, affected plans and the participants and beneficiaries thereof, as well as administratively feasible.

Prohibited Transaction Exemption 84-14 (the QPAM Exemption) is one such exemption. A QPAM is a "Qualified Professional Asset Manager." By definition, QPAMs are large regulated banks, savings and loan associations, insurance companies or federally registered investment advisors that meet certain standards of size and independence. PTE 84-14 permits these independent plan asset managers to engage in a variety of beneficial arm's length transactions with parties in interest that would otherwise be prohibited. Under Part I of the class exemption, QPAMs cannot: Engage in self-dealing transactions; act in their own interest or the interest of their affiliates; and/or engage in transactions with parties that are in a position to affect their independent judgment, such as persons with ownership interests in the QPAM.

Primarily, PTE 84-14 simply permits QPAMs to engage in various arm's length transactions with parties in interest and obviates the need to undertake time consuming compliance checks for parties in interest, forego investment opportunities, or seek an individual exemption from the Department for each transaction. The conditions in the exemption were designed to ensure that the transactions covered therein are protective of and beneficial to affected plans.

The scope of the anti-criminal provision set forth in section I(g) of PTE 84-14 is very broad and covers entities with various relationships to a convicted entity. Some of those entities may not have had the ability to influence the policies, procedures or practices of the convicted entity; and they may not have been in a position to be influenced by the policies, procedures or practices of the convicted entity. Nevertheless, a consequence of the conviction of an entity with a business relationship to one or more QPAMs is that the QPAMs lose the ability to rely on the exemption for 10 years following the date of the conviction, unless granted individual exemptions.

In reviewing applications for such exemptions, the Department will on a case-by-case basis consider the circumstances relating to the loss of

QPAM status, and the specific conditions necessary to prevent potential abuse. Of particular importance is the degree to which the investment and compliance operations of the QPAM can be sufficiently isolated from the influence of "bad actors". Based on such considerations, the Department has previously granted conditional individual exemptions that permit asset managers to continue to engage in the transactions described in PTE 84-14, notwithstanding that the asset managers were affiliated with, or otherwise related to, a convicted entity.

The Department has carefully considered Public Citizen's argument that BNP's exemption application should be rejected in order to deter criminal activity, the Department has concluded, however, that the interests of plan participants would be better protected by imposition of the stringent conditions set forth herein. It is unclear that the denial of the exemption application would have any meaningful effect on BNP's behavior. Moreover, the final exemption granted herein should promote adherence to strict fiduciary standards, insulate plans from any bad actors, and provide much or all of the deterrent effect that would have been achieved through outright denial.

In this regard, it should be emphasized that BNP itself cannot act as a QPAM under the terms of the exemption, and that the BNP QPAMs were not involved in the criminal activities that give rise to the Convictions. Nor is the Department aware of any evidence that the investment management activities of the BNP QPAMs were affected, in any way, by BNP's criminal activities. Moreover, denial of the requested exemption would deprive BNP-related asset managers from the ability to act as QPAMs. It would not bar them from continuing to manage plan assets, and such managers could continue to engage in a wide range of transactions on behalf of those plans.

The Department also notes Public Citizen's comments regarding the complexity of the transactions engaged in by BNP QPAMs, the relative investment returns of funds managed by those QPAMs, and the cost to plans for switching to a new QPAM. Undoubtedly, these are important issues that should be considered by the independent plan fiduciaries who hire or retain BNP asset managers. The Department does not believe these considerations are relevant, however, to its determination as to whether the BNP QPAMs may continue to engage in the transactions described in PTE 84-14 in light of the Convictions.

### *Public Citizen's Comments Regarding BNP Employees*

Public Citizen states that none of the individuals involved in the conduct underlying the Convictions should be allowed to manage ERISA and IRA assets. Public Citizen additionally questions whether it can be verified that employees of the BNP QPAMs were not involved in the crimes, and asserts that BNP should identify the individuals that participated in the criminal conduct so that the Department can confirm that they are not involved in oversight of the BNP QPAMs.

### *The Department's Response*

The Department believes that Public Citizen's concern is substantially addressed in the exemption as originally proposed, through Subsection I(f), which requires that each "BNP Affiliated QPAM," as defined in the exemption, ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any investment fund subject to ERISA and managed by such BNP Affiliated QPAM.

Unlike the conditions which are subject to correction in conjunction with the audit requirement, Subsection I(f) is not correctable through the audit process. Rather, a failure to abide by this condition will immediately and irrevocably disqualify a BNP Affiliated QPAM from the relief in this exemption for the entire period of the exemption. As with every condition of the exemption, the BNP Affiliated QPAMs must be able, at all times, to adequately demonstrate that this requirement has been met.

### *Public Citizen's Comment Regarding the Auditor*

Public Citizen also questions the independence of the auditor required under the proposed exemption, and makes a request that the auditor be chosen by the Department (or subject to the Department's approval), that the auditor's reports be made public, including a description of instances wherein BNP Affiliated QPAMs were required to take remedial action, and that the auditor's reports be provided to the Department so that it may review the auditor's findings.

### *The Department's Response*

The Department notes that a robust audit conducted by a sophisticated independent auditor, for the entire period covered by this exemption, is an important condition for relief under this exemption. The Department has taken care to ensure the independence and

rigor of the audit; it has tightened the stringency of the audit conditions from the original proposal; and it has enhanced its ability to exercise oversight, if necessary. For example, new Subsection I(h)(2) provides that the BNP Affiliated QPAMs and, if applicable, BNP, will provide the auditor "unconditional access to its business, including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel." Former Subsections I(h)(2) through I(h)(8) have been renumbered as I(h)(3) through I(h)(9). In former Subsection I(h)(4), now Subsection I(h)(5), the Department substituted the word "procedures" for "steps" in the first sentence; the Department also added the phrase "and compliance with" to the second sentence to reinforce the requirement that the auditor test for operational compliance with the Policies and Training requirements. The Department also added a new Subsection I(h)(10), which requires the BNP Affiliated QPAMs and the auditor to submit to the Department "(A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than nine months after the date of the earlier of the Convictions (and one month after the execution of any agreement thereafter)." Additionally, the Department removed from former Subsection I(h)(5), now Subsection I(h)(6), the following two sentences: "Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM." A similar requirement that will be more broadly applicable to all of Section I(h) was moved to new Subsection I(h)(11) and requires the auditor to provide to OED, upon request, "all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan, audit testing, identification of any instances of noncompliance by the relevant BNP Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable BNP Affiliated QPAM."

The Department does not endorse the selection of any particular auditor. The Department instead sets a threshold for

determining independence on behalf of the auditor and requires expertise in the appropriate field. With this in mind, Subsection I(h)(1) expressly requires retention of an "independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA." In the event that the Applicant contemplates replacing the current auditor, the exemption now requires BNP to notify the Department as to the identity of the replacement auditor at least 30 days prior to any such replacement, and BNP must be prepared to demonstrate to the Department's satisfaction that such replaced auditor is independent of BNP, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.

Importantly, the exemption language in Subsection I(h)(9), formerly Subsection I(h)(8), and new Subsection I(h)(11) expressly requires that the auditor's reports (including instances of remedial action taken) be submitted to the Department. Furthermore, the exemption contains a condition in Subsection I(g)(1)(v) requiring that the "BNP Affiliated QPAM does not make any material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans . . ." which is an obligation specifically applicable to the audit reports submitted by the BNP Affiliated QPAMs and which is, therefore, a material condition for relief under this exemption. After the Department receives each audit report, the reports will become a part of the administrative record and available to the public through the Department's Public Disclosure Room.

### *Public Citizen's Hearing Request*

Finally, Public Citizen requests that the Department hold a public hearing in connection with the proposed exemption.

### *The Department's Response*

Pursuant to the Department's regulations at 29 CFR part 2570.46, the Department will grant a hearing request where it is necessary to fully explore material factual issues raised by the person who requested the hearing.

The Department recognizes that Public Citizen's comment letter also contains numerous legal and policy objections that are similar to the legal and policy objections it raised during a public hearing the Department held on January 15, 2015. That public hearing related to a request by Credit Suisse AG for an individual exemption by Credit

Suisse AG, to permit Credit Suisse AG-related asset managers to continue to engage in the types of transactions described in the PTE 84–14, notwithstanding certain convictions that were impending against Credit Suisse AG.

Given that the legal and policy issues raised by Public Citizen in this case are not novel and were also raised and fully developed by them at a public hearing, and do not raise significant relevant factual issues concerning BNP, the Department has concluded that there is no need to hold an additional hearing in this case. Accordingly, the Department has determined not to hold a hearing.

#### *BNP's Comment*

The Applicant's comment requests several confirmations regarding the conditions of the proposed exemption, and provides clarifications and additional information in support of the Summary of Facts and Representations in the proposed exemption. The Applicant's requests and clarifications, and the Department's responses thereto, are as follows:

#### 1. Section I(e)

The Applicant's comment requests confirmation with regard to Section I(e) of the proposed exemption, which provides that a BNP Affiliated QPAM will not use its authority or influence to direct an investment fund managed by the QPAM to enter into any transaction with BNP or engage BNP to provide additional services for a fee paid by the investment fund. The Applicant requests that the Department confirm that this condition would not disallow a BNP Affiliated QPAM from trading in markets where BNP provides local subcustody services to global custodians of ERISA plans that are unaffiliated with BNP. According to the Applicant, to the extent that a BNP Affiliated QPAM enters into a transaction in a market where BNP is the local subcustodian, BNP might receive additional compensation from such global custodian.

The Department declines to provide the confirmation requested above. In this regard, the Department is concerned about the potential for self-dealing inasmuch as, depending on the facts and circumstances, a BNP Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into" a "transaction with" BNP or "provide additional services, for a fee borne by" the investment fund. The Department notes however, that it is not expressing a view on whether any particular transaction would constitute a separate

prohibited transaction under ERISA or the Code.

#### 2. Section I(g)(2)

The Applicant's comment requests confirmation with regard to Section I(g)(2) of the proposed exemption, which requires that each BNP Affiliated QPAM immediately develop and implement a program of training (the Training) conducted at least annually for relevant asset management, legal, compliance, and internal audit personnel and that "the Training shall be set forth in the Policies." The Applicant requests that the Department confirm that this condition requires the Policies to expressly provide for the Training, but that the actual Training materials may be separate from the Policies and need not be duplicated verbatim within the Policies.

The Department notes that participation in the Training is a crucial component of adhering to the Policies and of the exemptive relief. Therefore, the Department confirms that the actual Training materials need not be duplicated within the Policies so long as the Policies provide for and incorporate the Training requirement and provide specific details regarding the Training materials, including the identification of the particular training program and the primary training materials, the effective date(s) of any training manuals, and a brief outline of any information on the topics covered within the materials.

#### 3. Section I(h)(1)

The Applicant's comment requests confirmation with regard to Section I(h)(1) of the proposed exemption. Section I(h)(1) requires that the BNP Affiliated QPAMs submit to an annual audit conducted by an independent auditor. Pursuant to this condition, the first audit must cover the first six months following the earlier of the convictions, with each subsequent audit covering a corresponding twelve-month period. The Applicant requests confirmation that the final audit need only cover the last six months of the disqualifying period under Section I(g) of PTE 84–14.

The Department clarifies that the final audit need only cover the remaining period under which this individual exemption is required. The Department adds that because there are two simultaneous cases that will lead to two separate Convictions (federal and state) for the same underlying conduct, the final period may be slightly longer than six months. That is, this individual exemption is effective upon the earlier of the two Convictions, but will remain

in effect until ten years after the later of the two Convictions.

#### 4. Section I(l)

The Applicant's comment requests confirmation with regard to Section I(l) of the proposed exemption, which requires BNP to provide to interested persons a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14. The Applicant requests confirmation that the notice to interested persons required in accordance with Section I(l) was required to be sent only to ERISA-covered plans and IRAs that were clients as of the date the proposal was published in the **Federal Register**, and with respect to which PTE 84–14 may be used. Furthermore, the Applicant notes that Part II of the Form ADV is provided to each new separately managed account client and to the sponsor of each pooled fund prior to the inception of any asset management mandate. In the case of any banks or other entities that are not Registered Investment Advisors (and therefore do not maintain a Form ADV), the following disclosure will be included in the asset management or other account agreement: "In managing the account, [the Manager] may rely on the exemptive relief provided by U.S. Department of Labor Individual Prohibited Transaction Exemption 2015–[XX]. The exemption enables [Manager] to act as a "qualified professional asset manager" under PTE 84–14, notwithstanding the criminal conviction of an affiliate, BNP Paribas SA, for its role in certain U.S. dollar transactions involving parties subject to U.S. sanctions. [The Manager] was not involved in that conduct or that conviction. A copy of the proposed and final exemption may be found on the Department's Web site, [[http://www.dol.gov/ebsa/regs/ind\\_exemptionsmain.html](http://www.dol.gov/ebsa/regs/ind_exemptionsmain.html)]."

The Department confirms that the Applicant properly interpreted the requirements related to notifying interested persons of the proposed exemption, subject to the understanding that prospectively, notice of BNP's conviction must appear in both Part I and Part II of the Form ADVs of the BNP Affiliated QPAMs that are Registered Investment Advisers (RIAs) and remain there for ten years, and, in the case of BNP Affiliated QPAMs that are not RIAs, the additional disclosure noted above must be included in the asset

management or other account agreement.

#### 5. The BNP Affiliated QPAMs

The Applicant's comment makes certain clarifications to Paragraph 6 of the Summary of Facts and Representations, which describes BNP's relationship with the BNP Affiliated QPAMs. In this regard, Paragraph 6 provides that, "the BNP Affiliated QPAMs include Fisher Francis Trees and Watt, Inc., BNP Paribas Investment Partners Trust Company, BNP Paribas Asset Management, Inc., BancWest Investment Services, and Bishop Street Capital Management which are subsidiaries of Bank of the West and First Hawaiian Bank, respectively, which themselves provide fiduciary services to ERISA-covered plans and IRAs. The Applicant represents that each of the above-named entities are third tier affiliates of BNP, and BNP owns all or substantially all interests, directly or indirectly, in such entities."

The Applicant's comment provides that the BNP subsidiaries described in Paragraph 6 either currently rely on PTE 84-14 or may wish to do so in the future on behalf of ERISA-covered plans or IRAs. The Applicant states further that the list of BNP Affiliated QPAMs may change at any time depending on an entity's ERISA-covered plan or IRA client base or a change in strategy. The Applicant also notes that, while the BNP Affiliated QPAMs identified as third-tier subsidiaries in the application are indeed third-tier subsidiaries, other entities identified as BNP Affiliated QPAMs may be on other tiers, such as First Hawaiian Bank and Bank of the West, which are second-tier subsidiaries. Nevertheless, according to the Applicant, BNP owns all or substantially all interests, directly or indirectly, in the entities identified as BNP Affiliated QPAMs. The Department takes note of the Applicant's clarifications to Paragraph 6 of the Summary of Facts and Representations.

After giving full consideration to the entire record, including the written comments, subject to the Department's responses thereto, the Department has decided to grant the exemption. The complete application file, with copies of the comments, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal**

**Register** on November 26, 2014, at 79 FR 70661.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: The exemption is administratively feasible, the exemption is in the interests of the plan and of its participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of the plan;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

#### Exemption

##### Section I: Covered Transactions

The BNP Affiliated QPAMs and the BNP Related QPAMs shall not be

precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14<sup>2</sup> notwithstanding the Convictions (as defined in Section II(c)),<sup>3</sup> provided the following conditions are satisfied:

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(e) A BNP Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions

<sup>2</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>3</sup> Section I(g) generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including: (1) Conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

on behalf of any "investment fund" (as defined in Section VI(b) of PTE 84-14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g)(1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP. BNP Affiliated QPAMs will not be treated as

having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h)(1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies and the first of the audits must be completed no later than twelve (12) months after the earlier of the Convictions and must cover the first six-month period that begins on the date of the earlier of the Convictions; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each BNP Affiliated QPAM and, if applicable, BNP, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test

each BNP Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to BNP and the BNP Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM shall be promptly addressed by such BNP Affiliated QPAM, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(6) The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of BNP reviews the Audit Report for each BNP Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each BNP Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), Suite 400, 200 Constitution Avenue NW., Washington, DC 20210, no later than 30 days following its completion, and each BNP Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(10) Each BNP Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than nine months after the date of the earlier of the Convictions (and one month after the execution of any agreement thereafter); and

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan, audit testing, identification of any instances of noncompliance by the relevant BNP Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable BNP Affiliated QPAM;

(12) BNP must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until BNP demonstrates to the Department's satisfaction that such new auditor is independent of BNP, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(i) The BNP Affiliated QPAMs comply with each condition of PTE 84-14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of this granted exemption in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP

Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of this granted exemption in the **Federal Register**, each BNP Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) Each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs provided a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84-14 to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each

distribution agent of the fund with a request that such distribution agent forward the documents to its clients.

(m) A BNP Affiliated QPAM will not fail to meet the terms of this exemption solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this exemption solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

## Section II: Definitions

(a) The term "BNP Affiliated QPAM" means a "qualified professional asset manager" (as defined in Section VI(a)<sup>4</sup> of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which BNP is a current or future "affiliate" (as defined in Section VI(d) of PTE 84-14). The term "BNP Affiliated QPAM" excludes the parent entity, BNP.

(b) The term "BNP Related QPAM" means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BNP owns a direct or indirect five percent or more interest, but with respect to which BNP is not an "affiliate" (as defined in Section VI(d) of PTE 84-14).

(c) The term "Convictions" means the judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

<sup>4</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

**Effective Date:** This exemption is effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

Signed at Washington, DC, this 9th day of April 2015.

**Lyssa Hall,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2015-08672 Filed 4-14-15; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### Susan Harwood Training Grant Program, FY 2015

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of availability of funds and funding opportunity announcements (FOA) for Targeted Topic Training and Capacity Building grants.

**SUMMARY :** This notice announces availability of approximately \$3.5 million for Susan Harwood Training Program grants. Two separate funding opportunity announcements are available for Targeted Topic Training grants and Capacity Building grants. Two types of grants are being announced under each funding opportunity. Funding Opportunity Number SHTG-FY-15-01 will cover the two types of Targeted Topic Training grants: Targeted Topic Training and Targeted Topic Training and Educational Materials Development grants. Funding Opportunity Number SHTG-FY-15-02 will cover the two types of Capacity Building grants: Capacity Building Developmental and Capacity Building Pilot grants.

**DATES:** Grant applications for both Targeted Topic Training and Capacity Building grants must be received electronically by the Grants.gov system no later than 11:59 p.m., ET, on Tuesday, June 2, 2015.

**ADDRESSES:** The complete Susan Harwood Training Grant Program funding opportunity announcements and all information needed to apply for these funding opportunities are available at the Grants.gov Web site, <http://www.grants.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Questions regarding the funding opportunity announcements should be emailed to [HarwoodGrants@dol.gov](mailto:HarwoodGrants@dol.gov) or directed to Heather Wanderski, Program Analyst, or Jim Barnes, Director, Office of Training Programs and Administration, at 847-759-7700 (note this is not a toll-free number). Personnel will not be available to answer questions after 5:00 p.m., ET. To obtain further information on the Susan Harwood Training Grant Program, visit the OSHA Web site at: <http://www.osha.gov/dte/sharwood/index.html>.

Questions regarding Grants.gov should be emailed to [Support@grants.gov](mailto:Support@grants.gov) or directed to the Grants.gov Contact Center, at 1-800-518-4726 (toll free number). The Contact Center is available 24 hours a day, 7 days a week. The Contact Center is closed on Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is Section 21 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 670), Public Law 113-235, and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

**Funding Opportunity Number:** SHTG-FY-15-01 (Targeted Topic grants)

**Funding Opportunity Number:** SHTG-FY-15-02 (Capacity Building grants)

Catalog of Federal Domestic Assistance Number: 17.502.

Signed at Washington, DC, on April 6, 2015.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2015-08509 Filed 4-14-15; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Endowment for the Humanities will hold two meetings of the Humanities Panel, a federal advisory committee, during May, 2015. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National

Foundation on the Arts and Humanities Act of 1965.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** for meeting room numbers.

#### FOR FURTHER INFORMATION CONTACT:

Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room, 4060, Washington, DC 20506; (202) 606-8322; [evoyatzis@neh.gov](mailto:evoyatzis@neh.gov). Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. **Date:** May 13, 2015.

**Time:** 8:30 a.m. to 5:00 p.m.

**Room:** 4002.

This meeting will discuss applications on the subjects of Education and Public Programs for Digital Humanities: Implementation Grants, submitted to the Office of Digital Humanities.

2. **Date:** May 14, 2015.

**Time:** 8:30 a.m. to 5:00 p.m.

**Room:** 4002.

This meeting will discuss applications on the subject of Visualization for Digital Humanities: Implementation Grants, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: April 8, 2015.

**Lisette Voyatzis,**

*Committee Management Officer.*

[FR Doc. 2015-08607 Filed 4-14-15; 8:45 am]

**BILLING CODE 7536-01-P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, April 28, 2015.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTERS TO BE CONSIDERED:**

8635 Railroad Accident Report—  
*Chicago Transit Authority Train Collides with Bumping Post and Escalator at O'Hare Station, Chicago, Illinois, March 24, 2014.*  
News Media Contact: Telephone (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314-6305 by Wednesday, April 22, 2015.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at [www.ntsbt.gov](http://www.ntsbt.gov).

Schedule updates including weather-related cancellations are also available at [www.ntsbt.gov](http://www.ntsbt.gov).

**CONTACT PERSON FOR MORE INFORMATION:** Candi Bing, (202) 314-6403 or by email at [bingc@ntsbt.gov](mailto:bingc@ntsbt.gov).

Dated: April 13, 2015.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2015-08711 Filed 4-13-15; 11:15 am]

**BILLING CODE 7533-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2014-0237]

### Information Collection; Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities."

**DATES:** Submit comments by May 15, 2015.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Vlad Dorjets,

Desk Officer, Office of Information and Regulatory Affairs (3150-0143), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, email: [Vladik\\_Dorjets@omb.eop.gov](mailto:Vladik_Dorjets@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: [INFOCOLLECTS.Resource@nrc.gov](mailto:INFOCOLLECTS.Resource@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

#### A. Obtaining Information

Please refer to Docket ID NRC-2014-0237 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0237.

- *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](mailto:pdr.resource@nrc.gov). The supporting statement is available in ADAMS under Accession ML15051A451.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

#### B. Submitting Comments

The NRC cautions you not to include set identifying or contact information in your comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at: <http://www.regulations.gov> and entered into ADAMS. Comment submissions are

not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Disposal Facilities." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 1, 2014 (79 FR 71133).

1. *The title of the information collection:* 10 CFR part 62, "Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities."

2. *OMB approval number:* 3150-0143.

3. *Type of submission:* Extension.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* The collection would only be required upon application for a Commission emergency access determination when access to a non-Federal or regional Low-Level Waste Disposal facility is denied, which results in an immediate public health and safety and/or common defense and security concern.

6. *Who will be required or asked to respond:* Generators of Low-Level Radioactive Waste, or the Governor of a State on behalf of any generator or generators located in his or her State who are denied access to a Non-Federal or regional low-level radioactive wastes and who wish to request emergency access for disposal of Non-Federal or regional Low-Level Waste Disposal facility pursuant to part 62 of Title 10 of the *Code of Federal Regulations* (10 CFR).



7. *The estimated number of annual responses:* 1.

8. *The estimated number of annual respondents:* 1.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 233.

10. *Abstract:* Part 62 sets out the information which must be provided to the NRC by any low-level waste generator or Governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility. The information is required to allow the NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. Part 62 also provides that the commission may grant an exemption from the requirements in this Part upon application of an interested person or upon its own initiative.

Dated at Rockville, Maryland, this 9th day of April 2015.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2015-08568 Filed 4-14-15; 8:45 am]

**BILLING CODE 7590-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC-50; OMB-3420-0001]

### Submission for OMB Review; Comments Request

**AGENCY:** Overseas Private Investment Corporation (OPIC).

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing form and as such has prepared an information collection for OMB review and approval and requests public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** on February 2, 2015 [80 FR 5583]. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden,

including automated collected techniques and uses of other forms of technology.

**DATES:** Comments must be received within thirty (30) calendar days of publication of this Notice.

**ADDRESSES:** Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

**FOR FURTHER INFORMATION CONTACT:** OPIC Agency Submitting Officer: James Bobbitt, (202) 336-8558.

**SUPPLEMENTARY INFORMATION:** All mailed comments and requests for copies of the subject form should include form number [OPIC-50] on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to [James.Bobbitt@opic.gov](mailto:James.Bobbitt@opic.gov), subject line [OPIC-50].

### Summary Form Under Review

*Type of Request:* Extension without change of a currently approved information collection.

*Title:* Request for Registration for Political Risk Insurance.

*Form Number:* OPIC-50.

*Frequency of Use:* One per investor per project.

*Type of Respondents:* Business or other institution (except farms); individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies or citizens investing overseas.

*Reporting Hours:* 125 hours (30 minutes per response).

*Number of Responses:* 250 per year.

*Federal Cost:* \$6,429.

*Authority for Information Collection:* Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The registration is the screening document used by OPIC to review the investor's and the project's eligibility for political risk insurance and collect information for underwriting analysis.

Dated: April 6, 2015.

**Nichole Cadiente,**

*Administrative Counsel, Department of Legal Affairs.*

[FR Doc. 2015-08610 Filed 4-14-15; 8:45 am]

**BILLING CODE 3210-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC-52; OMB-3420-00015]

### Submission for OMB Review; Comments Request

**AGENCY:** Overseas Private Investment Corporation (OPIC).

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing form and as such has prepared an information collection for OMB review and approval and requests public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** volume 80 page 5584 on February 2, 2015. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

**DATES:** Comments must be received within thirty (30) calendar days of publication of this Notice.

**ADDRESSES:** Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

**FOR FURTHER INFORMATION CONTACT:** OPIC Agency Submitting Officer: James Bobbitt, (202) 336-8558.

**SUPPLEMENTARY INFORMATION:** All mailed comments and requests for copies of the subject form should include form number [OPIC-52] on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to [James.Bobbitt@opic.gov](mailto:James.Bobbitt@opic.gov), subject line [OPIC-52].

### Summary Form Under Review

*Type of Request:* Extension without change of a currently approved information collection.

*Title:* Application for Political Risk Insurance.

*Form Number:* OPIC-52.

*Frequency of Use:* One per investor per project.

*Type of Respondents:* Business or other institution (except farms); individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies or citizens investing overseas.

*Reporting Hours:* 150 hours (2 hours per response).

*Number of Responses:* 75 per year.

*Federal Cost:* \$11,572.

*Authority for Information Collection:* Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance and collect information for underwriting analysis.

Dated: April 6, 2015.

**Nichole Cadiente,**

*Administrative Counsel, Department of Legal Affairs.*

[FR Doc. 2015-08609 Filed 4-14-15; 8:45 am]

**BILLING CODE 3210-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74689; File No. SR-CME-2015-012]

**Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Facilitate Acceptance of a New Credit Default Swap Index Product Series**

April 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2015, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III, below, which Items have been primarily prepared by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii)<sup>4</sup> thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization. More specifically, the proposed rule change would make amendments to its rules regarding the listing of new series of CDS indexes available for clearing and the deletion of the series whose termination dates have passed.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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*

CME is registered as a derivatives clearing organization (“DCO”) with the Commodity Futures Trading Commission (“CFTC”) and offers clearing services for many different futures and swaps products, including certain credit default swap index products. Currently, CME offers clearing of the Markit CDX North American Investment Grade Index Series 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23. CME also offers clearing of the Markit CDX North American High Yield Index Series 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

The proposed rule change would expand CME’s Markit CDX North American Investment Grade (“CDX IG”) Index and Markit CDX North American High Yield (“CDX HY”) Index product offerings by incorporating the upcoming Series 24 for both sets of index products.

In addition to the changes to expand CME’s CDX offering, CME also proposes to remove from the current list of accepted CDX indices certain products whose termination dates have passed. These products are set forth in the following table:

CDX index	Series	Termination date (scheduled termination date)
CDX North American Investment Grade (CDX.NA.IG) .....	9	20 Dec 2014.
CDX North American Investment Grade (CDX.NA.IG) .....	13	20 Dec 2014.
CDX North American Investment Grade (CDX.NA.IG) .....	17	20 Dec 2014.
CDX North American High Yield (CDX.NA.HY) .....	13	20 Dec 2014.

Although these changes will be effective on filing, CME plans to operationalize the proposed changes as follows: CDX IG 24 will become available for clearing on March 20, 2015 and CDX HY 24 will become available for clearing on March 27, 2015; the

product deletions would be effective immediately.<sup>5</sup>

The change that is described in this filing is limited to CME’s business as a DCO clearing products under the exclusive jurisdiction of the CFTC and do not materially impact CME’s

security-based swap clearing business in any way. CME notes that it has also certified the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in a separate filing, CME Submission 15-100.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>5</sup> Staff has not altered any part of this paragraph even though the dates referenced in this paragraph have passed.

CME believes the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act.<sup>6</sup> The proposed rule change would expand CME's CDX IG and CDX HY product offerings by incorporating the upcoming Series 24 for both sets of index products and would therefore provide investors with an expanded range of derivatives products for clearing and would also remove certain products whose termination dates have passed. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.<sup>7</sup>

Furthermore, the proposed rule change is limited to CME's futures and swaps clearing businesses, which means it is limited in its effect to products that are under the exclusive jurisdiction of the CFTC. As such, the proposed rule change is limited to CME's activities as a DCO clearing futures that are not security futures and swaps that are not security-based swaps. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed rule change is limited in its effect to CME's futures and swaps clearing businesses, the proposed rule change is properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the proposed rule change is therefore consistent with the

requirements of Section 17A of the Act<sup>8</sup> and are properly filed under Section 19(b)(3)(A)<sup>9</sup> and Rule 19b-4(f)(4)(ii)<sup>10</sup> thereunder.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed rule change simply facilitates the offering of two new series of credit default swap index products and deletes certain products whose termination dates have passed. Further, the proposed rule change is limited to CME's futures and swaps clearing businesses and, as such, does not affect the security-based swap clearing activities of CME in any way and therefore does not impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from 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)<sup>11</sup> of the Act and paragraph (f)(4)(ii) of Rule 19b-4<sup>12</sup> 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.

### **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:

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(4)(ii).

#### *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](mailto:rule-comments@sec.gov). Please include File No. SR-CME-2015-012 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 21049-1090.

All submissions should refer to File Number SR-CME-2015-012. 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 or 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 CME and on CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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-CME-2015-012 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-08544 Filed 4-14-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-74643A; File No. SR-  
NYSEMKT-2014-95]

**Self-Regulatory Organizations; NYSE  
MKT LLC; Notice of Withdrawal of a  
Proposed Rule Change, as Modified by  
Partial Amendment No. 1 and Partial  
Amendment No. 2, Amending Rule  
13—Equities and Related Rules  
Governing Order Types and Modifiers;  
Correction**

April 9, 2015.

**AGENCY:** Securities and Exchange  
Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Securities and Exchange Commission published a document in the **Federal Register** on April 9, 2015, concerning a Notice of Withdrawal of a Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, Amending Rule 13—Equities and Related Rules Governing Order Types and Modifiers. The document contained a typographical error.

**FOR FURTHER INFORMATION CONTACT:**  
Steve Kuan, Division of Trading and  
Markets, Securities and Exchange  
Commission, 100 F Street NE.,  
Washington, DC 20549, (202) 551-5624.

**Correction**

In the **Federal Register** of April 9, FR Doc. 2015-8108, on page 19102, in the 13th line in the third column, correct the date “February 26, 2014” to “February 26, 2015.”

Dated: April 9, 2015.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-08629 Filed 4-14-15; 8:45 am]

**BILLING CODE** 8011-01-P

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-74694; File No. SR-  
NYSEArca-2015-28]

**Self-Regulatory Organizations; NYSE  
Arca, Inc.; Notice of Filing and  
Immediate Effectiveness of Proposed  
Rule Change Modifying the NYSE Arca  
Options Fee Schedule To Adopt Fees  
for Certain Manual Transactions in  
Options Overlying IWM**

April 9, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 3, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The Exchange proposes to adopt fees for certain Manual transactions in options overlying IWM (the iShares Russell 2000 ETF). The Exchange proposes to implement the fee change effective April 3, 2015. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

**II. Self-Regulatory Organization’s  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

**A. Self-Regulatory Organization’s  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**
**1. Purpose**

The purpose of this filing is to adopt fees for certain manual transactions in options overlying IWM (the iShares Russell 2000 ETF). The Exchange proposes to implement the fee change effective April 3, 2015.

Currently, manual trades in IWM are subject to the same fees as any other listed option that is traded manually. However, the Exchange is proposing to offer special pricing to encourage increased manual trading in the product and to offset losses of manual transactions associated with options in

the iShares Russell Index (RUT), which is exclusively trading on another venue.

Accordingly, for Manual transactions in IWM executed by NYSE Arca Market Makers, Firms and Broker Dealers (collectively, the “IWM Participants”), the Exchange proposes to charge \$0.125 per contract.<sup>4</sup> The Exchange also proposes to offer IWM Participants certain incentives for increased monthly volumes of manual transactions in IWM. Specifically, the Exchange proposes to instead offer the enhanced rates of (a) \$0.075 for each contract in excess of 74,999 contracts; and (b) \$0.025 for each contract in excess of 99,999 contracts, for Manual executions in IWM transacted during the month.<sup>5</sup> As is the case today, Customers (including Professional Customers) will not be charged for manual transactions in IWM.

The Exchange notes that Firm Facilitations,<sup>6</sup> Strategy Executions<sup>7</sup> and Qualified Contingent Crosses are excluded from the proposed fee change and would not count towards calculations of the total monthly Manual transactions in IWM. Further, after calculating fees associated with Manual transactions in IWM, at the end of the month, the Exchange will round to the nearest penny when applicable.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

<sup>4</sup> The Exchange notes that there is currently no Lead Market Maker (“LMM”) in IWM and, thus, the proposed fee reduction does not apply to LMMs. In the event that the Exchange appoints an LMM in IWM, the Exchange would address how the proposed fee reduction would apply to the LMM in a subsequent filing.

<sup>5</sup> *Id.*

<sup>6</sup> As defined in the Fee Schedule, a Firm Facilitation is any transaction involving a Firm proprietary trading account that has a customer of that same Firm on the contra side of the transaction, or a broker dealer facilitating a Customer order, where the broker dealer and the Customer both clear through the same clearing firm and the broker dealer clears in the customer range. See Fee Schedule, Endnote 7, available here, [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf)

<sup>7</sup> As set forth in the Fee Schedule, Strategy Executions are transactions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. See *id.*, “LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS”.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed changes to IWM pricing for Manual transactions are reasonable, equitable and not unfairly discriminatory because the reduced rates are based on the executions in IWM transacted on the Exchange. In addition, the Exchange believes the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are designed to incentivize IWM Participants to conduct Manual trades in IWM and apply equally to all IWM Participants.<sup>10</sup> The Exchange believes the proposed fee changes may result in an increase in volume and liquidity to the Exchange, which would provide more trading opportunities and tighter spreads, to the benefit of all market participants even non-IWM Participants, all of which perfects the mechanism for a free and open market and national market system.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fees associated with IWM are pro-competitive as they may attract more volume and liquidity to the Exchange through the proposed reduced rates, which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

<sup>10</sup> Similarly, as noted above, *supra* n. 4, the proposed fee is reasonable, equitable and not unfairly discriminatory because there is currently no LMM in IWM and, therefore, no LMM is impacted by this proposed fee change.

<sup>11</sup> 15 U.S.C. 78f(b)(8).

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-28 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.

All submissions should refer to File Number SR-NYSEArca-2015-28. 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/>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

[rules/sro.shtml](#)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-28 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-08548 Filed 4-14-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-74695; File No. SR-NYSEMKT-2015-28]**

### **Self-Regulatory Organizations; NYSE MKT, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period Applicable to the Customer Best Execution Auction per Rule 971.1 NY, Until July 17, 2015**

April 9, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 7, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to the Customer Best Execution Auction ("CUBE"), per Rule 971.1NY, until July 17, 2015. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to extend the pilot period applicable to certain aspects of the Customer Best Execution—or CUBE—Auction, which is currently set to expire on April 24, 2015, until July 17, 2015.<sup>4</sup>

##### Background

Rule 971.1NY sets forth an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange, referred to as the CUBE Auction.<sup>5</sup> The CUBE Auction, which was approved in April 2014, is designed to provide price improvement

<sup>4</sup> The Exchange notes that the proposed extension would align the expiration of the pilot period with that of other competing options exchanges that offer electronic price improvement auctions similar to the CUBE. See, e.g., ISE Rule 723 Supplementary Material .03 (pilot period for price improvement mechanism extended until Friday, July 17, 2015); PHLX Rule 1080(n)(vii); (pilot period for price improvement mechanism extended until Saturday, July 18, 2015); CBOE Rule 6.74A Interpretation and Policies .03 (same); BOX IM-7150-1 (same). Because July 18, 2015 is a Saturday and the Exchange is not open, the Exchange proposes to extend the pilot until Friday, July 17, 2015.

<sup>5</sup> See generally Rule 971.1NY (Electronic Cross Transactions).

for paired orders of any size.<sup>6</sup> Two aspects of the CUBE were approved for a one-year pilot period—Rule 971.1NY(b)(1)(B), which establishes the permissible range of executions for CUBE Auctions for fewer than 50 contracts; and Rule 971.1NY(b)(8), which establishes that the minimum size for a CUBE Auction is one contract (together, the "CUBE Pilot").

An ATP Holder may initiate a CUBE Auction by electronically submitting for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity ("CUBE Order") against principal interest or against any other order it represents as agent, provided the initiating ATP Holder complies with Rule 971.1NY.<sup>7</sup> Rule 971.1NY(b)(1) sets forth the permissible range of executions for a CUBE Order.<sup>8</sup> Pursuant to the CUBE Pilot, a CUBE Order for fewer than 50 contracts is subject to tighter ranges of execution than larger CUBE Orders to maximize price improvement.<sup>9</sup> Specifically, if the CUBE Order is for fewer than 50 contracts, the range of permissible execution will be equal to or better than the National Best Bid/Offer ("NBBO"), provided that such price must be at least one cent better than any displayed interest in the Exchange's Consolidated Book.<sup>10</sup>

The CUBE Pilot was initially approved for a one-year pilot.<sup>11</sup> Pursuant to Commentary .01 to Rule 971.1NY, the CUBE Pilot would, if not amended, end on April 24, 2015.<sup>12</sup> In connection with the CUBE Pilot, the Exchange agreed to submit certain data to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market

<sup>6</sup> See Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (NYSEMKT-2014-17) (the "CUBE Approval Order").

<sup>7</sup> In addition, CUBE provides for the automatic execution, under certain conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

<sup>8</sup> Subject to specified exceptions, a CUBE Order to buy (sell) may execute at prices equal to or between the initiating price as the upper (lower) bound and the National Best Bid ("NBB") (National Best Offer ("NBO")) as the lower (upper) bound. See Rule 971.1NY(b).

<sup>9</sup> See Rule 971.1NY(b)(1)(B). Rule 971.1NY(b)(8), also subject to the pilot period, provides that the minimum size for a CUBE Auction is one contract. See Rule (b)(8).

<sup>10</sup> See Rule 971.1NY(b)(1)(B).

<sup>11</sup> See CUBE Approval Order, *supra*, n. 6.

<sup>12</sup> See also Commentary .01 to Rule 971.1NY (establishing one-year pilot period for Rules 971.1NY(b)(1)(B) and 971.1NY(b)(8)).

functioning on the Exchange outside of the CUBE Auction.<sup>13</sup>

### Proposal To Extend the Operation of the CUBE Pilot

The Exchange implemented the CUBE Auction to provide an electronic crossing mechanism for single-leg orders with a price improvement auction. The CUBE Pilot was designed to create tighter markets and ensure that each order receives the best possible price. The Exchange believes that the CUBE Pilot attracts order flow and promotes competition and price improvement opportunities for CUBE Orders of fewer than 50 contracts. The Exchange believes that extending the pilot period is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the CUBE Pilot that the Exchange has committed to provide.<sup>14</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Pilot. Through this filing, the Exchange seeks to amend Commentary .01 to Rule 971.1NY and extend the current pilot period until July 17, 2015.<sup>15</sup> The Exchange notes that it would retain the text of Rules 971.1NY(b)(1)(B) and 971.1NY(b)(8). In further support of this proposed rule change, the Exchange would continue to submit to the Commission detailed data from, and analysis of, the CUBE Pilot.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period is consistent with these principles because the CUBE Pilot is reasonably designed to create tighter markets and ensure that each order receives the best possible price, which benefits investors by increasing competition thereby maximizing opportunities for price improvement. The proposed extension would allow

<sup>13</sup> See CUBE Approval Order, *supra*, n. 6 at 79 FR 24779, at 24785-86, fn. 94-95. See also Commentary .01 to Rule 971.1NY.

<sup>14</sup> *Id.*

<sup>15</sup> See proposed Commentary .01 to Rule 971.1NY.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Because the CUBE Pilot is applicable to all CUBE Orders for fewer than 50 contracts, and to the requirement that the minimum size of the CUBE Auction is one contract, the proposal to extend the pilot merely acts to maintain status quo on the Exchange, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the CUBE Pilot to ascertain whether there is meaningful competition for all size orders and whether there is an active and liquid market functioning on the Exchange outside of the CUBE Auction.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional period and would allow for further analysis of the CUBE Pilot. In addition, the proposed extension would allow the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Thus, the proposal would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii). Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

19b-4(f)(6) thereunder.<sup>19</sup> 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>20</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.<sup>22</sup>

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 under Section 19(b)(2)(B)<sup>23</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

#### *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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-28 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-NYSEMKT-2015-28. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-28, and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-08549 Filed 4-14-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74693; File No. SR-NYSEMKT-2015-26]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule To Adopt Fees for Certain Manual Transactions in Options Overlying IWM

April 9, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 1, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule (“Fee Schedule”) to adopt fees for certain Manual transactions in options overlying IWM (the iShares Russell 2000 ETF). The Exchange proposes to implement the fee change effective April 1, 2015. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to adopt fees for certain Manual transactions in options overlying IWM (the iShares Russell 2000 ETF). The Exchange proposes to implement the fee change effective April 1, 2015.

Currently, Manual trades in IWM are subject to the same fees as any other listed option that is traded Manually. However, the Exchange is proposing to offer special pricing to encourage increased Manual trading in the product and to offset losses of Manual transactions associated with options in the iShares Russell Index (RUT), which is exclusively trading on another venue.

Accordingly, for Manual transactions in IWM executed by Broker-Dealers, Firms, NYSE Amex Options Market Makers, non-NYSE Amex Options Market Makers and Professional Customers (collectively, the “IWM Participants”), the Exchange proposes to charge \$0.125 per contract. The Exchange also proposes to offer IWM Participants certain incentives for increased monthly volumes of Manual transactions in IWM. Specifically, the Exchange proposes to instead offer the enhanced rates of (a) \$0.075 for each contract in excess of 74,999 contracts; and (b) \$0.025 for each contract in excess of 99,999 contracts, for Manual executions in IWM transacted during the month. As is the case today, Customers will not be charged for Manual transactions in IWM.

The Exchange notes that Strategy Executions, Firm Facilitation and Qualified Contingent Crosses are excluded from the proposed fee change and would not count towards calculations of the total monthly Manual transactions in IWM. Further, after calculating fees associated with Manual transactions in IWM, at the end of the month, the Exchange will round to the nearest penny when applicable.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed changes to IWM pricing for Manual transactions are reasonable, equitable and not unfairly discriminatory because the reduced rates are based on the executions in IWM transacted on the Exchange. In addition, the Exchange believes the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are designed to incentivize IWM Participants to conduct Manual trades in IWM and apply equally to all IWM Participants. The Exchange believes the proposed fee changes may result in an increase in volume and liquidity to the Exchange, which would provide more trading opportunities and tighter spreads, to the benefit of all market participants even non-IWM Participants, all of which perfects the mechanism for a free and open market and national market system.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>6</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fees associated with IWM are pro-competitive as they may attract more volume and liquidity to the Exchange through the proposed reduced rates, which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>6</sup> 15 U.S.C. 78f(b)(8).



### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>9</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-26 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.

All submissions should refer to File Number SR-NYSEMKT-2015-26. 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-NYSEMKT-2015-26 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-08547 Filed 4-14-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74687; File No. SR-ICC-2015-007]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Provide for the Clearance of Additional Western European Sovereign Single Names

April 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 7, 2015, ICE Clear Credit LLC ("ICC") 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 primarily by ICC. 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 purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts.

Specifically, ICC is proposing to amend Subchapter 26I of its rules to provide for the clearance of additional Standard Western European Sovereign CDS contracts (collectively, "SWES Contracts"). ICC currently clears six SWES Contracts: the Republic of Ireland, the Italian Republic, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Belgium, and the Republic of Austria. The proposed changes to the ICC Rules would provide for the clearance of additional SWES Contracts, specifically the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden, and the Kingdom of Denmark.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. ICC currently clears six SWES Contracts: the Republic of Ireland, the Italian Republic, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Belgium, and the Republic of Austria. ICC proposes amending Subchapter 26I of its Rules to provide for the clearance of additional SWES Contracts, specifically the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden, and the Kingdom of Denmark. ICC plans to offer these additional SWES Contracts on the 2003 and 2014 ISDA Credit Derivatives Definitions. The addition of these SWES Contracts will benefit the market for credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules.

These additional SWES Contracts have terms consistent with the other SWES Contracts approved for clearing at ICC and governed by Subchapter 26I of the ICC Rules, namely the Republic of

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Ireland, the Italian Republic, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Belgium, and the Republic of Austria. Minor revisions to Subchapter 26I (Standard Western European Sovereign (“SWES”) Single Name) are made to provide for clearing the additional SWES Contracts and described as follows.

Rule 26I-102 is modified to include the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden, and the Kingdom of Denmark in the list of specific Eligible SWES Reference Entities to be cleared by ICC.

ICC’s Risk Management Framework has also been revised to provide enhancements to the General Wrong Way Risk (“GWWR”) methodology related to the clearance of additional SWES Contracts. The proposed changes to the ICC Risk Management Framework extend the GWWR framework to the portfolio level. Currently, there exists no Clearing Participant-level cumulative GWWR requirement incorporated in the Jump-to-Default calculations. The uncollateralized WWR exposure of a Risk Factor needs to exceed its corresponding WWR threshold in order to trigger WWR collateralization. The proposed enhancement is introduced to account for the potential accumulation of portfolio WWR through Risk Factor specific WWR exposures. Under the proposed approach, if the cumulative uncollateralized exposure exceeds a pre-determined portfolio GWWR threshold, the amount above the threshold is collateralized.

Section 17A(b)(3)(F) of the Act<sup>3</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. These contracts are similar to the SWES Contracts currently cleared by ICC, and the additional SWES Contracts will be cleared pursuant to ICC’s existing clearing arrangements and related financial safeguards, protections and risk management procedures, except as described herein. The additional SWES Contracts will allow market participants an increased ability to manage risk. ICC believes that acceptance of the new contracts, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions

cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>4</sup> ICC performed a comprehensive risk analysis related to the clearing of additional SWES Contracts and identified the potential for uncollateralized GWWR exposure as a new risk and accommodated for this risk in the ICC Risk Management Framework, as discussed herein. ICC identified no additional risk or systemic risk concerns introduced by clearing additional SWES Contracts, not accounted for by ICC’s existing risk management procedures. As such, clearing the additional SWES Contracts is consistent with the requirement of promoting and protecting the public interest in Section 17A(b)(3)(F).<sup>5</sup>

Clearing of the additional SWES Contracts will also satisfy the requirements of Rule 17Ad-22.<sup>6</sup> In particular, in terms of financial resources, ICC will apply its existing initial margin methodology to the additional contracts, with enhancements to the GWWR methodology discussed above. ICC believes that this model will provide sufficient initial margin requirements to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad-22(b)(2).<sup>7</sup> In addition, ICC believes its Guaranty Fund, under its existing methodology, will, together with the required initial margin, provide sufficient financial resources to support the clearing of the additional contracts consistent with the requirements of Rule 17Ad-22(b)(3).<sup>8</sup> ICC also believes that its existing operational and managerial resources will be sufficient for clearing of the additional contracts, consistent with the requirements of Rule 17Ad-22(d)(4),<sup>9</sup> as the new contracts are substantially the same from an operational perspective as existing contracts. Similarly, ICC will use its existing settlement procedures and account structures for the new contracts, consistent with the requirements of Rule 17Ad-22(d)(5), (12) and (15)<sup>10</sup> as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures. ICC determined to accept the additional SWES Contracts for clearing in

accordance with its governance process, which included review of the contracts and related risk management considerations (and the enhancements to the GWWR methodology discussed herein) by the ICC Risk Committee and approval by its Board. These governance arrangements are consistent with the requirements of Rule 17Ad-22(d)(8).<sup>11</sup> Finally, ICC will apply its existing default management policies and procedures for the additional SWES Contracts. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional single names, in accordance with Rule 17Ad-22(d)(11).<sup>12</sup>

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The additional SWES Contracts will be available to all ICC Participants for clearing. The clearing of these additional SWES Contracts by ICC does not preclude the offering of the additional SWES Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional SWES Contracts will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 240.17Ad-22.

<sup>7</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>8</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>9</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>10</sup> 17 CFR 240.17Ad-22(d)(5), (12) and (15).

<sup>11</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>12</sup> 17 CFR 240.17Ad-22(d)(11).

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2015-007 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-ICC-2015-007. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2015-007 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-08542 Filed 4-14-15; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74642A; File No. SR-NYSE-2014-59]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of a Proposed Rule Change, as Modified by Partial Amendment No. 1, Amending Rule 13 and Related Rules Governing Order Types and Modifiers; Correction

April 9, 2015.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Securities and Exchange Commission published a document in the **Federal Register** on April 9, 2015, concerning a Notice of Withdrawal of a Proposed Rule Change, as Modified by Partial Amendment No. 1, Amending Rule 13 and Related Rules Governing Order Types and Modifiers. The document contained a typographical error.

**FOR FURTHER INFORMATION CONTACT:** Steve Kuan, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551-5624.

#### Correction

In the **Federal Register** of April 9, 2015 in FR Doc. 2015-8107, on page 19097, in the fourth line in the first column, correct the date "February 26, 2014" to "February 26, 2015."

Dated: April 9, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-08628 Filed 4-14-15; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74688; File No. SR-ICC-2015-006]

#### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Provide for the Clearance of an Additional Standard Emerging Market Sovereign Single Name

April 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on March 27, 2015, ICE Clear Credit LLC ("ICC") 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 primarily by ICC. 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 purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear an additional credit default swap contract. Specifically, ICC is proposing to amend Subchapter 26D of its rules to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract ("SES Contract"), namely Ukraine.

ICC has been approved to clear twelve SES Contracts: The Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, the Republic of South Africa, the Republic of Chile, the Republic of Peru, the Republic of Colombia, and the Republic of Poland.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 34-65588 (Oct. 18, 2011), 76 FR 65763 (Oct. 24, 2011) (File No. SR-ICC-2011-01) (order approving rule change to clear SES Contracts referencing the Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, and the Argentine Republic); Securities Exchange Act Release No. 34-70849 (Nov. 12, 2013), 78 FR 69167 (Nov. 18, 2013) (File No. SR-ICC-2013-07) (order approving rule change to clear SES Contracts referencing the Republic of Turkey and the Russian Federation); Securities Exchange Act Release No. 34-73220 (Sep. 25, 2014), 79 FR 59340 (Oct. 1, 2014) (File No. SR-ICC-2014-13) (order approving rule change to clear SES Contracts referencing the Republic of Hungary and the Republic of South Africa); and Securities Exchange Act Release No. 34-74593 (Mar. 26, 2015), 80 FR 17538 (Apr. 1,

<sup>13</sup> 17 CFR 200.30-3(a)(12).

The proposed changes to the ICC Rules would provide for the clearance of an additional SES Contract, specifically Ukraine.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear an additional credit default swap contract. ICC has been approved to clear twelve SES Contracts: The Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, the Republic of South Africa, the Republic of Chile, the Republic of Peru, the Republic of Colombia, and the Republic of Poland. ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of an additional SES Contract, specifically Ukraine. This additional SES Contract will be offered on the 2014 ISDA Credit Derivatives Definitions. The addition of the additional SES Contract will benefit the market for emerging market credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional SES Contract will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Act.

The additional SES Contract has terms consistent with the other SES Contracts approved for clearing at ICC and governed by Subchapter 26D of the ICC rules, namely the Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of

Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, the Republic of South Africa, the Republic of Chile, the Republic of Peru, the Republic of Colombia, and the Republic of Poland. Minor revisions to Subchapter 26D (Standard Emerging Market Sovereign ("SES") Single Name) are made to provide for clearing the additional SES Contract and are described as follows.

Rule 26D-102 is modified to include Ukraine in the list of specific Eligible SES Reference Entities to be cleared by ICC.

Section 17A(b)(3)(F) of the Act<sup>4</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The clearance of the additional SES Contract will allow market participants an increased ability to manage risk. ICC believes that acceptance of this new contract, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>5</sup>

Clearing of the additional SES Contract will also satisfy the requirements of Rule 17Ad-22.<sup>6</sup> In particular, in terms of financial resources, ICC will apply its existing margin methodology to the additional SES Contract. ICC believes that this model will provide sufficient margin to cover its credit exposure to its clearing members from clearing this contract, consistent with the requirements of Rule 17Ad-22(b)(2).<sup>7</sup> In addition, ICC believes its Guaranty Fund, under its existing methodology, will, together with the required margin, provide sufficient financial resources to support the clearing of the new contract consistent with the requirements of Rule 17Ad-22(b)(3).<sup>8</sup> ICC also believes that its existing operational and managerial resources will be sufficient for clearing of the additional SES Contract, consistent with the requirements of Rule

17Ad-22(d)(4),<sup>9</sup> as the new contract is similar from an operational perspective to existing SES Contracts. Similarly, ICC will use its existing settlement procedures and account structures for the new contract, consistent with the requirements of Rule 17Ad-22(d)(5), (12) and (15)<sup>10</sup> as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures. Finally, ICC will apply its existing default management policies and procedures for the new contract. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional SES Contract, in accordance with Rule 17Ad-22(d)(11).<sup>11</sup>

### B. Self-Regulatory Organization's Statement on Burden on Competition

The additional SES Contract will be available to all ICC Participants for clearing. The clearing of the additional SES Contract by ICC does not preclude the offering of the additional SES Contract for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional SES Contract will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

2015) (order approving rule change to clear SES Contracts referencing the Republic of Chile, the Republic of Peru, the Republic of Colombia, and the Republic of Poland).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 240.17Ad-22.

<sup>7</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>8</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>9</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>10</sup> 17 CFR 240.17Ad-22(d)(5), (12) and (15).

<sup>11</sup> 17 CFR 240.17Ad-22(d)(11).

**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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2015-006 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-ICC-2015-006. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit’s Web site at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2015-006 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-08543 Filed 4-14-15; 8:45 am]  
BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74690; File No. SR-NASDAQ-2015-033]

**Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Public Disclosure of Exchange Usage of Market Data**

April 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 2, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission

(“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to update the public disclosure of the sources of data that NASDAQ utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are bracketed.

\* \* \* \* \*

4759. Data Feeds Utilized

[NASDAQ shall publicly disclose the proprietary and network processor feeds utilized by the System for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. This information shall be displayed on [www.nasdaqtrader.com](http://www.nasdaqtrader.com), and it shall be updated promptly each time NASDAQ determines to add, subtract, or otherwise modify a data source.]

*The NASDAQ System utilizes the below proprietary and network processor feeds utilized by the System for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Secondary Source of data is utilized only in emergency market conditions and only until those emergency conditions are resolved.*

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX) .....	CQS/UQDF .....	n/a
B—NASDAQ OMX BX .....	BX ITCH 4.1 .....	CQS/UQDF
D—FINRA ADF .....	CQS/UQDF .....	n/a
J—DirectEdge A .....	EdgeBook .....	CQS/UQDF
K—DirectEdge X .....	EdgeBook .....	CQS/UQDF
M—CSX .....	CQS/UQDF .....	n/a
N—NYSE .....	NYSE OpenBook Ultra .....	CQS/UQDF
P—NYSE Arca .....	ArcaBook Binary uncompactd .....	CQS/UQDF
T/Q—NASDAQ .....	ITCH 4.1 .....	CQS/UQDF
X—NASDAQ OMX PSX .....	PSX ITCH 4.1 .....	CQS/UQDF
Y—BATS Y-Exchange .....	BATS PITCH .....	CQS/UQDF
Z—BATS Exchange .....	BATS PITCH .....	CQS/UQDF

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

\* \* \* \* \*

- (b) Not applicable.
- (c) Not applicable.

**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**

In her June 5, 2014 market structure speech, the Chair requested that all national securities exchanges review and disclose their policies and procedures governing the market data used when performing important exchange functions.<sup>3</sup> In a letter dated June 20, 2014, the Director of the Division of Trading and Markets codified this request:

We believe there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof, are used by the exchanges for purposes of (1) order handling and execution (e.g., with pegged or midpoint orders), (2) order routing, and (3) regulatory compliance, as applicable. . . . Accordingly, we ask that proposed rule changes be filed that disclose the particular market data feeds that are used for each of these purposes. Consistent with your recent discussions with Commission staff, we ask that each SRO file these proposed rule changes with the Commission by July 15, 2014.<sup>4</sup>

NASDAQ fully supports the Commission’s efforts to provide more clarity in this area. In fact, in 2011, NASDAQ disclosed its general practices governing the use of market data in the handling, execution, and routing of orders on NASDAQ:

The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the [MatchView] Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange. . . .<sup>5</sup>

Although, as described above, NASDAQ publicly disclosed its general practice of consuming data from a combination of network processor and proprietary data feeds, NASDAQ did not disclose the specific feeds NASDAQ utilizes for each individual exchange, and it did not describe its data usage practice with respect to related compliance checks.

Through this proposed rule change, NASDAQ is publicly clarifying on a market-by-market basis the specific network processor and proprietary data feeds that NASDAQ utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. These complex practices are governed by a few, simple principles that are designed to ensure that NASDAQ has the most accurate view of the trading interest available across multiple markets, and to maximize the synchronization of the many exchange functions that depend upon the calculation of an accurate NBBO and top-of-book for each market. These principles are:

1. NASDAQ uses a proprietary data feed from each exchange that provides a reliable proprietary data feed. Where no reliable proprietary data feed is available, NASDAQ uses the network processor feed;
2. Where NASDAQ uses a proprietary data feed for an exchange quote, it also maintains access to the network processor feed as a back-up in the event a specific proprietary feed become unavailable or unusable for any reason;

3. NASDAQ uses the same proprietary data feed when performing order handling, routing, and execution functions, and also when the execution and routing System performs internal compliance checks related to those functions; and

4. NASDAQ acquires and processes all proprietary and network processor feeds via the same technological configuration (i.e., telecommunication circuitry, switches, and feed handlers) to the greatest extent possible.

5. NASDAQ calculates the National Best Bid and Offer (“NBBO”) and top-of-book for each exchange at a single point within the NASDAQ System, and then distributes that data simultaneously to numerous applications performing order handling, routing, execution, and internal compliance functions throughout the NASDAQ System.

6. NASDAQ aggregates odd-lot orders, including those in its own and affiliated markets, when calculating the NBBO based upon a direct feed from an away exchange. NASDAQ processes odd-lot orders from each exchange direct feed in the same manner that that exchange aggregates odd-lots when reporting its own quotations to the SIP.

7. NASDAQ utilizes the NBBO and top-of-book calculations described above for the handling of orders that use those reference points, including all variations of midpoint orders, pegged orders, and price-to-comply orders described in NASDAQ Rule 4751(f), as well as Retail Price Improving Orders described in NASDAQ Rule 4780(a).

8. When calculating the NBBO, the NASDAQ System does not utilize feedback from other venues when calculating the NBBO. The NASDAQ System assumes that a protected quotation to which it has routed an order has been executed and can be removed from the NBBO; it does not await or respond to execution reports from such routing activity.

As of the date of this filing, NASDAQ utilizes the following data feeds for the handling, execution and routing of orders, as well as for performing related compliance checks:

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX) .....	CQS/UQDF .....	n/a
B—NASDAQ OMX BX .....	BX ITCH 4.1 .....	CQS/UQDF
D—FINRA ADF .....	CQS/UQDF .....	n/a

<sup>3</sup> See Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O’Neill & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

<sup>4</sup> See Letter from Steven Luparello, Director, SEC Division of Trading and Markets, to Robert Greinfeld, Chief Executive Officer, NASDAQ OMX Group, Inc., dated June 20, 2014.

<sup>5</sup> See SR–NASDAQ–2011–118 (Aug. 18, 2011); 76 FR 53007 (Aug. 24, 2011).

Market center	Primary source	Secondary source
J—DirectEdge A	EdgeBook	CQS/UQDF
K—DirectEdge X	EdgeBook	CQS/UQDF
M—CSX	CQS/UQDF	n/a
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF
P—NYSE Arca	ArcaBook Binary uncompactd	CQS/UQDF
T/Q—NASDAQ	ITCH 4.1	CQS/UQDF
X—NASDAQ OMX PSX	PSX ITCH 4.1	CQS/UQDF
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF
Z—BATS Exchange	BATS PITCH	CQS/UQDF

NASDAQ uses these feeds to calculate the NBBO via an application called the “NMSFeed.” The NMSFeed consumes the NASDAQ Protected Quote Service (“NPQS”), which provides an internal view of that exchange’s own market data as NASDAQ ITCH, plus the proprietary and network processor market data feeds listed above. The NMSFeed calculates a Regulation NMS-Compliant “Best Bid or Offer” (“Compliant BBO”), and then delivers that information throughout the NASDAQ System, including to the “OUCH” order entry ports,<sup>6</sup> the routing System, and various compliance applications described below.

Upon receipt of an update to a protected quote for a specific venue, the NMSFeed updates its quote for that venue, recalculates the consolidated BBO based upon the update, and recalculates the Compliant BBO after applying NASDAQ’s own BBO. Any quote that crosses NASDAQ’s BBO is ignored. NASDAQ odd lot orders at the same price are aggregated and considered in the NBBO calculation if the sum is greater than or equal to a round lot. Otherwise, they are not considered in the NBBO calculation. Out of the remaining quotes, the most aggressive remaining bid and offer (excluding NASDAQ<sup>7</sup> and any destination which has been excluded from the NBBO in compliance with the self-help procedures under Regulation NMS) is selected and reported as the best quote. If away markets are crossing the market after applying NASDAQ’s BBO, orders will be accepted as originally priced and have the potential to execute. Any order sent to NASDAQ

that is not an Intermarket Sweep Order (“ISO”) will have the Compliant BBO check enforced by the System.<sup>8</sup>

The NASDAQ OMX Routing and Special Handling System (“RASH”) utilizes the Compliant BBO to determine if and when an order with special processing directives is marketable either against one or more orders in either the Core Matching System or a remote trading venue. RASH also receives market data feeds from certain venues not displaying protected quotes in the national market system for use in “QDRK” and “QCST” routing strategies set forth in NASDAQ Rule 4758(a)(1)(A)(xiii) and (xiv), respectively. RASH maintains a number of routing processes, or Routers, unique to each venue that the System accesses. These Routers maintain a limited set of details for orders that are configured as routable by the user, while also monitoring the current best bid and best offer prices on each exchange.

The NASDAQ System includes internal compliance applications related to locked and crossed markets, trade throughs, limit-up/limit-down, and Regulation SHO compliance. Each of these applications utilizes the Compliant BBO to ensure compliance with applicable regulations. NASDAQ operates a separate real-time surveillance system that is external to the execution systems and that monitors the execution system’s compliance with applicable rules and regulations. The real-time surveillance system utilizes a “mirrored” version of the internal NMSFeed in various realtime surveillance patterns, including (1) Lock/Cross, which detects lock/cross events across all markets, regardless of

whether or not NASDAQ is a participant in the event; (2) Trade Through, which detects potential trade through events for all three NASDAQ equity markets; and (3) RegSho, which detects potential RegSho violations, alerting when a trade executes at or below the NBBO at the time of order entry while the stock is in a RegSho restricted state.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general and with Sections 6(b)(5) of the Act,<sup>10</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to describe the Exchange’s use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange’s proposal will enable investors to better assess the quality of the Exchange’s execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the

<sup>6</sup> OUCH is a protocol that allows NASDAQ participants to enter, replace and cancel orders and receive executions. In addition to OUCH, NASDAQ offers the FLITE protocol as an option for participants. In this document, references to OUCH also include FLITE because they are interchangeable for these purposes.

<sup>7</sup> Deletion of NASDAQ’s quote at this stage of the process is necessary because otherwise the system would prevent valid executions on NASDAQ in the erroneous belief that such executions would be “trade throughs” in violation of Regulation NMS.

<sup>8</sup> In general, any order that is sent to NASDAQ with an ISO flag is not re-priced and will be processed at its original price. There are a limited number of circumstances in which an order marked as an ISO will be determined not to be executable at its original price and will be re-priced. These include re-pricing under the Plan to Address Extraordinary Market Volatility, re-pricing to comply with Regulation SHO, and the re-pricing of an order with a post-only condition if NASDAQ has an order at that price at the time the order is accepted.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

#### *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 the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that waiver of the operative delay would permit the Exchange to immediately enhance transparency. The Commission believes

the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>15</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-033 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-NASDAQ-2015-033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-033 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-08545 Filed 4-14-15; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74692; File No. SR-BATS-2015-28]

### **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.**

April 9, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 1, 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<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> 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](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule, effective immediately, in order to modify pricing charged by the Exchange's options platform ("BATS Options") including: (i) Adjusting the standard rebate associated with Market Maker<sup>6</sup> orders that add liquidity in Penny Pilot Securities;<sup>7</sup> (ii) to add a new tier to the Market Maker Penny Pilot Add Volume Tier; (iii) adjusting the standard fees paid for Professional,<sup>8</sup> Firm<sup>9</sup> and Market Maker orders that remove liquidity in Penny Pilot Securities and do not qualify for any

<sup>5</sup> 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).

<sup>6</sup> "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC.

<sup>7</sup> "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

<sup>8</sup> "Professional" applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

<sup>9</sup> "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC.

reduced fees; and (iv) to make certain changes to the Professional, Firm and Market Maker Penny Pilot Take Volume Tiers, as further described below. The Exchange is also proposing to make certain corresponding changes to the fee schedule.

#### Market Maker Orders That Add Liquidity in Penny Pilot Securities

The Exchange proposes to reduce the standard rebate for Market Maker orders that add liquidity in Penny Pilot Securities. Currently, the Exchange provides a rebate of \$0.40 per contract as a standard rebate for Market Maker orders that add liquidity in Penny Pilot Securities under fee code PM. The Exchange is proposing to reduce the standard rebate for Market Maker orders that add liquidity in Penny Pilot Securities from \$0.40 per contract to \$0.35 per contract in conjunction with the addition of adding a new tier to the Market Maker Penny Pilot Add Volume Tier, as further described below. The Exchange notes that this standard rebate is still higher than the standard rebate of \$0.20 per contract offered by the options platform operated by NASDAQ Stock Market LLC ("NOM"). The Exchange also notes that Members will still be eligible to receive the current rebates of \$0.42 and \$0.40 by meeting the existing Market Maker Penny Pilot Add Volume Tier and the new Market Maker Penny Pilot Add Volume Tier 1 proposed below, respectively.

#### Market Maker Penny Pilot Add Volume Tier

The Exchange is also proposing to add a new tier to the Market Maker Penny Pilot Add Volume Tier under footnote 6 of the fee schedule. Currently, the only enhanced rebate available under footnote 6 provides a \$0.42 rebate per contract to a Member that has an ADAV<sup>10</sup> equal to or greater than 1.00% of average TCV<sup>11</sup> and an ADV<sup>12</sup> equal to or greater than 2.00% of average TCV. The Exchange is proposing to add an additional tier to the Market Maker Penny Pilot Add Volume Tier such that a Member receives a \$0.40 rebate per contract in Market Maker orders that add liquidity in Penny Pilot Securities

<sup>10</sup> "ADAV" means average daily added volume calculated as the number of contracts added per day.

<sup>11</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

<sup>12</sup> "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

where the Member has an ADV equal to or greater than 0.30% of average TCV.

#### Professional, Firm and Market Maker Orders That Remove Liquidity in Penny Pilot Securities

The Exchange proposes to increase the standard fee for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities. Currently, the Exchange charges \$0.48 per contract as a standard fee for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities under fee code PP. The Exchange is proposing to increase the standard fees for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities from \$0.48 per contract to \$0.49 per contract in conjunction with the addition of two new tiers and the amendment of the pricing for another tier in the Professional, Firm and Market Maker Penny Pilot Take Volume Tiers, as further described below. The Exchange notes that this standard fee is still lower than the standard fee of \$0.50 charged by the options platform operated by NYSE Arca, Inc. ("Arca"). The Exchange also notes that Members will still be eligible to receive the current fees of \$0.48, \$0.47, and \$0.45 or the new \$0.43 charge per contract by meeting applicable Professional, Firm and Market Maker Penny Pilot Take Volume Tiers.

#### Professional, Firm and Market Maker Penny Pilot Take Volume Tiers

The Exchange is also proposing to increase the fees for the Non-Customer Take Volume Tier 1 and to add two new tiers to the Professional, Firm and Market Maker Penny Pilot Take Volume Tiers under footnote 3 of the fee schedule. Currently, the fee schedule contains three tiers that provide reduced fees available under footnote 3, under which a Member would pay either \$0.47 or \$0.45. The Exchange is not proposing to amend the required criteria for any of these three tiers, but rather to increase the fee for orders that meet the required criteria for Non-Customer Take Volume Tier 1 (applicable where a Member has an ADV equal to or greater than 1.00% of average TCV) from \$0.47 per contract to \$0.48 per contract. The Exchange is also proposing to add new Non-Customer Take Volume Tier 2 and Tier 4. Under proposed Non-Customer Take Volume Tier 2, a Member that has an ADV equal to or greater than 1.25% of average TCV will pay a reduced fee of \$0.47. Under proposed Non-Customer Take Volume Tier 4, a Member that has an ADAV in Customer orders that is equal to or greater than 2.00% of

average TCV would pay a reduced fee of \$0.43 per contract.

#### Corresponding Changes

In conjunction with the changes proposed above, the Exchange is also proposing to make certain corresponding changes to update the Standard Rates chart of the fee schedule and related to the numbering of existing tiers. Specifically, the Exchange proposes to update the Standard Rates chart to reflect the potential rebate of \$0.35 for a Market Maker order that adds liquidity as well as the new high remove rate of \$0.49 and low remove rate of \$0.43, each now possible for non-Customer orders. The Exchange is also proposing to change Non-Customer Take Volume Tier 2 to Non-Customer Take Volume Tier 3 and to make the Market Maker Add Volume Tier the Market Maker Add Volume Tier 2. Finally, the Exchange is also proposing to pluralize the title of the Market Maker Penny Pilot Add Volume Tier to be the Market Maker Penny Pilot Add Volume Tiers.

#### Effectiveness Date

As noted above, the Exchange proposes to implement the amendments to its fee schedule effective immediately.

#### 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.<sup>13</sup> Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>14</sup> 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 to be excessive.

Volume-based rebates and fees such as the ones currently maintained on BATS Options 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. The Exchange believes the proposed reduction of the standard rebate for Market Maker orders in Penny Pilot Securities that add liquidity is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in order to receive a higher rebate by meeting a higher Market Maker Add Volume Tier, including the proposed new Market Maker Add Volume Tier 1. Proposed Market Maker Add Volume Tier 1 would provide a rebate of \$0.40 per contract, the same as the current standard rebate for Market Maker orders that add liquidity in Penny Pilot Securities, and Members are eligible for such rebates where the Member has an ADV equal to or greater than 0.30% of average TCV. As such, the Exchange believes that decreasing the standard rebate will act to incentivize Members to increase their trading activity on the Exchange in order to qualify for proposed Market Maker Add Volume Tier 1 or Tier 2 and receive a rebate of \$0.40 or \$0.42 per contract, respectively, which are the same rebates currently available to Members today for such orders. Such increased participation on BATS Options, particularly in Market Maker orders, will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options. Further, as noted above, the proposed standard rebate is still significantly higher than the standard rebate offered by NOM of \$0.20 per contract.

Similarly, the Exchange believes that the addition of new Market Maker Add Volume Tier 1 is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will act to incentivize Members to meet minimum standards of Market Maker trading activity on BATS Options in order to receive an additional \$0.05 rebate per contract (\$0.40 per contract versus the proposed standard rebate of \$0.35 per contract). The proposed new tier will allow Members to continue to receive the same rebate that they currently receive for Market Maker orders that add liquidity in Penny Pilot Securities, which the Exchange believes will

incentivize Members to increase or maintain their ADV as a percentage of TCV of at least 0.30%. Such increased participation on the BATS Options, particularly in Market Maker orders, will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

The Exchange believes the proposed increase of the standard fees for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities (from \$0.48 per contract to \$0.49 per contract) is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in order to be eligible for lower fees by meeting a higher Professional, Firm and Market Maker Penny Pilot Take Volume Tier. Included in the Professional, Firm and Market Maker Penny Pilot Take Volume Tiers are the proposed new Non-Customer Take Volume Tiers 2 and 4, the second of which would actually provide a lower fee (\$0.43 per contract) for Members than currently is available for non-Customer orders and will further encourage increased participation on the BATS Options. Such increased participation on BATS Options will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options. Further, as noted above, the proposed standard fee is still lower than the standard fee offered by Arca of \$0.50 per contract.

Similarly, the Exchange believes that the proposed increase in fees for Non-Customer Take Volume Tier 1 from \$0.47 to \$0.48 per contract and the proposed new Non-Customer Take Volume Tier 2 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in order to be eligible for lower fees by meeting a higher Professional, Firm and Market Maker Penny Pilot Take Volume Tier. These proposed changes, when viewed in conjunction with one another, will incentivize Members to: (i) Have an ADV equal to or greater than 1.00% of average TCV in order to receive the lower fees associated with Non-Customer Take Volume Tier 1; and (ii) further increase their ADV to reach 1.25% of average TCV in order to meet proposed Non-Customer Take Volume

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

Tier 2 and receive a fee of \$0.47 per contract. While the price change for Non-Customer Take Volume Tier 1 does result in an increased fee for Members that qualify for the tier, the Exchange believes that the benefit to all participants on BATS Options from incentivizing increased participation on BATS Options outweighs the additional cost for those Members that qualify for Tier 1. Further, the requirements to meet proposed Tier 2 are only an additional 0.25% ADV as a percentage of average TCV, which would provide Members with fees identical to those that they would pay today under Tier 1. As such, the Exchange believes that the proposed change to Non-Customer Take Volume Tier 1 and the proposed new Non-Customer Take Volume Tier 2 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options which will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

The Exchange also believes that the proposed new Non-Customer Take Volume Tier 4 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in both Customer and non-Customer orders. Under proposed Tier 4, Members that have an ADAV in Customer orders equal to or greater than 2.00% of average TCV will be eligible for \$0.43 per contract fees for Non-Customer orders that remove liquidity in Penny Pilot Securities. The Exchange further emphasizes that the proposed change is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it allows the Exchange to further incentivize Customer orders that add liquidity beyond the \$0.50 per contract rebate that such orders receive. The Exchange believes that such additional incentives for Customer orders combined with the incentive for non-Customer orders that remove liquidity will lead Members to increase participation in both Customer and non-Customer orders. Incentivizing Members to increase participation in both added Customer liquidity and non-Customer orders that remove liquidity will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will

benefit all participants on BATS Options to a greater extent than most tier changes because it will incentivize increased participation in multiple order capacities simultaneously. As stated above, such increased participation benefits all participants on BATS Options, even those that are not receiving the lower fees from achieving Tier 4.

The Exchange reiterates 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 to be excessive.

Finally, the Exchange believes that the non-substantive changes discussed above would contribute to the protection of investors and the public interest by helping to avoid confusion with respect the Exchange fee schedule.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposed new rebates for Market Maker orders that add liquidity in Penny Pilot Securities, including the proposed new Market Maker Add Volume Tier 1, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options. Similarly, with respect to the proposed new fees for Professional, Firm and Market Maker Orders that remove liquidity in Penny Pilot Securities, include the proposed new tiers and adjusted rebates in the Professional, Firm and Market Maker Penny Pilot Take Volume Tiers, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options. 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 the 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<sup>15</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-28 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-BATS-2015-28. 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

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-28 and should be submitted on or before May 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-08546 Filed 4-14-15; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Type Certification Procedures for Changed Products

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014. 14 CFR part 21 may require applicants to demonstrate compliance with the latest regulations in effect on the date of application for amended Type Certificates (TC) or a Supplemental TCs for aeronautical products.

**DATES:** Written comments should be submitted by May 15, 2015.

**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 the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson at (202) 267-1416, or by email at: [Ronda.Thompson@faa.gov](mailto:Ronda.Thompson@faa.gov).

#### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 2120-0657.

**Title:** Type Certification Procedures for Changed Products.

**Form Numbers:** There are no FAA forms associated with this collection.

**Type of Review:** Extension without change of an information collection.

**Background:** The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014 (79 FR 76437). 14 CFR part 21 requires that, with certain exceptions, all aviation product changes comply with the latest airworthiness standards when determining the certification basis for aeronautical products. This process is intended to increase safety by applying the latest regulations where practicable. A certification application request, in letter form, and a supporting data package is made to the appropriate Federal Aviation Administration (FAA) Aircraft Certification Office by an aircraft/product manufacturer/modifier.

**Respondents:** Approximately 2,558 manufacturers/modifiers.

**Frequency:** Information is collected on occasion.

**Estimated Average Burden per Response:** 7.35 hours.

**Estimated Total Annual Burden:** 18,815 hours.

Issued in Washington, DC, on April 9, 2015.

**Ronda Thompson,**  
FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2015-08632 Filed 4-14-15; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35907]

#### Dakota, Minnesota & Eastern Railroad Corporation—Trackage Rights Exemption—Soo Line Railroad Company

Soo Line Railroad Company (Soo), pursuant to a written trackage rights agreement dated March 27, 2015,<sup>1</sup> has agreed to grant overhead and local trackage rights to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) over approximately 132.6 miles of rail line (the Line) extending (1) between Goodview, Minn., and Merriam Park in St. Paul, Minn., and (2) between Goodview and Bridge Switch in Bluff, Minn.<sup>2</sup>

This transaction is related to a concurrently filed verified notice of exemption in *Soo Line Railroad—Trackage Rights Exemption—Dakota, Minnesota & Eastern Railroad*, Docket No. FD 35906, wherein DM&E has agreed to grant Soo overhead and local trackage rights over approximately 223.1 miles of rail line extending between Goodview and Tracy, Minn.

DM&E may consummate its acquisition on or after April 29, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

According to DM&E, the proposed transaction, along with the transaction in Docket No. FD 35906, is part of an exchange of nonexclusive trackage rights between two affiliated rail

<sup>1</sup> The agreement replaces and supersedes the incidental trackage rights previously authorized by the Board. See *I&M Rail Link—Acquis. & Operation Exemption—Certain Lines of Soo Line R.R.*, FD 33326 (STB served Apr. 9, 1997).

<sup>2</sup> Specifically, the new trackage rights extend from Soo's connection with DM&E at milepost 313.2 +/- of Soo's River Subdivision at or in the vicinity of Goodview, over Soo's River Subdivision to Winona, Minn., north to the connection with Soo's Merriam Park Subdivision, and continue to Merriam Park at milepost 416.2 +/- in St. Paul. The trackage rights also include the line from Soo's River Subdivision at Goodview to Soo's Tomah Subdivision at River Junction West, Minn., and continue to Bridge Switch at milepost 283.6 +/- at or in the vicinity of Bluff.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

carriers<sup>3</sup> that is intended to allow more fluid and efficient operations over both carriers. DM&E's trackage rights will include the right to conduct both overhead and local service, including the right to perform pickups and setoffs at customer facilities over the Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 22, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35907, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Stinson Leonard Street LLP, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at "[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV)."

Decided: April 10, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Brendetta S. Jones,**  
Clearance Clerk.

[FR Doc. 2015-08670 Filed 4-14-15; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35906]

#### **Soo Line Railroad Company— Trackage Rights Exemption—Dakota, Minnesota & Eastern Railroad Corporation**

Dakota, Minnesota & Eastern Railroad Corporation (DM&E), pursuant to a written trackage rights agreement dated March 27, 2015, has agreed to grant

overhead and local trackage rights to Soo Line Railroad Company (Soo) over approximately 223.1 miles of rail line extending between Goodview, Minn., and Tracy, Minn. (the Line). Specifically, Soo will acquire trackage rights between milepost 4.9 +/- on DM&E's Waseca Subdivision at or in the vicinity of Goodview and milepost 228.0 +/- on DM&E's Tracy Subdivision where it meets Rapid City, Pierre & Eastern Railroad at or in the vicinity of Tracy.

This transaction is related to a concurrently filed verified notice of exemption in *Dakota, Minnesota & Eastern Railroad—Trackage Rights Exemption—Soo Line Railroad*, Docket No. FD 35907, wherein Soo has agreed to grant DM&E overhead and local trackage rights over approximately 132.6 miles of rail line extending (1) between Goodview and Merriam Park in St. Paul, Minn., and (2) between Goodview and Bridge Switch in Bluff, Minn.

Soo may consummate its acquisition on or after April 29, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

According to Soo, the proposed transaction, along with the transaction in Docket No. FD 35907, is part of an exchange of nonexclusive trackage rights between two affiliated rail carriers<sup>1</sup> that is intended to allow more fluid and efficient operations over both carriers. Soo's trackage rights will include the right to conduct both overhead and local service and the right to perform pickups and setoffs at customer facilities over the Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 22, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD

35906, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Stinson Leonard Street LLP, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at "[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV)."

Decided: April 10, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Brendetta S. Jones,**  
Clearance Clerk.

[FR Doc. 2015-08669 Filed 4-14-15; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### **Agency Information Collection Activities: Information Collection Renewal; Comment Request; Guidance on Stress Testing for Banking Organizations With More than \$10 Billion in Total Consolidated Assets**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Guidance on Stress Testing for Banking Organizations with more than \$10 Billion in Total Consolidated Assets."

**DATES:** Comments must be submitted on or before June 15, 2015.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0312, 400 7th Street SW., Suite

<sup>3</sup> Soo and DM&E are affiliated carriers under common control pursuant to Board authority. See *Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081 (STB served Sept. 30, 2008).

<sup>1</sup> Soo and DM&E are affiliated carriers under common control pursuant to Board authority. See *Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081 (STB served Sept. 30, 2008).

3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Mary H. Gottlieb, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** 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. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

**Title:** Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance.

**OMB Control No.:** 1557-0312.

**Description:** Each banking organization should have the capacity to understand its risks and the potential impact of stressful events and circumstances on its financial

condition.<sup>1</sup> On May 17, 2012, the OCC, along with the Federal Deposit Insurance Corporation (FDIC) and Board of Governors of the Federal Reserve (FRB), published guidance on the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.<sup>2</sup> The OCC is now seeking to renew the information collection associated with that guidance.

The guidance provides an overview of how a banking organization should structure its stress testing activities to ensure they fit into the banking organization's overall risk management. The purpose of the guidance is to outline broad principles for a satisfactory stress testing framework and to describe the manner in which stress testing should be used, that is as an integral component of risk management applicable at various levels of aggregation within a banking organization, as well as a tool for capital and liquidity planning. While the guidance is not intended to provide detailed instructions for conducting stress testing for any particular risk or business area, it does describe several types of stress testing activities and how they may be most appropriately used by banking organizations. The guidance also does not explicitly address the stress testing requirements imposed upon certain companies by section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>3</sup>

**Type of Review:** Regular.

**Affected Public:** Businesses or other for-profit.

**Estimated Number of Respondents:** 50.

**Estimated annual burden:** 13,000 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the

<sup>1</sup> For purposes of this guidance, the term "banking organization" means national banks and Federal branches and agencies supervised by the OCC; state member banks, bank holding companies, and all other institutions for which the FRB is the primary Federal supervisor; and state nonmember insured banks and other institutions supervised by the FDIC.

<sup>2</sup> 77 FR 29458 (May 17, 2012).

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376. Section 165(i) of the Dodd-Frank Act is codified at 12 U.S.C. 5365(i)(2).

information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 2015.

**Mary H. Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division.*

[FR Doc. 2015-08611 Filed 4-14-15; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Proposed Agency Information Collection Activities; Submission for OMB Review; Interest-Rate-Risk Vendor Questionnaire

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden and to fulfill the requirements of the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on a new information collection.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Currently, the OCC is soliciting comment concerning its proposed information collection entitled, "Interest Rate Risk Vendor Questionnaire." It also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before May 15, 2015.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention:

1557-NEW, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by email to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Mary Gottlieb, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to adopt the following new information collection:

*Title:* Interest Rate Risk Vendor Questionnaire.

*Frequency of Response:* Annually.

*Affected Public:* Business or other for-profit.

*Respondents:* Asset-Liability Management Software Vendors (model developers and consultants).

*Total Estimated Number of Respondents:* 73 (33 model developers; 40 consultants).

*Estimated Time per Response:* 8 hours for model developers; 4 hours for consultants.

*Total Estimated Total Annual Burden:* 424 hours.

*Type of Review:* Regular.

**Abstract**

In June 2014, the Federal Financial Institutions Examination Council (FFIEC)<sup>1</sup> Task Force on Supervision

<sup>1</sup> The FFIEC is a formal interagency body that prescribes uniform principles, standards, and report forms for the examination of financial institutions by the Board of Governors of the Federal Reserve

(TFOS) established a working group to discuss supervisory processes and strategies for monitoring and addressing interest rate risk at insured depository institutions. One of the group's key priorities is to complete a questionnaire of asset-liability management software vendor model developers and consultants. The questionnaire is designed to inform examiners of the mechanics and underlying assumptions of specific interest rate risk models with the goal of helping examiners gain a better understanding of financial institutions' rate sensitivity modeling. The questionnaire captures information ranging from basic aspects of each vendor or consultant's interest rate risk model, for instance, its client base to more complex components, including modeling capability. The complex modeling components will provide a baseline level of regulatory knowledge about each vendor or consultant's ability to measure interest rate risk under a variety of approaches, capture data, and measure the risk, including optionality. The questionnaire would cover approximately 73 vendors comprised of 33 model developers and 40 consultants. The questionnaire should take approximately 8 hours for each model developer to complete and 4 hours for each consultant to complete less detailed responses to model-related questions.

The OCC will serve as the sponsoring or central collection agency for this information collection. The information will be collected by the OCC and made available to the FFIEC's TFOS in order to support its discussions concerning supervisory processes and strategies for monitoring and addressing interest rate risk at insured depository institutions.

**Request for Comment**

The OCC published a notice for 60 days of comment on February 3, 2015 (80 FR 5884). One comment was received from a model vendor. The comment was generally favorable but raised an issue about awareness of vendor software upgrades; model vendors update software periodically. Vendors may have clients using different versions of a model as clients are not typically required to move to the most recent version. The questionnaire

System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the OCC, the Consumer Financial Protection Bureau, and makes recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors.

addresses this concern by accommodating several versions of each vendor's software.

Comments continue to be invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: April 9, 2015.

**Mary H. Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division.*

[FR Doc. 2015-08612 Filed 4-14-15; 8:45 am]

**BILLING CODE 4810-33-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of the Fiscal Service**

**Proposed Collection of Information: Request for Payment of Federal Benefit by Check, EFT Waiver Form**

**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 a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the "Request for Payment of Federal Benefit by Check, EFT Waiver Form".

**DATES:** Written comments should be received on or before June 15, 2015 to be assured of consideration.

**ADDRESSES:** Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or [bruce.sharp@fiscal.treasury.gov](mailto:bruce.sharp@fiscal.treasury.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, EFT Strategy Division; 401 14th Street SW., Room 303, Washington, DC 20227, (202) 874–6624.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Payment of Federal Benefit by Check, EFT Waiver Form.

*OMB Number:* 1530–0019 (Previously approved as 1510–0077 as a collection conducted by Department of the Treasury/Financial Management Service.) Transfer of OMB Control Number: The Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

*Form Number:* FMS Form 1201W, FMS Form 1201W–DFAS, FMS Form 1201W (SP).

*Abstract:* 31 CFR part 208 requires that all Federal non-tax payments be made by electronic funds transfer (EFT). This form is used to collect information from individuals requesting a waiver from the EFT requirement because of a mental impairment and/or who live in a remote geographic location that does not support the use of EFT. These individuals may continue to receive payment by check. However, 31 CFR part 208 requires individuals requesting one of these waiver conditions to submit a written justification that is notarized by a notary public. In order to assist individuals with this submission, Treasury has prepared waiver forms in order to collect all necessary information.

*Current Actions:* Extension of a currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 3,250.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 1,083.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 10, 2015.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2015–08640 Filed 4–14–15; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Fiscal Service

#### Proposed Collection of Information: Request by Fiduciary for Distribution of United States Treasury Securities

**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 a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the “Request by Fiduciary For Distribution of United States Treasury Securities”.

**DATES:** Written comments should be received on or before June 15, 2015 to be assured of consideration.

**ADDRESSES:** Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or [bruce.sharp@fiscal.treasury.gov](mailto:bruce.sharp@fiscal.treasury.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Request By Fiduciary For Distribution of United States Treasury Securities.

*OMB Number:* 1530–0035. (Previously approved as 1535–0012 as a collection conducted by Department of the Treasury/Bureau of the Public Debt.)

*Transfer of OMB Control Number:* The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service).

Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

*Form Number:* PD F 1455.

*Abstract:* The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

*Current Actions:* Extension of a currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 17,700.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 8,850.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 10, 2015.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2015–08641 Filed 4–14–15; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Additional Designations, Foreign Narcotics Kingpin Designation Act, and Unblocking of One Individual Blocked Pursuant to Executive Order 13382 of June 28, 2005

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.



**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two entities and two individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182). OFAC is also removing the name of one individual whose property and interest in property were blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters" from the list of Specially Designated Nationals and Blocked Persons (SDN List).

**DATES:** The designation by the Acting Director of OFAC of the two entities and two individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective as of April 8, 2015. The removal of the individual from the SDN List is effective as of April 3, 2015.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available on OFAC's Web site at <http://www.treasury.gov/ofac> or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

**Background**

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the

Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On April 8, 2015, the Acting Director of OFAC designated the following entities and individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

**Entities**

1. CARTEL DE JALISCO NUEVA GENERACION (a.k.a. CJNG; a.k.a. NEW GENERATION CARTEL OF JALISCO), Mexico [SDNTK].
2. LOS CUINIS (a.k.a. LOS CUINIS DRUG TRAFFICKING ORGANIZATION; a.k.a. LOS QUINIS), Mexico [SDNTK].

**Individuals**

1. GONZALEZ VALENCIA, Abigael (a.k.a. GOMEZ FLORES, Luis Angel; a.k.a. GONZALEZ VALENCIA, Abigail; a.k.a. GONZALEZ VALENCIA, Luis Angel; a.k.a. TAK TOLEDO, Jonathan Paul; a.k.a. TAK TOLEDO, Paul Jonathan); DOB 18 Oct 1972; alt. DOB 28 Oct 1979; POB Aguililla, Michoacan, Mexico; alt. POB Guadalajara, Jalisco, Mexico; alt. POB Apatzingan, Michoacan, Mexico; Gender Male; Passport JX755855 (Canada); C.U.R.P. GOVA721018HMNNLB07 (Mexico); alt. C.U.R.P. GOFL721018HJCMLS02 (Mexico); alt. C.U.R.P. GOVL721018HMNNLS08 (Mexico) (individual) [SDNTK] (Linked To: LOS CUINIS).
2. OSEGUERA CERVANTES, Nemesio (a.k.a. OSEGUERA CERVANTES, Ruben; a.k.a. "Mencho"); DOB 17 Jul 1966; alt. DOB 17 Jul 1964; POB Naranjo de Chila, Aguililla, Michoacan, Mexico (individual) [SDNTK] (Linked To: CARTEL DE JALISCO NUEVA GENERACION).

The Department of the Treasury's Office of Foreign Assets Control has determined that the following individual is no longer blocked pursuant to E.O. 13382 and the name has been removed from the SDN List:

**Individual**

TAHIR, Buhary Seyed Abu; DOB 17 Apr 1959; POB Chennai, India; nationality Sri Lanka; Additional Sanctions Information—Subject to Secondary Sanctions; Passport M2068357 (Sri Lanka) issued 04 Sep 2001

expires Sep 2006; alt. Passport M1754102 (Sri Lanka) issued 16 Mar 1999 expires 16 Mar 2004 (individual) [NPWMD] [IFSR].

The unblocking of this individual is effective as of April, 3 2015. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: April 8, 2015.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015–08642 Filed 4–14–15; 8:45 am]

**BILLING CODE 4810–AL–P**

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**Supplemental Identification Information for 1 Entity Designated Pursuant to Executive Order 13224**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing supplemental information for the name of 1 entity whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13224.

**DATES:** OFAC's actions described in this notice were effective April 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site ([www.treas.gov/ofac](http://www.treas.gov/ofac)). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

**Notice of OFAC Actions**

On April 7, 2015, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant

agencies, supplemented the identification information for 1 entity whose property and interests in property are blocked pursuant to Executive Order 13224. The supplemental identification information for the entity is as follows:

*Entity*

1. REVIVAL OF ISLAMIC HERITAGE SOCIETY (a.k.a. AFGHAN SUPPORT COMMITTEE; a.k.a. AHYAHU TURUS; a.k.a. AHYA UL TURAS; a.k.a. AHYA UTRAS; a.k.a. AL-FORQAN AL-KHAIRYA; a.k.a. AL-FURQAN AL-KHARIYA; a.k.a. AL-FURQAN CHARITABLE FOUNDATION; a.k.a. AL-FURQAN FOUNDATION WELFARE TRUST; a.k.a. AL-FURQAN KHARIA; a.k.a. AL-FURQAN UL KHAIRA; a.k.a. AL-FURQAN WELFARE FOUNDATION; a.k.a. AL-TURAZ ORGANIZATION; a.k.a. AL-TURAZ TRUST; a.k.a. FORKHAN RELIEF ORGANIZATION; a.k.a. HAYAT URAS AL-FURQAN; a.k.a. HAYATURAS; a.k.a. HAYATUTRAS; a.k.a. HIYAT ORAZ AL ISLAMIYA; a.k.a. JAMIA IHYA UL TURATH; a.k.a. JAMIAT AL-HAYA AL-SARAT; a.k.a. JAMIAT AYAT-UR-RHAS AL ISLAMIA; a.k.a. JAMIAT IHIA AL-TURATH AL-ISLAMIYA; a.k.a. JAMIAT IHYA UL TURATH AL ISLAMIA; a.k.a. JAMITO AHIA TORAS AL-ISLAMI; a.k.a. LAJNAT UL MASA EIDATUL AFGHANIA; a.k.a. LAJNATUL FURQAN; a.k.a. ORGANIZATION FOR PEACE AND DEVELOPMENT PAKISTAN; a.k.a. RAIES KHILQATUL QURANIA FOUNDATION OF PAKISTAN; a.k.a. REVIVAL OF ISLAMIC SOCIETY HERITAGE ON THE AFRICAN CONTINENT; a.k.a. "AL MOSUSTA FURQAN"; a.k.a. "AL-FORKAN"; a.k.a. "AL-FURKAN"; a.k.a. "AL-MOSASATUL FURQAN"; a.k.a. "ASC"; a.k.a. "HITRAS"; a.k.a. "JAMIAT AL-FURQAN"; a.k.a. "MOASSESA AL-FURQAN"; a.k.a. "MOSASA-TUL-FORQAN"; a.k.a. "RIHS"; a.k.a. "SOCIAL DEVELOPMENT FOUNDATION"), House Number 56, E. Canal Road, University Town, Peshawar, Pakistan; Afghanistan; Near old Badar Hospital in University Town, Peshawar, Pakistan; Chinar Road, University Town, Peshawar, Pakistan [SDGT].

Dated: April 7, 2015.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015-08639 Filed 4-14-15; 8:45 am]

**BILLING CODE 4810-AL-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Regulation Project**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning a final regulation, REG-146459-05 (TD 9324), Designated Roth Contributions under Section 402A.

**DATES:** Written comments should be received on or before June 15, 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 regulations should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Designated Roth Contributions.

*OMB Number:* 1545-1992.

*Regulation Project Number:* REG-146459-05 (TD 9324).

*Abstract:* These final regulations provide guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k).

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business, other for-profit organizations.

*Estimated Number of Respondents:* 357,000.

*Estimated Time per Respondent:* 2 hrs. 19 min.

*Estimated Total Annual Burden Hours:* 828,000.

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; (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: April 7, 2015.

**Christie Preston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-08652 Filed 4-14-15; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Credit for Renewable Electricity Production and Refined Coal Production, and Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2015**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Publication of inflation adjustment factor and reference prices for calendar year 2015 as required by sections 45(e)(2)(A) (26 U.S.C. 45(e)(2)(A)) and 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)) of the Internal Revenue Code.

**SUMMARY:** The 2015 inflation adjustment factor and reference prices are used in determining the availability of the credit for renewable electricity production and refined coal production under section 45. For calendar year 2015, the credit period for Indian coal production has expired.

**DATES:** The 2015 inflation adjustment factor and reference prices apply to calendar year 2015 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources and to 2015 sales of refined coal produced in the United States or a possession thereof.

*Inflation Adjustment Factor:* The inflation adjustment factor for calendar year 2015 for qualified energy resources and refined coal is 1.5336.

*Reference Prices:* The reference price for calendar year 2015 for facilities producing electricity from wind is 4.50 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are \$31.90 per ton for calendar year 2002 and \$57.64 per ton for calendar year 2015. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2015.

*Phaseout Calculation:* Because the 2015 reference price for electricity produced from wind (4.50 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor (1.5336), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2015. Because the 2015 reference price of fuel used as feedstock for refined coal (\$57.64) does not exceed \$83.17 (which is the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.5336) and 1.7), the phaseout of the credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2015. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2015.

*Credit Amount by Qualified Energy Resource and Facility and Refined Coal:* As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1), the 8 cent amount in section 45(b)(1), and the \$4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased

under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2015 under section 45(a) is 2.3 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.2 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2015 under section 45(e)(8)(A) is \$6.710 per ton on the sale of qualified refined coal.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Records, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 317-6853 (not a toll-free number).

**Christopher T. Kelley,**  
*Special Counsel to the Associate Chief Counsel (Passthroughs and Special Industries).*

[FR Doc. 2015-08650 Filed 4-14-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting

comments concerning information collection requirements related to real estate mortgage conduits; reporting requirements and other administrative matters; and allocation of allocable investment expense; original issue discount reporting requirements.

**DATES:** Written comments should be received on or before June 15, 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 this regulation should be directed to LaNita Van Dyke, at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at [Lanita.VanDyke@irs.gov](mailto:Lanita.VanDyke@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* T.D. 8366, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters. T.D. 8431, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

*OMB Number:* 1545-1018.

*Regulation Project Number:* T.D. 8366 and T.D. 8431.

*Abstract:* T.D. 8366 contains temporary and final regulations relating to real estate mortgage investment conduits (REMICs). T.D. 8431 contains final regulations relating to reporting requirements with respect to single-class real estate mortgage investment conduits (REMICs) and the market discount fraction reported with other REMIC information. This document also contains final regulations that require an issuer of publicly offered debt instruments with original issue discount (OID) to file an information return with the Internal Revenue Service. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and by the Technical and Miscellaneous Revenue Act of 1988.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 9,725.

*Estimated Total Annual Burden Hours:* 978.

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: April 7, 2015.

**Christie Preston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-08653 Filed 4-14-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 1098-MA

**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 1098-MA, Mortgage Assistance Payments.

**DATES:** Written comments should be received on or before June 15, 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 LaNita Van Dyke, at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Lanita.VanDyke@irs.gov](mailto:Lanita.VanDyke@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Mortgage Assistance Payments.

*OMB Number:* 1545-2221.

*Form Number:* Form 1098-MA.

*Abstract:* This form is a statement reported to the IRS and to taxpayers. It will be filed and furnished by State Housing Finance Agencies (HFAs) and HUD to report the total amounts of mortgage assistance payments and homeowner mortgage payments made to mortgage servicers. The requirement for the statement are authorized by Notice 2011-14, supported by Public Law 111-203, sec. 1496, and Public Law 110-343, Division A, sec. 109.

*Current Actions:* There were no changes made to the document that resulted in any change to the burden previously reported to OMB. We are making this submission to renew the OMB approval.

*Type of Review:* Extension to previously approved IC.

*Affected Public:* Individuals, Federal Government, State, Local, or Tribal Governments, and other Not-for-profit organizations.

*Estimated Number of Respondents:* 52.

*Estimated Time per Respondent:* 2 hours 50 minutes.

*Estimated Total Annual Burden Hours:* 170,400.

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: April 7, 2015.

**Christie Preston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-08651 Filed 4-14-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### DEPARTMENTAL OFFICES

#### Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on May 5, 2015 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and P.L. 103-202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101-05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to P.L. 103-202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C.

552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency

official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622-1876.

Dated: April 9, 2015.

**Seth B. Carpenter,**

*Acting Assistant Secretary for Financial Markets.*

[FR Doc. 2015-08536 Filed 4-14-15; 8:45 am]

**BILLING CODE 4810-25M**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War (FPOW) has scheduled a meeting on April 27-29, 2015, at Hamilton Crowne Plaza, 1401 K Street, NW., Washington, DC. The meeting will be held from 9:00 a.m. to 4:00 p.m. and is open to the public.

In exceptional circumstances, the agency may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**. 41 CFR 102-3.150. In this case, a new Designated Federal Officer, unfamiliar with the procedures, failed to prepare the notice in time. The meeting has already been scheduled, and travel plans have been made. Rescheduling will thus be expensive and delay the work of the Committee. We believe that this is sufficient exceptional circumstances for giving less than 15 calendar days notice.

The purpose of the Committee is to advise the Secretary of VA on the administration of benefits under title 38, United States Code, for Veterans who are FPOWs. The committee also makes recommendations on the needs of FPOW Veterans for compensation, health care, and rehabilitation.

On Tuesday, April 28, the Committee will hear from its Chairman and will receive briefings by VA management, as well as representatives from the Veterans Benefits Administration (VBA) and the Veterans Health Administration. Annual ethics training will be presented by the Office of General Counsel. The Associate Chief Consultant of Mental Health Disaster Response and Post-Deployment Activities and a learning consultant from the Cleveland Center Employee Education System will report on the FPOW training agenda. A Chief from VBA's Benefits Assistance Service will report on FPOW outreach efforts.

Also on April 28, the Committee will host an open public forum and FPOW panel, at 3:30 p.m. to gain information from FPOWs about their experiences, issues, and recommendations for health benefits and claims processing.

On Wednesday, April 29, the Committee will draft their 2015 recommendations and decide the location of their next meeting in the fall.

FPOWs who wish to speak at the public forum are invited to submit a 1-2 page summary of their comments at the end of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Eric Robinson, Designated Federal Officer, Advisory Committee on Former Prisoners of War, Compensation Service (212), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or via email at [eric.robinson3@va.gov](mailto:eric.robinson3@va.gov).

Any member of the public seeking additional information should contact Mr. Robinson via email or call (202) 443-6016.

Dated: April 13, 2015.

**Jelessa Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2015-08753 Filed 4-14-15; 8:45 am]

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# FEDERAL REGISTER

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Part II

## Department of Labor

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Employment and Training Administration

20 CFR Part 655

Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States; Proposed Rule

**DEPARTMENT OF LABOR****Employment and Training  
Administration****20 CFR Part 655**

RIN 1205-AB70

**Temporary Agricultural Employment of  
H-2A Foreign Workers in the Herding  
or Production of Livestock on the  
Open Range in the United States****AGENCY:** Employment and Training  
Administration, Labor.**ACTION:** Proposed rule; request for  
comments.

**SUMMARY:** The Department of Labor (Department) is proposing to amend its regulations governing certification of the employment of nonimmigrant workers in temporary or seasonal agricultural employment under the H-2A program to codify certain procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in sheepherding, goat herding and production of livestock on the open range. Such procedures must be consistent with the Secretary's statutory responsibility to ensure that there are no able, willing, qualified and available U.S. workers to perform these jobs, and that the employment of foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. Before the current rulemaking, variances from the general H-2A regulatory requirements were established and revised for these occupations through sub-regulatory guidance, *i.e.* "special procedures," that were issued in the form of separate Field Memoranda or Training and Employment Guidance Letters. The U.S. Court of Appeals for the District of Columbia Circuit recently ruled that the existing special procedures for sheepherding, goat herding and open range production of livestock are not interpretive rules but rather include substantive departures from established regulatory requirements necessitating notice and comment rulemaking under the Administrative Procedure Act. This proposed rule provides the public with the notice and opportunity to comment on proposed procedures to be followed in the filing and processing of applications involving herding and production of livestock on the open range. Among the issues addressed are the qualifying criteria for employing foreign workers in the applicable job opportunities, preparing job orders, program obligations of employers, filing of H-2A applications requesting

temporary labor certification, recruiting U.S. workers, determining the minimum offered wage rate, and the minimum standards for mobile housing on the open range. The Department's goal is to establish a single set of regulations enabling employers seeking to hire foreign temporary agricultural workers for both herding and production of livestock on the open range to comply with their obligations under the H-2A program given the unique characteristics of these job opportunities in their industry.

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before May 15, 2015.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB70, by any one of the following methods:

- *Federal e-Rulemaking Portal*  
*www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:*  
Please submit all written comments (including disk and CD-ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5641, Washington, DC 20210.

Please submit your comments by only one method and within the designated comment period. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters against including personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov*. The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration's (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the ETA Office of Policy Development and Research at (202) 693-3700 (VOICE) (this is not a toll-free number) or 1-877-889-5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** For further information, contact William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4312, Washington, DC 20210; Telephone (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background***A. The Statutory and Regulatory Framework*

The Immigration and Nationality Act (INA or the Act) establishes the H-2A visa classification for employers to employ foreign workers on a temporary basis to perform agricultural labor or services. INA Section 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* INA Secs. 214(c)(1) and 218, 8 U.S.C. 1184(c)(1) and 1188. The INA authorizes the Secretary of the Department of Homeland Security (DHS) to permit the admission of foreign workers to perform agricultural labor or services of a temporary or seasonal nature if the

Secretary of the Department of Labor (Secretary) certifies that:

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(B) The employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1).

The Secretary has delegated these responsibilities, through the Assistant Secretary, Employment and Training Administration (ETA), to ETA's Office of Foreign Labor Certification (OFLC). Sec. Order 06-2010, 75 FR 66268 (Oct. 27, 2010). The Secretary has delegated responsibility for enforcement of the worker protections to the Administrator of the Wage and Hour Division (WHD). Sec. Order 5-2010, 75 FR 55352 (Sept. 10, 2010).

The Department has operated the H-2A program for more than two decades under regulations promulgated under the authority of the Immigration Reform and Control Act of 1986 (IRCA), which amended the INA and established the H-2A program.<sup>1</sup> In 1987, the Department issued the first H-2A regulations (the 1987 regulations). 52 FR 20496 (Jun. 1, 1987). The Department's 1987 regulations provided for the establishment of special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and to ensure that the importation of foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1)(B); 20 CFR 655.93(b) 1987. The Department has issued several special procedures guidance documents under the 1987 regulations.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H-2A regulations on December 18, 2008. 73 FR 77110 (Dec. 18, 2008) (the 2008 Final Rule). The 2008 Final Rule implemented several substantive changes to the program, and revised the companion regulations at 29 CFR part 501 governing WHD's enforcement responsibilities under the H-2A

program. The 2008 Final Rule retained the authority of the OFLC Administrator to develop, amend, or rescind special procedures, enumerating those in effect at that time, including H-2A applications for sheepherders in the Western States as well as the adaptation of such procedures to the open range production of livestock. 20 CFR 655.102.

After the Department determined that the policy underpinnings of the 2008 Final Rule did not provide an adequate level of protection for either U.S. or foreign workers, the Department commenced a new rulemaking process that culminated in the publication of revised H-2A regulations on February 12, 2010. 75 FR 6884 (Feb. 12, 2010) (the 2010 Final Rule). The 2010 Final Rule better met the Department's responsibility to provide that wages and working conditions of U.S. workers are not adversely affected, by adjusting wages and working conditions requirements and establishing incentives for ensuring employers demonstrate that they have performed an adequate test of the U.S. labor market. The 2010 Final Rule retained the authority of the OFLC Administrator to develop, amend, or rescind special procedures, recognizing that variances from the regular H-2A labor certification processes are appropriate to permit access to the program for specific industries or occupations.

#### *B. Legislative and Sub-Regulatory Framework for Special Procedures for Herding and Production of Livestock on the Open Range*

Historically, employers in a number of States (primarily but not exclusively in the West) have used what is now the H-2A program to bring in foreign workers to work as sheep and goat herders. Sheep and goat herders attend to herds of sheep or goats, and oversee the herd as it moves from one area to another. Herders facilitate grazing, and they settle the herd to rest for the night, guard it from predatory animals and other dangers (e.g., poisonous plants and dangerous terrain), examine animals for illness, and administer medication, vaccinations, and insecticide care, as needed. This herding takes place on the open range which requires the herders to live on the open range with the herd, monitoring and attending to the herd's needs on an on-call basis up to 24 hours per day, 7 days per week, as the herd moves across remote range lands and isolated and often mountainous terrain. These herders may also assist in lambing, docking, and shearing. The employer may require the herd to be brought to

the main ranch or farm location for short periods, for the care or sorting of the animals. A herder's time at the ranch is limited, however, as the purpose of the work is to attend to the herd as it grazes on the open range. The unique occupational characteristics of sheep and goat herding (spending extended periods of time herding animals across remote open range lands; being on call to protect and maintain herds up to 24 hours a day, 7 days a week) have long been recognized by the Department as significant factors that limit the number of U.S. workers interested in performing these jobs.

Congress has recognized the lack of U.S. workers available to perform these jobs and has sought to address employers' need for labor. During the early 1950's, Congress enacted statutes authorizing the permanent admission of a certain number of "foreign workers skilled in sheepherding" to fill the demand for workers in sheepherding jobs. Pub. L. 81-587, 64 Stat. 306 (Jun. 30, 1950); Pub. L. 82-307, 66 Stat. 50 (Apr. 9, 1952); and Pub. L. 83-770, 68 Stat. 1145 (1954). These statutes enabled skilled foreign sheepherders to gain entry into the country on an expedited basis, provided that they were otherwise admissible into the United States for permanent residence.

During 1955 and 1956, the House Judiciary Committee (Committee), in response to requests from sheep ranchers, investigated allegations that a number of foreign sheep and goat herders admitted under those statutes were leaving herding shortly after arriving in the United States, and were instead becoming employed in other industries and occupations. In a report issued on February 14, 1957, the Committee found that American employers and the sheep-raising industry had not fully benefitted from the services of foreign sheepherders, as was intended by the legislation. H.R. Rep. No. 67, 85th Cong., 1st Session (1957). The Committee recommended that no additional legislation be enacted to admit foreign sheepherders and also that the process for bringing future foreign sheepherders be governed by the H-2 temporary worker provisions of the INA administered by the Immigration and Naturalization Service (INS) (now, U.S. Citizenship and Immigration Services (USCIS)) and the Department. *Id.* at 4-5.

Following the recommendation in the Committee's report, Congress permitted the previously-enacted legislation to expire. No additional legislation for foreign sheepherders has been enacted since then. The labor certification program for temporary foreign sheep

<sup>1</sup> The Immigration and Nationality Act of 1952 created the H-2 temporary worker program. Pub. L. 82-414, 66 Stat. 163. In 1986, IRCA divided the H-2 program into separate agricultural and non-agricultural temporary worker programs. See Pub. L. 99-603, sec. 301, 100 Stat. 3359 (1986). The H-2A agricultural worker program designation corresponds to the statute's agricultural worker classification in 8 U.S.C. 1101(a)(15)(H)(ii)(a).



and goat herders was instead implemented through the H-2 program and then the successor H-2A program after the passage of IRCA.<sup>2</sup>

Beginning in 1989, consistent with Congress's historical approach and in recognition of employers' need for appropriate access to foreign workers to perform these jobs, the Department established variances from certain H-2A regulatory requirements and procedures to allow employers of open range herders to use the H-2 program. Thus, Field Memorandum (FM) 74-89, *Special Procedures: Labor Certification for Shepherders Under the H-2A Program* (1989) established special procedures for sheep and goat herders. Due to the evolution of the H-2A program, these special procedures were rescinded and new special procedures were established by FM 24-01, *Special Procedures: Labor Certification for Shepherders Under the H-2A Program*, which were in use from August 1, 2001 until June 14, 2011. In 2011, new special procedures containing references to and incorporating the principles of the 2010 Final Rule were implemented in Training and Employment Guidance Letter (TEGL) No. 32-10, *Special Procedures: Labor Certification Process for Employers Engaged in Shepherding and Goatherding Occupations under the H-2A Program*.<sup>3</sup>

While the shepherding program history provided a basis for establishing special procedures for the temporary employment of foreign workers in sheep and goat herding occupations, the Department recognized that the production of other types of livestock on the open range (e.g., cattle) involved duties and occupational characteristics similar to sheep and goat herders. Like sheep and goat herders, herders of other types of livestock grazing on the open range also spend extended periods of time herding animals across remote open range lands living in mobile housing, and are on call up to 24 hours a day, 7 days a week to care for and protect the herd. Accordingly, in 2007, the Department established similar special procedures for the processing of H-2A applications for certification of temporary employment in those occupations. Rather than amending the

<sup>2</sup> In 2004, shepherders were added to the Department's permanent residence program as a specific occupation eligible for exemption from the permanent labor certification process, now referred to as PERM, upon meeting certain employment criteria. 20 CFR 656.16.

<sup>3</sup> The Department's policy directives and advisories for the H-2A program, including TEGLs related to herding and livestock production on the open range, are available at on the OFLC Web site at <http://www.foreignlaborcert.doleta.gov/reg.cfm>.

TEGL specific to sheep and goat herding occupations to encompass open range herding of other types of livestock, the Department adapted and extended similar variances through TEGL No. 15-06, which guided the regulated community until the TEGL was rescinded and replaced on June 14, 2011, with TEGL No. 15-06, Change 1, *Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock under the H-2A Program*. These new special procedures for livestock that were issued on June 14, 2011 were based on the 2010 Final Rule, which provided the OFLC Administrator (as the previous regulations had) with the authority to establish, continue, revise or revoke special procedures for processing H-2A applications so long as those procedures do not deviate from statutory requirements under the INA. 20 CFR 655.102.

### C. The Mendoza Litigation and Need for Rulemaking

On October 7, 2011, four workers filed a lawsuit in the U.S. District Court for the District of Columbia challenging these special procedures. *Mendoza v. Solis*, 924 F. Supp. 2d 307 (D.D.C. 2013). The plaintiffs, who are U.S. workers interested in herding employment, asserted that the Department violated the Administrative Procedure Act (APA) by adopting the special procedures without first providing notice and an opportunity for interested parties to comment. The district court dismissed the case, holding the plaintiffs lacked standing to bring a lawsuit on this issue.

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's dismissal for lack of standing, finding that the plaintiffs had both Article III and prudential standing. *Mendoza et al. v. Perez*, 754 F.3d 1002 (D.C. Cir. 2014). The court concluded that "[a]s participants in the labor market for herders, the plaintiffs were injured by the Department of Labor's promulgation of the TEGLs and fall within the zone of interests protected by the INA." *Id.* at 1025. In the interest of judicial efficiency, the D.C. Circuit also ruled on the merits of the plaintiffs' claim, agreeing with the plaintiffs that the Department's TEGLs constituted legislative rules subject to notice and comment under the APA. The appellate court remanded the case to the district court, which has set a rulemaking schedule.

Through this rulemaking, the Department seeks to remedy the APA violations identified by the D.C. Circuit. The *Mendoza* decision, however, is but

one reason for the promulgation of this NPRM. In these occupations the prevailing wage has served as the Adverse Effect Wage Rate (AEWR).<sup>4</sup> The on-call nature (up to 24 hours a day, 7 days a week) of the work associated with these occupations, coupled with the sustained scarcity of U.S. workers employed in open range herding and livestock production, has made determining the appropriate prevailing wage increasingly difficult under the current methodology for determining wages for these occupations. Few employers provide U.S. worker wage information in response to prevailing wage survey requests for these occupations, making it difficult for State Workforce Agencies (SWAs) to submit statistically valid prevailing wage findings to the OFLC Administrator. Therefore, through this rulemaking, the Department plans to establish a more effective and workable methodology for determining and adjusting a monthly AEWR for these unique occupations that adequately protects U.S. and H-2A workers in these occupations.

## II. Discussion of 20 CFR Part 655, Subpart C

### A. Introductory Sections

#### 1. § 655.200 Scope and Purpose of Subpart C

These introductory provisions propose to establish that, because of the unique nature of the occupations, employers who seek to hire temporary agricultural foreign workers to perform herding or production of livestock on the open range, as described in proposed § 655.200(b), are subject to certain standards that are different from the regular H-2A procedures in Subpart B of this part. To date, the Department has processed these applications using two different Departmental guidance letters containing substantially similar variances, one specific to sheep and goat herding on the open range and the other specific to open range production of other types of livestock. TEGL No. 32-10 (Jun. 14, 2011); TEGL No. 15-06, Change 1 (Jun. 14, 2011). In this

<sup>4</sup> The AEWR neutralizes any adverse effect on U.S. workers resulting from the influx of temporary foreign workers, and is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers must offer to and pay their U.S. and foreign workers, if prevailing wages are below the AEWR. Employment and Training Administration, Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States, 52 FR 20496, 20502 (June 1, 1987). The AEWR is intended to ensure that the wages of similarly employed U.S. workers will not be adversely affected by the importation of foreign workers. *Id.* As noted above, the Department has set the prevailing wage as the AEWR for these occupations.

rulemaking, the Department proposes to create a single set of procedures for employers engaged in the herding or production of livestock on the open range. Establishing a single set of procedures for these occupations will create administrative efficiencies for the Department, promote greater consistency in the review of H-2A applications, provide foreign workers and workers similarly employed in the United States with the same benefits and guarantees, and provide greater clarity for employers with respect to program requirements.

In order to use Subpart C, an employer's job opportunity must possess all of the characteristics described in this subpart. The employer must be seeking workers in the herding or production of livestock on the open range, on an on-call basis, up to 24 hours per day and 7 days a week, and in locations requiring the use of mobile housing for at least 50 percent of the workdays included in the work contract period.

The Department recognizes that the employer may, at times, require the workers to bring the herd to the fixed-site ranch or farm and stay at or near the ranch or farm for periods to assist with work involving the herd that constitutes the production of livestock (*e.g.*, lambing or calving, shearing, tending to a sick animal, branding, culling, or splitting livestock from the herd for sale or transfer). During such periods at the ranch the workers may also perform minor, sporadic, and incidental work closely and directly related to the herding and production of livestock. However, any such ranch duties must be included in the job order. Such minor, sporadic, and incidental work may occur on no more than 20 percent of the workdays that the worker is at the ranch during the contract period. The job order must not include any work other than work that is herding or production of livestock or work that is closely and directly related to the herding or production of livestock.

The Department seeks comments about whether sheep and goat herding involve distinct temporary positions at different times of the year that require more than one certification to reflect distinct temporary and/or seasonal needs under the INA. Under this proposal, open range livestock occupations would continue to be limited to periods of need of not more than 10 months as under the current special procedures. Should a similar 10 month limitation apply to sheep and goat herders, to reflect more appropriately their temporary or seasonal need as required by the INA?

Specifically, the Department seeks comment on the following:

- Based on information obtained during enforcement investigations, the Department understands that in some circumstances separate winter open range seasons and summer open range seasons exist. Between these seasons, workers may spend months at a time at the ranch; however, the amount of this time may vary substantially based on numerous factors, including geography and/or size of employer. Therefore, while recognizing that employer operations differ, the Department seeks comments, as reflected in the questions below, regarding a typical cycle of differing functions/locations for sheep and goat herders across the country, and the length of time and defined time periods within which these employees are on the open range as opposed to working at the ranch.

- The Department seeks information about the time periods and location of each duty typically performed by these workers.

- Do sheep and goat herders typically spend certain time periods on the range and other time periods on the ranch?

- If so, which periods are spent on the range? Which periods are spent at the ranch?

- What duties are typically performed while on the range? What duties are typically performed while on the ranch?

- If there are distinct seasonal needs for ranch and range work, would there be a need for an allowance for minor, sporadic and incidental work for open range occupations?

Where the job opportunity does not fall within the scope of this Subpart, the employer must comply with all of the regular H-2A procedures in Subpart B. If an employer submits an application containing information and attestations indicating that its job opportunity is eligible for processing under the procedures in Subpart C but later, as a result of an investigation or other compliance review, it is determined that the worker did not spend at least 50 percent of the workdays on the open range, that work performed on the ranch was not included within the scope of the job order (*e.g.*, unrelated ranch chores such as tilling soil for hay or constructing an irrigation well), or the worker performed work that is closely and directly related to herding or production of livestock during more than 20 percent of the workdays at the ranch, the employer will be in violation of its obligations under this part and, depending upon the precise nature of the violation, may owe back wages or have to provide other relief. Depending upon all the facts and circumstances,

including but not limited to factors such as the percentage of days the worker spent at the ranch, whether the work was closely and directly related to herding and the production of livestock, and whether the employer had violated these or other H-2A requirements in the past, the employer will be responsible for compliance with all of the regular H-2A procedures and requirements in Subpart B of this part, including payment of the highest applicable wage rate, determined in accordance with 20 CFR 655.122(l) for all hours worked.<sup>5</sup> In addition, the Department may seek other remedies, such as civil monetary penalties and potentially debarment from use of the H-2A program, for the violations.

This provision is also intended to provide notice to employers seeking workers in the open range production of livestock and herding occupations that they must comply with all the obligations contained in Subpart B of the rule, unless specifically addressed in Subpart C. Such employers must refer to all of the obligations in Subpart B before utilizing the specific variances from those requirements that comprise proposed Subpart C. The obligations contained in Subpart B, such as ensuring the general contents of job orders, the three-fourths guarantee, obligations to workers in corresponding employment, the prohibition of agency payments, and the provision of housing and transportation, have been fully explained elsewhere. *See* 75 FR 6884 (Feb. 12, 2010).

## 2. § 655.201 Definition of Terms

The proposed definitions contained in this subpart supplement the definitions in Subpart B of 20 CFR part 655, subparts B and F of 20 CFR part 653, and 20 CFR part 654. This subpart adds definitions for terms specific to the herding or production of livestock occupations working on the open range: Herding; livestock; minor, sporadic, and incidental work; mobile housing; open range; and production of livestock. These are new definitions, which did not previously exist in the TEGs. They are intended to assist employers in understanding the type of work that qualifies for these special procedures.

The proposed definitions of *herding* and *production of livestock* describe typical activities associated with

<sup>5</sup> Compliance with 20 CFR 655.122(l) of Subpart B requires an employer to "pay the worker at least the AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest, for every hour or portion [of an hour] worked during a pay period."

managing livestock on the open range, while the proposed definition of *livestock* describes the type of animals, when managed on the open range, covered by this Subpart. The proposed definition of *mobile housing* focuses on the movable nature of the housing used on the open range and specifies the provision in the regulation that sets forth the standards such housing must meet. The proposed definition of *minor, sporadic, and incidental work* is intended to help employers evaluate whether their job opportunity is an *open range* occupation covered under Subpart C (e.g., duties performed at the fixed-site ranch or farm that do not constitute the production of livestock must be closely and directly related to herding or the production of livestock and are limited to no more than 20 percent of the workdays spent at the ranch in the contract period).

The Department's proposed definition of *open range* describes an essential characteristic of the jobs covered under this Subpart. Whether on public or private lands, owned or not owned by the employer, the animals are roaming across range lands or remote mountainous locations not easily accessible on a daily basis from the employer's fixed-site ranch or farm. Moreover, the animals are not enclosed. For the purposes of this rule, animals are not enclosed where there are no fences or other barriers protecting them from predators or restricting their freedom of movement; rather the worker must actively herd the animals and direct their movement. Open range may include intermittent fencing or barriers to prevent or discourage animals from entering a particularly dangerous area (e.g., a steep cliff). These types of barriers prevent access to dangers rather than containing the animals, and therefore supplement rather than replace the herders' efforts.

The Department seeks comment on all the definitions. In particular, we seek comment on whether the definition of *open range* should include a minimum acreage of the land on which the animals roam. We also seek comment on whether, and under what circumstances (i.e., state requirements related to the "open range"), the regulation may take into account barriers, fences, or other enclosures on this same land. The Department also seeks comment on other factors that should be considered in the definition of *open range*.

#### B. Variances From Pre-Filing Procedures

This section enumerates the pre-filing procedures for employers seeking workers in open range production of livestock and herding occupations.

These provisions are intended to assist employers with understanding their basic obligations.

#### 1. § 655.205 Variances From Job Order Requirements

This provision addresses variances from the job order filing requirements in 20 CFR 655.121(a) through (d). The Department is proposing that an eligible employer seeking workers in open range production of livestock or herding occupations must submit its job order, *Agricultural and Food Processing Clearance Order*, Form ETA 790, directly to the National Processing Center (NPC) designated by the OFLC Administrator, rather than to the SWA. The employer must submit the job order to the NPC at the same time it submits its *Application for Temporary Employment Certification*, Form ETA 9142A, as outlined in 20 CFR 655.130. An employer submitting its application electronically using the iCERT Visa Portal System must scan and upload the job order as well as all other supporting documents.

This proposal reflects the current filing requirement in TEGL 32–10 for an association filing a master application as a joint employer with its employer-members for sheep or goat herding positions. The proposal to make the filing process the same for individual employers and associations filing as joint employers and for open range herding and livestock production occupations is intended to establish consistent handling of all applications eligible to use these procedures.

#### 2. § 655.210 Variances From Contents of Job Orders

This provision contains requirements for the content of the job order in addition to those in 20 CFR 655.122. Proposed § 655.210(a) reminds employers that if a requirement of Subpart B of this part is not addressed in Subpart C (such as workers' compensation, among other requirements), then employer-applicants must comply with the regulation as stated in Subpart B.

#### a. § 655.210(b) Job Qualifications and Requirements

The Department is proposing to retain a long-standing practice that the job offer in these occupations must include a statement that the hours of work are "on call for up to 24 hours per day, 7 days per week," rather than specific work hours. Additionally, the employer may require in its job offer that applicants possess up to 6 months of experience in similar occupations involving the herding and production of

livestock and provide verifiable references. We are proposing that an employer may specify other appropriate job qualifications and requirements for its job opportunity. These qualifications and requirements could include the ability to ride a horse, use a gun for occupational safety to protect the livestock herd from predators, or operate certain motorized vehicles (e.g., an all-terrain vehicle). The Certifying Officer (CO) may require the employer to submit documentation to substantiate the appropriateness of any job qualifications and requirements specified in the job order. In all cases, the employer must apply all qualifications and requirements included in the job offer equally to U.S. and foreign workers in order to maintain compliance with the prohibition against preferential treatment of foreign workers contained at 20 CFR 655.122(a).

#### b. § 655.210(c) Mobile Range Housing

The Department proposes that the employer disclose the use of mobile range housing when satisfying its obligation under 20 CFR 655.122(d) to ensure that it will provide sufficient housing to workers unable to reasonably return to their residence within the same day, at no cost to the worker.

In §§ 655.230 and 655.235, the Department proposes housing standards for range housing to account for the mobile nature of the housing typically used in this industry. The standards are discussed in *Section E: Mobile Housing*.

#### c. § 655.210(d) Employer-Provided Items

All H–2A employers must provide to their workers, free of charge, all tools, supplies, and equipment required to perform the duties assigned. See 20 CFR 655.122(f). DOL Wage and Hour Division investigations have found instances in which employers have failed to provide the tools/supplies/equipment necessary for the job, i.e., failing to provide boots, raingear, and/or ATV necessary for the work and/or in which the employers have charged the workers for such tools and brought them below the required wage. The proposed Subpart C regulations require the employer to provide, without charge or deposit charge, the tools, supplies, and equipment required by law, by the employer, or by the nature of the work to do the job safely and effectively. The Department proposes to add the additional requirement that the employer must also specify in the job order which items he or she will provide for the worker.

Because of the isolated nature of these occupations, an effective means of communication between worker and

employer—to enable the employer to check the worker's status and the worker to communicate an emergency to persons capable of responding—is required. The proposal specifies that such means of communication may include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems. The worker's location may be so remote that electronic communication devices may not work at all times. Where the employer will not otherwise make contact with the worker (e.g., when delivering food or checking on the worker and herd in-person), the employer must establish a regular schedule when the worker will be located in a place in which the electronic communication device will work so that the worker's safety and needs can be monitored. The Department expects that while the definition of "regularly" could vary, a worker must be able to communicate with his or her employer at intervals appropriate to monitoring the health and safety of the worker. The Department believes such contact is in the best interests of both the employer and the worker in the event that there are problems with the herd, the worker suffered a medical emergency, or the worker's safety is threatened. The employer's commitment to make contact with the worker at least at these regular intervals must also be disclosed in the job order. The Department seeks comment on the minimum allowable interval between contacts initiated by the employer, and whether a satellite phone or other electronic device would be an adequate substitute for a requirement related to the frequency of employer-employee contact. The Department also invites comments on how employers may satisfy the interval requirement without any new or increased costs.

In addition to the electronic communication device, other tools, supplies, and equipment are required by the nature of the work to perform the job safely and effectively. Depending on such factors as the terrain, weather, or size of the herd; particular tools, supplies, and equipment are required. For example, some workers need binoculars to monitor the herd's location and safety, or a gun to protect both the herd and themselves from predators. Others need boots, rain gear, a horse, or an all-terrain vehicle to effectively cover difficult terrain. As provided in § 655.235 regarding mobile housing standards, in areas in which the temperature is generally mild, the

employer may provide protective bedding and clothing as an alternative to heating equipment. This bedding and clothing, provided as an alternative to heating equipment, is required to perform the job and must be provided to the worker free of charge. The actual equipment required to perform the duties assigned vary, based upon factors such as the location of the herd, the number of workers available to tend the herd, and the time of year; however, whatever equipment is required by law or regulation, by the employer, or by the nature of the work must be disclosed in the job order and provided without charge to the worker. The Department invites comments on other tools, supplies, and equipment required by law, by employers, or by the nature of the work in order to perform it safely and effectively and whether it would be helpful to include in the regulation a list of items that typically are required by law or the nature of the work and location.

#### d. § 655.210(e) Meals

All H-2A employers of open range workers must provide either three sufficient prepared meals a day or provide free and convenient cooking facilities and enough food and water that is potable, or easily rendered potable, to enable the worker(s) to prepare their own meals. Historically, employers of open range sheep and goat herders have been prohibited from deducting the cost of food and meals from wages due, and employers of workers in other occupations, including open range livestock production, have had the option of doing so. As a result, under the sheep and goat herding TEGL, and pursuant to practice in the industry for some employers engaged in open range production of livestock, employers provide food, free of charge, to their workers in the field. This proposed rule adopts the practice applicable to employers of sheep and goat herders, and applies it to both employers engaged in open range herding and those engaged in open range livestock production; therefore, under this proposal, employers will not be permitted to deduct the cost of food from wages, and employers must disclose the provision of meals in the job order. However, particularly in light of the proposed increase in wages, the Department seeks comment about whether employers should be permitted to deduct costs of food and, if so, the reasonable amount of that deduction. The Department also seeks comment on what constitutes a sufficient meal for these workers, given the physically demanding nature of their work, as well

as what constitutes adequate food provision given the remote location of these workers. Also, given the remote nature of herding and production of livestock occupations on the open range, we are proposing a new specific obligation to provide workers with an adequate supply of potable water when working on the open range. See section E of this preamble for a fuller discussion on the requirements for food and potable water.

#### e. § 655.210(f) Hours and Earnings Statements

Employees principally engaged in the open range herding and livestock production are generally exempt from Fair Labor Standards Act (FLSA) minimum wage and overtime obligations under 29 U.S.C. 213(a)(6)(E), and therefore the typical FLSA recordkeeping requirements, such as those pertaining to hours worked each day and each workweek, do not apply to employers of such employees. See 29 CFR 516.1, 516.33. However, for the purpose of implementing and enforcing the requirements of the INA, some type of recordkeeping of compensable time actually worked is necessary for the Department to monitor compliance with and enforce H-2A program obligations, such as the three-fourths guarantee. See 20 CFR 655.122(i). As the Department is proposing a minimum required monthly wage rate, an hourly record for days spent working on the open range is not necessary (see proposed § 655.211). Except as discussed in the next paragraph, the Department is proposing that employers be required to keep and maintain no less than daily records for those employees engaged in open range herding or production of livestock. The records must reflect each day that the employee works or was available to work, as well as where the work is performed—on the open range or on the ranch or farm. Thus, for days when work is performed on the open range, the employer is exempt from recording the hours actually worked each day as well as the time the worker begins and ends each workday. All other regulatory requirements found in 20 CFR 655.122(j) and (k) apply.

The Department is also proposing that when herders or livestock production workers perform work on the ranch or farm, the employers must keep and maintain records of the hours that the workers work and the duties performed in that setting. Such records will enable the employer, and the Department, if necessary, to determine wages due and whether work at the ranch or farm that does not fall within the definition of the production of livestock was minor,

sporadic, and incidental (*i.e.*, occurred no more than 20 percent of the workdays spent at the ranch in the contract period). Moreover, the requirement to record employees' duties performed at the ranch permits the Department to distinguish herder- or livestock production-related ranch work from unrelated ranch work to determine whether the work performed at the ranch is in compliance with the job order and the applicable wage rate.

Employers should already be keeping and maintaining hourly work records where applicable for other ranch or farm employees as required under the regular H-2A regulations, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and the FLSA. Therefore, the Department believes that keeping records for the herders or open range production workers who are performing work on the ranch or farm does not create a significant new burden on employers.

The Department specifically invites comments on the two proposed recordkeeping requirements (to keep hourly records for work performed at the ranch and daily records of the work performed on the range) and other appropriate records employers should keep of compensable time worked in these occupations that will balance any new burdens imposed on the employer against the Department's need to monitor and enforce H-2A program obligations for open range applications as it does with all applications filed under the H-2A program.

As previously noted in this preamble, the Department is proposing to permit herders and livestock production workers, when at the ranch, to assist with minor, sporadic, and incidental work involving the herd that does not fall within the definition of the production of livestock (*e.g.*, the inspection and repair of the corral) so long as these duties are identified on the job order and they occur on no more than 20 percent of the workdays spent at the ranch in the contract period. This allowance should not be construed as a means by which to circumvent the regular H-2A program by using herders as ranch workers. The provisions of Subpart C do not apply to workers labeled as "herders" but who perform duties at the ranch on more than a minor, sporadic and incidental basis; rather, the regular H-2A program requirements apply to those workers. For example, the employer would not be permitted to pay those workers the monthly AEW as provided in Subpart C. Instead, the employer would be required to pay the workers according to the regular H-2A program provisions

(*i.e.*, payment of the highest applicable rate under 20 CFR 655.122(l) for all hours worked<sup>6</sup>). If it is determined that work performed by the herders or livestock production workers on the ranch or farm is not included within the scope of the job order, occurs at the ranch on more than 50 percent of the workdays in the contract period, or exceeds the 20 percent allowance for minor, sporadic, and incidental work, the employer will be in violation of the requirements of this part. For purposes of the 50 percent limitation for ranch work, if a majority of hours worked during a workday are spent on the ranch, it is considered to be a day worked at the ranch. If a majority of hours worked during a workday are spent on the range, it is considered a day worked on the range. However, for the purpose of determining whether the 20 percent allowance for minor, sporadic, or incidental work has been met, if any minor, sporadic, and incidental work occurs on a workday, that workday is counted towards the 20 percent allowance. As discussed above, the Department seeks comment on the nature and extent of work typically performed at the ranch or farm by herder and livestock production workers.

#### f. § 655.210(g) Rates of Pay

The Department is proposing, consistent with current practice and with Subpart B, that the employer must guarantee a wage that is no less than the minimum wage rate issued and announced annually by the Department. This amount will be set consistent with § 655.211, discussed in detail below.

An employer may prorate the monthly wage if the initial month of the job order is a partial month, or if an employee does not enter the country and report for work until the middle of a month. For example, an employer who pays based on the calendar month may pay half the required monthly wage for April if the job order begins on April 16, and may prorate if the job order begins on April 1 but the employee is unable for personal reasons to report for duty until April 16. Similarly, an employer may prorate the monthly wage if the final month of the job order is a partial month. For example, an employer who pays based on the calendar month may pay two-thirds of the monthly wage if

<sup>6</sup> Under 20 CFR 655.122(l) of Subpart B an employer must "pay the worker at least the AEW, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest, for every hour or portion [of an hour] worked during a pay period."

the job order ends on June 20. An employer also may prorate the required monthly wage if an employee is voluntarily absent from work for personal reasons. For example, if an employee returns to his home country for two weeks because of a family emergency. However, an employer must pay workers whenever they are available for work and may not encourage employees to miss work, such as when business is slow and fewer workers are required, and use that as a basis for prorating the required monthly wage. *See* WHD Field Assistance Bulletin 2012-1 (Feb. 28, 2012).<sup>7</sup>

#### g. § 655.210(h) Frequency of Pay

This provision proposes to establish the frequency of pay for these occupations to be no less than monthly. This requirement is a long-established standard in occupations involving the herding or production of livestock on the open range. With jobs in remote locations, employees may not be available to receive physical paychecks more frequently. However, employers must pay wages when due and such wage payments must be received free and clear. Therefore, if the employee voluntarily requests that the employer deposit the wages into a bank account or send a wire transfer back to the worker's home country, for example, the employer is still responsible for ensuring that wages are paid when due. The employer may not derive any benefit or profit from the transaction and must be able to demonstrate that the wage payment was properly transmitted to and deposited in the designated bank account or recipient on behalf of the employee. *See* WHD Field Assistance Bulletin 2012-3 (May 17, 2012). The Department specifically invites comments on how frequently employers in these industries should be obligated to provide pay, and whether the Department should require employers to prorate the salaries and issue paychecks in response to workers' requests in the event they want access to their wages on a more frequent basis.

#### C. § 655.211 Variance From the Wage Rate

Historically, herding employers have not paid the hourly AEW required for other H-2A employers. As discussed above, the 1987 and subsequent regulations authorized the creation of special procedures for certain occupations. Further, the OFLC

<sup>7</sup> WHD Field Assistance Bulletins are available at on the WHD Web site at <http://www.dol.gov/whd/FieldBulletins/>.

Administrator assumed the authority to establish monthly, weekly, or semi-monthly AEWRs for “occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock.” See 20 CFR 655.102. Accordingly, the guidance for these occupations exempted employers from paying at least the hourly AEWR in favor of an occupation-specific monthly, weekly, or semi-monthly AEWR. Historically, the AEWR for these occupations was determined based on prevailing wage surveys of employers conducted by the SWAs. The Department proposes to continue to use a monthly AEWR for these occupations because of the difficulties in tracking and paying an hourly wage rate to workers engaged in open range occupations given the remote location of the work and the sporadic and unpredictable nature of the duty hours on any given day.

To determine the AEWR for these occupations under the guidance, the Department historically followed the process as described in the *ETA Handbook 385*, defining the “Domestic Agricultural In-Season Wage Finding Process.” Each year since the promulgation of the 1987 regulations, SWAs conducted agricultural prevailing wage surveys, including surveys of employers in States where open range herding and production of livestock occupations are typically found. The SWAs attempted to obtain information from these employers, voluntarily, about the wages being paid exclusively to U.S. workers. The exclusion of H-2A nonimmigrant workers from the survey is required by *ETA Handbook 385*. After the OFLC Administrator determined that the computed wage rate derived from a SWA survey was statistically valid, it was designated as the prevailing wage rate and used as the AEWR for the occupation in that State.

The central dilemma faced by the Department for decades has been the dearth of information available to it through these surveys regarding the actual wages paid to U.S. workers. Often, and almost always more recently, the SWAs determine that there are no survey results or the survey does not return statistically valid results. Thus, for many years, the Department has been unable to determine a statistically valid prevailing wage rate each year in each State in which one is needed, requiring the OFLC Administrator to set the AEWR based on other data or to use the survey results from another adjoining area or State.

Both Field Memorandum 24-01, which established the special

procedures from 2001 to 2011 for sheep and goat herding occupations, and Field Memorandum 74-89, the predecessor guidance in place from 1989 to 2001 (with various amendments), established that in the event of inadequate sample sizes, “every attempt will be made to establish a prevailing wage by using other comparable information, e.g., utilizing data from adjoining areas or States, merging shepherd (goat herder) data from several States or using past survey data for shepherders (goat herders) in that State.” Therefore, the Department set wages based, where possible, on the wages actually provided in that State to U.S. workers in the occupation; but where such data is not available the guidance permitted aggregating data from contiguous States, or continuing the previous year’s wage. Where several contiguous States did not produce a statistically valid wage, it was not possible to aggregate State wage data, and previous survey data from the same State could be carried forward instead. Because almost every State experienced years in which no wage report could be statistically verified, wage stagnation in varying degrees across these occupations has been the inevitable result in all but two States.

Two States have legal mandates that set wages for these occupations, which have typically been higher than the DOL-set AEWR for the occupations. California law provides for increases to shepherd wages established by its Industrial Welfare Commission based on corresponding increases in the State’s minimum wage. Cal. Labor Code § 2695.2(a) (West 2003). The current minimum salary for shepherders in California as of July 1, 2014, is \$1,600.34 per month, and effective January 1, 2016, the minimum monthly salary for shepherders will be \$1,777.98.<sup>8</sup> Oregon’s shepherd wages are based on a court settlement reached two decades ago, which set a wage for shepherders and required them to be adjusted annually to reflect adjustments to the State minimum wage and the Consumer Price Index; that amount is \$1,319.07 per month in 2014.<sup>9</sup> *Zapata v. Western Range Association*, Civ. N. 92-10-25, 244L (Ore. 1994).<sup>10</sup>

<sup>8</sup> See State of California Department of Industrial Relations, Division of Labor Standards Enforcement at [http://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](http://www.dir.ca.gov/dlse/faq_minimumwage.htm).

<sup>9</sup> According to the Oregon SWA’s ETA Form 232, Domestic Agricultural In-Season Wage Report, the SWA applied the State minimum wage statute and the guidelines in the *Zapata* settlement to arrive at \$1,319.07, the minimum monthly wage applicable to shepherders in Oregon in 2014.

<sup>10</sup> The Department understands that the wage set by the *Zapata* settlement may be superseded by the State’s more recent interpretation of its minimum

In contrast, wages for these occupations in other States effectively have not increased since 1994. A memorandum from Barbara Ann Farmer, Administrator, Office of Regional Management, to regional Certifying Officers in 1993, noted that of the 14 State-based AEWRs for Shepherders and Goat Herders that were determined in 1994-1995, nine were set at \$700 per month and three were set at \$650 per month. Of the remaining two AEWR determinations, the Arizona AEWR was based on a reported weekly wage of \$205, and the Idaho AEWR was set at \$750 per month. By comparison, 11 of the current 14 listed AEWRs for sheep and goat herding are \$750 per month, indicating that in the vast majority of States sheep and goat herder wages have increased only \$50 per month in the most recent 20 years of the program. The open range livestock wages are currently somewhat higher, set in every case at \$875 per month. 78 FR 19019, 19021 (Mar. 28, 2013).

The 2011 TEGLs provided for small but distinct variations to the process. First, where the SWA survey results were insufficient to establish a prevailing wage rate for occupations involving the open range production of livestock, shepherding and goat herding, due to inadequate sample size or another valid reason, the applicable TEGL’s wage setting procedures allowed the Department to issue a prevailing wage or piece rate for that State based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activity, among other options.<sup>11</sup> This sought to

wage requirements. See [http://www.oregon.gov/boli/TA/pages/t\\_fa\\_q\\_taagric.aspx](http://www.oregon.gov/boli/TA/pages/t_fa_q_taagric.aspx). Based on this analysis, workers who spend more than 50 percent of their time in the range production of livestock are exempt from minimum wage. However, to be exempt, Oregon workers must be paid on a salary basis, which is defined as 2,080 hours times the current minimum wage, then divided by 12. For example, effective January 1, 2015, the Oregon minimum wage increased to \$9.25, so the required minimum salary for workers in the range production of livestock is \$9.25 times 2,080 hours divided by 12 months, or \$1,603.33 per month.

<sup>11</sup> OFLC used three main principles in establishing the prevailing wage rates for States that had no official wage rate findings: (1) Where a State directly borders a State with a wage rate finding, that wage rate finding is assigned to the adjoining (bordering) State; (2) where a State borders more than one State with wage rate findings, the findings of the State that is more adjoining (i.e., more shared geographic characteristics, including a longer shared border) are applied to the State with no wage rate finding; and (3) where a State does not directly border a State with a wage rate finding but is within a U.S. Department of Agriculture (USDA) farm production region that includes another State either with its own wage rate finding or to which findings were applied consistent with one of the other two

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avoid the continuation of the previous year's wage into one or more subsequent years. Second, the wage rates were to be published in the **Federal Register** after collection and analysis each year.

On January 8, 2013, the first wage rates after the promulgation of the 2011 TEGLs were published in the **Federal Register**. 78 FR 1260 (Jan. 8, 2013). On March 28, 2013, as a result of litigation, the Department issued a Notice amending and rescinding parts of the previous Notice "because of issues regarding the wage finding process in these states." 78 FR 19020 (Mar. 28, 2013). The wages were set in that second Notice at the previous rates, with herding wages in California and Oregon reflecting the applicable statutory or judicially set amounts. Thus, wages currently are set according to the methodology in place before the 2011 TEGLs: FM 24-10 for sheep and goat herding occupations and TEGL 15-06 for open range livestock production.

The Department has been given a broad statutory mandate to balance the competing goals of the statute to provide an adequate labor supply and to protect the jobs of U.S. workers. *See Rogers v. Larson*, 563 F.2d 617, 626 (3rd Cir. 1977), cert. denied, 439 U.S. 803, (1978); *AFL-CIO v. Brock*, 923 F.2d 182, 187 (D.C. Cir. 1991). With this balance in mind, we must set the prevailing wage to provide that H-2A workers are employed only where U.S. workers are not available for the job and will not be adversely affected by the presence of foreign workers, and also to foster the provision of workers for these occupations.

Given this statutory mandate, the Department proposes to establish the monthly AEW for these occupations based on the Farm Labor Survey (FLS) conducted by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture (USDA). Conducted annually in collaboration with the U.S. Department of Labor, the FLS provides estimates of the number of hired workers, average hours worked, total wages by type of worker (field, livestock, supervisor/manager, and other) for a specified survey week, and provides wage rates at regional and national levels. Annual average estimates for the number of all hired workers, hours worked by hired workers

principles, that wage rate finding is applied to the State with no wage rate finding. *See* Notice, Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Prevailing Wage Rates for Certain Occupations Processed Under H-2A Special Procedures, 78 FR 1260, 1261 (Jan. 8, 2013). *See also* TEGL No. 15-06, Change 1 and TEGL No. 32-10.

and wage rates are included in the October FLS report, which is published in November.<sup>12</sup> The Department currently uses the NASS Farm Labor Survey to set the AEW in the H-2A program, so its adoption for herder occupations in this rulemaking would be consistent with the Department's practice with respect to all other temporary agriculture work.

The FLS defines hired workers as anyone, other than workers supplied by a services contractor, who was paid for at least 1 hour of agricultural work on a farm or a ranch. Worker type is determined by what the employee was primarily hired to do, not necessarily what work was done during the survey week. The survey seeks data on four types of hired workers: Field workers, livestock workers, supervisors (hired managers, range foremen, and crew leaders) and other workers engaged in agricultural work not included in the other three categories.<sup>13</sup>

The FLS report is based on farmers' gross wages paid to workers grouped into two broad categories: Field workers and livestock workers. Wage rates are not calculated and published for supervisors or other workers, but are for field workers, livestock workers, field and livestock workers combined, and total hired workers. Field workers include employees engaged in planting, tending and harvesting crops, including operation of farm machinery on crop farms. Livestock workers include employees tending livestock, milking cows or caring for poultry, including operation of farm machinery on livestock or poultry operations.<sup>14</sup>

The USDA survey is conducted semi-annually (the April survey collects wage estimates for the January and April reference weeks, and the October survey collects wage estimates for the July and October reference weeks). Annual average wage estimates are based on these four quarterly estimates. The survey is designed to produce statistically reliable estimates of overall hired labor use and costs for California, Florida and Hawaii, and provide data

<sup>12</sup> Information about the methodology of the FLS is publicly available at: [http://www.nass.usda.gov/About\\_NASS/index.asp](http://www.nass.usda.gov/About_NASS/index.asp).

<sup>13</sup> The FLS includes work done in connection with the production of agricultural products, including nursery and greenhouse products and animal specialties such as fur farms or apiaries. It also includes work done off the farm to handle farm-related business, such as trips to buy feed or deliver products to local markets.

<sup>14</sup> To the extent workers receive incentive pay, the average wage rate would exceed the workers' actual wage rate. Because the ratio of gross pay to hours worked may be greater than a workers' actual wage rate, some statistics agencies refer to the ratio as average hourly earnings, and not as hourly wages or wage rate.

for other States except Alaska under 15 multistate groupings. Thus, for California, Florida and Hawaii, we propose to set the AEW each year as the annual average of the previous calendar year's semi-annual FLS hourly wage estimates for field and livestock workers (combined) in each of these States. For the other States the AEW will be set as the annual average of the previous calendar year's semi-annual FLS hourly wage estimates for field and livestock workers (combined) of the FLS multistate crop region to which the State belongs. Every State in the same region will be assigned the same AEW amount. The Department bases the AEW in the regular H-2A program on the combined wage estimates for both field and livestock workers. As a result, we propose that the AEW for herder occupations be similarly based on the combined estimates for field and livestock workers. The State groupings are as follows.<sup>15</sup>

Northeast I Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.  
 Northeast II Delaware, Maryland, New Jersey and Pennsylvania.  
 Appalachian I Virginia and North Carolina.  
 Appalachian II Kentucky, Tennessee and West Virginia.  
 Southeast Alabama, Georgia and South Carolina.  
 Delta Arkansas, Louisiana and Mississippi.  
 Cornbelt I Illinois, Indiana and Ohio.  
 Cornbelt II Iowa and Missouri.  
 Lake Michigan, Minnesota and Wisconsin.  
 Northern Plains Kansas, Nebraska, North Dakota and South Dakota.  
 Southern Plains Oklahoma and Texas.  
 Mountain I Idaho, Montana and Wyoming.  
 Mountain II Colorado, Utah and Nevada.  
 Mountain III Arizona and New Mexico.  
 Pacific Oregon and Washington.

The FLS defines livestock workers as follows:

Livestock Workers: Employees tending livestock, milking cows or caring for poultry, including operation of farm machinery on

<sup>15</sup> As proposed elsewhere in this NPRM, all employers must pay the higher of the Department's AEW or the agreed-upon collective bargaining wage, or the applicable minimum wage specific to the occupation(s) imposed by Federal or State law or judicial action. Accordingly, where a State-mandated minimum wage for the occupation is higher than the Department's AEW, which has been the case for employers in California and Oregon, the employer would be required to offer and pay the higher state-mandated minimum wage rate.

livestock or poultry operations. SOC codes and titles associated with livestock workers are 45–2041: graders and sorters, farm, ranch and aquacultural animal products; 45–2093: farm workers, farms, ranch and aquacultural animal products; 45–2099: all other workers, farms, ranch and aquacultural animal products; 53–7064: packers and packagers, hand, farms, ranch and aquacultural animal products.

The FLS methodology includes both livestock work performed on the ranch and on the open range.

The Department may reasonably rely on the FLS combined wage estimates for both field and livestock workers for the purpose of setting the wage for the occupation addressed in this NPRM, consistent with the Department's long standing practice for the rest of the H–2A program and the regulations in Subpart B. *Brock, supra*, 923 F.2d at 187; *United Farm Workers v. Solis*, 697 F. Supp. 2d 5, 9–10 (D.D.C. 2010). Both historically and in this NPRM, the Department has defined the work performed by sheep, goat and other livestock herders who tend to their herds and oversee them as they move from one area to another on the open range largely based on the care and upkeep of the animals. Accordingly, we propose in this NPRM to define herding as “activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the open range.” In addition, we propose to define the production of livestock as “care or husbandry of livestock throughout one or more seasons during the year, including guarding and protecting livestock from predatory animals and poisonous plants; feeding, fattening, and watering livestock; examining livestock to detect diseases, illnesses, or other injuries; administering medical care to sick or injured livestock; applying vaccinations and spraying insecticides on the open range; and assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock.” These primary duties are the same as those performed by livestock workers who are covered by the FLS survey. The FLS represents the most comprehensive survey available for wages of livestock workers, and it is the best available source for wage data related to livestock work.

The Department has considered alternatives to adopting the FLS as the basis for setting herders' wages. As noted elsewhere in this NPRM, SWA surveys of range herders have become increasingly unreliable because of the small numbers of U.S. workers employed in the occupation. The lack of reportable data in the SWA surveys

have likely contributed to the stagnation of wages over the last 20 years in these occupations, which has a prohibited adverse effect on the domestic labor market. As a result, the Department cannot continue to rely on these surveys under current conditions and fulfill its statutory mandate to prevent adverse effect to workers' wages and working conditions. In addition, for the reasons contained in the Department's 2010 H–2A rule, the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) survey is not the preferred method for determining the prevailing wage for agricultural livestock workers.<sup>16</sup> See “Temporary Agricultural Employment of H–2A Aliens in the United States; Final Rule,” 75 FR 6884, 6896–6898 (Feb. 12, 2010). Finally, the U.S. Census Bureau's occupational description for “farming occupations” in the American Community Survey (ACS) is not sufficiently disaggregated for application to herding occupations. The ACS provides data based on samples, and because herder occupations are so small, any sample would be insufficient for statistical purposes. Moreover, census data for herders is not available from the ACS. Accordingly, based on review of available data sets on which to base herder wages and our consideration of alternatives within the context of the statute's requirements, the Department proposes to adopt the FLS as the tool for setting the AEWR for these occupations. The Department seeks comment from the public on the selection of the FLS as the data set on which to set the AEWR for herder occupations, any alternative reliable and applicable data sets that may be used for this purpose, and the relative advantages and disadvantages of each.

In order to set a monthly wage, as discussed earlier, the Department proposes to convert the hourly AEWRs based on a 44-hour workweek, which is intended to reflect the average hours worked per week over the course of the employment period in these

<sup>16</sup> As we stated in the 2010 H–2A rule, 75 FR 6884, 6896 (Feb. 12, 2010):

The OES agricultural wage data has a number of significant shortcomings with respect to its accuracy as a measure of the wages of hired farm labor suitable to be used as the AEWR. Perhaps its most substantial shortcoming in this context is that the OES data do not include wages paid by farm employers. Data is not gathered directly from farmers but from non-farm establishments whose operations support farm production, rather than engage in farm production. . . . Given that the employees of non-farm establishments constitute a minority of the overall agricultural labor force, the Department has concluded that these data are therefore not representative of the farm labor supply and do not provide an appropriately representative sample for the labor engaged by H–2A employers.

occupations. We base the proposed 44-hour workweek on comments the Department received from both associations of industry employers and from worker advocates following the court's decision in *Mendoza v. Perez*.<sup>17</sup> The worker advocates' letter suggested that the salary for these occupations should be based on a 48-hour workweek, which they offered as a “conservative” estimate using employer data.<sup>18</sup> Industry employers submitted that workers on the open range work 173.33 hours per month, or 40 hours per week, which they based on the Oregon court's approach in the *Zapata* settlement, discussed earlier.<sup>19</sup> Therefore, the Department based its proposed 44-hour workweek on the average of the suggested 40- and 48-hour workweeks.<sup>20</sup> Accordingly, the hourly AEWRs applicable to each State would be multiplied by 44 hours per week and 4.333 weeks per month to arrive at the monthly AEWRs. The monthly AEWRs may increase or decrease each year, as the hourly AEWRs do, reflecting USDA survey results. The Department seeks comment on using a 44-hour workweek to calculate the monthly AEWRs for these occupations and invites

<sup>17</sup> We received a communication from Mountain Plains Agricultural Service, dated October 8, 2014. We also received a report from consultant Julie Stepanek Shiflett on behalf of three employer associations—Mountain Plains Agricultural Service, Western Range Association and the American Sheep Industry Association—dated October 9, 2014. Finally, we received a letter from attorney Edward Tuddenham on behalf of worker representatives, dated October 30, 2014. We have placed all three submissions in the administrative record related to this rulemaking so that the public may review and comment on them.

<sup>18</sup> The data relied on by the worker advocate letter included a survey of range workers in Colorado that found that the majority of workers work over 81 hours per week. See Colorado Legal Services, *Overworked and Underpaid*, January 14, 2010, at 18 (which can be accessed at <https://www.creighton.edu/fileadmin/user/StudentServices/MulticulturalAffairs/docs/OverworkedandUnderpaidReport.pdf>). In response, the Colorado Wool Growers Association suggested that a typical work day for range workers consists of 6–8 hours of actively watching the sheep, with longer days of 10 hours in the spring and shorter days of 4–6 hours in the fall and winter, which averages to 49.5 hours per week (based on the seven-day workweek). Julie Stepanek Shiflett, *The Real Wage Benefits Provided To H–2A Sheep Herders And The Economic Cost To Colorado Ranchers* (March 2010).

<sup>19</sup> *Zapata v. Western Range Association*, Civ. N. 92–10–25, 244L (Ore. 1994).

<sup>20</sup> In its separate letter dated October 8, 2014, the Mountain Plains Agricultural Service submitted that herders work 4–8 hours per day on average. Because this suggestion encompassed a very broad range, which could result in hours worked per week anywhere between 28 (4 hours × 7 days) and 56 (8 hours × 7 days), we found it difficult to incorporate it into our proposal. However, the average hours per week based on this suggested range is 42, which is very close to the proposed 44 hours-per-week standard.



information about studies or expert opinion supporting alternative methodologies that would result in using a different workweek figure to compute the wage.

The Department proposes to phase in the new wage requirement over a 5-year transition period. In doing so, we are striking a balance between the competing goals of the statute, as discussed earlier, that require us to foster an adequate labor supply and protect U.S. workers. *Rogers v. Larson*, 563 F.2d at 626; *Brock*, 923 F.2d at 187. The new wage methodology will begin to address immediately the stagnation concerns discussed earlier. A phase-in also recognizes that the full wage increase in a single year could lead to significant disruptions that might cause job losses that could be avoided by a gradual implementation period. In ensuring that prevailing wage is set at a level where it will not have adverse effect, it is appropriate for the Department to consider whether a significantly higher wage can be immediately absorbed by employers or might have the unintended consequence of reducing the availability of jobs for U.S. workers because the wage would result in some employers going out of business or scaling back their operations. This proposed rule will eventually result in wage increases of greater than one hundred percent to many employers. Given the long history of employers paying a substantially lower wage rate than would be required at the end of the phase-in period under this proposed rule, the Department proposes to set the monthly AEWR initially at 60 percent of the monthly AEWR calculated using the proposed methodology, with incremental increases over the 5-year period following implementation. This proposal is intended to ensure that this rule will not have adverse effect on U.S. workers due to significant job losses. As reflected in the projection charts below, during the first year, employers filing under Subpart C would be subject to monthly AEWRs that are 60 percent of the current USDA hourly AEWRs converted to a monthly rate. Each year thereafter until 2020, the monthly AEWRs applicable to these employers would increase by 10 percent (*i.e.*, 70 percent in 2017; 80 percent in 2018; 90 percent in 2019). Beginning in 2020, the monthly AEWR applicable to the occupations covered under Subpart C would be 100 percent of that year's hourly regional AEWR converted into a monthly rate by multiplying it by 44 hours per week and 4.333 weeks per month.

Wages in Year One will make a significant impact on wage stagnation, and subsequent years will continue to do so. By 2020, the Department anticipates this methodology will have addressed wage stagnation concerns fully. The Department invites comment on other options for determining the monthly AEWRs for these occupations, including other options for phasing in the new methodology.

Finally, the Department is proposing that an employer must offer and pay at least the monthly AEWR established using the adopted wage-setting methodology, unless another applicable wage source reflects a higher threshold wage rate. Specifically, if one of the following wage sources reflects a higher wage rate requirement for the occupation than the monthly AEWR, then the Department proposes the employer must offer and pay at least that wage rate: (1) Specified in an agreed-upon collective bargaining agreement; or (2) imposed by Federal or State law or judicial action. The current TEGs establish that the prevailing wage is the required wage unless there is a State occupation-specific wage rate for sheepherders; no additional wage obligation is imposed on the open range employers. The Department has developed these limited exceptions to account for increases that have occurred in States as a matter of legislative or judicial action. The Department has also opted to account for collective bargaining to permit a higher wage rate requirement where such an agreement exists. Accordingly, the Department proposes that the monthly AEWR determination will be the employer's minimum wage requirement, unless a CBA wage rate or State law or judicially required rate for the occupation is higher.

As always, an employer may choose to offer and pay more than the minimum required. The proposed methodology described in this provision is intended to set a more appropriate minimum wage requirement for employers seeking temporary open range workers through the H-2A program while preventing wage stagnation or regression.

The Department seeks comment on all aspects of the new wage methodology for these occupations. In particular, we seek comment on the proposal to combine open range herding and livestock production into one wage-setting structure, which is predicated on the similarity of the job duties, the nature of the activities, the location and the conditions under which the activities are performed, and the isolated, on-call nature of the

employment. In addition, we particularly seek comment on the proposed wage setting method used to establish a monthly AEWR for these occupations, which, when implemented, will determine the minimum wage an employer must offer, free and clear, without altering other benefits, wages, and working condition obligations (*e.g.*, provision of housing without charge or deposit charge) applicable to these occupations.

#### *D. Variances From Filing, Processing, and Post-Acceptance Procedures*

##### 1. § 655.215 Variances From Filing Procedures

The Department proposes to continue to require employers (whether an individual, an association, or an H-2A Labor Contractor) seeking workers in open range production of livestock and herding occupations to include an attachment listing the locations, estimated start and end dates, and, if applicable, names for each farmer/rancher where work will be performed under the job order when filing an *Application for Temporary Employment Certification*. The locations should be identified with as much specificity as possible in order to apprise potential U.S. workers of where the work will be performed and to ensure recruitment in all areas of intended employment.

The Department proposes to continue to allow employers or employer associations engaged in open range herding and livestock production to file applications and job orders covering work locations in multiple areas of intended employment and within one or more States.<sup>21</sup> This approach is warranted by the unique nature of the herding or production of livestock on the open range, particularly the transient nature of herding or livestock operations, often covering many hundreds of miles. In addition, the Department proposes to continue to allow an association of agricultural employers filing a master application as a joint employer to identify different dates of need for each of its employer-members on the application and job order.<sup>22</sup> Unless a modification to the job order is required by the CO or requested by the employer under 20 CFR 655.121(e), the association with

<sup>21</sup> This would continue the current practice that permits a variance from the geographic scope limitations of 20 CFR 655.132(a) for H-2ALCs engaged in open range herding and livestock production, and from 20 CFR 655.131(b) for master applications that include worksites in more than two contiguous States.

<sup>22</sup> The current guidance provides this variance from the date of need requirement in 20 CFR 655.131(b).

shepherding or goat herding positions will not need to resubmit its job order during the calendar year.

Finally, consistent with 20 CFR 655.103(d) and the history of herding, under the proposal, the total period of need that an employer seeking temporary labor certification for herding on the open range is permitted to state on the application and job order must be no longer than 364 days. The Department seeks comments regarding the temporary and seasonal nature of the work, including the amount of time spent on the open range during a year. The recognition of sheep and goat herding work on the open range has resulted from decades of past practices and draws upon the unique characteristics of the work that cannot be completely addressed within the generally applicable regulatory definition of temporary need; however, the Department seeks comments regarding whether the unique characteristics of the work exist year-round. The Department's long standing special procedures that allow sheep or goat herding employers to participate in the H-2A program with a total period of need lasting up to 364 calendar days have their origins in prior statutory provisions from the 1950s, *see, supra, Sec. I.A.* However, the Department is considering whether to modify this approach if evidence shows that the unique characteristics of sheep or goat herding on the open range do not exist for the entire period of the job order. The issuance of temporary labor certifications in this manner to employers engaged in sheep or goat herding on the open range has historically been based on the idea that the work is unique and, thus, has recognized the peculiarities of the industry and work involved. Thus, as we stated in Section II.A.1, we are seeking information on the seasonal nature as well as the duration of sheep and goat herding.

The proposal retains the 364-day duration of need in sheep and goat herding on the open range and does not expand this approach to applications for temporary open range livestock production occupations, for which an employer must continue to demonstrate a temporary need period of not more than 10 months. Despite similarities between herding and livestock production occupations performed on the open range, experience processing applications indicates that open range production of livestock involves distinct temporary positions at different times of the year. In any case, range livestock employers have been able to operate successfully without needing this

unique benefit for many years. *See, e.g., In the Matter of Vermillion Ranch Limited Partnership*, 2014-TLC-00002 (Dec. 5, 2013). As discussed in *Vermillion*, open range livestock employers may require separate temporary labor certifications for different time periods of the year to accurately reflect the distinct seasonal labor needs of the employer. 2014-TLC-00002, at \*9-10. The Department seeks comments as to whether sheep and goat herding similarly involves distinct temporary positions at different times of the year and should require more than one certification to match the various phases of the herding cycle to reflect temporary need under the INA. In addition, if separate certifications are required, should herding and open range livestock production employers be required to pay the hourly AEWR, as under the regular H-2A requirements, for temporary labor certifications covering time periods at a location other than the open range (*i.e.*, ranch or farm)?

## 2. § 655.220 Variance From Processing Procedures

This section contains the only variances the Department proposes to make from the general filing procedures in Subpart B for eligible employers seeking workers in open range production of livestock and herding occupations. Unless specifically addressed in these provisions, employers must comply, as they do currently, with the processing procedures in 20 CFR 655.140-655.145. The Department is proposing that under § 655.220, when the CO determines that an application and job order meet all regulatory requirements, the CO will notify the employer and transmit a copy of the job order to any one of the SWAs with jurisdiction over the anticipated worksites so that recruitment can begin. Where an association of agricultural employers files a master application as a joint employer and submits a single job order on behalf of its employer-members, the CO will transmit the copy of the job order to the SWA with jurisdiction over the association's location. The CO's notification will also direct the SWA receiving the job order copy to place the job order promptly in intrastate and interstate clearance, including forwarding the applications to all States where work will be performed.

Consistent with the OFLC's handling of other job orders approved for an association of agricultural employers filing a master application as a joint employer on behalf of its employer-members, the Department proposes that it will keep the job order posted on the OFLC's electronic job registry until 50

percent of the work contract period has elapsed for all employer-members identified on the job order (*i.e.*, the 50 percent period will be measured based on the employer-member with the last date of need). Since these job orders involve employer-members with different dates of need, each with its own 50 percent mark, this provision provides greater clarity for associations filing as joint employers with respect to the period the job order will appear on the electronic job registry.

## 3. § 655.225 Variances From Post-Acceptance Procedures

The Department is proposing to continue for sheep and goat herding occupations and expand to open range livestock production the practice under the TEGLs of waiving the requirement for placement of an advertisement on two separate days in a newspaper of general circulation as provided under 20 CFR 655.151. Because both open range herding and livestock production cover multiple areas of intended employment in remote, inaccessible areas within one or more States, and where fewer communities have newspapers, the newspaper advertisement is impractical and ineffective for recruiting domestic workers for these types of job opportunities.

Consistent with the OFLC's handling of other job orders approved for an association of agricultural employers filing a master application as a joint employer on behalf of its employer-members, the CO will direct the SWAs to keep the job order on its active file until 50 percent of the period of the work contract has elapsed for all employer-members identified on the approved job order. The SWA will refer all qualified U.S. workers to the association, with this proposed rule codifying the association's obligation to make every effort to accommodate a U.S. worker's worksite location preference (*e.g.*, the location with an opening nearest to his or her place of residence). In addition, this rule clarifies that an association handling the recruitment requirements for its employer-members must maintain a recruitment report containing the information required by 20 CFR 655.156 in a manner that allows the Department to see the recruitment results for each employer-member identified on the H-2A application and approved job order.

### E. Mobile Housing

#### 1. § 655.230 Use of Mobile Housing

Employers covered under this Subpart may use mobile housing for open range herding and livestock production job

opportunities, as provision of non-mobile housing is not practicable due to the remote locations of the work or terrain. Currently, there are no specific Department of Labor Occupational Safety and Health Administration (OSHA) standards for worker housing on the open range. OSHA's rules for temporary labor camps under 29 CFR 1910.142 are applicable only to workers housed in fixed structures or units. Similarly, the Department's rules for housing temporary agricultural workers under 20 CFR part 654, subpart E (published in the **Federal Register** on March 4, 1980) are only applicable to fixed structures or units and refer back to the OSHA standards in 29 CFR 1910.142 for employer-provided housing for agricultural workers. However, 29 CFR 654.400(b) requires mobile housing on the open range to "meet existing Departmental guidelines." The Department is proposing to codify these guidelines in § 655.235.

Since the mobile housing is often located in remote or isolated areas and is moved frequently, often covering hundreds of miles, the Department proposes continuing its long-standing practice of requiring the SWA to schedule and conduct an inspection of the employer's mobile housing no less frequently than once every 3 years (*i.e.*, 36 months). Based on that inspection, the SWA must provide a certification to the employer for a period lasting no more than 36 months. During the validity period of the SWA's housing certification, the Department will continue to allow employers to self-certify on each new application for certification that its mobile housing continues to meet the guidelines in § 655.235. To self-certify the employer must submit a copy of the SWA's valid housing certification along with a written statement, signed and dated by the employer, assuring the SWA and NPC that the employer's mobile housing continues to comply with all the applicable standards for mobile housing. The NPC may deny the H-2A application in situations where the certification provided by the SWA has expired or the housing does not meet all the applicable standards.

There are times when the mobile housing is temporarily located at or near the ranch or farm (or a similar central location) that has fixed housing for workers for certain operations that are a normal part of the herding cycle, such as birthing, shearing, or branding, and for minor, sporadic, and incidental work within the open range worker's duties. The Department acknowledges that the mobile housing may in such instances

continue to be used, or even be preferred, by workers, even where access to fixed housing exists. In situations in which the workers are temporarily stationed at or near the ranch or farm (reasonably able to return to it each night), the Department proposes that employers do not need to maintain full fixed-site housing for open range workers, but must provide access when employees are at the ranch to toilets, kitchens, and cleaning facilities for both person and clothing, including showers with hot and cold water under pressure. Where workers are temporarily located in employer-provided fixed-site housing at the ranch site, rather than remaining in the worker's mobile unit, such fixed-site housing must meet the standards applicable to such housing under 20 CFR 655.122(d). The Department invites comments about whether the employer must provide the worker a second sleeping facility in a fixed-site housing unit at the ranch or farm or other central location whenever the worker is located there.

## 2. § 655.235 Standards for Mobile Housing

The NPRM, in large measure, proposes to codify the minimum standards historically applied by the Department to mobile housing. These standards are generally consistent with the housing rules for temporary agricultural workers published under 20 CFR part 654, subpart E, but contain adaptations due to the unique circumstances of mobile housing. Because mobile housing for herders requires frequent movement to remote or isolated sites on the open range and must accommodate a very small number of workers, the current housing rules for temporary agricultural workers must be modified. For example, although the Department requires that mobile housing sites be well drained and free from depressions in which water may stagnate, the existing rules under 20 CFR 655.404(c)-(d) concerning the controlling of noxious plants and uncontrolled weeds or brush, as well as provision of space for recreation related to the size of the facility and type of occupancy, cannot practically be enforced due to the topography of the open range and highly mobile nature of the housing. Similarly, although the standards for water supply are consistent with those outlined under 20 CFR 654.405(a) and (c), the requirement under 20 CFR 654.405(b) concerning the provision of a cold water tap within 100 feet of each individual living unit is not feasible due to the remote and highly mobile nature of the housing units.

Finally, the Department proposes guidelines clarifying that, in situations where workers are located in rough or mountainous terrain or where land use regulations may not permit the use of certain kinds of mobile housing, tents may be used as a temporary housing option where the worker's health and safety will not be impaired.

The proposed rule also addresses health and safety concerns for workers living in the mobile housing. Workers must be able to escape from the mobile housing in an emergency, such as a fire. As electricity is not available in open range areas, alternative heating, lighting, and refrigeration or food preservation options are necessary. The Department invites comments related to safe and effective heating and lighting options for open range housing as well as refuse disposal methods that will avoid attracting wildlife. Further, the Department invites comments on food and food preservation options in keeping with food safety and nutrition concerns.

The Department proposes that each worker must have a separate bed, cot, or bunk with a clean mattress. The Department recognizes, however, that an employer must occasionally send a second worker to a remote open range location where only one, single-capacity mobile housing unit is located, and that bringing a second mobile housing unit or tent may not be feasible or appropriate. The second worker may be replacing the first worker, for example, and a short transition time may be necessary during which the workers will share the single-occupancy mobile housing unit. In those cases, the proposed rule codifies the Department's intent to limit the duration of the shared occupancy situation to no more than three consecutive days. Further, the rule proposes continuing the current requirement that, in such a temporary situation, each worker must have a separate bed or bedding (*e.g.*, sleeping bag).

The Department is expanding upon the current standards in a number of areas. For example, the Department is proposing that the employer provide the workers with water in quantities sufficient for basic cooking, consumption, cleaning, laundry and bathing requirements.<sup>23</sup> In WHD investigations, the Department has found employers who do not provide water at all times, and employees who

<sup>23</sup> Current requirements mandate the provision of sufficient water for cooking, drinking and bathing. Therefore, the proposal represents a modest expansion of the existing requirements by adding the obligation to supply water sufficient for cleaning and laundry as well.

were forced to melt snow for drinking water. The water to be used for cooking and consumption must be potable or easily rendered potable and the employee must be provided with the means to do so. Potable water is water that meets the water quality standards for drinking purposes of either the state or local authority having jurisdiction over supplies of drinking water or the U.S. Environmental Protection Agency's National Primary Drinking Water regulations, 40 CFR part 141. This definition mirrors the OSHA field sanitation regulations that define potable water for agricultural establishments, 29 CFR 1928.110. The supply of potable water must also be readily available in order to ensure that the water is available for cooking and consumption when needed by the worker. OSHA requires that drinking water must always be available in amounts needed for satisfying thirst, cooling, waste elimination, and metabolism. Occupational Safety and Health Administration, Field Sanitation, 52 FR 16050, 16087 (May 1, 1987). The Department is also proposing that the employer provide individual drinking cups.

The Department invites comments on the amount of water needed for each worker for these purposes. The Department further seeks comment on how much of the water should be potable (or easily rendered potable) for cooking and consumption and how much water is sufficient for cleaning, laundry, and bathing requirements.

When exigent circumstances make transporting water to remote locations temporarily impossible, the employer must identify an alternative water supply and methods for making water obtained from alternate supplies potable. The employer must provide the employee with the appropriate means for making the water potable. The Department seeks comment on what alternative water supplies may be used when exigent circumstances preclude the employer from transporting water to the worker, as well as what means are available to make alternate water sources potable for cooking and consumption.

The Department is aware that these rules may involve additional expense of providing a sufficient supply of potable water (or water easily rendered potable), but concludes that any additional expense is justified fully given the necessity of making drinkable water available for a vulnerable worker population performing physical labor outdoors, sometimes in extreme weather conditions.

In sum, the Department is proposing to maintain most of the existing requirements that have governed mobile housing for workers engaged in herding and the open range production of livestock for many years. The Department invites comments on all aspects of the standards for mobile housing on the open range as well as appropriate standards for tents, including size, material, accessories (e.g., rainfly and ground cover), and related sleeping units (e.g., thermal sleeping pad and type of sleeping bag).

### III. Administrative Information

#### A. Executive Order 13563 and Executive Order 12866

Executive Order (E.O.) 13563 directs 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 achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. E.O. 13563 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.

Under E.O. 12866, the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more or adversely affects 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 (also referred to as "economically significant"); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The proposed rule is a significant regulatory action under sec. 3(f) of E.O. 12866.

The economic effects of the costs and transfers that would result from the changes in this proposed rule, above and beyond the impacts of the program as it is currently implemented, are not economically significant. The largest impact on employers will result from implementation of the proposed wage setting methodology, which would be phased in over a 5-year period. This proposal will result in average annual transfers from employers to employees due to increased wages of \$45.08 million between 2016 and 2025, which includes a 5-year phase-in period from 2016 through 2020.<sup>24</sup> For those employers engaged in open range production of livestock other than sheep and goat herding, the proposed rule requires employers to provide food or meals, free of charge, to workers at an average annual cost of \$1.74 million. The special procedures guidance currently in place for open range production of livestock and sheepherding/goat herding require the provision of an adequate and convenient supply of water that meets the standards of the State health authority in sufficient amount to provide for drinking, cooking and bathing. The proposed rule expands the required water supply by including water for cleaning and laundry. In addition, the proposed rule requires that the water used for drinking and cooking be potable or easily rendered potable. The additional costs on employers resulting from this proposed rule include those involved in the provision of water for laundry and cleaning. The average additional annual cost for the employers to provide this water is \$2.97 million, which includes the cost of the potable water, utility trailers, vehicle mileage, and labor to deliver the water and food to workers.<sup>25</sup> The proposed rule includes a requirement that employers provide access to cooking and cleaning facilities when workers are located at or near a fixed-site ranch or farm. As the Department anticipates

<sup>24</sup> To estimate the new wage rates, the Department first calculates the annual percent change in each USDA region's average hourly AEWR for each year from 2009 to 2015. We then take the averages of the resulting six values to estimate the average annual percent changes by USDA region. Using each USDA region's average annual percent change, we forecast the hourly AEWR from 2016 to 2025 for each USDA region. This methodology is described in detail in Section 4: Subject-by-Subject Analysis.

<sup>25</sup> The estimate of \$2.97 million is likely an overestimate based on the fact employers are already required to provide water for drinking, cooking and bathing that meets state health standards.

existing cooking facilities will accommodate the requirement, the anticipated average annual cost to employers for costs related to the provision of cleaning facilities is \$0.36 million. Finally, the cost for the time required to read and review the proposed rule is \$0.01 million per year. Therefore, the average annual cost of the proposed rule is \$5.08 million. The proposed rule involves some cost reductions for employers, primarily for those who will no longer be required to place newspaper advertisements, which range from \$0.09 million to \$0.11 million per year.

#### 1. The Mendoza Litigation and Need for Rulemaking

In *Mendoza, et al. v. Solis et al.*, U.S. workers filed a lawsuit in the U.S. District Court for the District of Columbia challenging the special procedures for shepherding, goat herding, and occupations involved in the production of livestock on the open range, asserting that the Department violated the Administrative Procedure Act (APA) by adopting “special procedures” without first providing notice and an opportunity for public comment. The district court granted a motion to dismiss for lack of standing, but the Court of Appeals for the D.C. Circuit reversed the district court’s dismissal and held that the Department’s TEGLs containing special procedures for herding and production of livestock occupations on the open range constituted legislative rules subject to the APA’s procedural notice and comment requirements.

Through this rulemaking, the Department is complying with an order issued by the district court on remand to remedy the APA violation found by the D.C. Circuit. The lawsuit, however, is only one of the reasons for the promulgation of this Notice of Proposed Rulemaking (NPRM). The unique on-call nature (up to 24 hours a day, 7 days a week) of the work activity in isolated areas associated with these occupations, coupled with the sustained scarcity of U.S. workers employed in herding, has made determining an appropriate prevailing wage increasingly difficult under the current methodology for determining wages for these occupations. In these occupations, the prevailing wage serves as the Adverse Effect Wage Rate (AEWR). Few employers provide U.S. worker wage information in response to prevailing wage survey requests for these occupations, making it difficult for State Workforce Agencies (SWAs) to submit statistically valid prevailing wage findings to the OFLC Administrator. For

example, based on a review of employer surveys conducted over the last three years by approximately 10 States located in the mountain plains/western regions of the United States, all of the SWAs reported a combined total of only 30 (FY 2012), 26 (FY 2013), and 18 (FY 2014) domestic workers performing shepherding; these numbers are insufficient to report statistically reliable wage results by State. Therefore, through this rulemaking, the Department plans to establish a more effective methodology for determining and adjusting a monthly AEWR for these unique occupations that adequately protects U.S. and H-2A workers in these occupations. In addition, DOL has received complaints concerning housing conditions and has found violations of the housing standards in both complaint and directed (non-complaint) investigations. In addition, several cases have been litigated in which workers’ health and safety were at question (*Ruiz v. Fernandez*, 949 F. Supp. 2d 1055, 1060 (E.D. Wash. 2013) (denying defendants’ motion for summary judgment where plaintiff-shepherders alleged mistreatment, including denied breaks, threats of deportation, inadequate food, and housing that did not meet the minimum health and safety standards); *Camayo v. John Peroulis & Sons Sheep, Inc.*, No. 10-CV-00772-MSK-MJW, 2012 WL 4359086, at \*1 (D. Colo. Sept. 24, 2012) (denying defendant’s motion to dismiss where plaintiff-shepherders alleged severe mistreatment, including lack of food); *In the Matter of: John Peroulis & Sons Sheep, Inc.*, ALJ Case No. 2012-TAE-00004 (appeal pending before ARB) (ALJ upheld DOL’s charges against employer for multiple violations, including lack of adequate housing).

#### 2. Regulatory Alternatives

The Department has considered three alternatives: (1) To make the policy changes contained in the proposed rule in which the wage determination is based on forecasted AEWR values by U.S. Department of Agriculture (USDA) region, which are incrementally phased in over five years; (2) to make the same proposed policy changes contained in the proposed rule in which the wage determination is based on forecasted AEWR values by USDA region, which are incrementally phased in over three years; or (3) to make the policy changes contained in the proposed rule in which the wage determination is based on forecasted AEWR values by USDA region, which do not utilize a phase-in schedule. The Department believes that the first alternative—making the policy

changes contained in the proposed rule using the wage based on forecasted AEWR values by USDA region phased in over five years—will most effectively enable the Department to meet its statutory obligations to determine that there are not sufficient workers available to perform the labor or services requested and that the employment of foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed before the admission of foreign workers is permitted, given these occupations and their unique characteristics that have historically resulted in a limited number of U.S. workers interested in performing these jobs. The new wage methodology will begin to address immediately the stagnation concerns discussed earlier. A phase-in also recognizes that the full wage increase in a single year could lead to significant disruptions that might cause job losses that could be avoided by a gradual implementation period. In ensuring that prevailing wage is set at a level where it will not have adverse effect, it is appropriate for the Department to consider whether a significantly higher wage can be immediately absorbed by employers or might have the unintended consequence of reducing the availability of jobs for U.S. workers because the wage would result in some employers going out of business or scaling back their operations. This proposed rule will eventually result in wage increases of greater than 100 percent to many employers. Given the long history of employers paying a substantially lower wage rate than would be required at the end of the phase-in period, under this proposed rule the Department proposes to set the monthly AEWR initially at 60 percent of the monthly AEWR calculated using the proposed methodology, with incremental increases over the 5-year period following implementation. This proposal is intended to ensure that this rule will not have adverse effect on U.S. workers due to significant job losses. The Department invites comments from the public on these and other possible alternatives to consider with the goal of ensuring that the Final Rule best enables the Department to fulfill its statutory mandate.

#### 3. Economic Analysis

The economic analysis presented below covers herding and open range livestock production occupations. The Department’s economic analysis under this Part (III.A) is strictly limited to meeting the requirements under Executive Orders 12866 and 13563. The

Department did not use the economic analysis under this Part (III.A) as a factor or basis for determining the scope or extent of the Department's obligations or responsibilities under the Immigration and Nationality Act, as amended. Nor did the Department use the economic analysis in this Part (III.A) as a relevant factor relating to any requirement under the Administrative Procedure Act, or any case interpreting the requirements under the Administrative Procedure Act.

The Department derives its estimates by comparing the baseline, that is, the program benefits and costs under the 2010 Final Rule and Training and Employment Guidance Letters (TEGLs) 32–10 (*Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H-2A Program*) and 15–06, Change 1, (*Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock under the H-2A Program*), against the benefits and costs associated with the implementation of provisions contained in the proposed rule. We explain how the required actions of employers in herding and open range livestock production occupations are linked to the expected impacts of the proposed rule.

The Department has quantified and monetized the impacts of the proposed rule where feasible. Where we were unable to quantify benefits and costs—for example, due to data limitations—we describe them qualitatively and identify which data were not available to quantify the costs. The analysis covers 10 years (2016 through 2025) to ensure it captures all major impacts.<sup>26</sup> When summarizing the benefits, costs, or transfers resulting from specific provisions of the proposed rule, we present the 10-year averages to estimate the typical annual effect or 10-year discounted totals to estimate the present value of the overall effects.

In the remaining sections, the Department first presents a subject-by-subject analysis of the impacts of the proposed rule. We then present a summary of the costs and transfers of the proposed rule, including total impacts over the 10-year analysis period.

#### 4. Subject-by-Subject Analysis

The Department's analysis below considers the expected impacts of the following provisions of the proposed rule against the baseline (*i.e.*, the 2010

Final Rule; TEGL 32–10; and TEGL 15–06, Change 1): (a) Proportion/type of work permitted at the ranch (*i.e.*, not on the open range); (b) the new methodology for determining the wages of workers; (c) filing requirements; (d) job order submissions; (e) job order duration; (f) newspaper advertisements; (g) placement of workers on master applications; (h) employer-provided items; (i) meals; (j) potable water; (k) expanded cooking/cleaning facilities; (l) earnings records; and (m) time to read and review the rule.

For each of these subjects, the Department discusses the relevant costs, benefits, and transfers. In addition, we provide a qualitative assessment of transfer payments associated with the increased wages and protections of U.S. workers. Transfer payments, as defined by OMB Circular A–4, are payments from one group to another that do not affect total resources available to society. Transfer payments are associated with a distributional effect but do not result in additional costs or benefits to society.

##### a. Proportion/Type of Work Permitted at the Ranch

The proposed rule codifies certain procedures for employers who apply to the Department to obtain temporary agricultural labor certifications to hire foreign workers to perform herding or production of livestock on the open range. The proposed rule also clarifies the proportion/type of work that is permitted to be performed by workers at the fixed-site ranch. Any job duties performed at a place other than the open range (*e.g.*, a fixed site farm or ranch) must be performed on no more than 50 percent of the workdays in a work contract period, and any additional duties above and beyond the production of livestock must be minor, sporadic, and incidental to the herding or production of livestock, *i.e.* closely and directly related to herding and the production of livestock and be performed on no more than 20 percent of the workdays spent at the ranch in a work contract period. The proposed rule thus clarifies and makes more specific the provision in current TEGL 32–10, which similarly provides that it applies in the unique situation of sheepherding, which requires “spending extended periods of time with grazing herds of sheep in isolated mountainous terrain,” and states that workers may perform “other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.” As in current TEGL 32–10, the proposed rule states that the work activities must also generally require the workers to be

on call 24 hours per day, 7 days per week. In addition, the work performed in the open range must require the use of mobile housing because the worker is not reasonably able to return to his or her place of residence or the employer-provided fixed-site housing within the same day. However, as discussed previously, the Department is requesting comments regarding the length of time and nature of work performed while at the ranch and whether the ranch work duties should be considered a separate and distinct job from the open range duties, requiring a separate job order.

##### i. Costs

This change represents a cost to herding and open range livestock production employers that have had or will have workers at the ranch for more than 50 percent of the contracted workdays or have had workers perform minor, sporadic, and incidental duties on more than 20 percent of the contracted workdays spent at the ranch. These employers will be excluded from applying for workers pursuant to the special procedures in subpart C unless they commit to complying with the proposed percentage limitations for such workers. The Department is not able to estimate this cost, however, because we do not know how many workers currently spend more than 50 percent of their days working at the farm or ranch, although we believe the number is very small given the typical cycles for months spent on the range. Further, the Department cannot predict the adjustments of employers in response to the 20 percent cap. The Department anticipates that it is likely that affected employers will adjust their practices so that minor, sporadic, and incidental work performed at the employer's fixed-site ranch will be equal to or less than the 20 percent cap. However, as discussed previously, the Department is requesting comments regarding the length of time and nature of work performed while at the ranch and whether the ranch work duties should be considered a separate and distinct job from the open range duties, requiring a separate job order. Also, the Department invites comments regarding possible data sources that could be used to estimate this cost.

##### b. New Methodology for Determining the Wages of Workers

The proposed rule changes the methodology for determining the required wages of herding and open range livestock production workers. The Department proposes for both sets of occupations to establish the required wage by using forecasted AEWR values

<sup>26</sup> For the purposes of the cost-benefit analysis, the 10-year period starts on October 1, 2015.

by USDA region, and incrementally phasing the wages in over the first five years of the analysis period. The Department considered two other alternatives: Using forecasted AEWR values by USDA region, which are incrementally phased in over the first

three years of the analysis period; and using forecasted AEWR values by USDA region that do not utilize a phase-in schedule. The Department analyzes these alternatives relative to the baseline—the monthly AEWR for FY 2014—which is the most recent AEWR

data available and which reflects what employers currently are paying. To convert the monthly wage rate to an hourly wage rate, the Department divides the monthly wage rate by 44 hours and 4.333 weeks. Exhibit 1 presents the baseline wages by State.

EXHIBIT 1—BASELINE WAGE—FY 2014 MONTHLY AEWR

[Hourly AEWR]

State	Required wage for sheep and goat herders	Required wage for open range livestock production workers
AL	\$750.00 (\$3.93)	N/A
AZ	\$750.00 (\$3.93)	N/A
AR	\$750.00 (\$3.93)	N/A
CA	\$1,600.34 (\$8.39)	N/A
CO	\$750.00 (\$3.93)	\$875.00 (\$4.59)
HI	\$1,422.52 (\$7.46)	N/A
ID	\$750.00 (\$3.93)	\$875.00 (\$4.59)
MO	\$750.00 (\$3.93)	N/A
MT	\$750.00 (\$3.93)	\$875.00 (\$4.59)
NM	\$750.00 (\$3.93)	\$875.00 (\$4.59)
NV	\$800.00 (\$4.20)	\$875.00 (\$4.59)
ND	N/A	\$875.00 (\$4.59)
OK	\$750.00 (\$3.93)	N/A
OR	\$1,227.67 (\$6.44)	\$875.00 (\$4.59)
SD	\$750.00 (\$3.93)	\$875.00 (\$4.59)
TX	\$750.00 (\$3.93)	\$875.00 (\$4.59)
UT	\$750.00 (\$3.93)	\$875.00 (\$4.59)
WA	\$750.00 (\$3.93)	N/A
WY	\$750.00 (\$3.93)	\$875.00 (\$4.59)

Exhibit 2 presents the number and percentage of goat/sheepherding and open range livestock production employers participating in the H-2A program and the State for which they applied for certified H-2A workers. The number of employers is based on the FY 2012 H-2A certification dataset.<sup>27</sup> Note

that each employer is counted once for each State for which the employer applied for workers; some employers applied for workers in multiple States. Hence, Exhibit 2 overstates the number of employers participating in the H-2A herder and open range livestock program. As Exhibit 2 illustrates, sheep

and goat herders are most heavily concentrated in California, Utah, and Colorado, while open range livestock production workers are most heavily concentrated in Colorado, Texas, Utah, and Wyoming.

EXHIBIT 2—NUMBER AND PERCENTAGE OF H-2A EMPLOYERS BY OCCUPATION AND STATE

State	Number of sheep and goat herder employers	Percent of sheep and goat herder employers	Number of open range livestock production employers	Percent of open range livestock production employers
AL	2	0.4		
AZ	50	10.0		
AR	46	9.2		
CA	91	18.2		
CO	66	13.2	37	30.6
HI	2	0.4		
ID	43	8.6	5	4.1
MO	1	0.2		
MT	25	5.0	7	5.8
NM			1	0.8
NV	1	0.2	1	0.8
ND	27	5.4	1	0.8
OK	3	0.6		
OR	15	3.0	1	0.8
SD	4	0.8	1	0.8
TX	10	2.0	25	20.7

<sup>27</sup> The FY 2012 certification dataset provides the most recent data available in a useable form. Data from FY 2013 was not available in a useable form due to the Department's settlement of litigation

regarding prevailing wages during FY 2013:Q1 where the wage offers for many employers certified for H-2A open range workers changed post-certification and, therefore, the existing

administrative did not accurately reflect the actual wage offers for purposes of conducting the analysis. Data for FY 2014 was not yet available in a useable form at the time the analysis was conducted.

EXHIBIT 2—NUMBER AND PERCENTAGE OF H-2A EMPLOYERS BY OCCUPATION AND STATE—Continued

State	Number of sheep and goat herder employers	Percent of sheep and goat herder employers	Number of open range livestock production employers	Percent of open range livestock production employers
UT .....	71	14.2	22	18.2
WA .....	4	0.8	.....	.....
WY .....	38	7.6	20	16.5
Total .....	499	100	121	100

**Note:** The total number of employers by State (620) exceeds the number of actual employers participating in the H-2A herder and open range livestock program (517). This discrepancy is due to some employers submitting applications for certified H-2A workers in multiple States.

1. AEW Values Incrementally Phased In Over Five Years

To estimate the new wage rates, the Department first calculates the annual percent change in each USDA region's average hourly AEW for each year from 2009 to 2015. We then take the averages of the resulting six values to estimate the average annual percent

changes by USDA region. Using each USDA region's average annual percent change, we forecast the hourly AEW for the 5-year phase-in period from 2016 to 2020 for each USDA region. Using the Southeast region as an example, the average annual percent change over the six years is 2.2 percent. The Department applies the 2.2 percent growth rate to the 2015 hourly AEW to obtain the

forecasted 2016 hourly AEW (\$10.00 × 1.022 = \$10.22). We then apply the same 2.2 percent growth rate to the forecasted 2016 hourly AEW to forecast the 2017 hourly AEW (\$10.22 × 1.022 = \$10.44). We repeat this calculation to forecast the hourly AEWs for the remaining years in the analysis period. Exhibit 3 presents the actual and forecasted hourly AEWs for each USDA region.

EXHIBIT 3—ACTUAL AND FORECASTED HOURLY AEWRS BY USDA REGION

USDA Survey region (state)	Actual average hourly AEW							Forecasted hourly AEW				
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020–2025
Southeast (AL) .....	\$8.77	\$9.11	\$9.12	\$9.39	\$9.78	\$10.00	\$10.00	\$10.22	\$10.44	\$10.67	\$10.91	\$11.15
Annual Percent Change .....	.....	3.90%	0.10%	3.00%	4.20%	2.20%	0.00%	Forecasted hourly AEW calculated using the average annual percent change of 2.2%				
Cornbelt II (MO) .....	\$10.77	\$10.86	\$11.03	\$11.50	\$11.41	\$12.22	\$12.62	\$12.96	\$13.31	\$13.67	\$14.04	\$14.42
Annual Percent Change .....	.....	0.80%	1.60%	4.30%	-0.80%	7.10%	3.30%	Forecasted hourly AEW calculated using the average annual percent change of 2.7%				
Delta (AR) .....	\$8.92	\$9.10	\$8.97	\$9.30	\$9.50	\$9.87	\$10.18	\$10.40	\$10.63	\$10.87	\$11.11	\$11.35
Annual Percent Change .....	.....	2.00%	-1.40%	3.70%	2.20%	3.90%	3.10%	Forecasted hourly AEW calculated using the average annual percent change of 2.2%				
Northern Plains (KS, NE, ND, SD) .....	\$10.39	\$10.66	\$11.52	\$11.61	\$12.33	\$13.41	\$13.59	\$14.22	\$14.87	\$15.55	\$16.27	\$17.02
Annual Percent Change .....	.....	2.60%	8.10%	0.80%	6.20%	8.80%	1.30%	Forecasted hourly AEW calculated using the average annual percent change of 4.6%				
Southern Plains (OK, TX) .....	\$9.27	\$9.78	\$9.65	\$9.88	\$10.18	\$10.86	\$10.35	\$10.55	\$10.75	\$10.95	\$11.16	\$11.37
Annual Percent Change .....	.....	5.50%	-1.30%	2.40%	3.00%	6.70%	-4.70%	Forecasted hourly AEW calculated using the average annual percent change of 1.9%				
Mountain I (ID, MT, WY) .....	\$9.64	\$9.90	\$9.90	\$10.19	\$9.99	\$10.69	\$11.14	\$11.42	\$11.70	\$12.00	\$12.30	\$12.60
Annual Percent Change .....	.....	2.70%	0.00%	2.90%	-2.00%	7.00%	4.20%	Forecasted hourly AEW calculated using the average annual percent change of 2.5%				
Mountain II (CO, NV, UT) .....	\$9.88	\$10.06	\$10.48	\$10.43	\$10.08	\$10.89	\$11.37	\$11.64	\$11.92	\$12.21	\$12.50	\$12.80
Annual Percent Change .....	.....	1.80%	4.20%	-0.50%	-3.40%	8.00%	4.40%	Forecasted hourly AEW calculated using the average annual percent change of 2.4%				
Mountain III (AZ, NM) .....	\$9.82	\$9.71	\$9.60	\$9.94	\$9.73	\$9.97	\$10.54	\$10.67	\$10.79	\$10.92	\$11.06	\$11.19
Annual Percent Change .....	.....	-1.10%	-1.10%	3.50%	-2.10%	2.50%	5.70%	Forecasted hourly AEW calculated using the average annual percent change of 1.2%				
Pacific (OR, WA) .....	\$10.12	\$10.85	\$10.60	\$10.92	\$12.00	\$11.87	\$12.42	\$12.87	\$13.33	\$13.81	\$14.31	\$14.82
Annual Percent Change .....	.....	7.20%	-2.30%	3.00%	9.90%	-1.10%	4.60%	Forecasted hourly AEW calculated using the average annual percent change of 3.6%				
California .....	\$10.16	\$10.25	\$10.31	\$10.24	\$10.74	\$11.01	\$11.33	\$11.53	\$11.74	\$11.95	\$12.17	\$12.39
Annual Percent Change .....	.....	0.90%	0.60%	-0.70%	4.90%	2.50%	2.90%	Forecasted hourly AEW calculated using the average annual percent change of 1.8%				
Hawaii .....	\$11.06	\$11.45	\$12.01	\$12.26	\$12.72	\$12.91	\$12.98	\$13.33	\$13.69	\$14.06	\$14.44	\$14.83
Annual Percent Change .....	.....	3.50%	4.90%	2.10%	3.80%	1.50%	0.50%	Forecasted hourly AEW calculated using the average annual percent change of 2.7%				



The new wage rate determination methodology would be implemented over the first five years of the proposed rule. The Department estimates each region's hourly wage rate for each year of the analysis period as follows:

**EXHIBIT 4—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 1**

Year	Wage rate estimate
2016 ....	60 percent of the forecasted 2016 AEW. R.
2017 ....	70 percent of the forecasted 2017 AEW. R.

**EXHIBIT 4—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 1—Continued**

Year	Wage rate estimate
2018 ....	80 percent of the forecasted 2018 AEW. R.
2019 ....	90 percent of the forecasted 2019 AEW. R.
2020 ....	100 percent of the forecasted 2020 AEW. R.
2021 ....	100 percent of the forecasted 2021 AEW. R.
2022 ....	100 percent of the forecasted 2022 AEW. R.

**EXHIBIT 4—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 1—Continued**

Year	Wage rate estimate
2023 ....	100 percent of the forecasted 2023 AEW. R.
2024 ....	100 percent of the forecasted 2024 AEW. R.
2025 ....	100 percent of the forecasted 2025 AEW. R.

Exhibit 5 presents the phased-in forecasted hourly AEW. R. s for each USDA region under Alternative 1—the proposed 5-year phase-in.

**EXHIBIT 5—FORECASTED HOURLY AEW. R. S BY USDA REGION PHASED IN OVER 5 YEARS**

USDA Region	States included	2016	2017	2018	2019	2020–2025
Southeast .....	AL	\$6.13	\$7.31	\$8.54	\$9.82	\$11.15
Cornbelt II .....	MO	7.78	9.32	10.94	12.64	14.42
Delta .....	AR	6.24	7.44	8.69	10.00	11.35
Northern Plains .....	KS, NE, ND, SD	8.53	10.41	12.44	14.64	17.02
Southern Plains .....	OK, TX	6.33	7.52	8.76	10.04	11.37
Mountain I .....	ID, MT, WY	6.85	8.19	9.60	11.07	12.60
Mountain II .....	CO, NV, UT	6.99	8.35	9.77	11.25	12.80
Mountain III .....	AZ, NM	6.40	7.56	8.74	9.95	11.19
Pacific .....	OR, WA	7.72	9.33	11.05	12.88	14.82
California .....	CA	6.92	8.22	9.56	10.95	12.39
Hawaii .....	HI	8.00	9.58	11.25	13.00	14.83

To convert the hourly wage rate to a monthly wage rate, the Department multiplies the hourly wage rate by 44

hours and 4.333 weeks. Exhibit 6 presents the monthly wage rate by State.

**EXHIBIT 6—FORECASTED MONTHLY AEW. R. S BY STATE PHASED IN OVER 5 YEARS**

State	2016	2017	2018	2019	2020–2025
AL .....	\$1,169.08	\$1,393.93	\$1,628.11	\$1,871.92	\$2,125.67
AZ .....	1,220.15	1,440.59	1,666.15	1,896.91	2,132.97
AR .....	1,190.12	1,419.02	1,657.42	1,905.62	2,163.93
CA .....	1,319.38	1,566.99	1,823.08	2,087.88	2,361.62
CO .....	1,331.84	1,591.11	1,862.05	2,145.08	2,440.63
HI .....	1,524.89	1,827.07	2,144.46	2,477.65	2,827.28
ID .....	1,306.18	1,561.97	1,829.73	2,109.91	2,402.96
MO .....	1,482.59	1,776.40	2,084.98	2,408.93	2,748.86
MT .....	1,306.18	1,561.97	1,829.73	2,109.91	2,402.96
NM .....	1,220.15	1,440.59	1,666.15	1,896.91	2,132.97
NV .....	1,331.84	1,591.11	1,862.05	2,145.08	2,440.63
ND .....	1,626.09	1,984.37	2,372.17	2,791.45	3,244.29
OK .....	1,206.44	1,434.26	1,670.30	1,914.79	2,167.97
OR .....	1,471.89	1,779.02	2,106.36	2,454.96	2,825.93
SD .....	1,626.09	1,984.37	2,372.17	2,791.45	3,244.29
TX .....	1,206.44	1,434.26	1,670.30	1,914.79	2,167.97
UT .....	1,331.84	1,591.11	1,862.05	2,145.08	2,440.63
WA .....	1,471.89	1,779.02	2,106.36	2,454.96	2,825.93
WY .....	1,306.18	1,561.97	1,829.73	2,109.91	2,402.96

Exhibits 7 and 8 present the wage differential between the hourly wage under Alternative 1—the proposed 5-year phase-in—and the baseline by State for sheep and goat herders and open range livestock production workers, respectively. In the case of California, the hourly wage under Alternative 1 is

lower than the baseline wage for the first two years, because State law requires a higher wage than the proposed methodology. In those years, the workers would continue to receive the baseline wage; therefore, no wage differential results. Additionally, the hourly wage differentials for States that

did not have a baseline wage because there were no H–2A workers employed as herders or open range livestock workers are denoted as “N/A.” Note that these values are for informational purposes only and were not used in the analysis.

EXHIBIT 7—HOURLY WAGE DIFFERENTIAL BY STATE FOR SHEEP AND GOAT HERDERS PHASED IN OVER 5 YEARS

State	2016	2017	2018	2019	2020–2025
AL	\$2.20	\$3.38	\$4.61	\$5.88	\$7.22
AZ	2.47	3.62	4.81	6.02	7.25
AR	2.31	3.51	4.76	6.06	7.42
CA			1.17	2.56	3.99
CO	3.05	4.41	5.83	7.32	8.87
HI	0.54	2.12	3.79	5.53	7.37
ID	2.92	4.26	5.66	7.13	8.67
MO	3.84	5.38	7.00	8.70	10.48
MT	2.92	4.26	5.66	7.13	8.67
NM	2.47	3.62	4.81	6.02	7.25
NV	2.79	4.15	5.57	7.06	8.61
ND	N/A	N/A	N/A	N/A	N/A
OK	2.39	3.59	4.83	6.11	7.44
OR	1.28	2.89	4.61	6.44	8.38
SD	4.60	6.47	8.51	10.71	13.08
TX	2.39	3.59	4.83	6.11	7.44
UT	3.05	4.41	5.83	7.32	8.87
WA	3.79	5.40	7.11	8.94	10.89
WY	2.92	4.26	5.66	7.13	8.67

EXHIBIT 8—HOURLY WAGE DIFFERENTIAL BY STATE FOR OPEN RANGE LIVESTOCK PRODUCTION WORKERS PHASED IN OVER 5 YEARS

State	2016	2017	2018	2019	2020–2025
AL	N/A	N/A	N/A	N/A	N/A
AZ	N/A	N/A	N/A	N/A	N/A
AR	N/A	N/A	N/A	N/A	N/A
CA	N/A	N/A	N/A	N/A	N/A
CO	\$2.40	\$3.76	\$5.18	\$6.66	\$8.21
HI	N/A	N/A	N/A	N/A	N/A
ID	2.26	3.60	5.01	6.48	8.01
MO	N/A	N/A	N/A	N/A	N/A
MT	2.26	3.60	5.01	6.48	8.01
NM	1.81	2.97	4.15	5.36	6.60
NV	2.40	3.76	5.18	6.66	8.21
ND	3.94	5.82	7.85	10.05	12.43
OK	N/A	N/A	N/A	N/A	N/A
OR	3.13	4.74	6.46	8.29	10.23
SD	3.94	5.82	7.85	10.05	12.43
TX	1.74	2.93	4.17	5.45	6.78
UT	2.40	3.76	5.18	6.66	8.21
WA	N/A	N/A	N/A	N/A	N/A
WY	2.26	3.60	5.01	6.48	8.01

2. AEWV Values Incrementally Phased in Over Three Years

Under this alternative wage rate determination methodology, the Department estimates each region's hourly wage rate using the same AEWV values presented in Exhibit 3 but uses the following phase-in schedule:

EXHIBIT 9—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 2

Year	Wage rate estimate
2016	60 percent of the forecasted 2016 AEWV.

EXHIBIT 9—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 2—Continued

Year	Wage rate estimate
2017	80 percent of the forecasted 2017 AEWV.
2018	100 percent of the forecasted 2018 AEWV.
2019	100 percent of the forecasted 2019 AEWV.
2020	100 percent of the forecasted 2020 AEWV.
2021	100 percent of the forecasted 2021 AEWV.
2022	100 percent of the forecasted 2022 AEWV.

EXHIBIT 9—WAGE RATE PHASING SCHEDULE FOR ALTERNATIVE 2—Continued

Year	Wage rate estimate
2023	100 percent of the forecasted 2023 AEWV.
2024	100 percent of the forecasted 2024 AEWV.
2025	100 percent of the forecasted 2025 AEWV.

Exhibit 10 presents the phased-in forecasted hourly AEWVs for each USDA region under Alternative 2.

EXHIBIT 10—FORECASTED HOURLY AEWRS BY USDA REGION PHASED IN OVER 3 YEARS

USDA region	States included	2016	2017	2018	2019	2020–2025
Southeast	AL	\$6.13	\$8.36	\$10.67	\$10.91	\$11.15
Cornbelt II	MO	7.78	10.65	13.67	14.04	14.42
Delta	AR	6.24	8.51	10.87	11.11	11.35
Northern Plains	KS, NE, ND, SD	8.53	11.90	15.55	16.27	17.02
Southern Plains	OK, TX	6.33	8.60	10.95	11.16	11.37
Mountain I	ID, MT, WY	6.85	9.36	12.00	12.30	12.60
Mountain II	CO, NV, UT	6.99	9.54	12.21	12.50	12.80
Mountain III	AZ, NM	6.40	8.64	10.92	11.06	11.19
Pacific	OR, WA	7.72	10.66	13.81	14.31	14.82
California	CA	6.92	9.39	11.95	12.17	12.39
Hawaii	HI	8.00	10.95	14.06	14.44	14.83

To convert the hourly wage rate to a monthly wage rate, the Department multiplies the hourly wage rate by 44 hours and 4.333 weeks. Exhibit 11 presents the monthly wage rate by State.

EXHIBIT 11—FORECASTED MONTHLY AEWRS BY STATE PHASED IN OVER 3 YEARS

State	2016	2017	2018	2019	2020–2025
AL	\$1,169.08	\$1,593.06	\$2,035.14	\$2,079.91	\$2,125.67
AZ	1,220.15	1,646.39	2,082.68	2,107.68	2,132.97
AR	1,190.12	1,621.74	2,071.77	2,117.35	2,163.93
CA	1,319.38	1,790.84	2,278.84	2,319.86	2,361.62
CO	1,331.84	1,818.41	2,327.56	2,383.43	2,440.63
HI	1,524.89	2,088.08	2,680.57	2,752.95	2,827.28
ID	1,306.18	1,785.11	2,287.17	2,344.35	2,402.96
MO	1,482.59	2,030.17	2,606.23	2,676.59	2,748.86
MT	1,306.18	1,785.11	2,287.17	2,344.35	2,402.96
NM	1,220.15	1,646.39	2,082.68	2,107.68	2,132.97
NV	1,331.84	1,818.41	2,327.56	2,383.43	2,440.63
ND	1,626.09	2,267.85	2,965.21	3,101.61	3,244.29
OK	1,206.44	1,639.16	2,087.87	2,127.54	2,167.97
OR	1,471.89	2,033.16	2,632.95	2,727.73	2,825.93
SD	1,626.09	2,267.85	2,965.21	3,101.61	3,244.29
TX	1,206.44	1,639.16	2,087.87	2,127.54	2,167.97
UT	1,331.84	1,818.41	2,327.56	2,383.43	2,440.63
WA	1,471.89	2,033.16	2,632.95	2,727.73	2,825.93
WY	1,306.18	1,785.11	2,287.17	2,344.35	2,402.96

Exhibits 12 and 13 present the wage differential between the hourly wage under Alternative 2 and the baseline by State for sheep and goat herders and open range livestock production workers, respectively. In the case of California, the hourly wage under

Alternative 2 was lower than the baseline wage for the first year. The Department assumed that the workers would continue to receive the baseline wage; therefore, no wage differential results. Additionally, the hourly wage differentials for States that did not have

a baseline wage because there were no H–2A workers certified are denoted as “N/A.” Note that these values are for informational purposes only and were not used in the analysis.

EXHIBIT 12—HOURLY WAGE DIFFERENTIAL BY STATE FOR SHEEP AND GOAT HERDERS PHASED IN OVER 3 YEARS

State	2016	2017	2018	2019	2020–2025
AL	\$2.20	\$4.42	\$6.74	\$6.98	\$7.22
AZ	2.47	4.70	6.99	7.12	7.25
AR	2.31	4.57	6.93	7.17	7.42
CA	.....	1.00	3.56	3.77	3.99
CO	3.05	5.60	8.27	8.57	8.87
HI	0.54	3.49	6.60	6.98	7.37
ID	2.92	5.43	8.06	8.36	8.67
MO	3.84	6.71	9.74	10.11	10.48
MT	2.92	5.43	8.06	8.36	8.67
NM	2.47	4.70	6.99	7.12	7.25
NV	2.79	5.34	8.01	8.31	8.61
ND	N/A	N/A	N/A	N/A	N/A
OK	2.39	4.66	7.02	7.23	7.44
OR	1.28	4.22	7.37	7.87	8.38
SD	4.60	7.96	11.62	12.33	13.08

EXHIBIT 12—HOURLY WAGE DIFFERENTIAL BY STATE FOR SHEEP AND GOAT HERDERS PHASED IN OVER 3 YEARS—  
Continued

State	2016	2017	2018	2019	2020–2025
TX .....	2.39	4.66	7.02	7.23	7.44
UT .....	3.05	5.60	8.27	8.57	8.87
WA .....	3.79	6.73	9.88	10.37	10.89
WY .....	2.92	5.43	8.06	8.36	8.67

EXHIBIT 13—HOURLY WAGE DIFFERENTIAL BY STATE FOR OPEN RANGE LIVESTOCK PRODUCTION WORKERS PHASED IN  
OVER 3 YEARS

State	2016	2017	2018	2019	2020–2025
AL .....	N/A	N/A	N/A	N/A	N/A
AZ .....	N/A	N/A	N/A	N/A	N/A
AR .....	N/A	N/A	N/A	N/A	N/A
CA .....	N/A	N/A	N/A	N/A	N/A
CO .....	\$2.40	\$4.95	\$7.62	\$7.91	\$8.21
HI .....	N/A	N/A	N/A	N/A	N/A
ID .....	2.26	4.77	7.41	7.71	8.01
MO .....	N/A	N/A	N/A	N/A	N/A
MT .....	2.26	4.77	7.41	7.71	8.01
NM .....	1.81	4.05	6.33	6.47	6.60
NV .....	2.40	4.95	7.62	7.91	8.21
ND .....	3.94	7.31	10.96	11.68	12.43
OK .....	N/A	N/A	N/A	N/A	N/A
OR .....	3.13	6.07	9.22	9.72	10.23
SD .....	3.94	7.31	10.96	11.68	12.43
TX .....	1.74	4.01	6.36	6.57	6.78
UT .....	2.40	4.95	7.62	7.91	8.21
WA .....	N/A	N/A	N/A	N/A	N/A
WY .....	2.26	4.77	7.41	7.71	8.01

## 3. AEWR Values With No Phase-In

Under this alternative wage rate determination methodology, the Department estimates each region's hourly wage rate using the same AEWR

values presented in Exhibit 3 but does not use a phase-in schedule. To convert the hourly wage rate to a monthly wage rate, the Department multiplies the hourly wage rate by 44 hours and 4.333 weeks. With no phase-in, the monthly

AEWR requirement each year would be 100 percent of that year's hourly AEWR converted to a monthly rate by multiplying the hourly wage rate by 44 hours and 4.333 weeks. Exhibit 14 presents the monthly wage rate by State.

EXHIBIT 14—FORECASTED MONTHLY AEWRs BY STATE  
[No phase-in]

State	2016	2017	2018	2019	2020–2025
AL .....	\$1,948.46	\$1,991.33	\$2,035.14	\$2,079.91	\$2,125.67
AZ .....	2,033.59	2,057.99	2,082.68	2,107.68	2,132.97
AR .....	1,983.54	2,027.17	2,071.77	2,117.35	2,163.93
CA .....	2,198.97	2,238.55	2,278.84	2,319.86	2,361.62
CO .....	2,219.74	2,273.01	2,327.56	2,383.43	2,440.63
HI .....	2,541.48	2,610.10	2,680.57	2,752.95	2,827.28
ID .....	2,176.96	2,231.38	2,287.17	2,344.35	2,402.96
MO .....	2,470.99	2,537.71	2,606.23	2,676.59	2,748.86
MT .....	2,176.96	2,231.38	2,287.17	2,344.35	2,402.96
NM .....	2,033.59	2,057.99	2,082.68	2,107.68	2,132.97
NV .....	2,219.74	2,273.01	2,327.56	2,383.43	2,440.63
ND .....	2,710.14	2,834.81	2,965.21	3,101.61	3,244.29
OK .....	2,010.74	2,048.94	2,087.87	2,127.54	2,167.97
OR .....	2,453.14	2,541.46	2,632.95	2,727.73	2,825.93
SD .....	2,710.14	2,834.81	2,965.21	3,101.61	3,244.29
TX .....	2,010.74	2,048.94	2,087.87	2,127.54	2,167.97
UT .....	2,219.74	2,273.01	2,327.56	2,383.43	2,440.63
WA .....	2,453.14	2,541.46	2,632.95	2,727.73	2,825.93
WY .....	2,176.96	2,231.38	2,287.17	2,344.35	2,402.96

Exhibits 15 and 16 present the wage differential between the hourly wage under Alternative 3 and the baseline by State for sheep and goat herders and

open range livestock production workers, respectively. The hourly wage differentials for States that did not have a baseline wage are denoted as “N/A.”

Note that these values are for informational purposes only and were not used in the analysis.

EXHIBIT 15—HOURLY WAGE DIFFERENTIAL BY STATE FOR SHEEP AND GOAT HERDERS

[No phase-in]

State	2016	2017	2018	2019	2020–2025
AL	\$6.29	\$6.51	\$6.74	\$6.98	\$7.22
AZ	6.73	6.86	6.99	7.12	7.25
AR	6.47	6.70	6.93	7.17	7.42
CA	3.14	3.35	3.56	3.77	3.99
CO	7.71	7.99	8.27	8.57	8.87
HI	5.87	6.23	6.60	6.98	7.37
ID	7.48	7.77	8.06	8.36	8.67
MO	9.03	9.38	9.74	10.11	10.48
MT	7.48	7.77	8.06	8.36	8.67
NM	6.73	6.86	6.99	7.12	7.25
NV	7.45	7.73	8.01	8.31	8.61
ND	N/A	N/A	N/A	N/A	N/A
OK	6.61	6.81	7.02	7.23	7.44
OR	6.43	6.89	7.37	7.87	8.38
SD	10.28	10.94	11.62	12.33	13.08
TX	6.61	6.81	7.02	7.23	7.44
UT	7.71	7.99	8.27	8.57	8.87
WA	8.93	9.40	9.88	10.37	10.89
WY	7.48	7.77	8.06	8.36	8.67

EXHIBIT 16—HOURLY WAGE DIFFERENTIAL BY STATE FOR OPEN RANGE LIVESTOCK PRODUCTION WORKERS

[No phase-in]

State	2016	2017	2018	2019	2020–2025
AL	N/A	N/A	N/A	N/A	N/A
AZ	N/A	N/A	N/A	N/A	N/A
AR	N/A	N/A	N/A	N/A	N/A
CA	N/A	N/A	N/A	N/A	N/A
CO	\$7.05	\$7.33	\$7.62	\$7.91	\$8.21
HI	N/A	N/A	N/A	N/A	N/A
ID	6.83	7.11	7.41	7.71	8.01
MO	N/A	N/A	N/A	N/A	N/A
MT	6.83	7.11	7.41	7.71	8.01
NM	6.08	6.20	6.33	6.47	6.60
NV	7.05	7.33	7.62	7.91	8.21
ND	9.63	10.28	10.96	11.68	12.43
OK	N/A	N/A	N/A	N/A	N/A
OR	8.28	8.74	9.22	9.72	10.23
SD	9.63	10.28	10.96	11.68	12.43
TX	5.96	6.16	6.36	6.57	6.78
UT	7.05	7.33	7.62	7.91	8.21
WA	N/A	N/A	N/A	N/A	N/A
WY	6.83	7.11	7.41	7.71	8.01

i. Transfers

The proposed wage determination methodology and the two alternatives will each result in an increase in wages paid to H-2A workers and workers in corresponding employment, which represents a transfer from herding and open range livestock production employers.<sup>28</sup>

1. Transfers Using the Forecasted AEWR Incrementally Phased In Over Five Years

To estimate the transfer, the Department first subtracts the appropriate 2014 monthly AEWR value (i.e., the baseline as reflected in Exhibit 1) from the phased-in monthly AEWR to estimate the increase in monthly wages for each open range livestock production and shepherding/goat herding job certified in FY 2012.<sup>29</sup> Next,

we calculate the average increase in monthly wages across all records in the certification dataset. We then convert the average increase in monthly wages per worker to the average increase in hourly wages per worker by dividing the

from FY 2013 was not available in a useable form due to the Department’s settlement of litigation regarding prevailing wages during FY 2013:Q1 where the wage offers for many employers certified for H-2A open range workers changed post-certification and, therefore, the existing administrative did not accurately reflect the actual wage offers for purposes of conducting the analysis. Data for FY 2014 was not yet available in a useable form at the time the analysis was conducted.

<sup>28</sup> For the purpose of this analysis, H-2A workers are considered non-residents.

<sup>29</sup> The FY 2012 certification dataset provides the most recent data available in a useable form. Data

average increase in monthly wages per worker by the number of weeks in a month (4.333) as well as by the number of hours in a full-time workweek (44). Exhibit 17 presents the average increase in monthly and hourly wages per worker under Alternative 1—the proposed 5-year phase-in.

**EXHIBIT 17—AVERAGE INCREASE IN MONTHLY AND HOURLY WAGES PER WORKER FOR ALTERNATIVE 1**

Year	Monthly increase	Hourly increase
	A	b = a/4.333/44
2016 .....	\$515.66	\$2.70
2017 .....	771.28	4.05
2018 .....	883.09	4.63
2019 .....	1,159.61	6.08
2020 .....	1,447.96	7.59
2021 .....	1,447.96	7.59
2022 .....	1,447.96	7.59
2023 .....	1,447.96	7.59
2024 .....	1,447.96	7.59
2025 .....	1,447.96	7.59

The Department multiplies the average increase in hourly wages per H-2A worker under this wage determination option in 2016 (\$2.70) by the number of hours in a full-time workweek (44) and the average duration of need (50 weeks) to obtain the total increase per H-2A worker in 2016 (\$5,950). We then multiply the total increase per worker by the number of H-2A certified workers<sup>30</sup> to obtain total transfer due to increased wages of \$17.4 million in 2016. We repeat this calculation for each year of the analysis period using the average increases in hourly wages shown in Exhibit 17. Using an annual growth rate of two percent, the Department estimates that there will be 2,929 H-2A workers certified in 2016, which it estimates will increase to 3,500 in 2025. This results in an average annual transfer payment of \$45.1 million. The Department invites comments from the public on its

<sup>30</sup> Using the number of H-2A workers certified may be an overestimate of the number of affected workers. Employers do not bring into the country all the workers for which they are certified each year, and the workers do not all stay for the entire period of the certification. However, there likely are some corresponding workers who would also receive the increased wages. In some cases, the Department estimates the number of affected workers using the approximate number of H-2A workers per employer. For example, in FY 2012, there were 2,706 H-2A affected workers certified on 1,013 applications for 517 estimated unique employers. The Department could approximate the average number of H-2A workers per small entity by dividing the total number of certified H-2A workers in FY 2012 (2,706) by the total number of certified applications (1,013) to derive the estimate of approximately 3 H-2A workers per small entity (2,706/1,013).

calculation of the number of affected workers using the number of H-2A workers certified.

**2. Transfers Using the Forecasted AEWI Incrementally Phased In Over Three Years**

To estimate the transfer under the alternative wage option using a 3-year phase-in, the Department first subtracts the appropriate 2014 monthly AEWI value (*i.e.*, the baseline) from the phased monthly AEWI to estimate the increase in monthly wages for each record in the certification dataset for FY 2012. Next, we calculate the average increase in monthly wages across all records in the certification dataset. We then convert the average increase in monthly wages per worker to the average increase in hourly wages per worker by dividing the average increase in monthly wages per worker by the number of weeks in a month (4.333) as well as by the number of hours in a full-time workweek (44). Exhibit 18 presents the average increase in monthly and hourly wages per worker under Alternative 2.

**EXHIBIT 18—AVERAGE INCREASE IN MONTHLY AND HOURLY WAGES PER WORKER FOR ALTERNATIVE 2**

Year	Monthly increase	Hourly increase
	a	b = a/4.333/44
2016 .....	\$515.66	\$2.70
2017 .....	841.92	4.42
2018 .....	1,341.27	7.04
2019 .....	1,393.97	7.31
2020 .....	1,447.96	7.59
2021 .....	1,447.96	7.59
2022 .....	1,447.96	7.59
2023 .....	1,447.96	7.59
2024 .....	1,447.96	7.59
2025 .....	1,447.96	7.59

The Department multiplies the average increase in hourly wages per worker in 2016 (\$2.70) by the number of hours in a full-time workweek (44 hours) and the average duration of need (50 weeks) to obtain the total increase per worker (\$5,950). We then multiply the total increase per worker by the number of H-2A workers certified in 2016 (2,929) to obtain a total transfer in 2016 of \$17.4 million. We repeat this calculation for each remaining year of the analysis period using the average increases in hourly wages shown in Exhibit 18. Using an annual growth rate of two percent, the Department estimates that there will be 2,929 H-2A workers certified in 2016, which it estimates will increase to 3,500 in 2025. This results an average annual transfer

payment due to increased wages of \$47.8 million.

**3. Transfers Using the Forecasted AEWI With No Phase-In**

To estimate the transfer under the alternative wage option using no phase-in, the Department first subtracts the appropriate 2014 monthly AEWI value (*i.e.*, the baseline) from the monthly AEWI to estimate the increase in monthly wages for each record in the certification dataset for FY 2012. Next, we calculate the average increase in monthly wages across all records in the certification dataset. We then convert the average increase in monthly wages per worker to the average increase in hourly wages per worker by dividing the average increase in monthly wages per worker by the number of weeks in a month (4.333) as well as by the number of hours in a full-time workweek (44). Exhibit 19 presents the average increase in monthly and hourly wages per worker under Alternative 3.

**EXHIBIT 19—AVERAGE INCREASE IN MONTHLY AND HOURLY WAGES PER WORKER FOR ALTERNATIVE 3**

Year	Monthly increase	Hourly increase
	a	b = a/4.333/44
2016 .....	\$1,239.56	\$6.50
2017 .....	1,289.81	6.77
2018 .....	1,341.27	7.04
2019 .....	1,393.97	7.31
2020 .....	1,447.96	7.59
2021 .....	1,447.96	7.59
2022 .....	1,447.96	7.59
2023 .....	1,447.96	7.59
2024 .....	1,447.96	7.59
2025 .....	1,447.96	7.59

The Department multiplies the average increase in hourly wages per worker in 2016 (\$6.50) by the number of hours in a full-time work (44) week and the average duration of need (50 weeks) to obtain the total increase per worker (\$14,304) in 2016. We then multiply the total increase per worker by the number of H-2A workers certified in 2016 (2,929) to obtain a total transfer in 2016 of \$41.9 million. We repeat this calculation for each remaining year of the analysis period using the average increases in hourly wages shown in Exhibit 19. Using an annual growth rate of two percent, the Department estimates that there will be 2,929 H-2A workers certified in 2016, which it estimates will increase to 3,500 in 2025. This results in an average annual transfer payment due to increased wages of \$51.8 million.

The increase in the wage rates for some workers represents an important transfer from agricultural employers to corresponding U.S. workers, not just H-2A workers. As noted previously, the higher wages for workers associated with the new methodology for estimating the AEWR will result in an improved ability on the part of workers and corresponding U.S. workers and their families to meet their costs of living and spend money in their local communities. On the other hand, higher wages represent an increase in costs of production from the perspective of employers that affects economic profit and, on the margin, creates a disincentive to hire H-2A and corresponding U.S. workers. The Department does not have sufficient information to measure the net effect of these countervailing impacts.

There also may be a transfer of costs from government entities to employers as a result of lower expenditures on unemployment insurance benefits claims. Previously unemployed individuals who were not willing to accept a job at the lower wage may now be willing to accept the job and would not need to seek new or continued unemployment insurance benefits. The Department, however, is not able to quantify these transfer payments with precision.

The Department invites comments regarding the assumptions and data sources used to estimate the value of these wage transfers.

#### c. Job Order Submissions

The proposed rule extends the waiver of job order filing requirements in 20 CFR 655.121(a) through (d) to employers of H-2A workers in open range livestock production occupations. The Department is proposing that a covered employer will submit its job order, *Agricultural and Food Processing Clearance Order*, Form ETA 790, directly to the National Processing Center (NPC), not to the State Workforce Agency (SWA). The employer will submit the job order to the NPC at the same time it submits its *Application for Temporary Employment Certification*, Form ETA 9142A, as outlined in 20 CFR 655.130.

This provision does not represent a change for an association filing a master application as joint employer with its employer-members for sheep or goat herding positions. However, to ensure consistency in the handling of all employers eligible to use these special procedures, the Department is proposing to extend this existing practice to all employers involved in

open range herding and livestock production.

#### i. Cost Reductions

This change represents a minor cost reduction to employers of H-2A workers in open range livestock production occupations who will no longer be required to prepare and send a separate ETA Form 790 submission to the SWA and then communicate directly with the SWA about any concerns the SWA raises with the ETA Form 790. Due to data limitations, however, the Department is not able to quantify the staff time and resource costs saved relative to the baseline in which form submission and communication with the SWA is required. The Department invites comments regarding possible data sources regarding the staff time and resource costs saved that could be used to estimate this cost reduction.

#### d. Filing Requirements

The proposed rule permits an association of agricultural employers filing as a joint employer to submit a single job order and master *Application for Temporary Employment Certification* on behalf of its employer-members located in more than two contiguous States with different start dates of need.

This provision does not represent a change for an association filing a master application as joint employer with its employer-members for sheep or goat herding positions. However, to ensure consistency in the handling of all employers eligible to use these special procedures, the Department is proposing to extend this existing practice to employers in the herding or production of other livestock.

#### i. Cost Reductions

This change represents a minor cost reduction to employers of H-2A workers in open range livestock production occupations that file a master application as joint employer with its employer-members. Due to data limitations regarding the time savings realized by filing a master application relative to separate applications and the extent to which open range livestock production employers would file master applications as joint employers with their employer-members, however, the Department is not able to quantify this impact. The Department invites comments regarding possible data sources regarding the time savings realized by filing a master application relative to separate applications and the extent to which open range livestock production employers would file master

applications that could be used to estimate this cost reduction.

#### e. Job Order Duration

The proposed rule requires that, where a single job order is approved for an association of agricultural employers filing as a joint employer on behalf of its employer-members with different start dates of need, each of the SWAs to which the job order was transmitted by the Contracting Officer (CO) or the SWA having jurisdiction over the location of the association must keep the job order on its active file until 50 percent of the period of the work contract has elapsed for all employer-members identified on the job order, and must refer each qualified U.S. worker who applies (or on whose behalf an application is made) for the job opportunity. The proposed rule also requires that the Department keep the job order posted on the OFLC electronic job registry for the same period.

#### i. Cost Reductions

This change represents a possible cost reduction for an H-2A employer association that files a master application as a joint employer with its employer-members for workers in sheep and goat herding occupations. These employers were previously required to accept referrals throughout the work contract period. Under the proposed rule, these employers will only have to accept referrals for 50 percent of the work contract period, resulting in avoided costs of accepting referrals during the second half of the work contract period. Due to data limitations regarding the number of referrals during the second half of the work contract period, however, the Department is not able to quantify this impact. The Department invites comments regarding possible data sources regarding the number of referrals that could be used to estimate this cost reduction.

#### f. Newspaper Advertisements

The Department is proposing to continue for sheep and goat herding occupations and expand to production of livestock occupations on the open range the TEGL practice of granting a waiver of the requirement to place an advertisement on two separate days in a newspaper of general circulation serving the area of intended employment. Because both herding and production of livestock on the open range cover multiple areas of intended employment in remote, inaccessible areas within one or more States, the newspaper advertisement is impractical and ineffective for recruiting domestic

workers for these types of job opportunities.

#### i. Cost Reductions

This change represents a cost reduction to employers of workers in open range livestock production occupations. The Department estimates this cost reduction by multiplying the estimated number of applications filed by open range livestock production employers in 2016 (157) by the average cost of placing a newspaper advertisement (\$258.64) and the number of advertisements per employer (2).<sup>31</sup> We repeat this calculation for each remaining year of the analysis period. Using an annual growth rate of two percent, the Department estimates that 157 applications will be filed by open range livestock production employers in 2016, which it estimates will increase to 188 applications filed in 2025. This results in an average annual cost reduction of \$0.09 million.

Because these activities require time on the part of a human resources manager on the ranch, we add to the result the incremental cost of preparing the advertisement, which we calculate by multiplying the estimated number of applications filed by open range livestock production employers in 2016 (157) by the time required to prepare a newspaper advertisement (0.5 hours), the hourly labor compensation rate of a human resources manager at an agricultural business (\$75.90), and the number of advertisements per employer (2).<sup>32</sup> Using the projected number of applications, we repeat the above calculation for each remaining year of the analysis period to obtain an average annual cost reduction of \$0.01 million.

In total, the cost reduction from not having to place the advertisement and saved labor yield an average annual cost reduction of \$0.1 million. The Department invites comments regarding the assumptions and data sources used to estimate the value of this cost reduction.

#### g. Placement of Workers on Master Applications

The proposed rule requires that eligible U.S. workers who apply for the

<sup>31</sup> This newspaper advertisement cost estimate is based on an advertisement of 158 words placed in *The Salt Lake Tribune* for one day (Source: *The Salt Lake Tribune*. Available at <http://placead.yourutahclassifieds.com/webbase/en/std/jsp/WebBaseMain.do>. Accessed Nov. 13, 2014).

<sup>32</sup> The Department estimates that this work would be performed by a human resources manager at an agricultural employer at an hourly rate of \$53.45 (as published by the Department's OES Survey, O\*Net Online), which we multiply by 1.42 to account for employee benefits to obtain a total hourly labor cost of \$75.90.

job opportunities and are hired be placed at the locations nearest to them, absent a request for a different location by U.S. workers. The proposed rule also requires that associations that fulfill the recruitment requirements for their members maintain a written recruitment report for each individual employer-member identified in the application or job order, including any approved modifications.

#### i. Cost Reductions and Costs

The U.S. worker placement requirement represents a minor cost reduction. Because U.S. workers will be placed at locations nearest to them, the proposed rule will yield a decrease in travel costs to arrive at and return from the work site. Due to data limitations regarding travels costs to arrive at and return from the work site for participating U.S. workers, however, the Department is not able to quantify this impact with any certainty. The Department invites comments regarding possible data sources regarding travel costs to arrive at and return from the work site for participating U.S. workers that could be used to estimate this cost reduction.

The recruitment report requirement represents a cost to an association of employers of workers in open range livestock occupations. Associations will be required to maintain a written recruitment report for each individual employer-member; however, associations are currently required to document all applications and their disposition, making this a change in the form of the recordkeeping rather than its substance. The Department invites comment on whether there is an increased burden as a result of this requirement. This will likely lead to a marginal increase in costs for the association to prepare and maintain a more detailed recruitment report for each employer-member named on a master application. The Department is not able to quantify this impact with any certainty, however, due to data limitations regarding the time required for associations to prepare and maintain a more detailed recruitment report. The Department invites comments regarding possible data sources that could be used to estimate this additional cost.

#### h. Employer-Provided Items

This provision requires that all herding and open range livestock production employers seeking temporary workers through the H-2A program must provide to their workers, free of charge, all tools, supplies, and equipment required to perform the

duties assigned. The Department is proposing that the job offer specify that the employer will provide, without charge or deposit charge, those tools, supplies, and equipment required by law, by the employer, or by the nature of the work to do the job safely and effectively. Because of the isolated nature of these occupations, an effective means of communication between worker and employer—to enable the employer to check the worker's status and the worker to communicate an emergency to persons capable of responding—is required because it is necessary to perform the job safely and effectively. The workers' location may be so remote that electronic communication devices may not work at all times. Where the employer will not otherwise make contact with the worker (e.g., when delivering food or checking on the worker and herd in-person), the employer must establish a regular schedule when the workers will be geographically located in a place where the electronic communication device will function (e.g., mobile phone in an area with adequate reception) so that the workers' safety and needs can be monitored.

#### i. Costs

This change represents a possible minor cost to herding or open range livestock production employers. The requirement that employers establish a regular schedule when the workers will be located in a place where the electronic communication device will work may impose restrictions on land use or the purchase of particular types of communication devices. The Department cannot, however, predict this impact or quantify it as a cost to employers. The Department invites comments regarding how this provision may impose a cost on employers and how that cost may be estimated, given the existing requirement in the TEGLS for an effective means of communicating in case of an emergency and the employers' normal methods of communicating with and visiting their workers.

#### i. Meals

All H-2A employers must provide either three meals a day or free and convenient kitchen facilities. Currently, as required under the sheep and goat herding TEGL and pursuant to practice in the industry for open range production of livestock occupations, employers with these open range occupations provide food, free of charge, to their workers in the field. We are proposing to adopt this common practice as a requirement for both



employers engaged in herding and those engaged in the production of livestock on the open range and to require employers to disclose it in the job offer.

#### i. Costs

Because this is a requirement of the sheep and goat herding TEGL, this provision does not represent a cost to sheep and goat herding employers. This provision does, however, represent a cost to open range livestock production employers. The Department estimates this cost by multiplying the number of meals required per worker on a weekly basis (21), the average cost of a meal (\$3.86), and the average duration of need (50 weeks) to obtain the total cost of meals per worker (\$4,053).<sup>33</sup> We then multiply the total cost of meals per worker by the estimated number of open range livestock production employers in 2016 (131) and the average number of H-2A workers per employer needing meals on a weekly basis (3) to obtain a total cost in 2016 of \$1.6 million. We repeat the above calculation for each remaining year of the analysis period. Using an annual growth rate of two percent, the Department estimates that there will be 131 open range livestock production employers in 2016, which it estimates will increase to 157 in 2025. This results in an average annual cost due to meals of \$1.7 million.

In addition to the cost incurred by open range livestock production employers to purchase food, open range livestock production employers would incur costs to transport the food to the workers. The Department assumes that food would be transported to the workers on a weekly basis along with the potable water. The costs related to transporting food and potable water are accounted for below in the section on costs related to potable water. The Department invites comments regarding the assumptions and data sources used to estimate the value of this cost.

#### j. Potable Water

The proposed rule requires that employers provide to workers an adequate supply of water for drinking, cooking, bathing, cleaning and laundry that complies with State or local health standards of which cooking and drinking water must also be potable, or easily rendered potable. The proposed rule expands upon the current TEGLs, which require sufficient water that

meets the standards of the State health authority for drinking, cooking, and bathing, by requiring employers also to provide sufficient water for cleaning and laundry. In addition it requires that drinking and cooking water be potable or easily rendered potable.

#### i. Costs

This change represents a cost to herding and open range livestock production employers. The Department estimates the cost of providing potable water to workers as the sum of the cost of the potable water, the cost of purchasing utility trailers to transport the water and meals, the cost of mileage for the vehicles transporting the water and meals, and the labor costs to transport the water and meals.

The Department estimates the cost of purchasing the water by multiplying the estimated number of employers in 2016 (560) by the average number of H-2A workers per employer needing potable water on a weekly basis (3), the number of gallons of potable water needed per worker on a weekly basis (28), the average cost of a gallon of potable water (\$0.005), and the average duration of need (50 weeks).<sup>34</sup> This results in a cost of \$0.01 million in 2016. We repeat this calculation for each remaining year of the analysis period. Using an annual growth rate of two percent, the Department estimates that there will be 560 employers in 2016, which it estimates will increase to 669 in 2025. This results in an average annual cost of \$0.01 million.

Because the employers must have the means to transport the potable water and food to the workers, the Department estimates the cost of purchasing utility trailers. We assume that 10 percent of agricultural employers do not currently have a trailer sufficient to transport the water and food to workers. In the first year of the rule, we include the cost incurred by existing and new H-2A employers to purchase trailers; in future years, we include the cost incurred only by new participants. To calculate the cost for the first year of the proposed rule, we estimate the number of existing H-2A participants that would need to purchase a trailer in 2016, which we calculate by multiplying the number of existing participants (560) by the assumed percentage of employers that would need to purchase a trailer (10%).

We then multiply the number of employers needing to purchase a trailer (56) by the average cost of a trailer (\$838.34) to estimate the total cost of purchasing utility trailers in 2016 (\$46,971).<sup>35</sup> We repeat this calculation for each remaining year in the analysis time period using the following numbers of new participants: 11 in years 2017–2018, 12 in years 2019–2022, and 13 in years 2023–2025. This calculation results in an average annual cost of \$5,613. The Department also estimates the cost of mileage on the employers' vehicles. We estimate this cost by multiplying the estimated number of employers in 2016 (560) by the average cost per mile of owning and operating an automobile (\$0.59), the number of miles driven (roundtrip) to deliver the water and meals (100), and the number of roundtrips expected per year (50).<sup>36</sup> This calculation results in a cost of \$1.7 million in 2016. We repeat this calculation for each remaining year of the analysis period. Using an annual growth rate of two percent, the Department estimates that there will be 560 employers in 2016, which it estimates will increase to 669 in 2025. This results in an average annual cost of \$1.8 million.

Because these activities require time on the part of an agricultural worker on the ranch, the Department estimates the cost of transporting the potable water and food to the workers, which we calculate by multiplying the estimated number of employers in 2016 (560) by the assumed time required to transport the potable water and food (2.86 hours), the hourly labor compensation rate of an agricultural worker (\$13.01), and the number of roundtrips per year (50).<sup>37</sup>

<sup>35</sup> This trailer cost estimate is based on the average costs for a 5 x 8 ft. utility trailer from Tractor Supply Co. (Source: <http://www.tractor-supply.com/en/store/search/utility-trailers>. Accessed Nov. 13, 2014), Lowes, and Home Depot.

<sup>36</sup> This cost per mile of owning and operating an automobile is based on the average costs in the DOT Bureau of Transportation Statistics. (source: [http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national\\_transportation\\_statistics/html/table\\_03\\_17.html](http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_03_17.html). Accessed Nov. 13, 2014). The Department assumes the workers are all located within the 100-mile roundtrip distance so only one roundtrip per employer per week would be needed to transport water and meals to workers.

<sup>37</sup> The Department assumes that the water delivery will be performed by an agricultural worker at an hourly rate of \$9.16 (as published by the Department's OES Survey, O\*Net Online), which we multiply by 1.42 to account for employee benefits to obtain a total hourly labor cost of \$13.01. The time required to transport the potable water and meals roundtrip was estimated using the assumptions that a roundtrip is 100 miles and that the agricultural worker would drive at 35 mph. The Department assumes the workers are all located within the 100-mile roundtrip distance, so only one roundtrip per employer per week would be needed to transport water and meals to workers.

<sup>33</sup> The meal cost estimate of \$3.86 is from *Allowable Meal Charges and Reimbursements for Daily Subsistence* published by the U.S. Department of Labor, Employment & Training Administration (Source: [http://www.foreignlaborcert.doleta.gov/meal\\_travel\\_subsistence.cfm](http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm). Accessed Dec. 8, 2014).

<sup>34</sup> This potable water cost estimate is from the *2014 Water and Wastewater Survey* produced by the Texas Municipal League (Source: <http://www.tml.org/surveys>. Accessed Nov. 13, 2014). It is estimated based on the average cost of potable water for commercial entities in Texas cities with a population below 2,000 and based on the fee for 50,000 gallons.

This calculation results in a cost of \$1.0 million in 2016. We repeat this calculation for each year of the analysis period. Using an annual growth rate of two percent, the Department estimates that there will be 560 employers in 2016, which it estimates will increase to 669 in 2025. This results in an average annual cost of \$1.1 million.

This calculation yields an average annual cost of \$3.0 million for the cost of the water, utility trailers, vehicle mileage, and labor to deliver the water and food.

The Department has considered several alternatives in addition to the methodology presented above. While the estimation methodology described above produces an overestimate because it assumes that no herding or open range livestock production employers are currently delivering water or food to their workers and that some herding and open range livestock production employers will be required to purchase trailers to transport the water to workers in remote locations, we also considered the scenario in which herding and open range livestock production employers already deliver supplies to workers and simply add the additional potable water to the bed of a truck already owned by the ranch. This alternative scenario would yield a cost estimate that does not include the full roundtrip cost of mileage on the truck or the purchase of a trailer. This methodology would, however, include a cost incurred due to the decreased fuel efficiency of the truck because of the weight of the water in the bed of the truck. The Department invites comments regarding which of these scenarios is more likely to occur.

#### k. Expanded Cooking/Cleaning Facilities

The Department recognizes that there are times when the mobile housing is located at or near the ranch or farm (or a similar central location) that has fixed housing for workers for certain operations that are a normal part of the herding cycle, such as birthing (in some cases), shearing, or branding. We acknowledge that the mobile housing may in such instances continue to be used, or even preferred, by workers, even where access to fixed housing exists.

Where a worker continues to use the mobile housing provided for open range work while temporarily stationed at or near the ranch, the proposed rule obligates the herding or open range livestock production employer to provide the workers with access to facilities such as toilets and showers with hot and cold water under pressure. Similarly, the workers must be provided

access to cooking and cleaning facilities. Herding and open range livestock production employers do not need to maintain full housing in such cases, but must provide access to toilets, kitchens, and cleaning facilities for both person and clothing.

#### i. Costs

The Department expects that farm kitchens will be able to increase production to a sufficient extent to provide for the additional workers; thus, we do not anticipate herding and open range livestock production employers incurring a cost for constructing or expanding cooking facility space.

The requirement to provide access to cleaning facilities, however, will likely impose a cost on herding and open range livestock production employers that do not have cleaning facilities for worker use. This change represents a cost to employers. To estimate the cost of constructing or expanding the cleaning facilities for the first year of the proposed rule, the Department estimates the number of existing H-2A participants that would need to construct/expand cleaning facilities, which we calculate by multiplying the number of existing H-2A participants (560) by the assumed percentage of employers that would need to construct or expand their facilities (20%). We then multiply the number of existing employers that would need to construct/expand facilities (112) by the average cost per square foot to construct or expand cleaning facilities (\$270.00) and the assumed size of the cleaning facility (100 sq. ft.).<sup>38</sup> This calculation results in a cost of \$3.0 million in 2016.

We repeat this calculation for each of the remaining years using the following numbers of new participants: 11 in years 2017–2018, 12 in years 2019–2022, and 13 in years 2023–2025. Over the 10-year period, this calculation yields an average annual cost of \$0.4 million to existing and new employers.

The Department invites comments regarding the assumptions used for the average size of the cleaning facilities to be constructed or expanded and the average cost per square foot to construct or expand the cleaning facilities.

#### l. Earnings Records

The proposed rule requires that employers generate a daily record of the site of the employee's work, or availability to work, whether it was on

<sup>38</sup> This cost per square foot estimate is based on the average cost to add a bathroom to a building from The Nest (Source: <http://budgeting.thenest.com/average-cost-per-square-foot-add-addition-house-23356.html>. Accessed Nov. 13, 2014).

the open range or on the ranch or farm. The proposed rule also requires that employers retain records of hours worked and duties performed when the worker is performing work on the ranch or farm. This provision is new and will allow the Department to monitor compliance with and enforce H-2A program obligations.

#### i. Costs

This change represents a possible minor cost to herding or open range livestock production employers who are not already retaining hours worked records. The Department estimates the cost by multiplying the time required to prepare and store timesheets by the average compensation of a human resources manager at an agricultural business. In the first year of the rule, the Department estimates that the average employer will spend approximately 6 minutes each week or approximately 5 hours a year (based on a 50 week average period of need) to prepare and store timesheets, which amounts to approximately \$379.50 (\$75.90 x 5) in labor costs per year.<sup>39</sup> The Department invites comments regarding the assumptions and data sources used to estimate the value of this cost.

#### m. Time To Read and Review the Rule

During the first year that this rule would be in effect, herding and open range livestock production employers would need to learn about the new requirements.

#### i. Costs

This requirement represents a cost to herding and open range livestock production employers in the first year of the rule. The Department estimates this cost by multiplying the time required to read and review the new rule, application, compliance processes, and outreach materials explaining the program (2 hours) by the average compensation of a human resources manager at an agricultural business (\$75.90).<sup>40</sup> This amounts to

<sup>39</sup> The Department estimates that herding and open range livestock production employers will spend 6 minutes each week to record and store worker time sheets. The average period of need for an H-2A worker is 50 weeks a year. The median hourly wage for a human resources manager is \$53.45 (as published by the Department's OES survey, O\*Net Online), which we multiply by 1.42 to account for private-sector employee benefits (Source: Bureau of Labor Statistics). This calculation yields an hourly labor cost of \$75.90.

<sup>40</sup> The median hourly wage for a human resources manager is \$53.45 (as published by the Department's OES survey, O\*Net Online), which we multiply by 1.42 to account for private-sector employee benefits (source: Bureau of Labor Statistics). This calculation yields an hourly labor cost of \$75.90.

approximately \$151.80 in labor costs in the first year and an average annual cost of \$15.18 over the 10-year analysis period. The Department invites comments regarding the assumptions and data sources used to estimate the value of this cost.

5. Summary of Impacts

Costs and Transfers

Exhibit 20 presents a summary of first-year, the sixth-year, and average annual costs and transfers by affected entity. The Department estimates the total first-year costs and transfers of the proposed rule to be \$7.45 million and \$17.43 million, respectively. The transfer from all herding and open range livestock production employers to workers due to the revised wage determination methodology based on the forecasted AEWR phased in over five years amounts to \$17.43 million. The largest first-year cost is the cost to expand cooking/cleaning facilities at \$3.02 million, followed by the cost of providing water to workers, the cost of providing food to workers, and the time required to read and review the NPRM. These costs and transfers are incurred by all herding and open range livestock production employers with the

exception of the cost of providing food to workers, which is incurred only by open range livestock production employers. Open range livestock production employers experience a cost reduction of approximately \$0.09 million in the first year of the rule due to the proposed elimination of the newspaper advertising requirement.

The Department included the total costs and transfers of the proposed rule in the sixth year of the analysis. These are the costs and transfers that would prevail once the 5-year phase-in is complete. The Department estimates the total sixth-year costs and transfers of the proposed rule to be \$4.81 million and \$54.03 million, respectively. The transfer from all herding and open range livestock production employers to workers due to the revised wage determination methodology based on the forecasted AEWR phased in over five years amounts to \$54.03 million. The largest sixth-year cost is the cost to provide water to workers at \$2.99 million, followed by the cost of providing food to workers, and the cost to expand cooking/cleaning facilities. Open range livestock production employers experience a cost reduction of approximately \$0.10 million in the

first year of the rule due to the proposed elimination of the newspaper advertising requirement.

In general, average annual costs and transfers are larger than those in the first year because of the phase-in of the wage increases and because the Department estimates the H-2A participant population to increase over the 10-year analysis period. The exceptions to this are the impacts that include fixed costs in the first year of the rule (*i.e.*, Expanded Cooking/Cleaning Facilities, Time to Read and Review NPRM). The average annual transfer from employers to employees due to the revised wage determination methodology amounts to \$45.08 million per year. The largest cost is providing water to workers at \$2.97 million per year, followed by the cost of providing meals to workers at \$1.74 million per year, the cost of expanding cooking/cleaning facilities at \$0.36 million per year, and the time required to read and review the NPRM at \$0.01 million per year. The Department estimates the average annual cost of the proposed rule to be \$5.08 million. Open range livestock production employers experience an average annual cost reduction of approximately \$0.10 million.

EXHIBIT 20—SUMMARY OF COSTS AND TRANSFERS

Required action	Entity affected	Monetized year 1 costs/transfers (\$millions)	Monetized year 6 costs/transfers (\$millions)	Average annual costs/transfers (\$millions)
<b>Costs</b>				
1 Proportion/type of work permitted at the ranch.	All Employers .....	Not Monetized .....	Not monetized .....	Not Monetized.
2 Filing requirements .....	Open Range Employers ...	Not Monetized .....	Not Monetized .....	Not Monetized.
3 Job order submissions	Open Range Employers ...	Not Monetized .....	Not Monetized .....	Not Monetized.
4 Job order duration .....	Herding Employers .....	Not Monetized .....	Not Monetized .....	Not Monetized.
5 Newspaper advertisements.	Open Range Employers ...	(\$0.09) .....	(\$0.10) .....	(\$0.10).
6 Placement of workers on master applications.	All Employers .....	Not Monetized .....	Not Monetized .....	Not Monetized.
7 Employer-provided items.	All Employers .....	Not Monetized .....	Not Monetized .....	Not Monetized.
8 Meals .....	Open Range Employers ...	\$1.59 .....	\$1.76 .....	\$1.74.
9 Water .....	All Employers .....	2.76 .....	2.99 .....	2.97.
10 Expanded cooking/cleaning facilities.	All Employers .....	3.02 .....	0.07 .....	0.36.
11 Earnings records .....	All Employers .....	Not Monetized .....	Not Monetized .....	Not Monetized.
12 Time required to read and review the NPRM.	All Employers .....	0.08 .....	0.00 .....	0.01.
Total Costs .....	.....	7.36 .....	4.71 .....	4.98.
<b>Transfers</b>				
1 New wage determination methodology based on the phased-in AEWR.	All Employers .....	17.43 .....	54.03 .....	45.08.
Total Transfers .....	.....	17.43 .....	54.03 .....	45.08.

Note: Totals may not sum due to rounding.

Exhibit 21 presents a summary of the economic impact analysis of the proposed rule. The monetized net costs and transfers displayed are the yearly summations of the calculations described above. In some cases, the totals for one year are less than the totals of the annual averages described above. The total (undiscounted) costs and transfers of the rule sum to \$49.82

million and \$450.84 million over the 10-year analysis period, respectively. This amounts to an average annual cost and transfer of \$4.98 million and \$45.08 million per year, respectively. In total, the 10-year discounted costs of the proposed rule range from \$35.35 million to \$42.67 million (with 7 and 3 percent discounting, respectively). In total, the 10-year discounted transfers of the

proposed rule range from \$298.33 million to \$374.97 million (with 7 and 3 percent discounting, respectively).

Because the Department was not able to quantify any benefits of the proposed rule, the costs and transfers exceed the benefits at both 7 percent and 3 percent discounting.

EXHIBIT 21—SUMMARY OF MONETIZED COSTS/TRANSFERS

Year	Net costs (\$millions/year)	Transfers (\$millions/year)
1 2016 .....	7.36	17.43
2 2017 .....	4.35	26.59
3 2018 .....	4.44	31.05
4 2019 .....	4.53	41.59
5 2020 .....	4.62	52.97
6 2021 .....	4.71	54.03
7 2022 .....	4.81	55.11
8 2023 .....	4.90	56.22
9 2024 .....	5.00	57.34
10 2025 .....	5.10	58.49
Undiscounted total .....	49.82	450.84
Average annual impact .....	4.98	45.08
Total with 7% discounting .....	35.35	298.33
Total with 3% discounting .....	42.67	374.97

Note: Totals may not sum due to rounding.

Benefits

The Department was able to identify cost reductions of the proposed rule due to the elimination of the newspaper advertising requirement, which range from \$0.09 million to \$0.11 million per year over the 10-year analysis period. The Department also expects there to be cost reductions due to the revised job order submission requirements and the revised master application filing requirements. However, the Department was not able to quantify those cost reductions resulting from the proposed rule.

Due to data limitations, the Department also did not quantify several of the important benefits to society provided by the proposed policies. Through this rulemaking the Department is establishing a new methodology for determining a monthly AEWR and clarifying employer obligations for these unique occupations with the aim of protecting the wages and working conditions of U.S. workers and better assessing their availability for these jobs based on appropriate terms and conditions of employment. The higher wages for workers will result in an improved ability on the part of workers and their families to meet their costs of living and spend money in their local communities. Higher wages may also decrease turnover among U.S. workers and thereby decrease the costs

of recruitment and retention to employers. Reduced worker turnover is associated with lower costs to employers arising from recruiting and training replacement workers. Because seeking and training new workers is costly, reduced turnover leads to savings for employers. Research indicates that decreased turnover costs partially offset increased labor costs (Reich, Hall, and Jacobs 2003; Fairris, Runstein, Briones, and Goodheart 2005).<sup>41</sup>

This potential retention of U.S. workers may reduce the need to import temporary foreign workers to fill these jobs. Furthermore, higher wages may have positive impacts on productivity. Higher wages can boost employee morale, thereby leading to increased effort and greater productivity. For example, Holzer (1990)<sup>42</sup> finds that high-wage firms can sometimes offset more than half of their higher wage

costs through improved productivity and lower hiring and turnover costs.

In addition, proposed clarifications for such requirements as providing sufficient housing; supplying all tools, supplies, and equipment required, free of charge; establishing effective means of communication in case of emergencies; and providing meals and potable water will better foster the safety and health of both U.S. and H-2A workers as they perform these jobs. Due to data limitations, the Department was not able to quantify or monetize the impact of these protective measures. The Department invites comments regarding possible data sources or calculation methodologies for the estimation of this protective benefit. In addition, the Department invites comments regarding other benefits that may arise from the rule and how these benefits may be estimated.

6. Alternatives

The Department conducted economic analyses of the alternatives discussed above to better understand their costs relative to the baseline. For each of the analyses, the baseline is the 2010 Final Rule, TEGL 32-10, and TEGL 15-06, Change 1.

<sup>41</sup> Reich, Michael, Peter Hall, and Ken Jacobs, "Living Wages and Economic Performance: The San Francisco Airport Model," Institute of Industrial Relations, University of California, Berkeley, March 2003. Fairris, David, David Runsten, Carolina Briones, and Jessica Goodheart, "Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses," LAANE, 2005.

<sup>42</sup> Holzer, Harry, "Wages, Employer Costs, and Employee Performance in the Firm," *Industrial and Labor Relations Review*, Vol. 43, No. 3, pp 147-164, 1990.

a. Policy Changes in the NPRM Using the AEWV Values by USDA Region, Which Are Incrementally Phased In Over Five Years

The first alternative—this NPRM—retains the most effective features of the 2010 Final Rule, TEGL 32–10, TEGL 15–06, Change 1, and proposes provisions to best achieve the Department’s policy objectives. The analysis presented above lays out the calculations of the costs and benefits of the proposed regulation. The proposed regulation increases the responsibilities of the employers in herding and open range production occupations by establishing required wage rates using the AEWV values by USDA region, which are incrementally phased in over five years and by codifying special procedures in the H–2A program. As calculated above, the 10-year monetized costs of this alternative range from \$35.35 million to \$42.67 million (with 7 and 3 percent discounting, respectively). The 10-year monetized transfers of this alternative range from \$298.33 million to \$374.97 million (with 7 and 3 percent discounting, respectively).

b. Policy Changes in the NPRM Using the AEWV Values by USDA Region, Which Are Incrementally Phased In Over Three Years

The second alternative retains the same features of the 2010 Final Rule, TEGL 32–10, TEGL 15–06, Change 1, and proposes the same provisions as the first alternative; the only difference is that the AEWV-based wage determination is incrementally phased in over three years. As calculated above, the 10-year monetized costs of this alternative range from \$35.35 million to \$42.67 million (with 7 and 3 percent discounting, respectively). The 10-year monetized transfers of this alternative range from \$320.03 million to \$399.48 million (with 7 and 3 percent discounting, respectively).

c. Policy Changes in the NPRM Using the AEWV Values by USDA Region With no Phase-in Period

The third alternative retains the same features of the 2010 Final Rule, TEGL 32–10, TEGL 15–06, Change 1, and proposes the same provisions as the first alternative; the only difference is that the AEWV-based wage determination does not utilize a phase-in schedule. As calculated above, the 10-year monetized costs of this alternative range from \$35.35 million to \$42.67 million (with 7 and 3 percent discounting, respectively). The 10-year monetized transfers of this alternative range from \$356.38 million to \$437.79 million

(with 7 and 3 percent discounting, respectively).

B. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” Pub. L. 96–354, Sec. 2(b). To achieve that objective, the Act requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis, and to develop alternatives whenever possible, when drafting regulations that will have a significant economic impact on a substantial number of small entities. The Act requires the consideration of the impact of a proposed regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.*

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Department believes that this proposed rule will have a significant economic impact on a substantial number of small entities and is therefore publishing this initial regulatory flexibility analysis as required, and to aid stakeholders in understanding the small entity impacts of the proposed rule and to obtain additional information on the small entity impacts. The Department invites interested persons to submit comments on the following estimates, including the number of small entities affected by the proposed rule, the compliance cost estimates, and whether alternatives exist that will reduce the burden on small entities while still remaining consistent with the objectives of the proposed rule.

1. Why the Department Is Considering Action

As explained earlier in this preamble, the Department has concluded that developments in the H–2A program, including the APA violation found by the Court of Appeals in *Mendoza* and the continuing difficulty the Department experiences in determining an appropriate AEWV using the current wage setting methodology, require additional notice and comment rulemaking on proper regulatory standards and minimum wage setting methodology for these occupations in the H–2A program. The Department continues to evaluate its policy choices in light of additional public input and program experience. As a result, the Department publishes this NPRM on the proper standards and wage methodology for open range herding and livestock production occupations in the H–2A program, and we seek public input on all aspects of the proposals presented here.

2. Objectives of and Legal Basis for Rule

The Department is proposing to establish the standards that employers seeking H–2A workers to perform open range herding and livestock production work must meet to comply with H–2A program obligations, including wage rates determined under a new wage setting methodology that allows the Department to fulfill its statutory obligations. Sections 214(c)(1) and 218 of the INA, 8 U.S.C. 1184(c)(1) and 1188, require an H–2A employer to petition DHS for classification of a prospective temporary worker as an H–2A nonimmigrant. The INA authorizes the DHS to admit foreign workers to the United States under the H–2A visa classification if the Secretary of Labor certifies both that there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition, and that the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1). Accordingly, DHS regulations require employers to obtain certification from DOL that these conditions are met before submitting a petition to DHS. 8 CFR 214.2(h)(5)(i).

The Secretary of Labor has delegated the responsibility for making the factual determinations necessary to issue certifications, through the Assistant Secretary, ETA, to ETA’s OFLC. Sec. Order 06–2010, 75 FR 66268 (Oct. 27,

2010). The Department's regulations governing H-2A certifications authorize the OFLC Administrator to establish, continue, revise, or revoke special procedures for processing certain H-2A applications, including H-2A applications for open range herders and livestock production occupations. 20 CFR 655.102.

### 3. Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping

The Department has estimated the incremental costs for small businesses from the baseline (*i.e.*, the 2010 Final Rule, TEGL 32-10, and TEGL 15-06, Change 1) to this proposed rule. We have estimated the costs of (a) the new methodology for determining the monthly Adverse Effect Wage Rate (AEWR) of workers engaged in the herding or production of livestock on the open range; (b) elimination of requirements to advertise in a newspaper of general circulation in the area of intended employment (cost reduction); (c) provision of meals; (d) provision of additional water for laundry and cleaning, and the provision of potable water for drinking and cooking; (e) provision of cooking/cleaning facilities at the ranch; and (f) time to read and review the rule. This analysis includes the incremental cost of this proposed rule as it adds to the requirements in the 2010 Final Rule, TEGL 32-10, and TEGL 15-6, Change 1. The cost estimates included in this analysis for the provisions of the proposed rule are consistent with those presented in the EO 12866 section.

The Department identified the following provisions of the proposed rule to have an impact on industry but was not able to quantify the impacts due to data limitations: Proportion/type of work permitted at the ranch (*i.e.*, not on the open range); filing requirements; job order submissions; job order duration; placement of workers on master applications; employer-provided items; and retaining earnings records.

#### a. New Methodology for Estimating the Wages of Workers

Through this rulemaking, the Department is proposing to change the methodology for determining the monthly AEWR for workers engaged in the herding or production of livestock on the open range by using the FLS conducted by the USDA NASS. Specifically, the Department proposes to create a single monthly minimum AEWR for all occupations subject to this part by converting the hourly AEWRs into monthly rates by using 44 hours per week and 4.333 weeks per month to

arrive at the monthly AEWR for each State.

#### b. Newspaper Advertisements

The Department is proposing to continue for sheep and goat herding occupations and expand to production of livestock occupations on the open range the TEGL practice of granting a waiver of the regulatory requirement to place two advertisements in a newspaper of general circulation serving the area of intended employment. Because both herding and production of livestock on the open range cover multiple areas of intended employment within one or more States, this regulatory requirement is impractical and ineffective for recruiting domestic workers for these types of job opportunities.

#### c. Meals

All H-2A employers must provide either three meals a day or free and convenient kitchen facilities. Currently, as required under the sheep and goat herding TEGL and practice in the industry for herding or production of livestock on the open range, employers provide, at no cost to the worker, provisions (food), utensils, and other kitchen facilities for workers to use in preparing their own meals. During certain seasons of the year, the employer may provide workers with prepared meals, at no cost to the worker. The proposed rule codifies this common practice as a requirement for both employers engaged in herding and those engaged in the production of livestock on the open range that must be disclosed in the job offer, and employers must provide H-2A workers and workers in corresponding employment either three sufficient meals a day, free of charge, or free food provisions and free and convenient cooking and kitchen facilities.

#### d. Water

In addition to providing three sufficient meals per day or furnishing free food and convenient cooking and kitchen facilities, the proposed rule also requires that employers provide to workers a supply of water sufficient to meet the needs of the worker(s), including not only cooking, consumption, and bathing, but also for cleaning and laundry requirements. The water for drinking and cooking must be potable or easily rendered potable, and the employer must provide the means necessary to render adequate quantities of water potable.

#### e. Provision of Cooking/Cleaning Facilities at the Ranch

The Department recognizes that there are times when the mobile housing is located at or near the ranch or a central location that has fixed housing for workers for certain operations that are a normal part of the herding cycle, such as birthing (in some cases), shearing, or branding. We acknowledge that the mobile housing may in such instances continue to be used, even preferred, by workers, even where access to fixed housing exists.

Where a worker continues to use the mobile housing provided for open range work while temporarily stationed at the ranch, the proposed rule obligates the herding or open range livestock production employer to provide the workers with access to facilities such as toilets and showers with hot and cold water under pressure.

In situations in which the workers are near the ranch (reasonably able to return to it each night) but choose not to do so, they must still be provided access to cooking and cleaning facilities. Herding and open range livestock production employers do not need to maintain full housing in such cases, but must provide access to toilets, kitchens, and cleaning facilities for both person and clothing.

#### f. Time To Read and Review the Rule

During the first year that this rule would be in effect, herding and open range livestock production employers would need to learn about the new requirements.

### 4. Calculating the Impact of the Proposed Rule on Small Business Firms

The Department has estimated the incremental costs for small businesses from the baseline (*i.e.*, the 2010 Final Rule, TEGL 32-10, and TEGL 15-06, Change 1) to this proposed rule. We have estimated the costs of (a) the new methodology for determining the monthly AEWR of workers engaged in the herding or production of livestock on the open range; (b) elimination of requirements to advertise in a newspaper of general circulation in the area of intended employment (cost reduction); (c) provision of meals; (d) provision of potable water; (e) provision of cooking/cleaning facilities at the ranch; and (f) time to read and review the rule. This analysis includes the incremental cost of this proposed rule as it adds to the requirements in the 2010 Final Rule, TEGL 32-10, and TEGL 15-6, Change 1. The Department was not able to quantify the impacts of the following provisions of the proposed rule: Proportion/type of work permitted

at the ranch; filing requirements; job order submissions; job order duration; placement of workers on master applications; employer-provided items; and retaining earnings records. Thus, the total cost to small entities is likely higher than the total cost presented in this analysis, although the Department believes those additional costs are minor.

To examine the impact of this proposed rule on small entities, the Department evaluates the impact of the incremental costs on the average small entity in the relevant industries, which is assumed to apply for certification to employ 3 H-2A workers. The Department estimates this value based on the number of H-2A workers requested by employers in these industries using data from the FY 2012 H-2A certification dataset. In FY 2012, there were 2,706 H-2A workers certified on 1,013 applications. Not all of these 2,706 certified workers entered the U.S. to work for the 517 estimated unique employers, and some of the employers had multiple applications that were fully certified, resulting in the double counting of workers in some cases. Therefore, the Department approximated the average number of H-2A workers per small entity by dividing the total number of certified H-2A workers in FY 2012 (2,706) by the total number of certified applications (1,013) to derive the estimate of approximately 3 H-2A workers per small entity (2,706/1,013). The Department invites comments from the public on its calculation of the average number of H-2A workers per small entity. Additionally, the Department estimates that the farms in these industries have average annual revenues of approximately \$252,050.<sup>43</sup>

#### a. New Methodology for Determining the Monthly AEW

As discussed above, under the proposed wage determination methodology, the use of the five year phased-in hourly AEW to determine an average hourly wage results in an increase of \$2.70 in hourly wages paid to H-2A workers in 2016. Please refer to

Section A(4)(b) above (New Methodology for Determining Wages of Workers) for a discussion of the baseline and new wage determination methodology. The Department multiplies this average hourly wage increase by 44 hours per week to obtain a weekly cost per worker of \$118.80 ( $\$2.70 \times 44$ ) in 2016. The Department then multiplies this weekly cost by 50, which is the average period of need for workers in these industries. This results in a total cost of \$5,940.00 ( $\$118.80 \times 50$ ) per H-2A worker in 2016. For employers hiring the average number of H-2A workers (3), this results in a total cost of \$17,820.00 ( $\$5,940.00 \times 3$ ) due to the increase in wages in 2016.

To estimate the average annual cost of increased wages paid to H-2A workers under the first wage determination methodology alternative, the Department calculates the average annual hourly wage increase over the period of analysis using the following average hourly wage increases relative to the appropriate 2014 monthly AEW decomposed into hourly wage rates \$2.70 for 2016, \$4.05 for 2017, \$4.63 for 2018, \$6.08 for 2019, and \$7.59 for 2020 to 2025. Given the average annual hourly wage increase (\$6.30), a 44-hour workweek, and an average period of need for workers of 50 weeks, the Department estimates an average annual cost of \$13,860.00 ( $\$6.30 \times 44 \times 50$ ) per H-2A worker. For employers hiring the average number of H-2A workers (3), this results in an average annual cost of \$41,580.00 ( $\$13,860.00 \times 3$ ) per small entity due to the increase in wages.

Under the wage determination methodology alternative applying the forecasted AEW phased in over three years, the use of the phased-in hourly AEW to estimate an average hourly wage results in an increase of \$2.70 in hourly wages paid to H-2A workers in 2016. The Department multiplies this average hourly wage increase by 44 hours per week to obtain a weekly cost per worker of \$118.80 ( $\$2.70 \times 44$ ) in 2016. The Department then multiplies this weekly cost by 50, which is the average period of need for workers in these industries. This results in a total cost of \$5,940.00 ( $\$118.80 \times 50$ ) per H-2A worker in 2016. For employers hiring the average number of H-2A workers (3), this results in a total cost of \$17,820.00 ( $\$5,940.00 \times 3$ ) per small entity due to the increase in wages in 2016.

To estimate the average annual cost of increased wages paid to H-2A workers under the 3-year alternative, the Department calculates the average annual hourly wage increase over the period of analysis using the following

average hourly wage increases relative to the appropriate 2014 monthly AEW decomposed into hourly wage rates: \$2.70 for 2016, \$4.42 for 2017, \$7.04 for 2018, \$7.31 for 2019, and \$7.59 for 2020 to 2025. Given the average annual hourly wage increase (\$6.70), a 44-hour workweek, and an average period of need for workers of 50 weeks, the Department estimates an average annual cost of \$14,742.20 ( $\$6.70 \times 44 \times 50$ ) per H-2A worker. For employers hiring the average number of H-2A workers (3), this results in an average annual cost of \$44,226.60 ( $\$14,742.20 \times 3$ ) per small entity due to the increase in wages.

Under the wage determination methodology alternative applying the forecasted AEW with no phase-in, the use of the hourly AEW to estimate an average hourly wage results in an increase of \$6.50 in hourly wages paid to H-2A workers in 2016. The Department multiplies this average hourly wage increase by 44 hours per week to obtain a weekly cost per worker of \$286.00 ( $\$6.50 \times 44$ ) in 2016. The Department then multiplies this weekly cost by 50, which is the average period of need for workers in these industries. This results in a total cost of \$14,300.00 ( $\$286.00 \times 50$ ) per H-2A worker in 2016. For employers hiring the average number of H-2A workers (3), this results in a total cost of \$42,900.00 ( $\$14,300.00 \times 3$ ) per small entity due to the increase in wages in 2016.

To estimate the average annual cost of increased wages paid to H-2A workers under the alternative using no phase-in, the Department calculates the average annual hourly wage increase over the period of analysis using the following average hourly wage increases relative to the appropriate 2014 monthly AEW decomposed into hourly wage rates: \$6.50 for 2016, \$6.77 for 2017, \$7.04 for 2018, \$7.31 for 2019, and \$7.59 for 2020 to 2025. Given the average annual hourly wage increase (\$7.32), a 44-hour workweek, and an average period of need for workers of 50 weeks, the Department estimates an average annual cost of \$16,095.20 ( $\$7.316 \times 44 \times 50$ ) per H-2A worker. For employers hiring the average number of H-2A workers (3), this results in an average annual cost of \$48,285.60 ( $\$16,095.20 \times 3$ ) per small entity due to the increase in wages.

#### b. Newspaper Advertisements

Through this proposed rule, the Department is proposing to expand to production of livestock occupations on the open range the TEGL practice for sheep and goat herding occupations of granting a waiver of the requirement to place two advertisements in a newspaper serving the area of intended

<sup>43</sup> According to the 2012 Census of Agriculture, the average revenue (i.e., the average market value of agricultural products sold and government payments) per farm in the relevant industries is \$248,411. Adjusting for inflation using the Consumer Price Index for All Urban Consumers (CPI-U), the average revenue per farm in the relevant industries is \$252,050 in 2013 dollars. Thus, the Department estimates that a small farm in the relevant industries will have average annual revenues of approximately \$252,050. As discussed in section 5, the SBA defines a small entity in these industries as an establishment with annual revenues of less than \$0.75 million.

employment. This would result in a minor cost reduction. To estimate this cost reduction, the Department multiplies the number of newspaper advertisements required per open range livestock production employer (2) by the average cost of placing a newspaper advertisement (\$258.64) to obtain an avoided cost of purchasing advertising space equal to \$517.28 ( $2 \times \$258.64$ ) per open range livestock production employer per year.<sup>44</sup> The Department also estimates the labor cost required to prepare the advertisements by multiplying the number of newspaper advertisements required per open range livestock production employer (2) by the assumed time required to prepare a newspaper advertisement (0.5 hours) and the hourly compensation of a human resources manager (\$75.90), which amounts to \$75.90 ( $2 \times 0.5 \times \$75.90$ ) in avoided labor costs per open range livestock production employer per year.<sup>45</sup> In total, this requirement would result in a cost reduction of \$593.18 ( $\$517.28 + \$75.90$ ) per year for employers of open range livestock production occupations.

#### c. Meals

Under the proposed rule, the Department is proposing to require H-2A employers to provide either three sufficient meals per day or free and convenient kitchen facilities and food provisions to workers. This change represents a cost to open range livestock production employers but not to sheep or goat herding employers because this is already a requirement under TEGL 32-10. To estimate this cost, the Department multiplies the number of meals required per open range livestock production worker per week (21) by the average cost of a meal (\$3.86) and the average duration of need in weeks (50) to obtain a cost of \$4,053.00 ( $21 \times \$3.86 \times 50$ ) per open range livestock production worker per year.<sup>46</sup>

In addition to the cost to purchase food, open range livestock production

employers would also incur costs to transport the food to the workers. The Department assumes that food would be transported to the workers on a weekly basis along with the potable water. The costs related to transporting food and potable water are accounted for below in the section on costs related to potable water.

#### d. Water

The proposed rule requires that the herding or open range livestock production employer continue to provide to the workers adequate provision of water for drinking, cooking and bathing; the proposed rule adds requirements for sufficient water for laundry and cleaning. In addition, the rule proposes to require that drinking and cooking water be potable or easily rendered potable. The Department estimates this cost by summing the cost of purchasing the water, the cost of purchasing a trailer to transport the water and meals, the cost of vehicle mileage, and the labor cost of the time required to transport the water and meals to the workers.

The Department estimates the cost of purchasing the water by multiplying the cost per gallon of potable water (\$0.005) by the number of gallons of water per worker per week (28) and the average duration of need in weeks (50). This calculation yields a cost of providing potable water equal to \$7.00 ( $\$0.005 \times 28 \times 50$ ) per worker per year.<sup>47</sup>

The Department estimates the cost of purchasing a utility trailer to be \$839.34.<sup>48</sup> This results in a one-time cost of \$839.34 for the average employer in the first year of the rule. This value yields an average annual cost of \$83.93 over the 10-year analysis period.

The Department estimates the cost of vehicle mileage per employer by multiplying the average vehicle mileage cost (\$0.59) by the number of miles driven to transport the potable water and meals roundtrip (100) and the average number of roundtrips per year (50).<sup>49</sup> This calculation yields a mileage

cost equal to \$2,960.00 ( $\$0.592 \times 100 \times 50$ ) per employer per year.

The Department estimates the labor cost of time to transport the water and meals to workers by multiplying the average number of roundtrips required per employer (50) by the assumed time required to transport the water (2.86 hours) and the hourly compensation of an agricultural worker (\$13.01), which amounts to \$1,860.03 ( $50 \times 2.86 \times \$13.01$ ) in labor costs per employer per year.<sup>50</sup>

Finally, the Department sums the cost of purchasing water, the cost of purchasing a trailer to transport the water and meals, the cost of vehicle mileage, and the labor cost of the time required to transport the water and meals to the workers. This requirement would result in a cost of \$5,666.37 ( $\$7.00 + \$839.34 + \$2,960.00 + \$1,860.03$ ) per employer hiring only one H-2A worker during the first year of the rule. The average annual cost of this provision for employers hiring only one H-2A worker is \$4,910.96 ( $\$7.00 + \$83.93 + \$2,960.00 + \$1,860.03$ ) over the 10-year analysis period. For employers hiring the average number of H-2A workers (3), the first-year cost increases to \$5,680.37 ( $\$7.00 \times 3 + \$839.34 + \$2,960.00 + \$1,860.03$ ), and the average annual cost increases to \$4,924.96 ( $\$7.00 \times 3 + \$83.93 + \$2,960.00 + \$1,860.06$ ). This is an upper-bound estimate because employers currently are required to provide water that meets State health requirements that is sufficient to meet the employees' needs for drinking, cooking, and bathing. Therefore, employers likely already have trailers and are making trips to deliver the water.

#### e. Expanded Cooking/Cleaning Facilities

Where a worker continues to use the mobile housing provided for open range work while temporarily stationed at the ranch, the proposed rule obligates the herding or open range livestock production employer to provide the worker with access to facilities such as toilets and showers with hot and cold water with pressure. To estimate this

<sup>44</sup> The newspaper advertisement cost estimate is based on an advertisement of 158 words placed in *The Salt Lake Tribune* for one day; it is available at <http://placed.yourutahclassifieds.com/webbase/en/std/jsp/WebBaseMain.do>. (accessed on November 13, 2014).

<sup>45</sup> The Department estimates that the median hourly wage for a human resources manager is \$53.45 (as published by the Department's OES survey, O\*Net Online), which we increased by 1.42 to account for private-sector employee benefits (source: Bureau of Labor Statistics) for an hourly compensation rate of \$75.90.

<sup>46</sup> The meal cost estimate of \$3.86 is from *Allowable Meal Charges and Reimbursements for Daily Subsistence* published by the U.S. Department of Labor, Employment and Training Administration (source: [http://www.foreignlaborcert.doleta.gov/meal\\_travel\\_subsistence.cfm](http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm); accessed on December 8, 2014).

<sup>47</sup> The Department estimated the potable water cost using data published in the *2014 Water and Wastewater Survey* by the Texas Municipal League. (Source: <http://www.tml.org/surveys>; accessed on November 13, 2014). The estimate is based on the average cost of potable water for commercial entities in all Texas cities with a population below 2,000 using the fee for 50,000 gallons.

<sup>48</sup> The trailer cost estimate is based on the average cost for a 5 x 8 ft. utility trailer from Tractor Supply Company, Lowes, and Home Depot.

<sup>49</sup> The cost per mile of owning and operating an automobile is based on the average costs in the U.S. Department of Transportation, Bureau of Transportation Statistics. (source: [http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national\\_transportation\\_statistics/html/table\\_03\\_17.html](http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_03_17.html); accessed on November 13, 2014).

<sup>50</sup> The Department assumes that a roundtrip would be 100 miles and that an agricultural worker would drive at 35 mph. We divide the 100 miles by 35 mph to estimate that it would take an agricultural worker 2.86 hours to drive roundtrip (100/35). The Department assumes the workers are located within the 100-mile roundtrip distance so only one roundtrip per employer per week would be needed to transport water and meals to workers.

<sup>51</sup> The Department estimates that the median hourly wage for an agricultural worker is \$9.16 (as published by the Department's OES survey, O\*Net Online), which we increased by 1.42 to account for private-sector employee benefits (source: Bureau of Labor Statistics) for an hourly compensation rate of \$13.01.



cost, the Department multiplies the average cost per square foot to construct/expand cleaning facilities (\$270.00) by the assumed size of the facility that would be required to be constructed/expanded (100 square feet). This calculation results in a one-time cost of \$27,000.00 (\$270.00 × 100) for the average employer, which amounts to an average annual cost of \$2,700.00 over the 10-year analysis period.<sup>52</sup>

f. Time To Read and Review the Proposed Rule

During the first year that the proposed rule would be in effect, herding and open range livestock production employers would need to learn about the rule provisions and the activities necessary to remain compliant. In the first year of the rule, the Department estimates that the average small farm would spend approximately 2 hours of staff time to read and review the new rule, which amounts to approximately \$151.80 (\$75.90 × 2) in labor costs per

employer in the first year of the rule. This amounts to an average annual cost of \$15.18 (\$151.80/10) over the 10-year analysis period.<sup>53</sup>

g. Total Cost Burden for Small Entities

The Department’s calculations indicate that the total average annual cost of this proposed rule is \$49,220 (or 19.5 percent of annual revenues) for the average small entity employing three workers in sheep or goat herding occupations.<sup>54</sup> The total average annual cost of this proposed rule is \$60,786 (or 24.1 percent of annual revenues) for the average small entity employing workers in open range livestock production occupations.<sup>55</sup>

For small entities that apply for 1 worker instead of 3—representing the smallest of the small farms that hire workers—the Department estimates that the total average annual cost of the proposed rule is \$21,486 (or 8.5 percent of annual revenues) for entities employing a worker in a shepherding

or goat herding occupation.<sup>56</sup> The total average annual cost of the proposed rule is \$24,946 (or 9.9 percent of annual revenues) for small entities employing a worker in an open range livestock production occupation.<sup>57</sup>

Exhibit 22 presents a summary of the average annual cost per employer. The Department focuses on the average annual cost of the rule rather than costs in the first year because the phasing of the wage methodology increases the costs of compliance over the analysis time period. The total cost per employer varies depending on whether the employer is a shepherding/goat herding employer or an open range livestock production employer. The Department defines a “significant economic impact” as an impact that amounts to at least 3 percent of annual revenues. Due primarily to the increase in wages paid to H–2A workers, the proposed rule is expected to have a significant economic impact on affected small entities.

EXHIBIT 22—SUMMARY OF COSTS PER EMPLOYER

Provision	Entity affected	Average annual cost per employer	
		Hiring 1 worker	Hiring 3 workers
(a) New wage determination methodology based on the five-year phased-in AEW. ....	All Employers .....	\$13,860.00	\$41,580.00
(b) Newspaper advertisements .....	Open Range Employers .....	(593.18)	(593.18)
(c) Meals .....	Open Range Employers .....	4,053.00	12,159.00
(d) Potable water .....	All Employers .....	4,910.96	4,924.96
(e) Expanded cooking/cleaning facilities .....	All Employers .....	2,700.00	2,700.00
(f) Time required to read and review the NPRM ...	All Employers .....	15.18	15.18
Average annual revenue		\$252,050	
Total Annual Cost Per Sheep/Goat herding Employer .....		\$21,486	49,220
Average Annual Cost as a Percentage of Revenue .....		8.5%	19.5%
Total Annual Cost Per Open Range Employer .....		\$24,946	\$60,786
Average Annual Cost as a Percentage of Revenue .....		9.9%	24.1%

The Department seeks feedback on the estimated total summary of compliance costs of this rule for small businesses, and the estimates for the individual requirements listed above. The Department seeks input on the data and assumptions that the agency utilized to make this calculation. In particular, the

Department seeks feedback on its estimates regarding the annual revenues for small entities, the baseline utilized for this analysis and the estimates of the numbers of H–2B workers and corresponding workers per employer. In addition, the Department seeks comments on whether there is a better

data source available to use for wage information, or alternatives to reduce the paperwork burden or other costs of the proposed rule.

<sup>52</sup>The Department assumes that the average employer will require a cleaning facility of approximately 100 square feet.

<sup>53</sup>The Department estimates that the median hourly wage for a human resources manager is \$53.45 (as published by the Department’s OES survey, O\*Net Online), which we increased by 1.42 to account for private-sector employee benefits (source: Bureau of Labor Statistics) for an hourly compensation rate of \$75.90.

<sup>54</sup>For illustration, the total average annual cost of \$49,220 for the average small entity applying for 3 workers in sheep or goat herding occupations results from summing the totals for the various rule

requirements described above as follows: \$49,220 = \$13,860.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>55</sup>For illustration, the total average annual cost of \$60,786 for the average small entity applying for 3 workers in open range livestock production occupations results from summing the totals for the various rule requirements described above as follows: \$60,786 = \$13,860.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 – \$593.18.

<sup>56</sup>For illustration, the total average annual cost of \$21,486 for the average small entity applying for 1 worker in a sheep or goat herding occupation

results from summing the totals for the various rule requirements described above as follows: \$21,486 = \$13,860.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>57</sup>For illustration, the total average annual cost of \$24,946 for the average small entity applying for 1 worker in an open range livestock production occupation results from summing the totals for the various rule requirements described above as follows: \$24,946 = \$13,860.00 + 4,053.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 – \$593.18.

### 5. Estimating the Number of Small Businesses Affected by the Rulemaking

A small entity is one that is “independently owned and operated and which is not dominant in its field of operation.” The definition of small business varies from industry to industry to the extent necessary to properly reflect industry size differences. An agency must either use the SBA definition for a small entity or establish an alternative definition for the relevant industries to which a rule applies, which in this case includes Beef Cattle Ranching and Farming (NAICS 112111), Dairy Cattle and Milk Production (NAICS 11212), Sheep and Goat Farming (NAICS 1124), and Other Animal Production (NAICS 1129).<sup>58</sup> The Department has adopted the SBA definition for these industries, which is an establishment with annual revenues of less than \$0.75 million.<sup>59</sup>

Approximately 99 percent of U.S. farms in the relevant industries have annual revenues of less than \$0.75 million and, therefore, fall within the SBA’s definition of a small entity.<sup>60</sup> The Department considers a rule to have an impact on a “substantial number of small entities” when the total number of small entities impacted by the rule is equal to or greater than 15 percent of the relevant universe of small entities affected in a given industry. Therefore, the Department concludes that the proposed rule will have a significant economic impact on a substantial number of small entities. In 2012, there were 517 employers participating in the H–2A program in the industries subject to the proposed rule. Using an annual growth rate of 2 percent, the Department estimates that there will be approximately 669 participants by 2025.

<sup>58</sup> Animal Aquaculture (NAICS 1125) is not considered a relevant industry for this proposed rulemaking. However, the IRFA analysis uses data from the 2012 Census of Agriculture, which does not distinguish between Animal Aquaculture (1125) and Other Animal Production (1129). Due to this data limitation, the Department includes Animal Aquaculture industry data in the calculations of this IRFA analysis. In addition, the Department excludes farms in the Cattle Feedlots (NAICS 112112) industry because cattle in feedlots do not graze on the open range; therefore, employers in the cattle feedlot industry would not be affected by the proposed rule.

<sup>59</sup> Source: U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 2014). Available at [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf) (accessed on November 13, 2014).

<sup>60</sup> The relevant industries include the following: Beef Cattle Ranching and Farming (112111), Dairy Cattle and Milk Production (11212), Sheep and Goat Farming (1124), Animal Aquaculture (1125), and Other Animal Production (1129).

### 6. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Rule

The Department is not aware of any relevant Federal rules that conflict with this NPRM.

### 7. Alternatives to the Proposed Rule

The Department has considered three alternatives: (1) To make the policy changes contained in the proposed rule in which the wage determination is based on forecasted AEW values by U.S. Department of Agriculture (USDA) region, which are incrementally phased in over five years; (2) to make the policy changes contained in the proposed rule in which the wage determination is based on forecasted AEW values by USDA region, which are incrementally phased in over three years; or (3) to make the policy changes contained in the proposed rule in which the wage determination is based on forecasted AEW values by USDA region, which do not utilize a phase-in schedule. The Department believes that the first alternative—to make the policy changes contained in the proposed rule using the wage based on forecasted AEW values by USDA region, which are incrementally phased in over five years—is the most consistent with its dual statutory mandate to ensure that there are not sufficient workers who are able, willing, qualified and available to perform the labor or services required, and that the employment of the foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed and appropriately accounts for labor market concerns. The Department does not consider the 3-year phase in and no phase in period alternatives appropriate because they do not appropriately account for the unique characteristics of these occupations that have historically resulted in a limited number of U.S. workers interested in performing the jobs and raise concerns about labor market disruption, such as loss of jobs and lack of labor when and where it is needed. The Department invites comments from the public on other possible alternatives to consider, including alternatives to the specific provisions contained in this NPRM.

The Department estimated the total cost burden on small entities for each of the alternatives as follows.

### Wage Methodology Calculation

#### a. Policy Changes in the NPRM Using the AEW Values by USDA Region, Which Are Incrementally Phased In Over Five Years

The first alternative—this NPRM—retains the most effective features of the 2010 Final Rule, TEGL 32–10, TEGL 15–06, Change 1 and proposes provisions to best achieve the Department’s policy objectives. The Department’s calculations indicate that the total average annual cost of this proposed rule is \$49,220 (or 19.5 percent of annual revenues) for the average small entity employing three workers in sheep or goat herding occupations.<sup>61</sup> The total average annual cost of this proposed rule is \$60,786 (or 24.1 percent of annual revenues) for the average small entity employing three workers in open range livestock production occupations.<sup>62</sup>

For small entities that apply for 1 worker instead of 3—representing the smallest of the small farms that hire workers—the Department estimates that the total average annual cost of the proposed rule is \$21,486 (or 8.5 percent of annual revenues) for entities employing a worker in a sheep or goat herding occupation.<sup>63</sup> The total average annual cost of the proposed rule is \$24,946 (or 9.9 percent of annual revenues) for small entities employing a worker in an open range livestock production occupation.<sup>64</sup>

<sup>61</sup> For illustration, the total average annual cost of \$49,220 for the average small entity applying for 3 workers in sheepherding or goat herding occupations results from summing the totals for the various rule requirements described above as follows: \$49,220 = \$13,860.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>62</sup> For illustration, the total average annual cost of \$60,786 for the average small entity applying for 3 workers in open range livestock production occupations results from summing the totals for the various rule requirements described above as follows: \$60,786 = \$13,860.00 × 3 + \$4,053.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

<sup>63</sup> For illustration, the total average annual cost of \$21,486 for the average small entity applying for 1 worker in a sheep or goat herding occupation results from summing the totals for the various rule requirements described above as follows: \$21,486 = \$13,860.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>64</sup> For illustration, the total average annual cost of \$24,946 for the average small entity applying for 1 worker in an open range livestock production occupation results from summing the totals for the various rule requirements described above as follows: \$24,946 = \$13,860.00 + 4,053.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

**b. Policy Changes in the NPRM Using the AEWV Values by USDA Region, Which Are Incrementally Phased In Over Three Years**

The second alternative retains the same features of the 2010 Final Rule, TEGL 32–10, TEGL 15–06, Change 1, and proposes the same provisions as the first alternative; the only difference is that the AEWV-based wage determination is incrementally phase in over three years. The Department's calculations indicate that the total average annual cost of this alternative would be \$51,867 (or 20.6 percent of annual revenues) for the average small entity employing sheep or goat herding occupations.<sup>65</sup> The total average annual cost of this alternative would be \$63,433 (or 25.2 percent of annual revenues) for the average small entity employing open range livestock production occupations.<sup>66</sup>

For small entities that apply for 1 worker instead of 3—representing the smallest of the small farms that hire workers—the Department estimates that the total average annual cost of this alternative would be \$22,368 (or 8.9 percent of annual revenues) for entities employing a worker in a sheep or goat herding occupation.<sup>67</sup> The total average annual cost of this alternative would be \$25,828 (or 10.2 percent of annual revenues) for small entities employing a worker in an open range livestock production occupation.<sup>68</sup>

**c. Policy Changes in the NPRM Using the AEWV Values by USDA Region With No Phase-In Period**

The third alternative retains the same features of the 2010 Final Rule, TEGL

32–10, TEGL 15–06, Change 1, and proposes the same provisions as the first alternative; the only difference is that the AEWV-based wage determination does not utilize a phase-in schedule. The Department's calculations indicate that the total average annual cost of this alternative would be \$55,926 (or 22.2 percent of annual revenues) for the average small entity employing sheep or goat herding occupations.<sup>69</sup> The total average annual cost of this alternative would be \$67,492 (or 26.8 percent of annual revenues) for the average small entity employing open range livestock production occupations.<sup>70</sup>

For small entities that apply for 1 worker instead of 3—representing the smallest of the small farms that hire workers—the Department estimates that the total average annual cost of this alternative would be \$23,721 (or 9.4 percent of annual revenues) for entities employing a worker in a sheep or goat herding occupation.<sup>71</sup> The total average annual cost of this alternative would be \$27,181 (or 10.8 percent of annual revenues) for small entities employing a worker in an open range livestock production occupation.<sup>72</sup>

The Department seeks feedback on its chosen method for the wage determination, and seeks input on other wage methodologies that would minimize the economic impact of this rule for small entities while protecting against adverse effect. For example, is there a better data source that should be utilized? Is the 5-year phase-in period appropriate?

**d. Differing Compliance and Reporting Requirements for Small Entities**

The NPRM provides for no differing compliance requirements and reporting requirements for small entities. As discussed above, approximately 99 percent of the U.S. firms in the relevant industries fall within the SBA's definition of a small entity.

However, DOL is interested in receiving feedback on alternatives to the proposed compliance and reporting requirements for all regulated entities that would minimize the costs of this rulemaking while still achieving the objectives of the rulemaking. For example, are there any significant alternatives for any of the following requirements: (a) Recording the type of work performed at the ranch (*i.e.*, not on the open range); (b) filing requirements; (c) job order submissions; (d) job order duration; (e) newspaper advertisements; (f) placement of workers on master applications; (g) employer-provided items; (h) meals; (i) potable water; (j) expanded cooking/cleaning facilities; (k) provision of communication access, (l) earnings records; and (m) time to read and review the rule?

**e. Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities**

This NPRM was drafted to clearly state the compliance requirements for all small entities subject to this proposed rule. The paperwork burden associated with the reporting burden related to the proposed recordkeeping requirements is addressed below in section N.

The Department seeks feedback on any ways it can clarify, consolidate or simplify the requirements in this regulation.

**f. Use of Performance Rather Than Design Standards**

The NPRM was written to provide clear guidelines to ensure compliance with the proposed rule's requirements. Under the proposed rule, small entities may achieve compliance through a variety of means. The Department makes available a variety of resources to small entities for understanding their obligations and achieving compliance.

**g. Exemption From Coverage of the Rule for Small Entities**

All small entities that avail themselves of the H–2A program and seek H–2A workers to perform open range herding and livestock production occupations must comply with the proposed procedures and standards, including wage rate determinations

<sup>65</sup> For illustration, the total average annual cost of \$51,867 for the average small entity applying for 3 workers in sheep or goat herding occupations results from summing the totals for the various rule requirements described above as follows: \$51,867 = \$14,742.20 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>66</sup> For illustration, the total average annual cost of \$63,433 for the average small entity applying for 3 workers in open range livestock production occupations results from summing the totals for the various rule requirements described above as follows: \$63,433 = \$14,742.20 × 3 + \$4,053.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

<sup>67</sup> For illustration, the total average annual cost of \$22,368 for the average small entity applying for 1 worker in a sheep or goat herding occupation results from summing the totals for the various rule requirements described above as follows: \$22,368 = \$14,742.20 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>68</sup> For illustration, the total average annual cost of \$25,828 for the average small entity applying for 1 worker in an open range livestock production occupation results from summing the totals for the various rule requirements described above as follows: \$25,828 = \$14,742.20 + 4,053.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

<sup>69</sup> For illustration, the total average annual cost of \$55,926 for the average small entity applying for 3 workers in sheep or goat herding occupations results from summing the totals for the various rule requirements described above as follows: \$55,926 = \$16,095.20 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>70</sup> For illustration, the total average annual cost of \$67,492 for the average small entity applying for 3 workers in open range livestock production occupations results from summing the totals for the various rule requirements described above as follows: \$67,492 = \$16,095.20 × 3 + \$4,053.00 × 3 + \$7.00 × 3 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

<sup>71</sup> For illustration, the total average annual cost of \$23,721 for the average small entity applying for 1 worker in a sheep or goat herding occupation results from summing the totals for the various rule requirements described above as follows: \$23,721 = \$16,095.20 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18.

<sup>72</sup> For illustration, the total average annual cost of \$27,181 for the average small entity applying for 1 worker in an open range livestock production occupation results from summing the totals for the various rule requirements described above as follows: \$27,181 = \$16,095.20 + 4,053.00 + \$7.00 + \$83.93 + \$2,960.00 + \$1,860.03 + \$2,700.00 + \$15.18 = \$593.18.

using the proposed wage methodology, if finalized. The Department has no authority to exempt small businesses from the proposed regulation. Furthermore, as noted above, approximately 99 percent of the U.S. firms in the relevant industries fall within the SBA's definition of a small entity.

### C. Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. This Proposed Rule has no Federal mandate, which is defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector which is not voluntary. A decision by a private entity to obtain an H-2A worker is purely voluntary and is, therefore, excluded from any reporting requirement under the Act.

The SWAs are mandated to perform certain activities for the Federal Government under this program, and are compensated for the resources used in performing these activities.

This NPRM includes no new mandates for the SWAs in the H-2A application process and does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more. It also does not result in increased expenditures by the private sector of \$100 million or more, because participation in the H-2A program is entirely voluntary. SWA activities under the H-2A program are currently funded by the Department through grants provided under the Wagner-Peyser Act. 29 U.S.C. 49 *et seq.* The Department anticipates continuing funding under the Wagner-Peyser Act. As a result of this NPRM and the publication of a final regulation, the Department will analyze the amounts of such grants made available to each State to fund the activities of the SWAs.

### D. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this proposed rulemaking will impose a significant impact on a substantial number of small entities under the RFA; therefore, if the rule is finalized as proposed, the Department will be required to produce a Compliance Guide for Small Entities as mandated by the SBREFA. The Department has concluded that this Proposed Rule is not a major rule requiring review by the Congress under the SBREFA because it will not likely result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### E. The Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. If implemented as proposed, we will submit to Congress and the Comptroller General of the United States a report regarding the issuance of the Final Rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

### F. Executive Order 13132—Federalism

The Department has reviewed this NPRM in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The NPRM does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of Government as described by E.O. 13132. Therefore, the Department has determined that this NPRM will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

### G. Executive Order 13175—Indian Tribal Governments

This NPRM was reviewed under the terms of E.O. 13175 and determined not to have Tribal implications. The NPRM does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. As a

result, no Tribal summary impact statement has been prepared.

### H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681) requires the Department to assess the impact of this NPRM on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this NPRM and determines that it will not have a negative effect on families.

### I. Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

This NPRM is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

### J. Executive Order 12988—Civil Justice

This NPRM has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

### K. Plain Language

The Department drafted this NPRM in plain language.

### L. Executive Order 13211—Energy Supply

This NPRM is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

### M. Paperwork Reduction Act

This NPRM proposes a new information collection to the H-2A program and seeks approval from the Office of Management and Budget (OMB) under OMB Control Number 1205-NEW. The Department is not creating a specific form for this new collection requirement. Rather, the Department's proposal would require that employers keep and maintain records that reflect each day that the worker works, whether the work was performed on the open range or at the employer's ranch or farm. In addition,

for work that is conducted at the ranch or farm, the employer must keep records of the days worked and the nature of the work performed. Such records will enable the employer, and the Department, if necessary, to determine whether the worker performed work on the range at least 50 percent of the days during the contract period and that the work at the ranch that does not constitute the production of livestock was minor, sporadic, and incidental (*i.e.*, closely and directly related to herding and the production of livestock and occurred on no more than 20 percent of the workdays at the ranch).

This proposal constitutes a new information collection and creates an associated paperwork burden on the employers that must be assessed under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. Based on the number of current applications for H–2A workers to perform herding work, the Department estimates that by 2016 the proposed information collection will affect 560 employers employing foreign sheepherders, goat herders, and other workers engaged in the open range production of livestock. The Department further estimates that it will take each employer, on average, 5 minutes each week to prepare timesheets for its employees, and 1 minute each week to store these timesheets. Thus, the reporting burden for 560 employers is 2,800 minutes (560 employers × 5 minutes) per week, or 47 hours per week. When annualized, the total reporting burden is 2,444 hours per year (47 hours per week × 52 weeks). The total record keeping burden for 560 employers is 560 minutes (560 employers × 1 minute) per week, or 9 hours per week. When annualized, the total recordkeeping burden is 468 hours per year (9 hours per week × 52 weeks). When these two sums are added together, the total employer reporting and recordkeeping burden is 2,912 hours per year.

When estimating the cost burden of paperwork requirements, the Department used the average salary of a Human Resources Manager based on the national cross-industry mean hourly wage rate for a Human Resources Manager (\$53.45), from the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data,<sup>73</sup> and increased by a factor of 1.42 to account for employee benefits and other

compensation, for a total hourly cost of \$75.90. This number was multiplied by the total hourly annual burden created for this new requirement proposed by this NPRM, which, as noted above, is 2,912 hours per year. The total annual respondent hourly costs for this new burden placed on the employers in the sheepherding and open range production of livestock is estimated as follows:

Total Burden Cost of This Provision is 2,912 hours × \$75.90 = \$221,021 per year

As noted above, this collection of information is subject to the PRA. Accordingly, this information collection in this proposed rule has been submitted to OMB for review under 44 U.S.C. 3507(d) of the PRA. The PRA package for OMB Control Number 1205–NEW can be obtained by contacting the office listed below or in the **ADDRESSES** section of this Notice of Proposed Rulemaking or at the Web site: <http://www.reginfo.gov/public/dol/pramain>.

Written comments are encouraged and will be accepted until June 15, 2015.

When submitting comments on the new information collection, your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

#### Overview of Information Collection for the New Provision Proposed by This NPRM

*Type of Review:* New Collection.  
*Agency:* Employment and Training Administration.  
*Title:* H–2A Temporary Labor Certification Program.

*OMB Number:* 1205–NEW.  
*Affected Public:* Farm businesses.  
*Form(s):* None.  
*Total Annual Respondents:* 560.

*Annual Frequency:* Weekly.  
*Total Annual Responses:* 29,120.  
*Average Time per Response:* 6 minutes.

*Estimated Total Annual Burden Hours:* 2,912 hours per year.  
*Total Annual Start-up/Capital/Maintenance Costs for Respondents:* \$0.

The Department invites comments on all aspects of the PRA analysis. Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection. They will also be included on the administrative record of this rulemaking, and we will consider them in developing the final rule.

All comments and suggestions or question regarding additional information should be directed to the Federal e-Rulemaking Portal at: <http://www.regulations.gov> and a copy sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Employment and Training Administration, AND to Michel Smyth, Departmental Clearance Officer, Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210 or email: [Smyth.Michel@dol.gov](mailto:Smyth.Michel@dol.gov). The information collection aspects of the proposed rulemaking will not take effect until published in a final rule and approved by OMB. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number as required in 5 CFR 1320.11(k)(1).

#### List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons discussed in the preamble, Department of Labor proposes to amend 20 CFR part 655 as follows:

#### PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

- 1. The authority citation for part 655 continues to read in part as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101 649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 733, 1748 (8 U.S.C. 1101 note);

<sup>73</sup> Source: Bureau of Labor Statistics. Occupational Employment Statistics: May 2013 National Occupational Employment and Wage Estimates; Management Occupations

sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

\* \* \* \* \*

■ 2. Subpart C is added to read as follows:

**Subpart C—Labor Certification Process for Temporary Agricultural Employment in Open Range Shepherding, Goat Herding, and Production of Livestock Occupations**

Sec.

- 655.200 Scope and purpose.
- 655.201 Definition of terms.
- 655.205 Job orders.
- 655.210 Contents of job orders.
- 655.211 Wage rate.
- 655.215 Procedures for filing applications for temporary employment certification.
- 655.220 Processing applications for temporary employment certification.
- 655.225 Post-acceptance requirements.
- 655.230 Mobile housing.
- 655.235 Standards for mobile housing.

**Subpart C—Labor Certification Process for Temporary Agricultural Employment in Open Range Shepherding, Goat Herding, and Production of Livestock Occupations**

**§ 655.200 Scope and purpose.**

(a) *Purpose.* The purpose of this subpart is to establish certain procedures for employers who apply to the Department of Labor to obtain labor certifications to hire temporary agricultural foreign workers to perform herding or production of livestock on the open range, as defined in this subpart. Unless otherwise specified in this subpart, employers whose job opportunities meet the qualifying criteria under this subpart must fully comply with all of the requirements of part 655, subpart B; part 653, subparts B and F; and part 654 of this chapter.

(b) *Jobs subject to this subpart.* These procedures apply to job opportunities with the following unique characteristics:

(1) The work activities involve the herding or production of livestock, as defined under § 655.201. Any additional job duties performed by the worker must be minor, sporadic, and incidental to the herding or production of livestock;

(2) The work is performed on the open range requiring the use of mobile housing, as defined under § 655.201, for at least 50 percent of the workdays in the work contract period because the worker is not reasonably able to return to his or her place of residence or to employer-provided fixed site housing within the same day. Any additional

work performed at a place other than the open range (e.g., an enclosed farm or ranch) that does not constitute the production of livestock must be minor, sporadic, and incidental to the herding or production of livestock; and

(3) The work activities generally require the workers to be on call 24 hours per day, 7 days a week.

**§ 655.201 Definition of terms.**

The following are terms that are not defined in subpart B of this part and are specific to applications for labor certifications involving the herding or production of livestock on the open range.

*Herding.* Activities associated with the caring, controlling, feeding, gathering, moving, tending, and sorting of livestock on the open range.

*Livestock.* An animal species or species group such as sheep, cattle, goats, horses, or other domestic hooved animals. In the context of this subpart, livestock refers to those species raised on the open range.

*Minor, sporadic, and incidental work.* Work duties and activities that are closely and directly related to herding and the production of livestock and are performed on no more than 20 percent of the workdays spent at the ranch in a work contract period.

*Mobile housing.* Housing meeting the standards articulated under § 655.235 that can be moved from one area to another area on the open range.

*Open range.* Unenclosed public or private land outside of cities and towns in which sheep, cattle, goats, horses, or other domestic hooved animals, by ownership, custom, license, lease, or permit, are allowed to graze and roam. Animals are not meaningfully enclosed where there are no fences or other barriers protecting them from predators or restricting their freedom of movement; rather a worker must actively herd the animals and direct their movement. Open range may include intermittent fencing or barriers to prevent or discourage animals from entering a particularly dangerous area. These types of barriers prevent access to dangers rather than containing the animals, and therefore supplement rather than replace the worker's efforts.

*Production of livestock.* The care or husbandry of livestock throughout one or more seasons during the year, including guarding and protecting livestock from predatory animals and poisonous plants; feeding, fattening, and watering livestock; examining livestock to detect diseases, illnesses, or other injuries; administering medical care to sick or injured livestock; applying vaccinations and spraying insecticides

on the open range; and assisting with the breeding, birthing, raising, weaning, castration, branding, and general care of livestock.

**§ 655.205 Job orders.**

The employer whose job opportunity has been determined to qualify for these procedures, whether individual, association, or H–2ALC, is not required to comply with the job order filing requirements in § 655.121(a) through (d). Rather, the employer must submit a job order, Form ETA 790, directly to the National Processing Center (NPC) designated by the Office of Foreign Labor Certification (OFLC Administrator) along with a completed *Application for Temporary Employment Certification*, Form ETA 9142, as required in § 655.130.

**§ 655.210 Contents of job orders.**

(a) *Content of job offers.* Unless otherwise specified in this subpart, the employer, whether individual, association, or H–2ALC, must satisfy the requirements for job orders established under § 655.121(e) and for the content of job offers established under part 653, subpart F of this chapter and § 655.122.

(b) *Job qualifications and requirements.* The job offer must include a statement that the workers are on call for up to 24 hours per day, 7 days per week and that the workers are primarily engaged (spend at least 50 percent of the workdays during the contract period) in the herding or production of livestock on the open range. Duties may include activities performed at the ranch or farm only if such duties constitute the production of livestock or are closely and directly related to herding and the production of livestock. Work that is closely and directly related to herding or the production of livestock must be performed on no more than 20 percent of the workdays spent at the ranch in a work contract period. All such duties must be specifically disclosed on the job order. The job offer may also specify that applicants possess up to 6 months of experience in similar occupations involving the herding or production of livestock on the open range and require reference(s) for the employer to verify applicant experience. An employer may specify other appropriate job qualifications and requirements for its job opportunity. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H–2A workers engaged in herding or the production of livestock on the open range. Any such requirements must be applied equally to both U.S. and foreign workers. Each job

qualification and requirement listed in the job offer must be bona fide, and the Certifying Officer (CO) may require the employer to submit documentation to substantiate the appropriateness of any other job qualifications and requirements specified in the job offer.

(c) *Mobile range housing.* The employer must specify in the job order mobile housing will be provided. The housing must meet the requirements set forth in § 655.235.

(d) *Employer-provided items.* The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required by law, by the employer, or by the nature of the work to perform the duties assigned in the job offer safely and effectively. The employer must specify in the job order which items it will provide to the worker. Because of the unique nature of the herding or production of livestock on the open range, this equipment must include an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency including, but not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems. Although there may be periods of time when the workers are in locations where electronic communication devices may not operate effectively, the employer must arrange for workers to be located in geographic areas where electronic communication devices can operate effectively on a regular basis, unless the employer will make contact in-person with the worker regularly. The employer must specify in the job order that it will make contact with the worker in-person or using an electronic communication device regularly.

(e) *Meals.* The employer must specify in the job offer and provide to the worker, without charge or deposit charge, three sufficient meals a day, or furnish free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals, and adequate potable water, or water that can be easily rendered potable and the means to do so.

(f) *Hours and earnings statements.* (1) The employer must keep accurate and adequate records with respect to the worker's earnings and furnish to the worker on or before each payday a statement of earnings. The employer is exempt from recording the hours actually worked each day as well as the time the worker begins and ends each workday when the worker is performing duties on the open range, but all other regulatory requirements in § 655.122(j) and (k) apply.

(2) The employer must keep daily records indicating the site of the employee's work, whether it was on the open range or on the ranch or farm. The employer must also keep and maintain records of hours worked and duties performed over the course of the day when the worker is performing work on the ranch or farm. If the employer prorates a worker's monthly wage pursuant to paragraph (g)(2) of this section because of the worker's voluntary absence for personal reasons, it must also keep a record of the reason for the worker's absence.

(g) *Rates of pay.* The employer must pay the worker at least the monthly AEW, as specified in § 655.211, the agreed-upon collective bargaining wage, or the applicable minimum wage specific to the occupation(s) imposed by Federal or State law or judicial action, whichever is highest, for every month of the job order period or portion thereof.

(1) The offered wage shall not be based on commissions, bonuses, or other incentives, and must be paid to each worker free and clear without any unauthorized deductions no less than monthly.

(2) If the worker is paid by the month, the employer may prorate the monthly wage for the initial and final months of the job order period, if its pay period does not match the beginning or ending dates of the job order (such as if the employer pays on a calendar month basis and the job order starts or ends in the middle of the month). The employer also may prorate the monthly wage if an employee is voluntarily unavailable for work for personal reasons.

(h) *Frequency of pay.* The employer must state in the job offer the frequency with which the worker will be paid, which must be no less frequently than monthly. Employers must pay wages when due.

#### **§ 655.211 Wage rate.**

(a) *Compliance with rates of pay.* (1) To comply with its obligation under § 655.210(g), an employer must offer, advertise in its recruitment and pay each worker employed under this subpart a wage that is the highest of the monthly AEWs established under this section, the agreed-upon collective bargaining wage, or the applicable minimum wage specific to the occupation(s) imposed by Federal or State law or judicial action.

(2) If the monthly AEW for a State established under this section is adjusted under the FLS during a work contract, and is higher than the highest of the monthly AEW, the agreed-upon collective bargaining wage, or the

applicable minimum wage specific to the occupation(s) imposed by Federal or State law or judicial action, in effect at the time the work is performed, the employer must pay that adjusted monthly AEW upon publication by the Department in the Federal Register.

(b) *Determining the monthly AEWs.* The monthly AEWs are calculated using the hourly AEWs, as defined under § 655.103(b), multiplied by 44 hours per week, and then multiplied by 4.333 weeks per month.

(c) *Publication of the monthly AEWs.* The OFLC Administrator will publish a notice in the **Federal Register**, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the monthly AEWs for each State.

(d) *Implementation Schedule for the monthly AEWs.* The monthly AEWs shall be determined using the method specified in paragraph (b) of this section and published in the **Federal Register**, as specified in paragraph (c) of this section, according to the following schedule:

(1) For calendar year 2016, the Department shall determine the monthly AEWs using 60 percent of the hourly AEWs established for each State based on wage surveys conducted for the preceding calendar year.

(2) For calendar year 2017, the Department shall determine the monthly AEWs using 70 percent of the hourly AEWs established for each State based on wage surveys conducted for the preceding calendar year.

(3) For calendar year 2018, the Department shall determine the monthly AEWs using 80 percent of the hourly AEWs established for each State based on wage surveys conducted for the preceding calendar year.

(4) For calendar year 2019, the Department shall determine the monthly AEWs using 90 percent of the hourly AEWs established for each State based on wage surveys conducted for the preceding calendar year.

(5) For calendar year 2020 and all subsequent calendar years, the Department shall determine the monthly AEWs using 100 percent of the hourly AEWs established for each State based on wage surveys conducted for the preceding calendar year.

#### **§ 655.215 Procedures for filing applications for temporary employment certification.**

(a) *Compliance with subpart B of this part.* Unless otherwise specified in this subpart, the employer must satisfy the requirements for filing an *Application for Temporary Employment Certification* with the NPC designated

by the OFLC Administrator as required under §§ 655.130–655.132.

(b) *What to file.* An employer must file a completed *Application for Temporary Employment Certification* (Form ETA 9142), job order (Form ETA 790), and an attachment identifying, with as much geographic specificity as possible for each farmer/rancher, the names, physical locations and estimated start and end dates of need where work will be performed under the job order.

(1) The *Application for Temporary Employment Certification* and job order may be filed by an individual employer, association, or an H–2ALC, covering multiple areas of intended employment and more than two contiguous States.

(2) The total period of need identified on the *Application for Temporary Employment Certification* and job order for open range sheep or goat herding or production occupations must be no more than 364 calendar days. The total period of need identified on the *Application for Temporary Employment Certification* and job order for open range herding or production of cattle, horses, or other domestic hooved livestock, except sheep and goats, must be for no more than 10 months.

(3) An association of agricultural employers filing as a joint employer may submit a single job order and master *Application for Temporary Employment Certification* on behalf of its employer-members located in more than two contiguous States with different start dates of need. Unless modifications to a sheep or goat herding or production job order are required by the CO or requested by the employer, pursuant to § 655.121(e), the association is not required to re-submit the job order during the calendar year with its *Application for Temporary Employment Certification*.

#### **§ 655.220 Processing applications for temporary employment certification.**

(a) *NPC review.* Unless otherwise specified in this subpart, the CO will review and process the *Application for Temporary Employment Certification* and the job order in accordance with the requirements outlined in §§ 655.140–655.145, and will work with the employer to address any deficiencies in the job order in a manner consistent with §§ 655.140–655.141.

(b) *Notice of acceptance.* Once the job order is determined to meet all regulatory requirements, the NPC will issue a Notice of Acceptance consistent with § 655.143(b)(1). The CO will provide notice to the employer authorizing conditional access to the interstate clearance system; identify and transmit a copy of the job order to any

one of the SWAs having jurisdiction over the anticipated worksites, and direct the SWA to place the job order promptly in intrastate and interstate clearance (including all States where the work will take place); and commence recruitment of U.S. workers. Where an association of agricultural employers files as a joint employer and submits a single job order on behalf of its employer-members, the CO will transmit a copy of the job order to the SWA having jurisdiction over the location of the association, again directing that SWA to place the job order in intrastate and interstate clearance, including to those other States where the work will take place, and commence recruitment of U.S. workers.

(c) *Electronic job registry.* Under § 655.144(b), where a single job order is approved for an association of agricultural employers filing as a joint employer on behalf of its employer-members with different start dates of need, the Department will keep the job order posted on the OFLC electronic job registry until 50 percent of the period of the work contract has elapsed for all employer-members identified on the job order.

#### **§ 655.225 Post-acceptance requirements.**

(a) Unless otherwise specified in this section, the requirements for recruiting U.S. workers by the employer and SWA must be satisfied, as specified in §§ 655.150–655.158.

(b) *Interstate clearance of job order.* Pursuant to § 655.150(b), where a single job order is approved for an association of agricultural employers filing as a joint employer on behalf of its employer-members with different start dates of need, each of the SWAs to which the job order was transmitted by the CO or the SWA having jurisdiction over the location of the association must keep the job order on its active file until 50 percent of the period of the work contract has elapsed for all employer-members identified on the job order, and must refer to the association each qualified U.S. worker who applies (or on whose behalf an application is made) for the job opportunity.

(c) Any eligible U.S. worker who applies (or on whose behalf an application is made) for the job opportunity and is hired will be placed at the location nearest to him/her absent a request for a different location by the U.S. worker. Employers must make reasonable efforts to accommodate such placement requests by the U.S. worker.

(d) The employer will not be required to place an advertisement in a newspaper of general circulation serving

the area of intended employment, as required in § 655.151.

(e) An association that fulfills the recruitment requirements for its members is required to maintain a written recruitment report containing the information required by § 655.156 for each individual employer-member identified in the application or job order, including any approved modifications.

#### **§ 655.230 Mobile housing.**

(a) Housing for work performed on the open range must be provided in accordance with this part. The regulations at § 655.122(d)(2) require that housing for work performed on the open range meet standards of the DOL Occupational Safety and Health Administration (OSHA). Since such standards do not currently exist, range housing must meet the minimum standards contained in § 655.235.

(b) The SWA with jurisdiction over the location of the mobile housing must inspect and certify that the mobile housing used on the open range is sufficient to accommodate the number of certified workers and meets all applicable standards contained in § 655.235. The SWA must conduct a housing inspection no less frequently than once every three calendar years after the initial inspection and provide documentation to the employer certifying the housing for a period lasting no more than 36 months. If the SWA determines that an employer's housing cannot be inspected within a 3-year timeframe or, when it is inspected, the housing does not meet all the applicable standards, the CO may deny the H–2A application in full or in part or require additional inspections, to be carried out by the SWA, in order to satisfy the regulatory requirement.

(c)(1) The employer may self-certify its compliance with the standards contained in § 655.235 only when the employer has received a certification from the SWA for the mobile housing it seeks to use within the past 36 months.

(2) To self-certify the mobile housing, the employer must submit a copy of the valid SWA housing certification and a written statement, signed and dated by the employer, to the SWA and the CO assuring that the housing is available, sufficient to accommodate the number of workers being requested for temporary labor certification, and meets all the applicable standards for mobile housing contained in § 655.235.

(d) The use of mobile housing at a location other than the open range (e.g., at the farm or ranch), where fixed site employer-provided housing would otherwise be required, is permissible



only when the worker occupying the housing is performing work that constitutes the production of livestock or is minor, sporadic, and incidental to the herding or production of livestock. In such a situation, workers must be granted access to facilities, including but not limited to toilets and showers with hot and cold water under pressure, as well as cooking and cleaning facilities, that would satisfy the requirements contained in § 655.122(d)(1)(i). When such work does not constitute the production of livestock or is not minor, sporadic, and incidental to the herding or production of livestock, workers must be housed in housing that meets all the requirements of § 655.122(d).

**§ 655.235 Standards for mobile housing.**

An employer employing workers under this subpart may use a mobile unit, camper, or other similar mobile housing vehicle that meets the following standards:

(a) *Housing site.* Mobile housing sites must be well drained and free from depressions where water may stagnate.

(b) *Water supply.* (1) An adequate and convenient supply of water that meets the standards of the state or local health authority must be provided. Water used for drinking and cooking must be potable or easily rendered potable, and the employer must provide the worker with the means to make the water potable. The amount of water provided must be enough for normal cooking, consumption, cleaning, laundry and bathing needs of each worker; and

(2) Individual drinking cups must be provided.

(c) *Excreta and liquid waste disposal.* (1) Facilities must be provided and maintained for effective disposal of excreta and liquid waste in accordance with the requirements of the state health authority or involved Federal agency; and

(2) If pits are used for disposal by burying of excreta and liquid waste, they must be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with state and local health and sanitation requirements.

(d) *Housing structure.* (1) Housing must be structurally sound, in good repair, in a sanitary condition and must provide shelter against the elements to occupants;

(2) Housing, other than tents, must have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;

(3) Each housing unit must have at least one window which can be opened or skylight opening directly to the outdoors; and

(4) Tents appropriate to weather conditions may be used only where the terrain and/or land use regulations do not permit the use of other more substantial mobile housing.

(e) *Heating.* (1) Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters must have properly installed operable heating equipment that supplies adequate heat. Where the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required as long as proper protective clothing and bedding are made available, free of charge, to the workers.

(2) Any stoves or other sources of heat using combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(3) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe must be made of fireproof material. A vented metal collar must be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof.

(4) When a heating system has automatic controls, the controls must be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

(5) A heater may be used in a tent if the heater is approved by a testing service and if the tent is fireproof.

(f) *Lighting.* (1) In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns must be provided (kerosene wick lights meet the definition of lantern); and

(2) Lanterns, where used, must be provided in a minimum ratio of one per occupant of each unit, including tents.

(g) *Bathing, laundry, and hand washing.* Movable bathing, laundry and hand washing facilities must be provided when it is not feasible to provide hot and cold water under pressure.

(h) *Food storage.* When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as dehydrating or salting, are acceptable.

(i) *Cooking and eating facilities.* (1) When workers or their families are permitted or required to cook in their individual unit, a space must be provided with adequate lighting and ventilation; and

(2) Wall surfaces next to all food preparation and cooking areas must be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas must be of fire-resistant material.

(j) *Garbage and other refuse.* (1) Durable, fly-tight, clean containers must be provided to each housing unit, including tents, for storing garbage and other refuse; and

(2) Provision must be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary.

(k) *Insect and rodent control.* Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

(l) *Sleeping facilities.* A separate sleeping facility must be provided for each person, except in a family arrangement. A sleeping facility or sleeping accommodation must include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the CO that it is impractical to set up a second sleeping facility, the employer may request a variance from the separate sleeping facility requirement to allow for a second worker to temporarily join the open range operation. The second worker may be temporarily housed in the same sleeping facility for no more than 3 consecutive days, and the employer must supply a sleeping bag or bed roll for the second occupant free of charge.

(m) *Fire, safety, and first aid.* (1) All units in which people sleep or eat must be constructed and maintained according to applicable state or local fire and safety law.

(2) No flammable or volatile liquid or materials may be stored in or next to rooms used for living purposes, except for those needed for current household use.

(3) Mobile housing units for range use must have a second means of escape through which the worker can exit the unit without difficulty.

(4) Tents are not required to have a second means of escape, except when

large tents with walls of rigid material are used.

(5) Adequate fire extinguishers in good working condition and first aid

kits must be provided in the mobile housing.

**Portia Wu,**

*Assistant Secretary, Employment and Training Administration.*

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Part III

## Department of Health and Human Services

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Centers for Medicare & Medicaid Services

42 CFR Part 495

Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Modifications to Meaningful Use in 2015 Through 2017; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Part 495**

[CMS-3311-P]

RIN 0938-AS58

**Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Modifications to Meaningful Use in 2015 Through 2017****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would change the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program EHR reporting period in 2015 to a 90-day period aligned with the calendar year, and also would align the EHR reporting period in 2016 with the calendar year. In addition, this proposed rule would modify the patient action measures in the Stage 2 objectives related to patient engagement. Finally, it would streamline the program by removing reporting requirements on measures which have become redundant, duplicative, or topped out through advancements in EHR function and provider performance for Stage 1 and Stage 2 of the Medicare and Medicaid EHR Incentive Programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 15, 2015.

**ADDRESSES:** In commenting, please refer to file code CMS-3311-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3311-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3311-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Holland, (410) 786-1309, Medicare EHR Incentive Program and Medicare payment adjustment.

Elisabeth Myers (CMS), (410) 786-4751, Medicare EHR Incentive Program.

Thomas Romano (CMS), (410) 786-0465, Medicaid EHR Incentive Program.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search

instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

**Acronyms**

ARRA—American Recovery and Reinvestment Act of 2009  
 AAC—Average Allowable Cost (of certified EHR Technology)  
 ACO—Accountable Care Organization  
 AIU—Adopt, Implement, Upgrade (certified EHR Technology)  
 CAH—Critical Access Hospitals  
 CAHPS—Consumer Assessment of Healthcare Providers and Systems  
 CCN—CMS Certification Number  
 CDC—Centers for Disease Control  
 CEHRT—Certified Electronic Health Record Technology  
 CFR—Code of Federal Regulations  
 CHIP—Children's Health Insurance Program  
 CHIPRA—Children's Health Insurance Program Reauthorization Act of 2009  
 CMS—Centers for Medicare and Medicaid Services  
 CPOE—Computerized Physician Order Entry  
 CQM—Clinical Quality Measure  
 CY—Calendar Year  
 EHR—Electronic Health Record  
 EP—Eligible Professional  
 ePHI—Electronic Protected Health Information  
 EPO—Exclusive Provider Organization  
 FACA—Federal Advisory Committee Act  
 FFP—Federal Financial Participation  
 FFY—Federal Fiscal Year  
 FFS—Fee-for-Service  
 FQHC—Federally Qualified Health Center  
 FTE—Full Time Equivalent  
 FY—Fiscal Year  
 HEDIS—Healthcare Effectiveness Data and Information Set  
 HHS—Department of Health and Human Services  
 HIE—Health Information Exchange  
 HIT—Health Information Technology  
 HITPC—Health Information Technology Policy Committee  
 HIPAA—Health Insurance Portability and Accountability Act of 1996  
 HITECH—Health Information Technology for Economic and Clinical Health Act  
 HMO—Health Maintenance Organization  
 HOS—Health Outcomes Survey  
 HPSA—Health Professional Shortage Area  
 HRSA—Health Resources and Services Administration  
 IAPD—Implementation Advanced Planning Document  
 ICR—Information Collection Requirement  
 IHS—Indian Health Service  
 IPA—Independent Practice Association  
 IPPS—Inpatient Prospective Payment System

IQR—Inpatient Quality Reporting  
 IT—Information Technology  
 MA—Medicare Advantage  
 MAC—Medicare Administrative Contractor  
 MCO—Managed Care Organization  
 MITA—Medicaid Information Technology Architecture  
 MMIS—Medicaid Management Information Systems  
 MSA—Medical Savings Account  
 MU—Meaningful Use  
 NAAC—Net Average Allowable Cost (of certified EHR Technology)  
 NCQA—National Committee for Quality Assurance  
 NCVHS—National Committee on Vital and Health Statistics  
 NPI—National Provider Identifier  
 NQF—National Quality Forum  
 ONC—Office of the National Coordinator for Health Information Technology  
 PAHP—Prepaid Ambulatory Health Plan  
 PAPD—Planning Advanced Planning Document  
 PFFS—Private Fee-for-Service  
 PHO—Physician Hospital Organization  
 PHS—Public Health Service  
 PHSA—Public Health Service Act  
 PIHP—Prepaid Inpatient Health Plan  
 POS—Place of Service  
 PPO—Preferred Provider Organization  
 PQRS—Physician Quality Reporting System  
 PHI—Protected Health Information  
 PSO—Provider Sponsored Organization  
 RHC—Rural Health Clinic  
 RPPO—Regional Preferred Provider Organization  
 SAMHSA—Substance Abuse and Mental Health Services Administration  
 SMHP—State Medicaid Health Information Technology Plan  
 TIN—Tax Identification Number

## I. Executive Summary and Background

### A. Executive Summary

#### 1. Purpose of Regulatory Action

##### a. Need for Regulatory Action

In this proposed rule, we would implement changes to Stage 1 and Stage 2 of the Medicare and Medicaid EHR Incentive Programs. In the March 30, 2015 **Federal Register** (80 FR 16731 through 16804), we published in the proposed rule for Stage 3 of meaningful use which included changes to the objectives and measures of meaningful use for providers beginning in 2017. These changes included removing redundant, duplicative, and topped out measures, and focusing the EHR Incentive Programs on advanced use of EHR technology. In order to reduce reporting burden, eliminate redundant and duplicative reporting, and to better align the objectives and measures of meaningful use for 2015 through 2017 with the proposed Stage 3 requirements which would be optional in 2017 and required beginning in 2018, we are proposing to make similar modifications to Stage 1 and Stage 2 of the EHR Incentive Programs.

In addition, in order to accommodate these changes, we propose additional modifications to the EHR reporting period and timeline of the Medicare and Medicaid EHR Incentive Programs in 2015 and 2016. We believe these changes would better align reporting periods for providers, support a flexible, clear framework to reduce provider burden, and ensure future sustainability of the Medicare and Medicaid EHR Incentive Programs.

##### b. Legal Authority for the Regulatory Action

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) amended Titles XVIII and XIX of the Social Security Act (the Act) to authorize incentive payments to Eligible Professionals (EPs), eligible hospitals, and Critical Access Hospitals (CAHs), and Medicare Advantage (MA) organizations to promote the adoption and meaningful use of Certified Electronic Health Record Technology (CEHRT). Sections 1848(o), 1853(l) and (m), 1886(n), and 1814(l) of the Act provide the statutory basis for the Medicare incentive payments made to meaningful EHR users. These statutory provisions govern EPs, MA organizations (for certain qualifying EPs and hospitals that meaningfully use CEHRT), subsection (d) hospitals, and CAHs respectively. Sections 1848(a)(7), 1853(l) and (m), 1886(b)(3)(B), and 1814(l) of the Act also establish downward payment adjustments, beginning with calendar or fiscal year 2015, for EPs, MA organizations, subsection (d) hospitals, and CAHs that are not meaningful users of CEHRT for certain associated reporting periods. Sections 1903(a)(3)(F) and 1903(t) of the Act provide the statutory basis for Medicaid incentive payments. (There are no payment adjustments under Medicaid.) (For a more detailed explanation of the statutory basis for the EHR incentive payments, see the July 28, 2010 Stage 1 final rule (75 FR 44316 through 44317).)

#### 2. Summary of Major Provisions

##### a. Aligning Meaningful Use in 2015 Through 2017 With the Stage 3 Proposals for Meaningful Use in 2017 and Subsequent Years

The Stage 1 final rule sets the foundation for the Medicare and Medicaid EHR Incentive Programs by establishing requirements for the electronic capture of clinical data, including providing patients with electronic copies of health information. We outlined Stage 1 meaningful use criteria, and finalized core and menu

objectives for EPs, eligible hospitals, and CAHs. (For a full discussion of the objectives and measures of Stage 1, we refer readers to the Stage 1 final rule at 75 FR 44313 through 44588.) In the Stage 1 rulemaking, we discussed the idea that alignment of stage of meaningful use and payment year should synchronize for all providers in 2015. However, while we stated a goal to align the stages of meaningful use across all providers in 2015 (75 FR 44322), we did not finalize such changes in the Stage 2 final rule. Furthermore, we stated in subsequent rulemaking (see for example the 2014 CERHT Flexibility rule at 79 FR 52923 and 52596) that the requirements for each stage for the program must be informed by analysis of program data related to performance and participation milestones.

In the September 4, 2012 stage 2 final rule, we maintained the same core-menu structure finalized for several Stage 1 core and menu objectives. We finalized that EPs must meet the measure or qualify for an exclusion to 17 core objectives and 3 of 6 menu objectives. We finalized that eligible hospitals and CAHs must meet the measure or qualify for an exclusion to 16 core objectives and 3 of 6 menu objectives. We combined several Stage 1 measures into Stage 2. With the experience providers gained from the Stage 1 final rule, we also increased functional objective measure thresholds in Stage 2 to increase efficiency, effectiveness, and flexibility. Also, beginning in 2014, we finalized a set of clinical quality measures (CQMs) for all providers participating in any Stage of the program to report to CMS. (For a full discussion of the meaningful use objectives and measures, and the CQMs we finalized under Stage 2, we refer readers to the Stage 2 final rule at 77 FR 53968 through 54162.)

In the Stage 3 proposed rule, we built on the groundwork established in the Stage 1 and Stage 2 final rules, including continuing our goal started under Stage 2 to increase interoperability among providers. We also proposed to make changes to the Medicare and Medicaid EHR Incentive Programs that simplify reporting requirements and reduce program complexity. These changes were intended to balance the statutory requirements in the HITECH Act with responsiveness to providers expressing confusion and concerns over increased reporting burden related to the number of program requirements, the multiple stages of program participation, and the timing of EHR reporting periods. Therefore, we proposed for Stage 3 a

single set of 8 objectives and related measures to meet the definition of meaningful use. We proposed that this single set of 8 objectives would be optional for 2017 and mandatory beginning in 2018. Also, the Stage 3 proposed rule would move all providers to an EHR reporting period of one full calendar year, with a limited exception for Medicaid providers demonstrating meaningful use for the first time, to support program alignment and simplify reporting requirements among provider types. The Stage 3 proposed rule and the 2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications (hereinafter referenced as the “2015 Edition proposed rule”) published by the Office of the National Coordinator for Health Information Technology (ONC) may be reviewed at 80 FR 16731 through 16804 and 80 FR 16804 through 1692, respectively. The Stage 3 proposed rule would align the stages of meaningful use across all providers beginning in 2018.

In this proposed rule, we are seeking to make changes to the requirements for Stage 1 and Stage 2 of meaningful use for 2015 through 2017 to align with the approach for Stage 3 of meaningful use in 2017 and subsequent years. The analysis conducted during the planning process for Stage 3 also allowed insight into the progress toward program milestones and provider performance on the objectives and measures. This analysis allowed us to identify an approach to be responsive to stakeholder concerns about program complexity and revisit the consideration that the stage of meaningful use and EHR reporting periods should align where possible. Therefore, we are proposing a number of changes to both the EHR reporting period, and to the number of objectives and measures to which a provider must attest to demonstrate meaningful use. Specifically, we are proposing to move all providers to an EHR reporting period based on the calendar year beginning in 2015. Also, we propose to align the objectives and measures used in 2015 through 2017 with those identified in the Stage 3 proposed rule for use in 2017 and subsequent years. This includes a proposal that, beginning with an EHR reporting period in 2015, providers would no longer be required to attest to certain objectives and measures which have been identified through our analysis to have reduced utility because they may now be redundant, duplicative, or “topped

out”. (For further discussion of this selection process for Stage 3, we direct readers to sections I.A.2. and II.A.2. of the Stage 3 proposed rule at (80 FR 16733 through 16735 and 16767 through 16768, respectively). The related selection process for the proposed changes to meaningful use in 2015 through 2017 uses a similar approach to reducing the reporting burden while also seeking to meet our statutory requirement to include more stringent measures of meaningful use. Our approach for applying these principals for meaningful use in 2015 through 2017 is discussed in more detail in section II.B.1.c. of this proposed rule.

#### b. EHR Reporting Period in 2015 and 2016

We are proposing to align the definition of an EHR reporting period with the calendar year for all providers beginning in 2015 and continuing through 2016 onward. Specifically, this proposal would change the EHR reporting period for eligible hospitals and CAHs from a period based on the fiscal year to the calendar year beginning in 2015. This aligns with the provision outlined in the Stage 3 proposed rule to move all providers to an EHR reporting period of 1 full calendar year beginning in 2017 with a limited exception for Medicaid providers demonstrating meaningful use for the first time (80 FR 16734 and 80 FR 16737 through 16739). For 2015 and 2016, we are proposing to allow new participants in the EHR Incentive Program to attest to meaningful use for an EHR reporting period of any continuous 90-day period within the calendar year. In addition, for 2015 only, we are proposing to allow all EPs (regardless of their prior participation in the program) to attest to an EHR reporting period of any continuous 90-day period within the calendar year. For 2015 only, we are proposing to allow eligible hospitals and CAHs (regardless of their prior participation in the program) to attest to an EHR reporting period of any continuous 90-day period within the period beginning October 1, 2014 and the close of the 2015 calendar year. This 90-day EHR reporting period for 2015 would allow providers additional time to address any remaining issues with the implementation of technology certified to the 2014 Edition and to accommodate the changes to the objectives and measures of meaningful use proposed in this rule.

In 2016, we propose EPs, eligible hospitals, and CAHs that are demonstrating meaningful use for the first time may use an EHR reporting

period of any continuous 90-day period between January 1, 2016 and December 31, 2016. However, all returning participants would use an EHR reporting period of a full calendar year from January 1, 2016 through December 31, 2016. In 2017, all providers, both new and existing participants, would use an EHR reporting period of 1 full calendar year as proposed in the Stage 3 proposed rule at (80 FR 16737 through 16739) with a limited exception for Medicaid providers demonstrating meaningful use for the first time.

#### c. Meaningful Use Objectives and Measures for 2015 Through 2017

In the Stage 3 proposed rule, we outlined our method and approach for identifying the objectives and measures retained for Stage 3 of meaningful use in 2017. We also identified those objectives and measures which are now redundant, duplicative, or topped out; and therefore, would no longer be required for the successful demonstration of meaningful use for Stage 3. For further discussion of this approach, we refer readers to (80 FR 16733 through 16735 and 16767 through 16768).

In this proposed rule, we discuss how we have used the same method to identify objectives and measures from Stages 1 and 2 of meaningful use which we believe should no longer be required for a provider to demonstrate meaningful use in 2015 through 2017 as these measures have been identified as redundant, duplicative, or topped out. These changes would remove the menu and core structure of Stages 1 and 2 and reduce the overall number of objectives to which a provider must attest. We discuss this approach in section II.B.1.c. of this proposed rule.

In addition, we are proposing changes to individual objectives and measures for Stage 2 of meaningful use as follows:

- Changing the threshold from the Stage 2 Objective for Patient Electronic Access measure number 2 from “5 percent” to “equal to or greater than 1”.
- Changing the threshold from the Stage 2 Objective Secure Electronic Messaging from being a percentage-based measure, to yes-no measure stating the “functionality fully enabled”.
- Consolidating all public health reporting objectives into one objective with measure options following the structure of the Stage 3 Public Health Reporting Objective (80 FR 16745 through 16767).
- Changing the eligible hospital electronic prescribing objective from a “menu” objective to a mandatory

objective with an exclusion available for certain eligible hospitals and CAHs.

These proposed changes would apply for providers beginning with the EHR reporting period in 2015. We note that these proposals include provisions to maintain the existing definitions for the objectives and measures including numerator and denominator calculation, provisions to maintain measure thresholds for 2015, and provisions to allow exclusions for certain eligible providers in 2015 in order to facilitate the transition for providers already engaged in the workflows, data capture and measure calculation for meaningful use for an EHR reporting period in 2015.

#### d. Certification Requirements

Under this proposed rule, we are not proposing changes to the individual certification requirements for the objectives and measures of meaningful use for an EHR reporting period in 2015 through 2017. Until a transition to EHR technology certified to the 2015 Edition is required (proposed in the Stage 3 proposed rule beginning with an EHR reporting period in 2018 at (80 FR 16767 and 16768)), we are proposing that providers would continue to use EHR technology certified to the 2014 Edition for an EHR reporting period in 2015, 2016, and 2017. As outlined in the Stage 3 proposed rule, providers may upgrade early to EHR technology certified to the 2015 Edition for an EHR reporting period prior to 2018. (For further information on this, and to review the applicable definition of CEHRT, we direct readers to the Stage 3 proposed rule at (80 FR 16767 and 16768).

#### e. Medicaid EHR Incentive Program in 2015 through 2017

The proposals included in this proposed rule would also apply for the Medicaid EHR Incentive Program, including the proposed changes to the EHR reporting period in 2015 and 2016, and the objectives and measures required to demonstrate meaningful use in 2015 through 2017. Consistent with the Stage 3 proposed rule, we propose to continue to offer states flexibility under the Medicaid EHR Incentive Program for the public health reporting objective. For meaningful use in 2015 through 2017, we would continue the policy stated in the Stage 2 final rule (77 FR 53979) to allow states to specify the means of transmission of the data or otherwise change the public health measure (as long as it does not require EHR functionality above and beyond that which is included in the certification requirements specified under the 2014 Edition certification criteria). (For more information see the

Stage 3 proposed rule (80 FR 16737 through 16739).)

#### f. Clinical Quality Measurement

We are not proposing changes to the CQM selection or reporting scheme (9 or 16 CQMs across at least 3 domains) from the CQM requirements previously established for all providers seeking to demonstrate meaningful use in the Medicare and Medicaid EHR Incentive Programs defined in earlier rulemaking (see, for example, 77 FR 54049 through 54089). For an EHR reporting period in 2015, and for providers demonstrating meaningful use for the first time in 2016, we are proposing that providers may—

- Attest to any continuous 90-day period of CQM data during the calendar year through the Medicare EHR Incentive Program registration and attestation site; or
- Electronically report CQM data using the established methods for electronic reporting.

For 2016 and subsequent years, providers beyond their first year of meaningful use may attest to one full calendar year of CQM data or they may electronically report their CQM data using the established methods for electronic reporting outlined in section II.C. of this proposed rule.

#### g. Demonstration of Meaningful Use

We are proposing to continue our common method for demonstrating meaningful use in both the Medicare and Medicaid EHR Incentive Programs. The demonstration methods we adopt for Medicare would automatically be available to states for use in their Medicaid programs. We are proposing to continue the use of attestation as the method for demonstrating that an EP, eligible hospital, or CAH has met the objectives and measures of meaningful use. In lieu of individual Medicare EP attestation through the CMS registration and attestation system, we are proposing to continue the existing optional batch file process for attestation. We are additionally proposing changes to the attestation deadlines to accommodate the proposed change to reporting based on the calendar year for eligible hospitals and CAHs beginning with an EHR reporting period in 2015, as well as the proposed change to a 90-day EHR reporting period for all providers in 2015. We are proposing changes to the attestation deadlines for new meaningful EHR users in 2015 and 2016 to avoid the Medicare payment adjustments in 2016 and 2017. Finally, we are proposing an alternate attestation option for certain Medicaid providers to demonstrate meaningful use in 2015

and subsequent years to avoid Medicare payment adjustments.

#### h. Payment Adjustments and Hardship Exceptions

We are proposing changes to the definition of an EHR reporting period for a payment adjustment at \$ 495.4 as well as the attestation deadlines for certain providers to demonstrate meaningful use for an EHR reporting period to avoid the Medicare payment adjustment.

#### i. Summary of Cost Benefit Analysis

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). Accordingly, we have prepared a regulatory impact analysis that to the best of our ability presents the costs and benefits of the proposed rule.

The regulatory impact analysis of this proposed rule for modification to the Medicare and Medicaid EHR Incentive Programs from 2015 through 2017 outlines the reduction in the reporting burden for providers demonstrating meaningful use in 2015 and estimates the total annual cost savings. The low and high estimates for these total savings are \$52,547,132 and \$68,617,864 respectively. In addition to these reductions, we believe there are substantial cost savings accruing to eligible hospitals and EPs related to having additional time to achieve meaningful use.

#### B. Overview of the Regulatory History

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5)(ARRA) amended Titles XVIII and XIX of the Act to authorize incentive payments to EPs, eligible hospitals, and CAHs, and MA organizations to promote the adoption and meaningful use of CEHRT. In the July 28, 2010 **Federal Register** (75 FR 44313 through 44588), we published a final rule (“Medicare and Medicaid Programs; Electronic Health Record Incentive Program”, or “Stage 1 final rule”) that specified the Stage 1 criteria EPs, eligible hospitals, and CAHs must meet in order to qualify for an incentive payment, calculation of the incentive payment amounts, and other program participation requirements. (For a full explanation of the amendments made by ARRA, see the Stage 1 final rule at 75 FR 44316.) In that Stage 1 final rule, we also detailed that the Medicare and Medicaid EHR

Incentive Program would consist of three different stages of meaningful use requirements.

In the September 4, 2012 **Federal Register** (77 FR 53967 through 54162), we published a final rule (“Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 2; Final Rule” or “Stage 2 final rule”) that specified the Stage 2 criteria that EPs, eligible hospitals, and CAHs would have to meet in order to qualify for incentive payments. In addition, the Stage 2 final rule finalized payment adjustments and other program participation requirements under Medicare for covered professional and hospital services provided by EPs, eligible hospitals, and CAHs failing to demonstrate meaningful use of CEHRT, and finalized the revision of certain Stage 1 criteria, and finalized criteria that applied regardless of stage.

In the December 7, 2012 **Federal Register** (77 FR 72985), CMS and ONC jointly published an interim final rule with comment period (IFC) titled “Health Information Technology: Revisions to the 2014 Edition Electronic Health Record Certification Criteria; and Medicare and Medicaid Programs; Revisions to the Electronic Health Record Incentive Program” (December 7, 2012 IFC). The Department of Health and Human Services (HHS) issued the IFC to replace the Data Element Catalog (DEC) standard and the Quality Reporting Document Architecture (QRDA) Category III standard adopted in the final rule published on September 4, 2012 in the **Federal Register** with updated versions of those standards. The December 7, 2012 IFC also revised the Medicare and Medicaid EHR Incentive Programs by—

- Adding an alternative measure for the Stage 2 meaningful use (MU) objective for hospitals to provide structured electronic laboratory results to ambulatory providers;
- Correcting the regulation text for the measures associated with the objective for hospitals to provide patients the ability to view online, download, and transmit information about a hospital admission; and
- Making the case number threshold exemption for CQM reporting applicable for eligible hospitals and CAHs beginning with FY 2013.

The December 7, 2012 IFC also provided notice of our intention to issue technical corrections to the electronic specifications for CQMs released on October 25, 2012.

In the September 4, 2014 **Federal Register** (79 FR 52910 through 52933) CMS and ONC published a final rule titled “Medicare and Medicaid

Programs; Modifications to the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program for 2014 and Other Changes to the EHR Incentive Program; and Health Information Technology: Revisions to the Certified EHR Technology Definition and EHR Certification Changes Related to Standards; Final Rule” (“2014 CEHRT Flexibility final rule”). Due to issues related to EHR technology certified to the 2014 Edition availability delays, the 2014 CEHRT Flexibility final rule included policies allowing EPs, eligible hospitals, and CAHs that could not fully implement EHR technology certified to the 2014 Edition for an EHR reporting period in 2014 to continue to use one of the following options for reporting periods in CY 2014 and FY 2014, respectively—

- EHR technology certified to the 2011 Edition; or
- A combination of EHR technology certified to the 2011 Edition and EHR technology certified to the 2014 Edition for the EHR reporting periods.

These CEHRT options applied only to those providers that could not fully implement EHR technology certified to the 2014 Edition to meet meaningful use for an EHR reporting period in 2014 due to delays in 2014 Edition availability. Although the 2014 CEHRT flexibility final rule did not alter the attestation or hardship exception application deadlines for 2014, it did make changes to the attestation process to support these flexible options for CEHRT. This 2014 CEHRT Flexibility final rule also discussed the provisions of the December 7, 2012 IFC and finalized policies relating to the provisions contained in the December 7, 2012 IFC.

In the November 13, 2014 **Federal Register**, we published an interim final rule with comment period, under the Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Clinical Laboratory Fee Schedule, Access to Identifiable Data for the Center for Medicare and Medicaid Innovation Models & Other Revisions to Part B for CY 2015 (79 FR 67976 through 67978) (“November 13, 2014 IFC”). Under this November 13, 2014 IFC, we recognized a hardship exception for EPs and eligible hospitals for 2014 under the established category of extreme and uncontrollable circumstances in accordance with the Secretary’s discretionary authority. To accommodate this hardship exception, we further extended the hardship application deadline for EPs and eligible hospitals to November 30 for 2014 only. We also amended the regulations to allow CMS to specify a later hardship application deadline for certain

hardship categories for EPs, eligible hospitals, and CAHs.

In the March 30, 2015 **Federal Register**, we published a proposed rule entitled “Medicare and Medicaid Programs; Electronic Health Record Incentive Program Stage 3” (80 FR 16731 through 16804). In this March 30, 2015 Stage 3 proposed rule, we specified the proposed meaningful use criteria that EPs, eligible hospitals, and critical access hospitals must meet in order to demonstrate meaningful use of certified EHR technology for Stage 3 of the EHR Incentive Programs. It also specifies the proposed requirements for electronic submission of CQMs and creates a single set of meaningful use requirements for Stage 3 which would be optional for providers in 2017 and required for all providers beginning in 2018. Finally, the Stage 3 proposed rule would also change the EHR reporting period so that all providers would report under a calendar year timeline.

For Stages 1 and 2, CMS and the ONC worked closely to ensure that the definition of meaningful use of CEHRT and the associated standards and certification criteria were coordinated. (Current ONC regulations may be found at 45 CFR part 170.) For the Stage 3 proposed rule and the ONC 2015 Edition proposed rule, CMS and ONC have aligned the proposed rules (80 FR 16731 through 16804 and 80 FR 16804 through 16921) and would again work together to align the final regulations.

(Readers may also visit: [www.cms.hhs.gov/EHRincentiveprograms](http://www.cms.hhs.gov/EHRincentiveprograms) and [www.healthit.gov](http://www.healthit.gov) for more information on the efforts at the Department of Health and Human Services (HHS) to advance HIT initiatives.)

## II. Provisions of the Proposed Regulations

### A. Introduction

When the EHR Incentive Program began in 2011, the requirements for the objectives and measures of meaningful use were designed to begin a process toward health care delivery system transformation aligning with foundational goals defined in the HITECH Act. First, the statute requires the Secretary to seek to improve the use of EHR and health care quality over time by requiring more stringent measures of meaningful use (see section 1848(o)(2)(A)(iii) of the Act). To meet this goal, we established stages of meaningful use to move providers along a progression from adoption to advanced use of certified EHR technology. Second, the statute includes requirements for the use of EHR



technology, which defines both the functions that should be available within the EHR and the purpose to which those functions should be applied. These requirements include functions that are similar to the following (see section 1848(o)(4) of the Act)—

- The capacity to provide clinical decision support;
- To support provider order entry;
- To capture and query information relevant to health care quality; and
- To exchange protected health information with, and integrate such information from other sources.

The statute also defines key foundational principles of meaningful use such as electronic prescribing, the electronic exchange of health information to support the improvement of care and care coordination, and the use of EHR technology to submit information on clinical quality measures and other measures (see section 1848(o)(2)(A) of the Act).

Since the EHR Incentive Programs began in 2011, a number of environmental changes have occurred which prompted us to reevaluate the program requirements in relation to progress toward goals. These changes include a wide range of factors including—

- Expansion of basic certified EHR technology infrastructure;
- Advancements in EHR and related health information technology;
- Widespread adoption of certain standards and functionality;
- Increased use of CEHRT to support quality improvement; and
- Performance on certain measures reaching maximum potential.

The Certified Health IT Product List (ONC CHPL) developed by ONC assists providers in identifying certified EHR technology products that have been certified by an ONC-Authorized Certification Body (ONC-ACB). Certified EHR technology products, certified to the 2014 Edition, are required for use in the Medicare and Medicaid EHR Incentive Programs to meet meaningful use criteria for Stage 1 and 2 for an EHR reporting period in 2015. We reviewed data related to the ONC CHPL as of March 20, 2015 and found 1956 unique products that are currently certified to the 2011 Edition and 2157 unique products that are certified to the 2014 Edition. A unique product is a product that is certified and receives a unique certification ID (product updates and product version changes are included in the unique product count). Data from March 2013 to March 2015 shows an increase of 104

percent in the total number of certified EHR technology products and an increase of 133 percent in total unique certified EHR technology products in the last 2 years alone. We believe the increase in the number of certified EHR technology products available is a positive step for providers seeking to meet meaningful use requirements and advance EHR technology. The data provided and additional information related to the ONC CHPL may be found on the HealthIT.gov Web site at <http://healthit.gov/chpl>.

For a wide range of data and reports on health IT adoption rates, use of certification functions and standards, updates to eCQM specifications and testing, as well as the performance data for providers in relation to the available software, we direct readers to the ONC Web site (<http://www.healthit.gov>), the CMS eCQM Library ([http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM\\_Library.html](http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM_Library.html)), and the CMS EHR Incentive Programs data and reports Web site (<http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/DataAndReports.html>).

As the program has increased the overall adoption of EHRs and as EHR technology has automated certain clinical functions and supported standardized data capture, we propose modifications, which would recognize these changes and realign the program with ongoing program goals. Our quality reporting programs regularly reevaluate measures based on factors like clinical relevance, updates to electronic specifications, and measure performance. We consider modifications to the objectives and measures of this program similar to those regularly made in our quality reporting programs.

In addition to these environmental changes, stakeholder associations and provider groups have through correspondence, public forums, and public comment requested that we consider changes to the requirements to demonstrate meaningful use of certified EHR technology in the EHR Incentive Programs which would reduce the overall complexity of the program and the burden on providers. We believe some of these recommended changes may contradict certain statutory requirements for this program. For example, certain provisions such as electronic prescribing or health information exchange cannot be fully “optional” because they are expressly required under the statute (see section 1848(o)(2)(A) of the Act). The statutory directive to require increasingly more stringent measures of meaningful use

(see section 1848(o)(2)(A)(iii) of the Act) prohibits the removal of all measure thresholds. Further examples are also discussed in the Stage 3 proposed rule at (80 FR 16737 through 16742).

However, there are methods that could be employed to modify Stages 1 and 2 of the program to address stakeholder concerns, meet the statutory requirements for the program defined in the HITECH Act, and continue to support progress toward the program’s foundational goals. In addition, these methods would move providers along a continuum from data capture to advanced use of certified EHR technology including electronic prescribing, health information exchange, and quality improvement with increasingly stringent measures as identified in the Act and discussed in section II.B.1.b. of this proposed rule. Therefore, we are proposing modifications to Stages 1 and 2 and are seeking public comment on these proposals, which are intended to be responsive to the changing environment and to stakeholder concern over program complexity and redundant reporting requirements. We propose these modifications to address these concerns and to continue to support the overall goal of the widespread adoption and meaningful use of EHR technology in efforts to transform our health care delivery system and improve health care quality.

#### *B. Meaningful Use Requirements for EHR Reporting Periods in 2015 Through 2017*

##### 1. Definitions Across the Medicare Fee for Service, Medicare Advantage, and Medicaid Programs

###### a. Uniform Definitions

As discussed in prior rules, we finalized several uniform definitions applicable for the Medicare FFS, Medicare Advantage, and Medicaid EHR Incentive Programs. We set forth these uniform definitions in part 495 subpart A of the regulations. (For further discussion of the uniform definitions finalized previously, we refer readers to the Stage 1 and Stage 2 final rules at 75 FR 44317 through 44321 and 77 FR 53972 respectively.) (For discussion of the proposed changes to uniform definitions outlined in the Stage 3 proposed rule, we refer readers to the Stage 3 proposed rule at (80 FR 16736 through 16737).

In this proposed rule, we are proposing to maintain the previously finalized uniform definitions except as stated in this proposed rule.

b. Changes to Definitions for 2015 Through 2017

We are proposing changes to a number of definitions previously finalized for meaningful use in the Stage 1 and Stage 2 rules in order to modify the program in response to the changing health IT environment and related stakeholder concerns. These changes address the following:

- An overall simplification of the program aligned to the overarching goals of sustainability as discussed in the Stage 3 proposed rule (80 FR 16737) and in section II.B.1.b.(1). of this proposed rule and a related change to requirements necessary to accommodate these changes outlined in section II.B.1.b.(2) of this proposed rule.

- Moving all providers to an EHR reporting period aligned with the calendar year as outlined in section II.B.1.b.(3).A. of this proposed rule.
- Providing flexibility for providers in 2015 to accommodate the proposed changes as outlined in section II.B.1.b of this proposed rule.
- Removing requirements for objectives and measures which are redundant or duplicative or which have “topped out” as described at (80 FR 16767) of the Stage 3 proposed rule and outlined in section II.B.1.c.(1). of this proposed rule.
- Restructuring the remaining measures and objectives to streamline requirements for 2015 through 2017 and to accommodate the changes for an EHR reporting period in 2015 as outlined in section II.B.1.c.(2). of this proposed rule.

- Refocusing the existing program on building toward advanced use of EHR technology, aligned with the Stage 3 proposed rule, through maintaining the objectives and measures outlined in section II.B.2. of this proposed rule.

(1) Stages of Meaningful Use

In the phased approach to meaningful use, we finalized the criteria for meaningful use through staggered rulemaking, which covered Stages 1 and 2 of the EHR Incentive Program. (For further explanation of the criteria we finalized in Stages 1 and 2, we refer readers to 75 FR 44314 through 44588, 77 FR 53968 through 54162, and 79 FR 52910 through 52933). The current progression of the stages as finalized in prior rulemaking is outlined in Table 1.

TABLE 1—STAGE OF MEANINGFUL USE CRITERIA BY FIRST PAYMENT YEAR

First payment year	Stage of meaningful use								
	2011	2012	2013	2014	2015	2016	2017	2018	2019
2011 .....	1	1	1	1 or 2* .....	2	2	3	3	TBD
2012 .....		1	1	1 or 2* .....	2	2	3	3	TBD
2013 .....			1	1* .....	2	2	3	3	TBD
2014 .....				1* .....	1	2	2	3	3
2015 .....					1	1	2	2	3
2016 .....						1	1	2	2
2017 .....							1	1	2

In the Stage 3 proposed rule, we noted our intent for Stage 3 to be the final stage in meaningful use and that no further stages would be developed. We further proposed that all providers may optionally move to Stage 3 in 2017, and that all providers are required to move to Stage 3 beginning in 2018 regardless of their prior participation or stage of meaningful use. (For further discussion on this proposal, we direct readers to (80 FR 16774).

In this proposed rule to modify Stages 1 and 2 for meaningful use in 2015 through 2017, we propose to further reduce complexity in the program and work toward this overall shift to a single set of objectives and measures in Stage 3 in 2018. We propose to require all providers to attest to a single set of objectives and measures beginning with

an EHR reporting period in 2015. These objectives and measures would leverage existing objectives and measures of meaningful use. Because this change may occur after providers have already begun their work toward meeting meaningful use in 2015, we propose accommodations within individual objectives for providers in different stages of meaningful use. These accommodations include retaining the different specifications between Stage 1 and Stage 2, and allowing special exclusions for certain objectives or measures for eligible providers previously scheduled to participate in Stage 1 for an EHR reporting period in 2015.

In this rule, we propose all providers would be required to attest to certain objectives and measures finalized in the

Stage 2 final rule, which would align with those objectives and measures proposed for Stage 3 of meaningful use. In effect, this would create a new progression using the existing objectives and measures where providers attest to a modified version of Stage 2 with accommodations for Stage 1 providers (equivalent to a reduced version of Stage 3) in 2015; a modified version of Stage 2 in 2016 (equivalent to a reduced version of Stage 3); either a modified version of Stage 2 (equivalent to a reduced version of Stage 3) or the full version of Stage 3 outlined in the Stage 3 proposed rule in 2017; and the full version of Stage 3 outlined in the Stage 3 proposed rule beginning in 2018.

The revised timeline based on this proposal and the Stage 3 proposed rule is outlined in Table 2.

TABLE 2—STAGE OF MEANINGFUL USE CRITERIA BY FIRST YEAR

First year as a meaningful EHR user	Stage of meaningful use			
	2015	2016	2017	2018
2011 .....	Modified Stage 2 .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3
2012 .....	Modified Stage 2 .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3
2013 .....	Modified Stage 2 .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3
2014 .....	Modified Stage 2* .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3
2015 .....	Modified Stage 2* .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3

TABLE 2—STAGE OF MEANINGFUL USE CRITERIA BY FIRST YEAR—Continued

First year as a meaningful EHR user	Stage of meaningful use			
	2015	2016	2017	2018
2016 .....	- NA - .....	Modified Stage 2 .....	Modified Stage 2 Or Stage 3 .....	Stage 3

\* The Modifications to Stage 2 proposed in this rule include alternate exclusions and specifications for certain objectives and measures for providers that were scheduled to demonstrate Stage 1 of meaningful use in 2015.

For simplification and reader clarity, we would therefore refer to the “Stage” designation in relation to the EHR Incentive Program rules and to the objectives and measures as follows:

- Meaningful use objectives and measures for 2015 through 2017
- Stage 3 meaningful use objectives and measures for 2017 and subsequent years

This alignment of Stages 1 and 2 to the proposals for Stage 3 essentially creates a new paradigm for providers in 2015 through 2017. This includes a simplified structure and focus on the objectives and measures with sustainable growth potential aligned to the programs foundational goals prior to the full implementation of Stage 3 in 2018. This change could alleviate the

need to include the option in 2017 to allow providers to choose to demonstrate Stage 3 of the program in 2017. To better understand the impact and potential complexity, we seek comment on whether or not we should implement only the modifications proposed in this rule from 2015 through 2017 and begin Stage 3 in 2018 without an option year in 2017, or if we should allow providers the option to demonstrate Stage 3 beginning in 2017 as discussed in the Stage 3 proposed rule (80 FR 16774).

We seek comment on these proposals.

(2) Meaningful EHR User

In the Stage 3 proposed rule (80 FR 16731 through 16804), we proposed to modify the definition of “Meaningful

EHR User” in 42 CFR 495.4 to include the Stage 3 objectives and measures proposed at § 495.7. We further propose to redesignate some of the numbering of the regulation text under Part 495 to more clearly identify which sections of the regulation apply to specific years of the program. This would allow more direct references for the objectives and measures, while also preserving the content that applies for prior program years. We note this numerical redesignation would not affect the content of the regulation text except where noted in this proposed rule, nor would it change the proposed objectives and measures of Stage 3 of meaningful use at (80 FR 16745 through 16767). The redesignated numerical references for the regulation text are as follows:

Current section designation	Proposed section redesignation
§ 495.6—Objectives and Measures .....	§ 495.20—Objectives and Measures Prior to 2015
§ 495.7*—Stage 3 Objectives and Measures .....	§ 495.22—Objectives and Measures Beginning in 2015
§ 495.8—Demonstration of Meaningful Use .....	§ 495.24—Stage 3 Objectives and Measures
§ 495.10—Participation Requirements .....	§ 495.40—Demonstration of Meaningful Use
	§ 495.60—Participation Requirements

\* Indicates a new section that was proposed in the Stage 3 proposed rule.

In this proposed rule, we refer to § 495.20 for the objectives and measures that apply for years prior to 2015, § 495.22 for the objectives and measures proposed in this rule for 2015 through 2017, and § 495.24 for the objectives and measures proposed in the Stage 3 proposed rule for 2017 and subsequent years. Pending public comment and agency review of these proposals, all changes in Part 495 would be reconciled through the final rule.

(3) EHR Reporting Periods in 2015 Through 2017

In 42 CFR 495.4, we define an EHR reporting period for eligible hospitals and CAHs based on the federal fiscal year (October 1 through September 30). However, the fiscal year EHR reporting period has resulted in varying reporting timelines between provider types and a shortened timeline for system developers to meet hospital and CAH technology needs. In the Stage 3 proposed rule, we outline changes to the EHR reporting period beginning with

the EHR reporting period in 2017 in order to move eligible hospitals and CAHs to EHR reporting periods based on a calendar year. (For further discussion of this proposal and the relationship to program alignment with quality reporting programs, we direct readers to 80 FR 16739.)

In this proposed rule, our intent is to modify the program to remove redundant and duplicative measures; reduce reporting burden for measures that have “topped out” while preserving the program’s foundational goals and the requirement for stringent or robust measurement; and better align the existing program with other CMS quality reporting programs. In order to move these efforts forward and to accommodate the proposed changes beginning in 2015 while still allowing providers time to complete an EHR reporting period after the effective date of a final rule, we are proposing changes to the uniform definition of an “EHR reporting period” in § 495.4 beginning in 2015. We are also proposing similar

changes to the definition of an “EHR reporting period for a payment adjustment year” in § 495.4 beginning in 2015 as discussed in section II.E.1. of this proposed rule. We are proposing changes to the attestation deadlines for purposes of the incentive payments and payment adjustments in section I.A.1.i. of this proposed rule.

(a) Calendar Year Reporting Beginning in 2015

Beginning in 2015, we are proposing to change the definition of “EHR reporting period” at § 495.4 for EPs, eligible hospitals, and CAHs such that the EHR reporting period would begin and end in relation to a calendar year. This change would allow eligible hospitals and CAHs the same amount of time as EPs from the release of a new edition by ONC to the required date for full implementation of the EHR technology certified in accordance with those criteria. In addition, this change would allow providers additional time to accommodate the changes proposed

in this rule for demonstrating meaningful use in 2015. Finally, this change would align EHR reporting periods for the EHR Incentive Program with EHR reporting periods in CMS quality reporting programs, which have similar or related requirements.

In this proposal, all providers (EPs, eligible hospitals, and CAHs) would be required to complete an EHR reporting period within January 1 and December 31 of the calendar year in order to demonstrate meaningful use. In order to accommodate eligible hospitals and CAHs that may have planned their EHR reporting period in 2015 during the federal fiscal year and want to continue to use that time period for reporting, we propose for 2015 only these providers may begin an EHR reporting period as early as October 1 of 2014 and end by December 31 of 2015. Beginning with 2016, the EHR reporting period must be completed within January 1 and December 31 of the calendar year.

We seek comment on this proposal.

(b) 90-Day EHR Reporting Period for All Providers in 2015

In the 2014 CEHRT Flexibility rule (79 FR 52919) we noted that many commenters had requested a 90-day EHR reporting period in 2015. In that rule, we discussed the reasons we did not propose or finalize a change to allow for an EHR reporting period of 90 days in 2015. We stated that we did not finalize changes to the EHR reporting period, because we believed such changes were not necessary to mitigate risk associated with the delay in the availability of EHR technology certified to the 2014 Edition (79 FR 52919). In addition, we stated that such changes would put the forward progress of the program at risk, and potentially cause further delay in implementing effective health IT infrastructure and misalignment with the CMS quality reporting programs (79 FR 52919). We maintain the assertion that the delay in 2014 Edition availability does not necessitate changes to the EHR reporting period 2015; and that the proposed change to the EHR reporting period in 2015 in conjunction with the other modifications to the EHR Incentive Program proposed in this rule does represent a potential risk to the continued development of effective health IT infrastructure.

Subsequent to the publication of the 2014 CEHRT Flexibility final rule, we conducted a full analysis of provider performance on Stage 1 and Stage 2 measures and identified areas where measures were topped out or had become redundant or duplicative based on the widespread adoption of EHR

technology certified to the 2014 Edition and successful implementation of the more complex Stage 2 objective functions. We determined that there was significant potential for a positive impact through reducing the reporting burden, simplifying the program, and realigning the program with long term goals for advanced use of EHRs.

However, in order to implement these changes, a shortened EHR reporting period would be necessary in 2015 to allow both providers and CMS time to make necessary changes to systems. We believe the benefits to be gained from the proposals in this rule outweigh the potential risk of misalignment introduced by the shortened reporting period, if the risk is limited to only be allowable for an EHR reporting period in 2015. Therefore, we are proposing to allow a 90-day EHR reporting period in 2015 only to accommodate implementation of the other changes proposed in this rule.

For 2015 only, we are proposing to change the definition of "EHR reporting period" at § 495.4 for EPs, eligible hospitals, and CAHs such that the EHR reporting period in 2015 would be any continuous 90-day period within the calendar year. We intend this change to allow providers adequate time to plan for any necessary changes to their implementation of meaningful use required in order to accommodate the changes outlined in this proposed rule. We further believe this change is responsive to provider and stakeholder feedback received through correspondence, public forums, and public comment, which requested that we allow a 90-day EHR reporting period in 2015 in order to provide flexibility for continuing difficulties providers are experiencing with successful implementation of EHR technology certified to the 2014 Edition.

We propose that for an EHR reporting period in 2015, eligible professionals may select an EHR reporting period of any continuous 90-day period from January 1, 2015 through December 31, 2015; while eligible hospitals and CAHs may select an EHR reporting period of any continuous 90-day period from October 1, 2014 through December 31, 2015. This is intended to accommodate the shift from reporting based on the federal fiscal year to the calendar year for eligible hospitals and CAHs.

In 2016, for eligible professionals, eligible hospitals, and CAHs that have not successfully demonstrated meaningful use in a prior year and are first-time participants in the program, the EHR reporting period would be any continuous 90-day period between January 1, 2016 and December 31, 2016.

However, for all returning participants that have successfully demonstrated meaningful use in a prior year, the EHR reporting period would be a full calendar year from January 1, 2016 through December 31, 2016. In 2017, the EHR reporting period would be 1 full calendar year for all providers, as proposed in the Stage 3 proposed rule (80 FR 16739).

We invite comment on these proposals.

c. Definition of Meaningful Use

(1) Considerations in Defining Meaningful Use

In order to update the definition of meaningful use of certified EHR technology and make modifications to program requirements to reflect a changing health IT environment, we analyzed the existing objectives and measures of meaningful use to consider if they should be modified for the program beginning in 2015. As outlined in the Stage 3 proposed rule, we looked at the set of potential objectives and measures for inclusion in the program for 2017 and subsequent years, and sought to determine if they were redundant, duplicative, or had reached a performance level considered to be "topped out." We stated that redundant measures include those objectives where there is now a viable health IT-based solution which may replace paper-based actions and therefore a provider should no longer be required to also report on the objective where the measure includes paper-based actions, such as the Stage 2 Clinical Summary objective (77 FR 53998 through 54002). We stated that duplicative measures include those objectives where a measure which is also captured in the course of meeting another objective, such as recording vital signs which is also a required part of the Consolidated Clinical Document Architecture (C-CDA) in the Summary of Care objective (77 FR 54014 through 54016). Finally, we stated that "topped out" measures do not provide a meaningful gain in the effort to improve the use of EHR and health care quality over time by requiring more stringent measures of meaningful use. (For further discussion of this approach to identifying the objectives and measures for Stage 3, we direct readers to (80 FR 16740 through 16744).

In this proposed rule, we have taken a similar approach to review the current objectives and measures of meaningful use with a few additional considerations. These included reviewing the functions and standards included the 2014 Edition when

determining if a measure is redundant or duplicative; and adding a review of isolated performance rates for providers in the first year of meaningful use in addition to reviewing quartile performance rates for topped out measures. (For further discussion on “topped out” measures in the Stage 3 proposed rule, we direct readers to (80 FR 16741 and 16742). For further information on the performance rates for

new participants as well as quartile performance rates for individual measures, we direct readers to the CMS EHR Incentive Program Web site data and reports page.<sup>1</sup>

Our analysis of the objectives and measures of meaningful use Stages 1 and 2 identified a number of measures, which meet these criteria as either redundant, duplicative, or topped out with new participants consistently

performing at a statistically comparable rate to returning participants. Table 3 identifies the current objectives and measures which meet these criteria. We are therefore proposing to no longer require providers to attest to these objectives and measures as currently codified in the CFR under § 495.6 in order to demonstrate meaningful use beginning in 2015.

TABLE 3—OBJECTIVES AND MEASURES IDENTIFIED BY PROVIDER TYPE WHICH ARE REDUNDANT, DUPLICATIVE OR TOPPED OUT

Provider type	Objectives and measures	
Eligible Professional .....	Record Demographics ..... Record Vital Signs ..... Record Smoking Status ..... Clinical Summaries ..... Structured Lab Results ..... Patient List ..... Patient Reminders ..... Summary of Care ..... Measure 1—Any Method Measure 3—Test Electronic Notes ..... Imaging Results ..... Family Health History .....	42 CFR § 495.6 (j)(3)(i) and (ii). 42 CFR § 495.6 (j)(4)(i) and (ii). 42 CFR § 495.6 (j)(5)(i) and (ii). 42 CFR § 495.6 (j)(11)(i) and (ii). 42 CFR § 495.6 (j)(7)(i) and (ii). 42 CFR § 495.6 (j)(8)(i) and (ii). 42 CFR § 495.6 (j)(9)(i) and (ii). 42 CFR § 495.6 (j)(14)(i) and (ii). 42 CFR § 495.6 (j)(9)(i) and (ii). 42 CFR § 495.6 (k)(6)(i) and (ii). 42 CFR § 495.6 (k)(2)(i) and (ii).
Eligible Hospital/CAH .....	Record Demographics ..... Record Vital Signs ..... Record Smoking Status ..... Structured Lab Results ..... Patient List ..... Summary of Care ..... Measure 1—Any Method Measure 3—Test eMAR ..... Advanced Directives ..... Electronic Notes ..... Imaging Results ..... Family Health History ..... Structure Labs to Ambulatory Providers .....	42 CFR § 495.6 (l)(2)(i) and (ii). 42 CFR § 495.6 (l)(3)(i) and (ii). 42 CFR § 495.6 (l)(4)(i) and (ii). 42 CFR § 495.6 (l)(6)(i) and (ii). 42 CFR § 495.6 (l)(7)(i) and (ii). 42 CFR § 495.6 (l)(11)(i) and (ii). 42 CFR § 495.6 (l)(16)(i) and (ii). 42 CFR § 495.6 (m)(1)(i) and (ii). 42 CFR § 495.6 (m)(2)(i) and (ii). 42 CFR § 495.6 (m)(2)(i) and (ii). 42 CFR § 495.6 (m)(3)(i) and (ii). 42 CFR § 495.6 (m)(6)(i) and (ii).

We note that many of these objectives and measures include actions that may be valuable to providers and patients, such as providing a clinical summary to a patient after an office visit. We encourage providers to continue to conduct these activities as best suits their practice and the preferences of their patient population. The removal of these measures is in no way intended as a removal of endorsement of these best practices or to discourage providers from conducting and tracking these activities for their own quality improvement goal. Instead, we would no longer require providers to calculate and attest to the results of these measures in order to demonstrate meaningful use beginning in 2015.

We seek comment on this proposal.

(2) Changes to Definition of Meaningful Use for 2015 Through 2017

In order to implement the proposed changes to no longer require providers to attest to their performance on the identified objectives and measures and to accomplish the related goal of restructuring the program to align with long-term goals, there are a number of changes, which must be made to other requirements of meaningful use. These changes fall into the following two major categories:

- Changes to streamline the structure for 2015 through 2017 to align with the proposed structure for Stage 3 of meaningful use in 2017 and subsequent years; and
- Changes to accommodate this shift to allow providers to successfully demonstrate meaningful use for an EHR reporting period in 2015.

In addition, we have heard from stakeholder associations and provider representatives that providers have faced significant challenges in implementing the patient engagement objectives, which require patient action. These are outlined in the Stage 2 final rule at 77 FR 54046 under the Health Outcomes Policy Priority “Engage patients and families in their care”: The Patient Electronic Access objective Stage 2 measure 2 for more than 5 percent of patients to view, download or transmit their health information; and, the EPs secure electronic messaging objective for more than 5 percent of patients to send a secure message using CEHRT. These concerns have included both the barriers to successful implementation of the required health IT or CEHRT functions necessary to support the measures and especially the

<sup>1</sup> CMS EHR Incentive Programs Web site: “Data and Reports” <https://www.cms.gov/Regulations->

[and-Guidance/Legislation/EHRIncentivePrograms/DataAndReports.html](https://www.cms.gov/Regulations-DataAndReports.html).

secure transmission function; and the challenges to effectively changing patient behavior including patient IT knowledge gaps, lack of widespread access to technologies, and cultural barriers among specific patient populations. We recognize these concerns and are proposing changes to these objectives to allow providers to focus on improvements without jeopardizing their ability to successfully demonstrate meaningful use. These changes are outlined in section II.B.1.c.(2).(c). of this proposed rule.

(a) Structural Requirements of Meaningful Use in 2015 Through 2017

If we remove the requirement to attest to the identified measures and objectives, the distribution requirements between menu and core objectives can no longer be applicable. In addition, stakeholder associations and provider representatives have expressed through correspondence, public forum, and public comment on regulation that the core and menu structure is unnecessarily complex and a source of confusion for providers. Therefore, we propose to eliminate the distinction between core and menu objectives, and further propose that all retained objectives and measures would be required for the program. We note that for Stage 1 providers, this means three current menu objectives would now be required; and for Stage 2 eligible hospitals and CAHs, one current menu objective would now be a required objective. These objectives are as follows:

- Stage 1 Menu: Perform Medication Reconciliation
- Stage 1 Menu: Patient Specific Educational Resources

- Stage 1 Menu: Public Health Reporting Objectives (multiple options)
- Stage 2 Menu Eligible Hospitals and CAHs Only: Electronic Prescribing

We note that the objectives and measures retained in each case for all providers would be the Stage 2 objectives and measures; however, we are proposing to establish alternate exclusions and specifications to mitigate any additional burden on providers for an EHR reporting period in 2015. These related proposals are discussed further in section II.B.3.c.(2).(b). of this proposed rule.

For the public health reporting objectives and measures, we are proposing to consolidate the different Stage 2 core and menu objectives into a single objective with multiple measure options. We proposed this approach for the Stage 3 public health reporting objective as we believe it provides greater flexibility for providers and supports continued efforts to engage providers and public health agencies in the essential data capture and information exchange which supports quality improvement, emergency response, and population health management initiatives. For further discussion of the rationale for the Stage 3 objective, we direct readers to (80 FR 16731 through 16804). We discuss the proposal for the consolidated public health reporting objective for meaningful use in 2015 through 2017 in section II.B.2.j. of this proposed rule. We propose that EPs must select to report on any combination of 2 of the 5 available options outlined in section II.B.2.j. of this proposed rule and eligible hospitals and CAHs must select

to report on any combination of 3 of the 6 available options in section II.B.2.j. of this proposed rule. If a provider is scheduled to attest to Stage 1 of meaningful use in 2015, we propose to allow these EPs in 2015 to select to report on only 1 of the 5 available options outlined in section II.B.2.j. of this proposed rule and these eligible hospitals and CAHs in 2015 to select to report on any combination of 2 of the 6 available options in section II.B.2.j. of this proposed rule.

Therefore, we propose that the structure of meaningful use for 2015 through 2017 would be 9 required objectives for EPs using the Stage 2 objectives for EPs with alternate exclusions and specifications for Stage 1 providers in 2015. We propose that the structure of meaningful use for 2015 through 2017 would be 8 required objectives for eligible hospitals and CAHs using the Stage 2 objectives for eligible hospitals and CAHs with alternate exclusions and specifications for Stage 1 providers and some stage 2 providers in 2015. In addition, EPs would be required to report on a total of 2 measures from the public health reporting objective or meet the criteria for exclusion from up to 5 measures, and eligible hospitals and CAHs would be required to report on a total of 3 measures from the public health reporting objective or meet the criteria for exclusion from up to 6 measures. We reiterate that the alternate exclusions and specifications mentioned are further defined in section II.B.1.c.(2).(b). of this section of this proposed rule, and the objectives and measures are defined in section II.B.2. of this proposed rule.

TABLE 4—CURRENT STAGE STRUCTURE, RETAINED OBJECTIVES, AND PROPOSED STRUCTURE

	Current stage 1 structure	Retained objectives	Proposed structure
EP .....	13 core objectives ..... 5 of 9 menu objectives including 1 public health objective.	6 core objectives ..... 3 menu objectives .....	9 core objectives. 1 public health objective (2 measure options).
EH/CAH .....	11 core objectives ..... 5 of 10 menu objectives including 1 public health objective.	5 core objectives ..... 3 menu objectives .....	8 core objectives. 1 public health objective (3 measure options).
EP .....	17 core objectives including public health objectives. 3 of 6 menu objectives .....	9 core objectives ..... 0 menu objectives .....	9 core objectives. 1 public health objective (2 measure options).
EH/CAH .....	16 core objectives including public health objectives. 3 of 6 menu objectives .....	7 core objectives ..... 1 menu objective ..... 3 public health objectives .....	8 core objectives. 1 public health objective (3 measure options).

(b) Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

We are proposing several alternate exclusions and specifications for providers scheduled to demonstrate Stage 1 of meaningful use in 2015, which would allow these providers to continue to demonstrate meaningful use despite the proposals to use only the Stage 2 objectives and measures identified for meaningful use in 2015 through 2017. These provisions fall into the following two major categories:

- Maintaining the specifications for objectives and measures which have a lower threshold or other measure difference between Stage 1 and Stage 2.
- Establishing an exclusion for Stage 2 measures which do not have an equivalent Stage 1 measure associated with any Stage 1 objective or where the provider did not plan to attest to the menu objective which would now be otherwise required.

For the first category, we propose that providers who are scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may attest to meaningful use using the specifications established for the Stage 1 objectives and measures defined at 42 CFR 495.6 for each retained objective or measure where there is a difference in specifications between Stages 1 and 2. For example, in Stage 1 the electronic prescribing objective for EPs requires that “More than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using certified EHR technology” (75 FR 44338). While the Stage 2 electronic prescribing objectives requires that “More than 50 percent of all permissible prescriptions written by the EP are compared to at least one drug formulary and transmitted electronically using Certified EHR Technology” (77 FR 53990). Therefore, we are proposing that for an EHR reporting period in 2015, providers scheduled to demonstrate Stage 1 of meaningful use may attest based on the specifications associated with the Stage 1 measure. We note that for an EHR reporting period beginning in 2016, all providers must attest to the specifications including the measure thresholds associated with the Stage 2 measure. For an EHR reporting period in 2016, all providers, including those who would otherwise be scheduled for Stage 1 in 2016, would be required to meet the Stage 2 specifications with no alternate exclusions.

For the second category, we note that some objectives, such as the Patient Electronic Access objective, have the same requirements for one measure

(more than 50 percent of patients are provided access to view, download, and transmit their health information) for both Stage 1 and Stage 2, but also have an additional measure for Stage 2 (more than 5 percent of patients view, download, or transmit their health information). Other objectives, such as the Summary of Care objective, are designated as a menu objective for Stage 1 but are a core objective for Stage 2 and also may have additional measure requirements in Stage 2 that are not applicable for Stage 1 (77 FR 54013 through 54017). Finally, some objectives consist of requirements from multiple objectives from Stage 1 that were consolidated into a single objective for Stage 2 such as drug-drug and drug-allergy decision support interventions. For these consolidated objectives, all providers would be required to attest to the Stage 2 objective and measures. For objectives where there is a measure that is not equivalent between Stage 1 and Stage 2 or where the objective moves from menu to core between Stage 1 and Stage 2, we propose to include an exclusion for providers who were scheduled to demonstrate Stage 1 of meaningful use for the EHR reporting period in 2015. For example, Stage 1 providers may exclude from the requirement to send an electronic summary of care record for more than 10 percent of transitions of care as required in the Stage 2 Summary of Care objective measure 2 (75 FR 44364).

These alternate exclusions and specifications for certain objectives and measures of meaningful use for an EHR reporting period in 2015 are defined for each objective and measure in the description of each objective and measure included in section II.B.2. of this proposed rule.

We invite public comment on this proposal.

(c) Changes to Patient Engagement Requirements for 2015 Through 2017

Through correspondence, public forums, and public comment on our proposed regulations, stakeholders have expressed concern that certain factors like demographics, low utilization of internet capable technology among their patient population, or other external barriers which are beyond their control are impacting providers’ ability to meet certain measures which require providers to track patient action. In addition, providers and system developers have noted through similar means an overall immaturity in the market with health IT equipped with the functions required to support the transmission of health information by a patient or the delivery of a secure

message from a patient to a third party. Providers have indicated that while they support the goal of improved patient engagement, these issues are impacting their ability to meet the measure requirements. We note that data obtained from provider attestations shows performance on these measures is concentrated around the median rate (around 20 percent<sup>2</sup>) which indicates the potential for ongoing performance that exceeds the existing threshold. However, there is a wide variance at the high and low ends, which indicates that there may be external factors impacting performance. Therefore, we are seeking to mitigate these concerns by making changes to the related measures. We believe these changes would allow providers the necessary time to work toward patient education about the availability of these resources as well as allowing the industry as a whole time to develop a stronger infrastructure supporting patient engagement.

There are two objectives for EPs and one objective for eligible hospitals and CAHs, which specifically contain measures requiring a provider to track patient action. We propose to modify these measures as follows:

- Patient Action To View, Download, or Transmit Health Information

++ Remove the 5 percent threshold for Measure 2 from the EP Stage 2 Patient Electronic Access (VDT) objective. Instead require that at least 1 patient seen by the provider during the EHR reporting period views, downloads, or transmits his or her health information to a third party. This would demonstrate the capability is fully enabled and workflows to support the action have been established by the provider.

++ Remove the 5 percent threshold for Measure 2 from the eligible hospital and CAH Stage 2 Patient Electronic Access (VDT) objective. Instead require that at least 1 patient discharged from the hospital during the EHR reporting period views, downloads, or transmits his or her health information to a third party. This would demonstrate the capability is fully enabled and workflows to support the action have been established by the provider.

We seek comment on potential alternate proposals for this proposed change to the threshold for Measure 2 of the Stage 2 Patient Electronic Access objective. For example, we seek

<sup>2</sup> CMS EHR Incentive Programs Web site: “Data and Reports: Performance data through February 2015” [https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/Downloads/AttestationPerformanceData\\_Feb2015.pdf](https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/Downloads/AttestationPerformanceData_Feb2015.pdf)

comment on potential alternates such as a percentage threshold less than 5 percent, or a numerator greater than 10 patients, or another similar numerical alternative. We further seek comment on suggestions for other potential alternatives which would accomplish the goals here stated of reducing the burden on providers to account for patient actions while still continuing to encourage IT supported patient engagement.

- Secure Electronic Messaging Using CEHRT

++ Convert the measure for the Stage 2 EP Secure Electronic Messaging objective from the 5 percent threshold to a yes/no attestation to the statement: “The capability for patients to send and receive a secure electronic message was enabled during the EHR reporting period”.

These changes are reflected in the discussion of these objectives in section II.B.2. of this proposed rule. We note that these changes are intended to allow providers to work toward meaningful patient engagement through health IT using the methods best suited to their practice and their patient population. We further note that the Stage 3 proposed rule includes an objective exclusively focused on patient engagement with an expanded set of measures and increased thresholds which providers would be required to meet beginning in 2018 (and optionally in 2017). (For further information on that proposed objective, we direct readers to 80 FR 16755 through 16758.)

We invite public comment on this proposal.

## 2. Meaningful Use Objectives and Measures for 2015, 2016, and 2017

We propose the following objectives and measures for EPs, eligible hospitals, and CAHs to successfully demonstrate meaningful use for an EHR reporting period in 2015 through 2017. We note that there are 9 proposed objectives for EPs plus one consolidated public health reporting objective, and 8 proposed objectives for eligible hospitals and CAHs plus one consolidated public health reporting objective which would be required with alternate exclusions for certain providers in 2015 and which would be mandatory for all providers for an EHR reporting period beginning in 2016.

### a. Protect Electronic Health Information

We are proposing to retain with certain modifications the Stage 2 objective and measure for Protect Electronic Health Information for meaningful use in 2015 through 2017.

(For further information and discussion of the existing Stage 2 Protect Electronic Health Information objective and measure, please refer to 77 FR 54002 and 54003).

*Proposed Objective:* Protect electronic health information created or maintained by the CEHRT through the implementation of appropriate technical capabilities.

In the Stage 2 final rule (77 FR 54002 through 54003), we discussed the benefits of safeguarding electronic protected health information (ePHI), as doing so is essential to all other aspects of meaningful use. Unintended and unlawful disclosures (or both) of ePHI could diminish consumers' confidence in EHRs and health information exchange. Ensuring that ePHI is adequately protected and secured would assist in addressing the unique risks and challenges that may be presented by electronic health records.

*Proposed Measure:* Conduct or review a security risk analysis in accordance with the requirements in 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of data stored in Certified EHR Technology in accordance with requirements in 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the EP, eligible hospital, or CAHs risk management process.

A review must be conducted for each EHR reporting period and any security updates and deficiencies that are identified should be included in the provider's risk management process and implemented or corrected as dictated by that process. We refer providers to the requirements in 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of data at rest in accordance with requirements in 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), of the HIPAA Security Rule for compliance. The HHS Office for Civil Rights (OCR) has issued guidance on conducting a security risk analysis in accordance with the HIPAA Security Rule (<http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/rafinalguidancepdf.pdf>). Other free tools and resources available to assist providers include a Security Risk Assessment (SRA) Tool developed by ONC and OCR <http://www.healthit.gov/providers-professionals/security-risk-assessment-tool>.

The scope of the security risk analysis for purposes of this meaningful use measure applies to ePHI created or maintained by CEHRT. However, we note that other ePHI may be subject to the HIPAA Rules and we refer providers

to those rules for additional security requirements.

We invite public comment on this proposal.

### b. Clinical Decision Support

We are proposing to retain the Stage 2 objective and measures for Clinical Decision Support (CDS) for meaningful use in 2015 through 2017. This is a consolidated objective, which incorporates the Stage 1 objective to implement drug-drug and drug-allergy interaction checks. (For further information and discussion of the existing consolidated Stage 2 CDS objective and measures, please refer to 77 FR 53995 through 53998.)

*Proposed Objective:* Use clinical decision support to improve performance on high-priority health conditions.

We propose to retain the Stage 2 clinical decision support (CDS) objective such that CDS would be used to improve performance on high-priority health conditions. It would be left to the provider's clinical discretion to select the most appropriate CDS interventions for his or her patient population. CDS interventions selected should be related to four or more of the clinical quality measures (CQMs) on which providers would be expected to report. The goal of the proposed CDS objective is for providers to implement improvements in clinical performance for high-priority health conditions that would result in improved patient outcomes. We propose to maintain that providers must implement the CDS intervention at a relevant point in patient care when the intervention can influence clinical decision making before an action is taken on behalf of the patient.

*Proposed Measure:* In order for EPs, eligible hospitals, and CAHs to meet the objective they must satisfy both of the following measures:

- Measure 1: Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in patient care for the entire EHR reporting period. Absent four clinical quality measures related to an EP, eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions.

- Measure 2: The EP, eligible hospital, or CAH has enabled and implemented the functionality for drug-drug and drug allergy interaction checks for the entire EHR reporting period.

For the first measure, it is suggested that one of the five clinical decision support interventions be related to improving healthcare efficiency.



Exclusion: For the second measure, any EP who writes fewer than 100 medication orders during the EHR reporting period.

#### Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

We propose that providers who are scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may attest to meaningful use using the specifications established for the Stage 1 objectives and measures as they are currently defined at 42 CFR 495.6 for each retained objective or measure where there is a difference in specifications between Stages 1 and 2. We note that the Stage 1 Clinical Decision Support objective has a different requirement than the Stage 2 Clinical Decision Support objective measure 1 defined previously. For Stage 1, the objective reads "Implement one clinical decision support rule relevant to specialty or high clinical priority along with the ability to track compliance with that rule" for EPs and "Implement one clinical decision support rule related to a high priority hospital condition along with the ability to track compliance with that rule" for eligible hospitals and CAHs (42 CFR 495.6). Therefore, for an EHR reporting period in 2015 only, we propose that an EP, eligible hospital or CAH who is scheduled to participate in Stage 1 in 2015 may satisfy the following Stage 1 measure instead of the Stage 2 measure 1 stated previously:

- *Alternate Objective and Measure (For Measure 1):* Objective: Implement one clinical decision support rule relevant to specialty or high clinical priority, or high priority hospital condition, along with the ability to track compliance with that rule. Measure: Implement one clinical decision support rule.

We propose that for an EHR reporting period in 2015, an EP, eligible hospital or CAH who is scheduled to participate in Stage 1 in 2015 must also satisfy the Stage 2 measure 2 previously stated because it is the same as an existing Stage 1 measure (77 FR 53998). There are no alternate exclusions for this objective.

We invite public comment on this proposal.

#### c. Computerized Provider Order Entry (CPOE)

We are proposing to retain the Stage 2 objective and measures for Computerized Provider Order Entry (CPOE) for meaningful use in 2015 through 2017, with the modifications proposed here as alternate exclusions

and specifications for Stage 1 providers for an EHR reporting period in 2015. (For further information and discussion of the existing Stage 2 CPOE objective and measures, please refer to 77 FR 53985 through 53987.)

*Proposed Objective:* Use computerized provider order entry for medication, laboratory, and radiology orders directly entered by any licensed healthcare professional who can enter orders into the medical record per state, local, and professional guidelines.

We define CPOE as entailing the provider's use of computer assistance to directly enter medical orders (for example, medications, consultations with other providers, laboratory services, imaging studies, and other auxiliary services) from a computer or mobile device. The order is then documented or captured in a digital, structured, and computable format for use in improving safety and efficiency of the ordering process. CPOE improves quality and safety by allowing clinical decision support at the point of the order and therefore influences the initial order decision. CPOE improves safety and efficiency by automating aspects of the ordering process to reduce the possibility of communication and other errors.

*Proposed Measures:* In Stage 2 of meaningful use, we adopted three measures for this objective:

- *Measure 1:* More than 60 percent of medication orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

- *Measure 2:* More than 30 percent of laboratory orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

- *Measure 3:* More than 30 percent of radiology orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry. We propose to retain the three measures of this current Stage 2 objective to calculate a percentage threshold for all three types of orders: Medication, laboratory, and radiology. We propose to retain exclusionary criteria for those providers who so infrequently issue an order type that it is not practical to implement CPOE for that order type. To calculate the

percentage, CMS and ONC have worked together to define the following for this objective:

- *Measure 1:*

Denominator: Number of medication orders created by the EP or authorized providers in the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period.

Numerator: The number of orders in the denominator recorded using CPOE.

Threshold: The resulting percentage must be more than 60 percent in order for an EP, eligible hospital or CAH to meet this measure.

Exclusion: Any EP who writes fewer than 100 medication orders during the EHR reporting period.

- *Measure 2:*

Denominator: Number of laboratory orders created by the EP or authorized providers in the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period.

Numerator: The number of orders in the denominator recorded using CPOE.

Threshold: The resulting percentage must be more than 30 percent in order for an EP, eligible hospital or CAH to meet this measure.

Exclusion: Any EP who writes fewer than 100 laboratory orders during the EHR reporting period.

- *Measure 3:*

Denominator: Number of radiology orders created by the EP or authorized providers in the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period.

Numerator: The number of orders in the denominator recorded using CPOE.

Threshold: The resulting percentage must be more than 30 percent in order for an EP, eligible hospital or CAH to meet this measure.

Exclusion: Any EP who writes fewer than 100 radiology orders during the EHR reporting period.

An EP through a combination of meeting the thresholds and exclusions (or both) must satisfy all three measures for this objective. A hospital must meet the thresholds for all three measures.

#### Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

We propose that providers who are scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may attest to meaningful use using the specifications and thresholds established for the Stage 1 objectives and measures as they are currently defined at 42 CFR 495.6 for each retained objective or measure

where there is a difference in specifications between Stages 1 and 2.

In the Stage 1 final rule, the CPOE measure requires that “More than 30 percent of all unique patients with at least one medication in their medication list seen by the EP or admitted to the eligible hospital’s or CAH’s inpatient or emergency department (POS 21 or 23) during the EHR reporting period have at least one medication order entered using CPOE” (75 FR 44334). In addition, in the Stage 2 final rule, we established an optional alternative to this measure for Stage 1 of “More than 30 percent of medication orders created by the EP or authorized providers of the eligible hospital’s or CAH’s inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using CPOE.” (77 FR 53988). Therefore, we are proposing that for an EHR reporting period in 2015, providers scheduled to demonstrate Stage 1 of meaningful use may attest to the specification associated with the Stage 1 measure.

We further propose that providers scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may claim an exclusion for any retained Stage 2 measure where there is not an equivalent Stage 1 measure currently defined at 42 CFR 495.6. The Stage 2 CPOE objective includes measures for laboratory and radiology orders, whereas the Stage 1 CPOE objective does not include these measures. Thus, we propose that for an EHR reporting period in 2015 only, providers scheduled to demonstrate Stage 1 of meaningful use in 2015 may exclude the Stage 2 CPOE measures for laboratory and radiology orders (measures 2 and 3 listed previously). We propose that for an EHR reporting period beginning in 2016, all providers must attest to the Stage 2 objective and measures, and meet the thresholds associated with all three of the Stage 2 measures discussed previously in order to successfully demonstrate meaningful use.

*Alternate Measure 1:* More than 30 percent of all unique patients with at least one medication in their medication list seen by the EP or admitted to the eligible hospital’s or CAH’s inpatient or emergency department (POS 21 or 23) during the EHR reporting period have at least one medication order entered using CPOE; or more than 30 percent of medication orders created by the EP during the EHR reporting period, or created by the authorized providers of the eligible hospital or CAH for patients admitted to their inpatient or emergency departments (POS 21 or 23) during the EHR reporting period, are recorded

using computerized provider order entry.

*Alternate Exclusion for Measure 2:* Provider may claim an exclusion for measure 2 (laboratory orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.

*Alternate Exclusion for Measure 3:* Provider may claim an exclusion for measure 3 (radiology orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.

We invite public comment on this proposal.

#### d. Electronic Prescribing

We are proposing to retain the Stage 2 objective and measure for Electronic Prescribing (eRx) for EPs as well as for eligible hospitals and CAHs for meaningful use in 2015 through 2017. We note that the Stage 2 objective for eligible hospitals and CAHs is currently a menu objective, but we propose it would be required for 2015 through 2017, with an exception for Stage 1 eligible hospitals and CAHs for an EHR reporting period in 2015. (For further information and discussion of the existing Stage 2 eRx objectives and measures, please refer to 77 FR 53989 through 53990 for EPs and 77 FR 54035 through 54036 for eligible hospitals and CAHs.)

##### (1) EP Proposed Objective

*Proposed EP Objective:* Generate and transmit permissible prescriptions electronically (eRx).

The use of electronic prescribing has several advantages over having the patient carry the prescription to the pharmacy or directly faxing a handwritten or typewritten prescription to the pharmacy. When the EP generates the prescription electronically, CEHRT can recognize the information and can provide decision support to promote safety and quality in the form of adverse interactions and other treatment possibilities. The CEHRT can also provide decision support that promotes the efficiency of the health care system by alerting the EP to generic alternatives or to alternatives favored by the patient’s insurance plan that are equally effective. Transmitting the prescription electronically promotes efficiency and safety through reduced communication errors. It also allows the pharmacy or a third party to automatically compare the medication order to others they have received for the patient. This comparison allows for many of the same decision support functions enabled at the generation of the prescription, but bases them on potentially greater information.

*Proposed EP Measure:* More than 50 percent of all permissible prescriptions, or all prescriptions, written by the EP are queried for a drug formulary and transmitted electronically using Certified EHR Technology.

We propose to retain the exclusion introduced for Stage 2 that would allow EPs to exclude this objective if no pharmacies within 10 miles of an EP’s practice location at the start of his/her EHR reporting period accept electronic prescriptions. This is 10 miles in any straight line from the practice location independent of the travel route from the practice location to the pharmacy. We stated that EPs practicing at multiple locations would be eligible for the exclusion if any of their practice locations that are equipped with CEHRT meet this criteria. An EP would not be eligible for this exclusion if he or she is part of an organization that owns or operates its own pharmacy within the 10 mile radius regardless of whether that pharmacy can accept electronic prescriptions from EPs outside of the organization.

We also propose to retain the exclusion for EPs who write fewer than 100 permissible prescriptions during the EHR reporting period.

To calculate the percentage, CMS and ONC have worked together to define the following for this objective:

Denominator: Number of prescriptions written for drugs requiring a prescription in order to be dispensed other than controlled substances during the EHR reporting period; or Number of prescriptions written for drugs requiring a prescription in order to be dispensed during the EHR reporting period.

Numerator: The number of prescriptions in the denominator generated, queried for a drug formulary and transmitted electronically using CEHRT.

Threshold: The resulting percentage must be more than 50 percent in order for an EP to meet this measure.

Exclusions: Any EP who:

- Writes fewer than 100 permissible prescriptions during the EHR reporting period; or
- Does not have a pharmacy within his or her organization and there are no pharmacies that accept electronic prescriptions within 10 miles of the EP’s practice location at the start of his or her EHR reporting period.

Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

We propose that providers who are scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may attest to meaningful

use using the specifications established for the Stage 1 objectives and measures as they are currently defined at 42 CFR 495.6 for each retained objective or measure where there is a difference in specifications between Stages 1 and 2.

In Stage 1, the electronic prescribing measure for EPs requires that “More than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using certified EHR technology” (75 FR 44338).

Therefore, we are proposing that for an EHR reporting period in 2015, EPs scheduled to demonstrate Stage 1 of meaningful use may attest to the specifications and threshold associated with the Stage 1 measure. We note that for an EHR reporting period beginning in 2016, all EPs must meet the specifications and threshold for the retained Stage 2 measure in order to successfully demonstrate meaningful use.

*Alternate EP Measure:* More than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using Certified EHR Technology.

There are no alternate exclusions for this EP objective.

## (2) Eligible Hospital/CAH Proposed Objective

*Proposed Eligible Hospital/CAH Objective:* Generate and transmit permissible discharge prescriptions electronically (eRx).

In the Stage 2 final rule at 77 FR 54035, we describe that the use of electronic prescribing has several advantages over having the patient carry the prescription to the pharmacy or directly faxing a handwritten or typewritten prescription to the pharmacy. When the hospital generates the prescription electronically, CEHRT can provide support for a number of purposes such as promoting safety and quality in the form of decision support around adverse interactions and other treatment possibilities; increasing the efficiency of the health care system by alerting the EP to generic alternatives or to alternatives favored by the patient’s insurance plan that are equally effective; and reducing communication errors by allowing the pharmacy or a third party to automatically compare the medication order to others they have received for the patient. This allows for many of the same decision support functions enabled at the generation of the prescription, but with access to potentially greater information. For this reason, we continue to support the use of electronic prescribing for discharge prescriptions in a hospital setting.

*Proposed Eligible Hospital/CAH Measure:* More than 10 percent of hospital discharge medication orders for permissible prescriptions (for new, changed and refilled prescriptions) are queried for a drug formulary and transmitted electronically using Certified EHR Technology.

We propose to retain the exclusion that would allow a hospital to exclude this objective if there is no internal pharmacy that can accept electronic prescriptions and is not located within 10 miles of any pharmacy that accepts electronic prescriptions at the start of their EHR reporting period.

To calculate the percentage, CMS and ONC have worked together to define the following for this objective:

*Denominator:* Number of new, changed, or refill prescriptions written for drugs requiring a prescription in order to be dispensed other than controlled substances for patients discharged during the EHR reporting period.

*Numerator:* The number of prescriptions in the denominator generated, queried for a drug formulary and transmitted electronically.

*Threshold:* The resulting percentage must be more than 10 percent in order for an eligible hospital or CAH to meet this measure.

*Exclusion:* Any eligible hospital or CAH that does not have an internal pharmacy that can accept electronic prescriptions and is not located within 10 miles of any pharmacy that accepts electronic prescriptions at the start of their EHR reporting period.

*Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015*

We propose that eligible hospitals and CAHs scheduled to report on Stage 1 objectives for an EHR reporting period in 2015 may claim an exclusion for the Stage 2 eRx measure as there is not an equivalent Stage 1 measure defined at 42 CFR 495.6. We further propose that eligible hospitals and CAHs scheduled to report Stage 2 objectives for an EHR reporting period in 2015 who were not intending to attest to the eRx menu objective and measure may also claim an exclusion. We note that for an EHR reporting period beginning in 2016, all providers must attest to the objective and measure and meet the specifications and threshold for the Stage 2 measure in order to successfully demonstrate meaningful use.

*Alternate Eligible Hospital/CAH Exclusion:* Provider may claim an exclusion for the eRx objective and measure if for an EHR reporting period in 2015 they were either scheduled to

demonstrate Stage 1 which does not have an equivalent measure, or if they are scheduled to demonstrate Stage 2 but did not intend to select the Stage 2 eRx menu objective for an EHR reporting period in 2015.

There are no alternate specifications for this eligible hospital and CAH objective.

We invite public comment on this proposal.

## e. Summary of Care

We are proposing to retain only the second measure of the existing Stage 2 objective for Summary of Care for meaningful use in 2015 through 2017 with the modifications discussed in this proposed rule. (For further information and discussion of the existing Stage 2 Summary of Care objective and measures, we refer readers to the discussion in the Stage 2 final rule at 77 FR 54013 through 54021.)

*Proposed Objective:* The EP, eligible hospital or CAH who transitions their patient to another setting of care or provider of care or refers their patient to another provider of care provides a summary care record for each transition of care or referral.

In the Stage 2 final rule, we outlined the following benefits of this objective. By assuring lines of communication between providers caring for the same patient, all of the providers of care can operate with better information and more effectively coordinate the care they provide. Electronic health records, especially when linked directly or through health information exchanges, reduce the burden of such communication. The purpose of this objective is to ensure a summary of care record is provided to the receiving provider when a patient is transitioning to a new provider or has been referred to another provider while remaining in the care of the referring provider.

*Proposed Measure:* The EP, eligible hospital or CAH that transitions or refers their patient to another setting of care or provider of care that—(1) uses CEHRT to create a summary of care record; and (2) electronically transmits such summary to a receiving provider for more than 10 percent of transitions of care and referrals.

We are proposing to retain an updated version of the second measure of the Stage 2 Summary of Care objective with modifications based on guidance provided through CMS responses to frequently asked questions we have received since the publication of the Stage 2 final rule. We are proposing to retain this measure for electronic transmittal because we believe that the electronic exchange of health

information between providers would encourage the sharing of the patient care summary from one provider to another and the communication of important information that the patient may not have been able to provide, which can significantly improve the quality and safety of referral care and reduce unnecessary and redundant testing. Use of common standards in creating the summary of care record can significantly reduce the cost and complexity of interfaces between different systems and promote widespread exchange and interoperability.

The proposed updates to this measure reflect stakeholder input regarding operational challenges in meeting this measure, and seek to increase flexibility for providers while continuing to drive interoperability across care settings and encouraging further innovation. Currently, the measure specifies the manner in which the summary of care must be electronically transmitted. Providers must either—(1) electronically transmit the summary of care using CEHRT to a recipient; or (2) where the recipient receives the summary of care record via exchange facilitated by an organization that is a NwHIN Exchange participant or in a manner that is consistent with the governance mechanism ONC establishes for the nationwide health information network. We propose to update this measure to state simply that a provider would be required to create the summary of care record using CEHRT and transmit the summary of care record electronically.

To calculate the percentage of the measure, CMS and ONC have worked together to define the following for this objective:

**Denominator:** Number of transitions of care and referrals during the EHR reporting period for which the EP or eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) was the transferring or referring provider.

**Numerator:** The number of transitions of care and referrals in the denominator where a summary of care record was created using Certified EHR Technology and is exchanged electronically.

**Threshold:** The percentage must be more than 10 percent in order for an EP, eligible hospital or CAH to meet this measure.

**Exclusion:** Any EP who transfers a patient to another setting or refers a patient to another provider less than 100 times during the EHR reporting period.

Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

We propose that providers scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may claim an exclusion for Measure 2 of the Stage 2 Summary of Care core objective, as there is not an equivalent Stage 1 measure. The measure related to the electronic transmission of a summary of care record in the Summary of Care core objective requires an electronic summary of care document to be sent for transitions and referrals and is only applicable for Stage 2. There is not an equivalent objective and measure in Stage 1. We note that for an EHR reporting period beginning in 2016, all providers must attest to the complete objective and meet the specifications and threshold for the both Stage 2 measures in order to successfully demonstrate meaningful use.

**Alternate Exclusion:** Provider may claim an exclusion for the measure of the Stage 2 Summary of Care objective which requires the electronic transmission of a summary of care document if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.

There are no alternate specifications for this objective.

We invite public comment on this proposal.

#### f. Patient Specific Education

We are proposing to retain the Stage 2 objective and measure for Patient Specific Education for meaningful use for 2015 through 2017. (For further information and discussion of the existing Stage 2 Patient Specific Education objective and measure, please refer to 77 FR 54011 and 54012.)

**Proposed Objective:** Use clinically relevant information from Certified EHR Technology to identify patient-specific education resources and provide those resources to the patient.

In the Stage 2 proposed rule, we explained that providing clinically relevant education resources to patients is a priority for the meaningful use of CEHRT. While CEHRT must be used to identify patient-specific education resources, these resources or materials do not have to be stored within or generated by the CEHRT. We are aware that there are many electronic resources available for patient education materials, such as through the National Library of Medicine's MedlinePlus (<http://www.nlm.nih.gov/medlineplus>, that can be queried via CEHRT (that is, specific patient characteristics are

linked to specific consumer health content). The EP or hospital should utilize CEHRT in a manner where the technology suggests patient-specific educational resources based on the information stored in the CEHRT. Certified EHR technology is certified to use the patient's problem list, medication list, or laboratory test results to identify the patient-specific educational resources. The EP or hospital may use these elements or additional elements within CEHRT to identify educational resources specific to patients' needs. The EP or hospital can then provide these educational resources to patients in a useful format for the patient (such as, electronic copy, printed copy, electronic link to source materials, through a patient portal or PHR).

**Proposed EP Measure:** Patient-specific education resources identified by Certified EHR Technology are provided to patients for more than 10 percent of all unique patients with office visits seen by the EP during the EHR reporting period.

We propose to retain the exclusion for EPs who have no office visits in order to accommodate such EPs.

The resources would have to be those identified by CEHRT. If resources are not identified by CEHRT and provided to the patient then it would not count in the numerator. We do not intend through this requirement to limit the education resources provided to patient to only those identified by CEHRT. The education resources would need to be provided prior to the calculation and subsequent attestation to meaningful use.

To calculate the percentage for EPs, CMS and ONC have worked together to define the following for this objective:

**Denominator:** Number of unique patients with office visits seen by the EP during the EHR reporting period.

**Numerator:** Number of patients in the denominator who were provided patient-specific education resources identified by the Certified EHR Technology.

**Threshold:** The resulting percentage must be more than 10 percent in order for an EP to meet this measure.

**Exclusion:** Any EP who has no office visits during the EHR reporting period.

**Proposed Eligible Hospital/CAH Measure:** More than 10 percent of all unique patients admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) are provided patient specific education resources identified by Certified EHR Technology.

To calculate the percentage for hospitals, CMS and ONC have worked

together to define the following for this objective:

**Denominator:** Number of unique patients admitted to the eligible hospital or CAH inpatient or emergency departments (POS 21 or 23) during the EHR reporting period.

**Numerator:** Number of patients in the denominator who are subsequently provided patient-specific education resources identified by CEHRT.

**Threshold:** The resulting percentage must be more than 10 percent in order for an eligible hospital or CAH to meet this measure.

#### Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

While the Patient Specific Education objective is designated as an optional menu objective in Stage 1 of meaningful use, the same objective is a mandatory core objective in Stage 2 of meaningful use. We expect that not all Stage 1 scheduled providers were planning to choose this menu objective when attesting in an EHR reporting period in 2015. Therefore, we propose that any provider scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 who was not intending to attest to the Stage 1 Patient Specific Education menu objective, may claim an exclusion to the measure. We note that for an EHR reporting period beginning in 2016, all providers must attest to the objective and measure and meet the Stage 2 specifications and threshold in order to successfully demonstrate meaningful use.

**Alternate Exclusion:** Provider may claim an exclusion for the measure of the Stage 2 Patient Specific Education objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Patient Specific Education menu objective.

There are no alternate specifications for this objective.

We invite public comment on this proposal.

#### g. Medication Reconciliation

We are proposing to retain the Stage 2 objective and measure for Medication Reconciliation for meaningful use in 2015 through 2017. (For further information and discussion of the existing Stage 2 Medication Reconciliation objective and measure, please refer to 77 FR 54012 and 54013.)

**Proposed Objective:** The EP, eligible hospital or CAH who receives a patient from another setting of care or provider of care or believes an encounter is relevant should perform medication reconciliation.

Medication reconciliation allows providers to confirm that the information they have on the patient's medication is accurate. This not only assists the provider in his or her direct patient care, it also improves the accuracy of information they provide to others through health information exchange.

In the Stage 2 proposed rule, we noted that that when conducting medication reconciliation during a transition of care, the EP, eligible hospital or CAH that receives the patient into their care should conduct the medication reconciliation. We reiterated that the measure of this objective does not dictate what information must be included in medication reconciliation. Information included in the process of medication reconciliation is appropriately determined by the provider and patient. We defined medication reconciliation as the process of identifying the most accurate list of all medications that the patient is taking, including name, dosage, frequency, and route, by comparing the medical record to an external list of medications obtained from a patient, hospital or other provider.

**Proposed Measure:** The EP, eligible hospital or CAH performs medication reconciliation for more than 50 percent of transitions of care in which the patient is transitioned into the care of the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23).

For the purposes of this measure, we propose to maintain the definition of a transition of care as the movement of a patient from one setting of care (for example, a hospital, ambulatory primary care practice, ambulatory specialty care practice, long-term care, home health, rehabilitation facility) to another and referrals are cases where one provider refers a patient to another, but the referring provider maintains his or her care of the patient as well.

To calculate the percentage, CMS and ONC have worked together to define the following for this objective:

**Denominator:** Number of transitions of care during the EHR reporting period for which the EP or eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) was the receiving party of the transition.

**Numerator:** The number of transitions of care in the denominator where medication reconciliation was performed.

**Threshold:** The resulting percentage must be more than 50 percent in order for an EP, eligible hospital or CAH to meet this measure.

**Exclusion:** Any EP who was not the recipient of any transitions of care during the EHR reporting period.

#### Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

While the Medication Reconciliation objective is designated as an optional menu objective in Stage 1 of meaningful use, the same objective is a mandatory core objective in Stage 2 of meaningful use. We expect that not all Stage 1 scheduled providers were planning to choose this menu objective when attesting in an EHR reporting period in 2015. Therefore, we propose that any provider scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 who was not intending to attest to the Stage 1 Medication Reconciliation menu objective, may claim an exclusion to the measure. We note that for an EHR reporting period beginning in 2016, all providers must attest to the objective and measure and meet the Stage 2 specifications and threshold in order to successfully demonstrate meaningful use.

**Alternate Exclusion:** Provider may claim an exclusion for the measure of the Stage 2 Medication Reconciliation objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Medication Reconciliation menu objective.

There are no alternate specifications for this objective.

We invite public comment on this proposal.

#### h. Patient Electronic Access (VDT)

We are proposing to retain the Stage 2 objective for Patient Electronic Access for meaningful use in 2015 through 2017. We are proposing to retain the first measure of the Stage 2 objective without modification. We are proposing to retain the second measure for the Stage 2 objective with modification to the measure threshold. (For further information and discussion of the existing Stage 2 Patient Electronic Access objective and measures, please refer to 77 FR 54007 through 54011.)

**Proposed EP Objective:** Provide patients the ability to view online, download, and transmit their health information within 4 business days of the information being available to the EP.

**Proposed Eligible Hospital/CAH Objective:** Provide patients the ability to view online, download, and transmit information about a hospital admission.

In the Stage 2 proposed rule, we stated that the goal of this objective was

to allow patients easy access to their health information as soon as possible, so that they can make informed decisions regarding their care or share their most recent clinical information with other health care providers and personal caregivers as they see fit.

The ability to have this information online means it is always retrievable by the patient, while the download function ensures that the patient can take the information with them when secure internet access is not available. The patient must be able to access this information on demand, such as through a patient portal or personal health record (PHR). We note that while a covered entity may be able to fully satisfy a patient's request for information through VDT, the measure does not replace the covered entity's responsibilities to meet the broader requirements under HIPAA to provide an individual, upon request, with access to PHI in a designated record set. Providers should also be aware that while meaningful use is limited to the capabilities of CEHRT to provide online access there may be patients who cannot access their EHRs electronically because of their disability. Additionally, other health information may not be accessible. Finally, we noted that providers who are covered by civil rights laws must provide individuals with disabilities equal access to information and appropriate auxiliary aids and services as provided in the applicable statutes and regulations.

#### Proposed EP Measures

- *EP Measure 1:* More than 50 percent of all unique patients seen by the EP during the EHR reporting period are provided timely (within 4 business days after the information is available to the EP) online access to their health information subject to the EP's discretion to withhold certain information.

- *EP Measure 2:* At least one patient seen by the EP during the EHR reporting period (or their authorized representatives) views, downloads, or transmits his or her health information to a third party.

In order to meet this objective, the following information must be made available to patients electronically within 4 business days of the information being made available to the EP:

- ++ Patient name.
- ++ Provider's name and office contact information.
- ++ Current and past problem list.
- ++ Procedures.
- ++ Laboratory test results.

- ++ Current medication list and medication history.

- ++ Current medication allergy list and medication allergy history.

- ++ Vital signs (height, weight, blood pressure, BMI, growth charts).

- ++ Smoking status.

- ++ Demographic information (preferred language, sex, race, ethnicity, date of birth).

- ++ Care plan field(s), including goals and instructions.

- ++ Any known care team members including the primary care provider (PCP) of record.

As we stated in the Stage 2 proposed rule, this is not intended to limit the information made available by the EP. An EP can make available additional information and still align with the objective. In circumstances where there is no information available to populate one or more of the fields previously listed, either because the EP can be excluded from recording such information (for example, vital signs) or because there is no information to record (for example, no medication allergies or laboratory tests), the EP may have an indication that the information is not available and still meet the objective and its associated measure. Please note that while some of the information made available through this measure is similar to the information made available in the summary of care document that must be provided following transitions of care or referrals, the list of information provided is specific to the view online, download, and transmit objective. Patients and providers have different information needs and contexts, so we have established separate required fields for each of these objectives.

We propose to retain the exclusion that any EP who neither orders nor creates any of the information listed for inclusion as part of this measure may exclude from this measure as well as the exclusion for limited broadband access in an EP's service area.

To calculate the percentage of the first measure for providing patient with timely online access to health information, CMS and ONC have worked together to define the following for this objective:

- *EP Measure 1:* More than 50 percent of all unique patients seen by the EP during the EHR reporting period are provided timely (within 4 business days after the information is available to the EP) online access to their health information subject to the EP's discretion to withhold certain information.

*Denominator:* Number of unique patients seen by the EP during the EHR reporting period.

*Numerator:* The number of patients in the denominator who have timely (within 4 business days after the information is available to the EP) online access to their health information.

*Threshold:* The resulting percentage must be more than 50 percent in order for an EP to meet this measure.

- *EP Measure 2:* At least one patient seen by the EP during the EHR reporting period (or his or her authorized representatives) views, downloads, or transmits his or her health information to a third party.

- *Exclusions:* Any EP who—

- (a) Neither orders nor creates any of the information listed for inclusion as part of the measures; or

- (b) Conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period.

#### Proposed Eligible Hospital/CAH Measures:

- *Eligible Hospital/CAH Measure 1:* More than 50 percent of all patients who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH have their information available online within 36 hours of discharge.

- *Eligible Hospital/CAH Measure 2:* At least 1 patient who is discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH (or his or her authorized representative) views, downloads, or transmits to a third party his or her information during the EHR reporting period.

The following information must be available to satisfy the objective and measure:

- ++ Patient name.
- ++ Admit and discharge date and location.
- ++ Reason for hospitalization.
- ++ Care team including the attending of record as well as other providers of care.
- ++ Procedures performed during admission.
- ++ Current and past problem list.
- ++ Vital signs at discharge.
- ++ Laboratory test results (available at time of discharge).
- ++ Summary of care record for transitions of care or referrals to another provider.
- ++ Care plan field(s), including goals and instructions.

- ++ Discharge instructions for patient.
- ++ Demographics maintained by hospital (sex, race, ethnicity, date of birth, preferred language).
- ++ Smoking status.

This is not intended to limit the information made available by the hospital. A hospital can make available additional information and still align with the objective. Please note that while some of the information made available through this measure is similar to the information made available in the summary of care document that must be provided following transitions of care or referrals, this list of information provided is specific to the view online, download, and transmit objective. Patients and providers have different information needs and contexts, so CMS has established separate required fields for each of these objectives.

To calculate the percentage of the first measure for providing patients timely access to discharge information, CMS and ONC have worked together to define the following for this objective:

- *Eligible Hospital/CAH Measure 1:* More than 50 percent of all patients who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH have their information available online within 36 hours of discharge.

*Denominator:* Number of unique patients discharged from an eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period.

*Numerator:* The number of patients in the denominator whose information is available online within 36 hours of discharge.

*Threshold:* The resulting percentage must be more than 50 percent in order for an eligible hospital or CAH to meet this measure.

- *Eligible Hospital/CAH Measure 2:* At least 1 patient who is discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH (or his or her authorized representative) views, downloads, or transmits to a third party his or her information during the EHR reporting period.

- *Exclusion:* Any eligible hospital or CAH that is located in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period.

Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

The Patient Electronic Access objective has two associated measures, the first (provide access to view, download, and transmit health information) is applicable for both Stage 1 and Stage 2 while the second (patients view, download, or transmit their health information) is only applicable for Stage 2. Therefore, we propose that providers scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may additionally claim an exclusion for the second measure of the Stage 2 Patient Electronic Access objective as there is not an equivalent Stage 1 measure defined at 42 CFR 495.6. We note that for an EHR reporting period beginning in 2016, all providers must attest to the objective and both measures and meet the specifications and threshold associated with the retained Stage 2 objective and measures in order to successfully demonstrate meaningful use.

- *Alternate Exclusion Measure 2:* Provider may claim an exclusion for the second measure if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.

There are no alternate specifications for this objective.

We invite public comment on this proposal.

#### i. Secure Electronic Messaging

We are proposing to retain the Stage 2 objective for secure electronic messaging with modifications to the measure for meaningful use in 2015 through 2017. (For further information and discussion of the existing Stage 2 secure electronic messaging objective and measure, please refer to 77 FR 54033.)

*Proposed Objective:* Use secure electronic messaging to communicate with patients on relevant health information.

In the Stage 2 proposed rule, we outlined the following benefits of using secure electronic messaging to communicate with patients: Electronic messaging (for example, email) is one of the most widespread methods of communication for both businesses and individuals. The ability to communicate through forms of electronic messaging is essential to the provider-patient relationship. Electronic messaging is very inexpensive on a transactional basis and allows for communication even when the provider and patient are not available at the same moment in time. However, common email services

may not be secure enough to be appropriate for the exchange of ePHI. Therefore, the exchange of ePHI through electronic messaging requires additional security measures while maintaining its ease of use for communication. While secure email with the necessary safeguards is probably the most widely used method of electronic messaging, for the purposes of meeting this objective, secure electronic messaging could also occur through functionalities of patient portals, PHRs, or other stand-alone secure messaging applications.

For EPs, secure electronic messaging is critically important to two National Quality Strategy (NQS) priorities—

- Ensuring that each person/family is engaged as partners in their care; and
- Promoting effective communication and coordination of care.

Secure electronic messaging could make care more affordable by using more efficient communication vehicles when appropriate. Specifically, research demonstrates that secure messaging has improved patient adherence to treatment plans, which reduces readmission rates. In addition, secure messaging has led to increased patient satisfaction with their care and is one of the top ranked features according to patients. In addition, despite some trepidation, providers have seen a reduction in time responding to inquiries and less time spent on the phone.<sup>3</sup>

*Proposed Measure:* During the EHR reporting period, the capability for patients to send and receive a secure electronic message with the provider was fully enabled.

We propose to retain the exclusion for EPs who have no office visits, and for those EPs who lack the infrastructure required for secure electronic messaging due to being located in areas with limited broadband availability as identified by the FCC.

*Measure:* During the EHR reporting period, the capability for patients to send and receive a secure electronic message with the provider was fully enabled.

*Exclusion:* Any EP who has no office visits during the EHR reporting period,

<sup>3</sup> Rosenberg SN, Shnaiden TL, Wagh AA, Juster IA (2008) "Supporting the patient's role in guideline compliance: a controlled study" American Journal of Managed Care 14(11):737-44; Gustafson DH, Hawkins R, Boberg E, Pingree S, Serlin RE, Graziano F, Chan CL (1999) "Impact of a patient-centered, computer-based health information/support system" American Journal of Preventive Medicine 16(1):1-9. Ralston JD, Carrell D, Reid R, Anderson M, Moran M, Hereford J (2007) "Patient web services integrated with a shared medical record: patient use and satisfaction" Journal of the American Medical Informatics Association 14(6):798-806.

or any EP who conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period.

#### Alternate Exclusions and Specifications for Stage 1 Providers for Meaningful Use in 2015

For the secure electronic messaging objective, there is no Stage 1 objective or measure which relates to the requirements of the Stage 2 objective and measure. We therefore propose that an EP scheduled to demonstrate Stage 1 of meaningful use for an EHR reporting period in 2015 may claim an exclusion for the secure electronic messaging objective measure as there is not an equivalent Stage 1 objective or measure defined at 42 CFR 495.6. We note that for an EHR reporting period beginning in 2016, all providers must attest to the objective and measure of the retained Stage 2 secure electronic messaging objective in order to successfully demonstrate meaningful use.

- *Alternate Exclusion:* An EP may claim an exclusion for the measure if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.

There are no alternate specifications for this objective and there is no equivalent objective for eligible hospitals and CAHs in the Stage 2 objectives and measures for meaningful use.

We invite public comment on this proposal.

#### j. Public Health and Clinical Data Registry (CDR) Reporting

As mentioned previously, we are proposing to adopt the consolidated Stage 3 version of the public health reporting objectives for all providers to demonstrate meaningful use for an EHR reporting period in 2015 through 2017. We note that this change does not fundamentally change a provider's ability to demonstrate meeting the requirements of meaningful use with any actions they may have already taken or are in the progress of taking to meet the prior requirements of meaningful use defined in the Stage 1 and Stage 2 rules for public health reporting. These requirements are currently defined at (75 FR 44325 through 44326) for EPs and (75 FR 44364 through 44368) for eligible hospitals and CAHs in the Stage 1 final rule. In the Stage two final rule the requirements may be found at (77 FR 54021 through 54026) for EPs and

(77 FR 54029 through 54031) for eligible hospitals and CAHs. We further note that this change does not require the addition of any new technology or standard not already available in CEHRT to demonstrate meaningful use in 2014.

This objective is designed based on the objective proposed in the Stage 3 proposed rule at which builds on the requirements set forth in the Stage 2 final rule (see for example 77 FR 54047 through 54048 under the Health Outcomes Policy Priority "Improve population and public health"). In the Stage 3 proposed rule, we proposed changes to the Stage 1 and Stage 2 public health and specialty registry objectives to consolidate the prior objectives and measures into a single objective in alignment with efforts to streamline the program and support flexibility for providers (80 FR 16739 and 16740).

*Proposed Objective:* The EP, eligible hospital, or CAH is in active engagement with a Public Health Agency (PHA) or clinical data registry (CDR) to submit electronic public health data in a meaningful way using certified EHR technology, except where prohibited and in accordance with applicable law and practice.

In the Stage 3 proposed rule, we highlighted our intention to remove the prior ongoing submission requirement and replace it with an "active engagement" requirement. We believe that "active engagement" as defined in the Stage 3 rule at (80 FR 16739 and 16740) and reiterated in this section is more aligned with the process providers undertake to report to a clinical registry or to a PHA.

For purposes of meeting this new objective, EPs, eligible hospitals and CAHs would be required to demonstrate that "active engagement" with a PHA or CDR has occurred. Active engagement means that the provider is in the process of moving towards sending "production data" to a PHA or CDR, or— is sending production data to a PHA or CDR. We note that the term "production data" refers to data generated through clinical processes involving patient care, and it is here used to distinguish between this data and "test data" which may be submitted for the purposes of enrolling in and testing electronic data transfers. We propose that "active engagement" may be demonstrated by any of the following options:

*Active Engagement Option 1—Completed Registration to Submit Data:* The EP, eligible hospital, or CAH registered to submit data with the PHA or, where applicable, the CDR to which the information is being submitted;

registration was completed within 60 days after the start of the EHR reporting period; and the EP, eligible hospital, or CAH is awaiting an invitation from the PHA or CDR to begin testing and validation. This option allows providers to meet the measure when the PHA or the CDR has limited resources to initiate the testing and validation process. Providers that have registered in previous years do not need to submit an additional registration to meet this requirement for each EHR reporting period.

*Active Engagement Option 2—Testing and Validation:* The EP, eligible hospital, or CAH is in the process of testing and validation of the electronic submission of data. Providers must respond to requests from the PHA or, where applicable, the CDR within 30 days; failure to respond twice within an EHR reporting period would result in that provider not meeting the measure.

*Active Engagement Option 3—Production:* The EP, eligible hospital, or CAH has completed testing and validation of the electronic submission and is electronically submitting production data to the PHA or CDR.

We note that the change in definition is intended to better capture the activities a provider may conduct in order to engage with a PHA or CDR, and that any prior action taken to meet the non-consolidated public health reporting objectives of meaningful use Stages 1 and 2 would count toward meeting the active engagement requirement of this objective.

*Proposed Measures:* We are proposing a total of 6 possible measures for this objective. For meaningful use in 2015 through 2017, EPs would be required to choose from Measures 1 through 5, and would be required to successfully attest to any combination of two measures. For meaningful use in 2015 through 2017, eligible hospitals and CAHs would be required to choose from Measures 1 through 6, and would be required to successfully attest to any combination of three measures. In 2015 only for providers scheduled to be in Stage 1, EPs would be required to choose from Measures 1 through 5, but would be permitted to successfully attest to one measure; and eligible hospitals and CAHs would be required to choose from Measures 1 through 6, but would be permitted to successfully attest to any combination of two measures. The measures are as shown in Table 5. As noted, measures 4 and 5 for Public Health Registry Reporting and Clinical Data Registry Reporting may be counted more than once if more than one Public Health Registry or Clinical Data Registry is available.



The measures are as follows:

TABLE 5—MEASURES FOR OBJECTIVE 8—PUBLIC HEALTH AND CLINICAL DATA REGISTRY REPORTING OBJECTIVE

Measure	Maximum times measure can count towards objective for EP	Maximum times measure can count towards objective for eligible hospital or CAH
Measure 1—Immunization Registry Reporting .....	1	1
Measure 2—Syndromic Surveillance Reporting .....	1	1
Measure 3—Case Reporting .....	1	1
Measure 4—Public Health Registry Reporting* .....	3	4
Measure 5—Clinical Data Registry Reporting** .....	3	4
Measure 6—Electronic Reportable Laboratory Results .....	N/A	1

\* EPs, eligible hospitals, and CAHs may choose to report to more than one public health registry (measure 4) to meet the number of measures required to meet the objective.

\*\* EPs, eligible hospitals, and CAHs may choose to report to more than one clinical data registry (measure 5) to meet the number of measures required to meet the objective.

For EPs, we propose that an exclusion for a measure does not count toward the total of two measures. Instead, in order to meet this objective an EP would need to meet two of the total number of measures available to them. If the EP qualifies for multiple exclusions and the remaining number of measures available to the EP is less than two, the EP can meet the objective by meeting the one remaining measure available to them and claiming the applicable exclusions. If no measures remain available, the EP can meet the objective by claiming applicable exclusions for all measures. An EP who is scheduled to be in Stage 1 in 2015 must report at least one measure unless they can exclude from all available measures. Available measures include ones for which the EP does not qualify for an exclusion.

For eligible hospitals and CAHs, we propose that an exclusion for a measure does not count toward the total of three measures. Instead, in order to meet this objective an eligible hospital or CAH would need to meet three of the total number of measures available to them. If the eligible hospital or CAH qualifies for multiple exclusions and the total number of remaining measures available to the eligible hospital or CAH is less than three, the eligible hospital or CAH can meet the objective by meeting all of the remaining measures available to them and claiming the applicable exclusions. If no measures remain available, the eligible hospital or CAH can meet the objective by claiming applicable exclusions for all measures. An eligible hospital or CAH that is scheduled to be in Stage 1 in 2015 must report at least two measures unless they can either—(1) exclude from all but one available measure and report that one measure; or (2) can exclude from all available measures. Available measures include ones for which the eligible

hospital or CAH does not qualify for an exclusion.

We note that we are proposing to allow EPs, eligible hospitals, and CAHs to choose to report to more than one public health registry to meet the number of measures required to meet the objective. We are also proposing to allow EPs, eligible hospitals, and CAHs to choose to report to more than one clinical data registry to meet the number of measures required to meet the objective. We believe that this flexibility allows for EPs, eligible hospitals, and CAHs to choose reporting options that align with their practice and that would aid the provider’s ability to care for their patients.

To calculate the measures:

- *Measure 1—Immunization Registry Reporting:* The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system (IIS).

We believe the immunization registry reporting measure remains a priority for the EHR Incentive Programs because the exchange of information between certified EHR technology and immunization registries allows a provider to use the most complete immunization history available to inform decisions about the vaccines a patient may need. Public health agencies and providers also use immunization information for emergency preparedness and to estimate population immunization coverage levels of certain vaccines.

We propose that to successfully meet the requirements of this measure, bidirectional data exchange between the provider’s certified EHR technology system and the immunization registry/IIS is required. We understand that

many states and local public health jurisdictions are exchanging immunization data bidirectionally with providers, and that the number of states and localities able to support bidirectional exchange continues to increase. In the 2015 Edition proposed rule (80 FR 16851), the ONC is proposing to adopt a bidirectional exchange standard for reporting to immunization registries/IIS. We believe this functionality is important for patient safety and improved care because it allows for the provider to use the most complete immunization record possible to make decisions on whether a patient needs a vaccine. Immunization registries and health IT systems also are able to provide immunization forecasting functions which can inform discussions between providers and patients on what vaccines they may need in the future and the timeline for the receipt of such immunizations. Therefore, we believe that patients, providers, and the public health community would benefit from technology that can accommodate bidirectional immunization data exchange.

We welcome comment on this proposal.

*Exclusion:* Any EP, eligible hospital, or CAH meeting one or more of the following criteria may be excluded from the immunization registry reporting measure if the EP, eligible hospital, or CAH:

- ++ Does not administer any immunizations to any of the populations for which data is collected by their jurisdiction’s immunization registry or immunization information system during the EHR reporting period;

- ++ Operates in a jurisdiction for which no immunization registry or immunization information system is capable of accepting the specific standards required to meet the CEHRT

definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no immunization registry or immunization information system has declared readiness to receive immunization data from the EP, eligible hospital or CAHs at the start of the EHR reporting period.

• *Measure 2—Syndromic Surveillance Reporting:* The EP, eligible hospital or CAH is in active engagement with a public health agency to submit syndromic surveillance data from a non-urgent care ambulatory setting for EPs, or an emergency or urgent care department for eligible hospitals and CAHs (POS 23).

This measure remains a policy priority for the EHR Incentive Programs because electronic syndromic surveillance is valuable for early detection of outbreaks, as well as monitoring disease and condition trends.

We are distinguishing between EPs and eligible hospital or CAHs reporting locations because as discussed in the Stage 2 final rule, few PHAs appeared to have the ability to accept non-emergency or non-urgent care ambulatory syndromic surveillance data electronically (77 FR 53979). We continue to observe differences in the infrastructure and current environments for supporting electronic syndromic surveillance data submission to PHAs between eligible hospitals or CAHs and EPs. Because eligible hospitals and CAHs send syndromic surveillance data using different methods as compared to EPs, we are defining slightly different exclusions for each setting as described by the following:

*Exclusion for EPs:* Any EP meeting one or more of the following criteria may be excluded from the syndromic surveillance reporting measure if the EP—

++ Does not treat or diagnose or directly treat any disease or condition associated with a syndromic surveillance system in his or her jurisdiction;

++ Operates in a jurisdiction for which no public health agency is capable of receiving electronic syndromic surveillance data from EPs in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no public health agency has declared readiness to receive syndromic surveillance data from EPs at the start of the EHR reporting period.

*Exclusion for eligible hospitals/CAHs:* Any eligible hospital or CAH meeting one or more of the following criteria

may be excluded from the syndromic surveillance reporting measure if the eligible hospital or CAH—

++ Does not have an emergency or urgent care department;

++ Operates in a jurisdiction for which no public health agency is capable of receiving electronic syndromic surveillance data from eligible hospitals or CAHs in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no public health agency has declared readiness to receive syndromic surveillance data from eligible hospitals or CAHs at the start of the EHR reporting period.

• *Measure 3—Case Reporting:* The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit case reporting of reportable conditions.

This is a new reporting option that was not part of Stage 2. The collection of electronic case reporting data greatly improves reporting efficiencies between providers and the PHA. Public health agencies collect “reportable conditions” as defined by the state, territorial, and local PHAs to monitor disease trends and support the management of outbreaks. In many circumstances, there has been low reporting compliance because providers do not know when, where, or how to report. In some cases, the time burden to report can also contribute to low reporting compliance. Electronic case reporting, however, presents a core benefit to public health improvement, and a variety of stakeholders have identified electronic case reporting as a high value element of patient and continuity of care. Further, we believe that electronic case reporting reduces burdensome paper-based and labor intensive case reporting. Electronic reporting would support more rapid exchange of case reporting information between PHAs and providers and can include structured questions or data fields to prompt the provider to supply additional required or care-relevant information.

To support case reporting, the ONC has proposed a certification criterion that includes capabilities to enable certified EHR systems to send initial case reporting data and receive a request from the public health agency for supplemental or ad hoc structured data in the 2015 Edition proposed rule (80 FR 16855).

*Exclusion:* Any EP, eligible hospital, or CAH meeting one or more of the following criteria may be excluded from

the case reporting measure if the EP, eligible hospital, or CAH:

++ Does not treat or diagnose any reportable diseases for which data is collected by their jurisdiction’s reportable disease system during the EHR reporting period;

++ Operates in a jurisdiction for which no public health agency is capable of receiving electronic case reporting data in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no public health agency has declared readiness to receive electronic case reporting data at the start of the EHR reporting period.

• *Measure 4—Public Health Registry Reporting:* The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit data to public health registries.

In the Stage 2 final rule, we were purposefully general in our use of the term “specialized registry” (other than a cancer registry) to encompass both registry reporting to public health agencies and clinical data registries in order to prevent inadvertent exclusion of certain registries through an attempt to be more specific (77 FR 54030). In response to insight gained from the industry through listening sessions, public forums, and responses to a **Federal Register** notice soliciting public comments on the proposed information collections to develop a centralized repository on public health readiness to support meaningful use (79 FR 7461); we propose to carry forward the concept behind this broad category from Stage 2, but also propose to split public health registry reporting from clinical data registry reporting into two separate measures which better define the potential types of registries available for reporting. We propose to define a “public health registry” as a registry that is administered by, or on behalf of, a local, state, territorial, or national PHA and which collects data for public health purposes. While immunization registries are a type of public health registry, we propose to keep immunization registry reporting separate from the public health registry reporting measure to retain continuity from Stage 1 and 2 policy in which immunization registry reporting was a distinct and separate objective (77 FR 54023). We believe it is important to retain the public health registry reporting option for Stage 3 because these registries allow the public health community to monitor health and disease trends, and inform the development of programs and policy for

population and community health improvement.

We reiterate that any EP, eligible hospital, or CAH may report to more than one public health registry to meet the total number of required measures for the objective. For example, if a provider meets this measure through reporting to both the National Hospital Care Survey and the National Healthcare Safety Network registry, the provider could get credit for meeting two measures. ONC would consider the adoption of standards and implementation guides in future rulemaking. Should these subsequently be finalized, they may then be adopted as part of the certified EHR technology definition as it relates to meeting the public health registry reporting measure through future rulemaking for the EHR Incentive Programs.

We further note that ONC adopted standards for ambulatory cancer case reporting in its 2014 Edition final rule (see § 170.314(f)(6)) and CMS provided EPs the option to select the cancer case reporting menu objective in the Stage 2 final rule (77 FR 54029 through 54030). We included cancer registry reporting as a separate objective from specialized registry reporting because it was more mature in its development than other registry types, not because other reporting was intended to be excluded from meaningful use. For the Stage 3 public health agency reporting measure, given the desire to provide more flexible options for providers to report to the registries most applicable for their scope of practice, we propose that EPs would have the option of counting cancer case reporting under the public health registry reporting measure. Under this measure, we note that cancer case reporting is not an option for eligible hospitals and CAHs, because hospitals have traditionally diagnosed and treated cancers (or both) and have the infrastructure needed to report cancer cases.

*Exclusions:* Any EP, eligible hospital, or CAH meeting at least one of the following criteria may be excluded from the public health registry reporting measure if the EP, eligible hospital, or CAH—

++ Does not diagnose or directly treat any disease or condition associated with a public health registry in their jurisdiction during the EHR reporting period;

++ Operates in a jurisdiction for which no public health agency is capable of accepting electronic registry transactions in the specific standards

required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no public health registry for which the EP, eligible hospital, or CAH is eligible has declared readiness to receive electronic registry transactions at the beginning of the EHR reporting period.

• *Measure 5—Clinical Data Registry Reporting:* The EP, eligible hospital, or CAH is in active engagement to submit data to a clinical data registry.

As discussed in the Public Health Registry Reporting measure, we propose to split specialized registry reporting into two separate, clearly defined measures: Public health registry reporting and clinical data registry reporting. In Stage 2 for EPs, reporting to specialized registries is a menu objective and this menu objective includes reporting to clinical data registries. For Stage 3, we propose to include clinical data registry reporting as an independent measure. The National Quality Registry Network defines clinical data registries as those that record information about the health status of patients and the health care they receive over varying periods of time<sup>4</sup>. We propose to further differentiate between clinical data registries and public health registries as follows: For the purposes of meaningful use, “public health registries” are those administered by, or on behalf of, a local, state, territorial, or national public health agencies; and, “clinical data registries” are administered by, or on behalf of, other non-public health agency entities. We believe that clinical data registries are important for providing information that can inform patients and their providers on the best course of treatment and for care improvements, and can support specialty reporting by developing reporting for areas not usually covered by PHAs but that are important to a specialist’s provision of care. Clinical data registries can also be used to monitor health care quality and resource use.

As noted previously, we reiterate that any EP, eligible hospital, or CAH may report to more than 1 clinical data registry to meet the total number of required measures for this objective. ONC would consider the adoption of standards and implementation guides in future rulemaking. Should these subsequently be finalized, they may then be adopted as part of the certified EHR technology definition as it relates to meeting the clinical data registry

reporting measure through future rulemaking for the EHR Incentive Programs.

*Exclusion:* Any EP, eligible hospital, or CAH meeting at least one of the following criteria may be excluded from the clinical data registry reporting measure if the EP, eligible hospital, or CAH—

++ Does not diagnose or directly treat any disease or condition associated with a clinical data registry in their jurisdiction during the EHR reporting period;

++ Operates in a jurisdiction for which no clinical data registry is capable of accepting electronic registry transactions in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no clinical data registry for which the EP, eligible hospital, or CAH is eligible has declared readiness to receive electronic registry transactions at the beginning of the EHR reporting period.

• *Measure 6—Electronic Reportable Laboratory Result Reporting:* The eligible hospital or CAH is in active engagement with a public health agency to submit electronic reportable laboratory results. This measure is available to eligible hospitals and CAHs only. Electronic reportable laboratory result reporting to PHAs is required for eligible hospitals and CAHs in Stage 2 (77 FR 54021). We propose to retain this measure for the EHR Incentive Programs to promote the exchange of laboratory results between eligible hospitals/CAHs and PHAs for improved timeliness, reduction of manual data entry errors, and more complete information.

*Exclusion:* Any eligible hospital or CAH meeting one or more of the following criteria may be excluded from the electronic reportable laboratory result reporting measure if the eligible hospital or CAH—

++ Does not perform or order laboratory tests that are reportable in their jurisdiction during the EHR reporting period;

++ Operates in a jurisdiction for which no public health agency is capable of accepting the specific ELR standards required to meet the CEHRT definition at the start of the EHR reporting period; or

++ Operates in a jurisdiction where no public health agency has declared readiness to receive electronic reportable laboratory results from eligible hospitals or CAHs at the start of the EHR reporting period.

<sup>4</sup> <https://download.ama-assn.org/resources/doc/qqi/x-pub/nqm-what-is-clinical-data-registry.pdf>

We seek public comment on this proposal.

TABLE 6—MEANINGFUL USES OBJECTIVES AND MEASURES FOR 2015 THROUGH 2017

Provider type	Proposed objectives for 2015, 2016 and 2017	Proposed measures for providers in 2015, 2016 and 2017	Proposed alternate measures, exclusions and/or specifications for certain providers in 2015 ONLY
Eligible Professional ...	<p>CPOE .....</p> <p>Electronic Prescribing</p> <p>Clinical Decision Support.</p> <p>Patient Electronic Access (VDT).</p>	<ul style="list-style-type: none"> <li>• <i>Measure 1:</i> More than 60 percent of medication orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> <li>• <i>Measure 2:</i> More than 30 percent of laboratory orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> <li>• <i>Measure 3:</i> More than 30 percent of radiology orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> </ul> <p><i>EP Measure:</i> More than 50 percent of all permissible prescriptions, or all prescriptions, written by the EP are queried for a drug formulary and transmitted electronically using Certified EHR Technology.</p> <ul style="list-style-type: none"> <li>• <i>Measure 1:</i> Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in patient care for the entire EHR reporting period. Absent four clinical quality measures related to an EP, eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions. It is suggested that one of the five clinical decision support interventions be related to improving healthcare efficiency.</li> <li>• <i>Measure 2:</i> The EP, eligible hospital, or CAH has enabled and implemented the functionality for drug-drug and drug allergy interaction checks for the entire EHR reporting period. Exclusion: For the second measure, any EP who writes fewer than 100 medication orders during the EHR reporting period.</li> <li>• <i>EP Measure 1:</i> More than 50 percent of all unique patients seen by the EP during the EHR reporting period are provided timely (within 4 business days after the information is available to the EP) online access to their health information subject to the EP's discretion to withhold certain information.</li> </ul>	<p>If for an EHR reporting period in 2015, the provider is scheduled to demonstrate Stage 1:</p> <ul style="list-style-type: none"> <li>• <i>Alternate Measure 1:</i> More than 30 percent of all unique patients with at least one medication in their medication list seen by the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period have at least one medication order entered using CPOE; or more than 30 percent of medication orders created by the EP during the EHR reporting period, or created by the authorized providers of the eligible hospital or CAH for patients admitted to their inpatient or emergency departments (POS 21 or 23) during the EHR reporting period, are recorded using computerized provider order entry.</li> <li>• <i>Alternate Exclusion for Measure 2:</i> Provider may claim an exclusion for measure 2 (laboratory orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.</li> <li>• <i>Alternate Exclusion for Measure 3:</i> Provider may claim an exclusion for measure 3 (radiology orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.</li> </ul> <p>If for an EHR reporting period in 2015, the provider is scheduled to demonstrate Stage 1:</p> <p><i>Alternate EP Measure:</i> More than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using Certified EHR Technology.</p> <p>If for an EHR reporting period in 2015, the provider is scheduled to demonstrate Stage 1:</p> <p><i>Alternate Objective and Measure 1:</i> Objective: Implement one clinical decision support rule relevant to specialty or high clinical priority, or high priority hospital condition, along with the ability to track compliance with that rule. <i>Measure:</i> Implement one clinical decision support rule.</p> <p><i>Alternate Exclusion Measure 2:</i> Provider may claim an exclusion for the second measure if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.</p>

TABLE 6—MEANINGFUL USES OBJECTIVES AND MEASURES FOR 2015 THROUGH 2017—Continued

Provider type	Proposed objectives for 2015, 2016 and 2017	Proposed measures for providers in 2015, 2016 and 2017	Proposed alternate measures, exclusions and/or specifications for certain providers in 2015 ONLY
	Protect Electronic Health Information.	<ul style="list-style-type: none"> <li>• <i>EP Measure 2:</i> At least one patient seen by the EP during the EHR reporting period (or their authorized representatives) views, downloads, or transmits his or her health information to a third party.</li> </ul> <p><i>Measure:</i> Conduct or review a security risk analysis in accordance with the requirements in 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of ePHI data stored in Certified EHR Technology in accordance with requirements in 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the EP, eligible hospital, or CAHs risk management process.</p>	NONE.
	Patient Specific Education.	<p><i>EP Measure:</i> Patient-specific education resources identified by Certified EHR Technology are provided to patients for more than 10 percent of all unique patients with office visits seen by the EP during the EHR reporting period.</p>	<p><i>Alternate Exclusion:</i> Provider may claim an exclusion for the measure of the Stage 2 Patient Specific Education objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Patient Specific Education menu objective.</p>
	Medication Reconciliation.	<p><i>Measure:</i> The EP, eligible hospital or CAH performs medication reconciliation for more than 50 percent of transitions of care in which the patient is transitioned into the care of the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23).</p>	<p><i>Alternate Exclusion:</i> Provider may claim an exclusion for the measure of the Stage 2 Medication Reconciliation objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Medication Reconciliation menu objective.</p>
	Summary of Care .....	<p><i>Measure:</i> The EP, eligible hospital or CAH that transitions or refers their patient to another setting of care or provider of care (1) uses CEHRT to create a summary of care record; and (2) electronically transmits such summary to a receiving provider for more than 10 percent of transitions of care and referrals.</p>	<p><i>Alternate Exclusion:</i> Provider may claim an exclusion for Measure 2 of the Stage 2 Summary of Care objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.</p>
	Secure Messaging .....	<p><i>Measure:</i> During the EHR reporting period, the capability for patients to send and receive a secure electronic message with the provider was fully enabled.</p>	<p><i>Alternate Exclusion:</i> An EP may claim an exclusion for the measure if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.</p>
	Public Health .....	<ul style="list-style-type: none"> <li>• <i>Measure Option 1—Immunization Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system (IIS).</li> <li>• <i>Measure Option 2—Syndromic Surveillance Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit syndromic surveillance data from a non-urgent care ambulatory setting for EPs, or an emergency or urgent care department for eligible hospitals and CAHs (POS 23).</li> <li>• <i>Measure Option 3—Case Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit case reporting of reportable conditions.</li> </ul>	NONE.

TABLE 6—MEANINGFUL USES OBJECTIVES AND MEASURES FOR 2015 THROUGH 2017—Continued

Provider type	Proposed objectives for 2015, 2016 and 2017	Proposed measures for providers in 2015, 2016 and 2017	Proposed alternate measures, exclusions and/or specifications for certain providers in 2015 ONLY
Eligible Hospital/CAH ..	CPOE .....	<ul style="list-style-type: none"> <li>• <i>Measure Option 4—Public Health Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit data to public health registries.</li> <li>• <i>Measure Option 5—Clinical Data Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement to submit data to a clinical data registry.</li> <li>• <i>Measure 1:</i> More than 60 percent of medication orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> <li>• <i>Measure 2:</i> More than 30 percent of laboratory orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> <li>• <i>Measure 3:</i> More than 30 percent of radiology orders created by the EP or by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> </ul>	<p>If for an EHR reporting period in 2015, the provider is scheduled to demonstrate Stage 1:</p> <ul style="list-style-type: none"> <li>• <i>Alternate Measure 1:</i> More than 30 percent of all unique patients with at least one medication in their medication list seen by the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period have at least one medication order entered using CPOE; or more than 30 percent of medication orders created by the EP or created by the authorized providers of the eligible hospital or CAH for patients admitted to their inpatient or emergency departments (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.</li> <li>• <i>Alternate Exclusion for Measure 2:</i> Provider may claim an exclusion for measure 2 (laboratory orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.</li> <li>• <i>Alternate Exclusion for Measure 3:</i> Provider may claim an exclusion for measure 3 (radiology orders) of the Stage 2 CPOE objective for an EHR reporting period in 2015.</li> </ul>
	Clinical Decision Support.	<ul style="list-style-type: none"> <li>• <i>Measure 1:</i> Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in patient care for the entire EHR reporting period. Absent four clinical quality measures related to an EP, eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions. It is suggested that one of the five clinical decision support interventions be related to improving healthcare efficiency.</li> <li>• <i>Measure 2:</i> The EP, eligible hospital, or CAH has enabled and implemented the functionality for drug-drug and drug allergy interaction checks for the entire EHR reporting period. Exclusion: For the second measure, any EP who writes fewer than 100 medication orders during the EHR reporting period.</li> </ul>	<p>If for an EHR reporting period in 2015, the provider is scheduled to demonstrate Stage 1:</p> <p><i>Alternate Measure 1:</i> Implement one clinical decision support rule. We propose that for an EHR reporting period in 2015, an EP, eligible hospital or CAH who is scheduled to participate in Stage 1 in 2015 must also satisfy the Stage 2 measure 2 previously stated because it is the same as an existing Stage 1 measure (77 FR 53998). There are no alternate exclusions for this objective.</p>

TABLE 6—MEANINGFUL USES OBJECTIVES AND MEASURES FOR 2015 THROUGH 2017—Continued

Provider type	Proposed objectives for 2015, 2016 and 2017	Proposed measures for providers in 2015, 2016 and 2017	Proposed alternate measures, exclusions and/or specifications for certain providers in 2015 ONLY
	Patient Electronic Access (VDT).	<ul style="list-style-type: none"> <li>• <i>Eligible Hospital/CAH Measure 1:</i> More than 50 percent of all patients who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH have their information available online within 36 hours of discharge.</li> <li>• <i>Eligible Hospital/CAH Measure 2:</i> At least 1 patient who is discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH (or his or her authorized representative) views, downloads, or transmits to a third party his or her information during the EHR reporting period.</li> </ul>	<i>Alternate Exclusion Measure 2:</i> Provider may claim an exclusion for the second measure if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.
	Protect Electronic Health Information.	<i>Measure:</i> Conduct or review a security risk analysis in accordance with the requirements in 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of ePHI data stored in Certified EHR Technology in accordance with requirements in 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the EP, eligible hospital, or CAHs risk management process.	NONE.
	Patient Specific Education.	<i>Eligible Hospital/CAH Measure:</i> More than 10 percent of all unique patients admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) are provided patient specific education resources identified by Certified EHR Technology.	<i>Alternate Exclusion:</i> Provider may claim an exclusion for the measure of the Stage 2 Patient Specific Education objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Patient Specific Education menu objective.
	Medication Reconciliation.	<i>Measure:</i> The EP, eligible hospital or CAH performs medication reconciliation for more than 50 percent of transitions of care in which the patient is transitioned into the care of the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23).	<i>Alternate Exclusion:</i> Provider may claim an exclusion for the measure of the Stage 2 Medication Reconciliation objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1 but did not intend to select the Stage 1 Medication Reconciliation menu objective.
	Summary of Care .....	<i>Measure:</i> The EP, eligible hospital or CAH that transitions or refers their patient to another setting of care or provider of care (1) uses CEHRT to create a summary of care record; and (2) electronically transmits such summary to a receiving provider for more than 10 percent of transitions of care and referrals.	<i>Alternate Exclusion:</i> Provider may claim an exclusion for Measure 2 of the Stage 2 Summary of Care objective if for an EHR reporting period in 2015 they were scheduled to demonstrate Stage 1, which does not have an equivalent measure.
	Electronic Prescribing	<i>Eligible Hospital/CAH Measure:</i> More than 10 percent of hospital discharge medication orders for permissible prescriptions (for new, changed and refilled prescriptions) are queried for a drug formulary and transmitted electronically using Certified EHR Technology.	<i>Alternate EH Exclusion:</i> Measure Exclusion: Provider may claim an exclusion for the eRx objective and measure if for an EHR reporting period in 2015 they were either scheduled to demonstrate Stage 1 which does not have an equivalent measure, or if they are scheduled to demonstrate Stage 2 but did not intend to select the Stage 2 eRx menu objective for an EHR reporting period in 2015.
	Public Health .....	<ul style="list-style-type: none"> <li>• <i>Measure Option 1—Immunization Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system (IIS).</li> </ul>	NONE.

TABLE 6—MEANINGFUL USES OBJECTIVES AND MEASURES FOR 2015 THROUGH 2017—Continued

Provider type	Proposed objectives for 2015, 2016 and 2017	Proposed measures for providers in 2015, 2016 and 2017	Proposed alternate measures, exclusions and/or specifications for certain providers in 2015 ONLY
		<ul style="list-style-type: none"> <li>• <i>Measure Option 2—Syndromic Surveillance Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit syndromic surveillance data from a non-urgent care ambulatory setting for EPs, or an emergency or urgent care department for eligible hospitals and CAHs (POS 23).</li> <li>• <i>Measure Option 3—Case Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit case reporting of reportable conditions.</li> <li>• <i>Measure Option 4—Public Health Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement with a public health agency to submit data to public health registries</li> <li>• <i>Measure Option 5—Clinical Data Registry Reporting:</i> The EP, eligible hospital, or CAH is in active engagement to submit data to a clinical data registry.</li> <li>• <i>Measure Option 6—Electronic Reportable Laboratory Result Reporting:</i> The eligible hospital or CAH is in active engagement with a public health agency to submit electronic reportable laboratory results.</li> </ul>	

3. Certified EHR Technology

Certified EHR technology is defined for the Medicare and Medicaid EHR Incentive Programs at 42 CFR 495.4, which references ONC’s definition of CEHRT in 45 CFR 170.102. The definition establishes the requirements for EHR technology that must be used by providers to meet the meaningful use objectives and measures. The Stage 2 final rule requires that CEHRT must be used by EPs, eligible hospitals, and CAHs to satisfy their CQM reporting requirements in the Medicare and Medicaid EHR Incentive Programs. In addition, the CQM data reported to CMS must originate from EHR technology that is certified to “capture and export” in accordance with 45 CFR 170.314(c)(1) and “electronic submission” in accordance with 45 CFR 170.314(c)(3) (77 FR 54053).

Rather than establishing a meaningful use specific CEHRT definition for the EHR Incentive Programs in the ONC 2015 Edition proposed rule, we instead proposed to define the term “Certified EHR Technology” in the Stage 3 proposed rule at § 495.4 (80 FR 16767 and 16768). This proposed change is designed to simplify the overall regulatory relationship between ONC and CMS rules for stakeholders and to ensure that relevant CMS policy for the Medicare and Medicaid EHR Incentive

Programs is clearly defined in CMS regulations.

We are proposing no further changes to the definition of CEHRT in this proposed rule. We reiterate that providers must use EHR technology certified to the 2014 Edition for an EHR reporting period in 2015. As proposed in the Stage 3 proposed rule, providers must use EHR technology certified at least to the 2014 Edition in 2016 and 2017. Providers may adopt EHR technology certified to the 2015 Edition prior to the beginning of Stage 3 in 2017 or 2018, and that technology could be used to satisfy the definition of CEHRT under § 495.4 to demonstrate meaningful use (80 FR 16767 through 16768).

4. Medicaid EHR Incentive Program in 2015 Through 2017

The proposals included in this proposed rule would apply for providers participating in the Medicaid EHR Incentive Program in 2015 through 2017.

Consistent with both Stage 1 and 2, we propose to continue to offer states flexibility in the Medicaid EHR Incentive Program for meaningful use in 2015 through 2017. This flexibility would apply to the public health reporting objective and measures where we propose to continue to allow states to specify the means of transmission of

the data or otherwise change the public health reporting objective and measures as long as it does not require EHR functionality above and beyond that which is included in 45 CFR part 170 as stated in the Stage 2 final rule (77 FR 53979).

Finally, we propose to provide an alternate attestation option for Medicaid providers who are seeking to demonstrate meaningful use to avoid the Medicare payment adjustment and who are prohibited from switching between the Medicare and Medicaid EHR incentive programs. For these providers, we propose that they may use the Medicare Registration and Attestation system to attest to meaningful use without switching programs solely for the purposes of avoiding the Medicare payment adjustment. We are proposing this alternate attestation option in response to concerns about providers who participate in the Medicaid EHR Incentive Program; but, due to their patient volume or another similar factor, they are unable to attest to meaningful use through their state Medicaid program for a given year. If such a provider uses the alternate attestation option to demonstrate meaningful use for an EHR reporting period, they may avoid the Medicare payment adjustment associated with that EHR reporting period without switching out of the



Medicaid EHR Incentive Program. This option is discussed in further detail in section II.D. of this proposed rule.

We invite public comment on these proposals.

### C. Clinical Quality Measurement

Under sections 1848(o)(2)(A), 1886(n)(3)(A), and 1814(l)(3)(A) of the Act and 42 CFR 495.4, EPs, eligible hospitals, and CAHs must report on CQMs selected by CMS using certified EHR technology, as part of being a meaningful EHR user under the Medicare and Medicaid EHR Incentive Programs. In the Stage 2 final rule, we outlined the CQMs available for use in the EHR Incentive Programs beginning in 2014 for EPs, eligible hospitals, and CAHs at (77 FR 54057 through 54068 for EPs and 77 FR 54081 through 54087 for eligible hospitals/CAHs) as well as the form and method for submission at (77 FR 54076 through 54080 for EPs and 77 FR 54087 through 54089 for eligible hospitals/CAHs). Following the publication of the Stage 2 final rule, we also established requirements for reporting on CQMs under the EHR Incentive Program in the PFS and IPPS rules (see for example 79 FR 50319 through 50321 and 79 FR 67779). In sections II.B.1.a. and b. of the preamble of the Stage 3 proposed rule, we outlined the requirements for CQM reporting for all providers for the EHR Incentive Programs in 2017 and subsequent years (80 FR 16768 and 16769) as well as the intent to continue program alignment with other CMS quality reporting programs in the IPPS and PFS rules.

In this proposed rule for meaningful use in 2015 through 2017, we are proposing to maintain the existing requirements established in earlier rulemaking for the reporting of CQMs. The options for CQM submission for providers in the Medicare EHR Incentive Program are as follows:

- EP Options for Medicare EHR Incentive Program Participation (*single program participation*)

- ++ Option 1: Attest to CQMs through the EHR Registration & Attestation System.

- ++ Option 2: Electronically report CQMs through Physician Quality Reporting System (PQRS) Portal.

- EP Options for Electronic Reporting for Multiple Programs (*for example: EHR Incentive Program plus PQRS participation*)

- ++ Option 1: Report individual eligible professionals' CQMs through PQRS Portal.

- ++ Option 2: Report group's CQMs through PQRS Portal.

We note that under option 2, this may include an EP reporting using the group reporting option, either electronically using QRDA, or via the GPRO Web Interface through Pioneer ACO participation.

- Eligible hospital and CAH Options for Medicare EHR Incentive Program Participation (*single program participation*)

- ++ Option 1: Attest to CQMs through the EHR Registration & Attestation System.

- ++ Option 2: Electronically report CQMs through QualityNet Portal.

- Eligible hospital and CAH Options for Electronic Reporting for Multiple Programs (*for example: EHR Incentive Program plus IQR participation*)

- ++ Electronically report through QualityNet Portal.

For the Medicaid EHR Incentive Program, states would continue to be responsible for determining whether and how electronic reporting of CQMs would occur, or if they wish to allow reporting through attestation. Any changes that states make to their CQM reporting methods must be submitted through the State Medicaid Health IT Plan (SMHP) process for our review and approval prior to being implemented.

We are also proposing to maintain the existing CQM reporting requirements of nine CQMs covering at least three NQS domains for EPs and 16 CQMs covering at least three NQS domains for eligible hospitals and CAHs (77 FR 54058 for EPs and 77 FR 54056 for eligible hospitals and CAHs).

As discussed in section II.B.2(a) of this proposed rule, beginning in 2015, we are proposing to change the definition of "EHR reporting period" in § 495.4 for eligible hospitals and CAHs such that the EHR reporting period would begin and end in relation to a calendar year. In connection with this proposal, we also propose that in 2015 and for all methods of reporting, eligible hospitals and CAHs would be required to complete a reporting period for clinical quality measures aligned with the calendar year in order to demonstrate meaningful use. In order to accommodate eligible hospitals and CAHs that may have planned their clinical quality measure reporting in 2015 based on the federal fiscal year, we propose for 2015 only that eligible hospitals and CAHs that are submitting CQMs via attestation, may begin a reporting period as early as October 1 of 2014 and end by December 31 of 2015. Eligible hospitals and CAHs submitting CQMs via electronic reporting must meet the requirements established in the FY 2015 final rule (79 FR 50319 through 50321).

As discussed in section II.B.1.b.(3). of this proposed rule, for 2015 only, we are proposing to change the EHR reporting period for all EPs, eligible hospitals, and CAHs to any continuous 90-day period within the calendar year. In connection with this proposal, we also propose a 90-day reporting period for clinical quality measures for all EPs, eligible hospitals, and CAHs that report clinical quality measures by attestation. We are proposing eligible professionals may select any continuous 90-day period from January 1, 2015 through December 31, 2015, while eligible hospitals and CAHs may select any continuous 90-day period from October 1, 2014 through December 31, 2015, to report CQMs via attestation using the EHR Incentive Program registration and attestation system. In accordance with our existing policy, it is acceptable for a provider to use a continuous 90-day reporting period for CQMs even if it is different from their continuous 90-day EHR reporting period for the meaningful use objectives and measures if that provider is reporting via attestation. We also propose that a provider may choose to attest to a CQM reporting period of greater than 90-days up to and including 1 full calendar year of data.

We further propose to continue our existing policy that providers in any year of participation for the EHR Incentive Programs for 2015 through 2017 may instead electronically report CQM data using the options previously outlined for electronic reporting either for single program participation in the Medicare EHR Incentive Programs, or for participation in multiple programs if the requirements of the aligned quality program are met.

We note that EPs seeking to participate in multiple programs with a single electronic submission would be required to submit a full calendar year of CQM data using the 2014 electronic specifications for the CQMs (which are also known as eCQMs) for a reporting period in 2015. These specifications include the annual updates released in June of 2014 and are available at the CMS eCQMs Library ([http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM\\_Library.html](http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM_Library.html))

Eligible hospitals and CAHs seeking to participate in multiple programs with a single electronic submission for a reporting period in 2015 would be required to submit 1 calendar quarter of data for 2015 from either Q1 (January 1, 2015–March 31, 2015), Q2 (April 1, 2015–June 30, 2015), or Q3 (July 1, 2015–September 30, 2015) and would require of the use of the April 2014 release of the eCQMs available at the

CMS eCQM Library ([http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM\\_Library.html](http://cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM_Library.html)). For further information, we direct readers to the FY 2015 IPPS final rule at 79 FR 50319 through 50321.

We note that an EHR certified for CQMs under the 2014 Edition certification criteria does not need to be recertified each time it is updated to a more recent version of the eCQMs. (For further information on CQM reporting, we direct readers to the EHR Incentive Program Web site where guides and tip sheets are available for each reporting option ([www.CMS.gov/ehrincentiveprograms](http://www.CMS.gov/ehrincentiveprograms))).

We invite public comment on this proposal.

#### *D. Demonstration of Meaningful Use for 2015 Through 2017*

##### 1. Common Methods of Demonstration in Medicare and Medicaid

We are proposing to continue our common method for demonstrating meaningful use in both the Medicare and Medicaid EHR Incentive Programs. The demonstration methods we adopt for Medicare would automatically be available to the states for use in their Medicaid programs.

##### 2. Methods for Demonstration of the Criteria for Meaningful Use in 2015 Through 2017

As mentioned previously in section II.B.2. of this proposed rule, we are redesignating the numbering of certain sections of the regulation text under 42 CFR part 495. In prior rules, we defined the criteria for the demonstration of meaningful use at 42 CFR 495.8, which would be redesignated as § 495.40. In this proposed rule, we define the criteria for the demonstration of meaningful use at § 495.40 including references to the objectives and measures of meaningful use as well as the requirement to report CQMs. In order to demonstrate meaningful use in 2015 through 2017, we are proposing that the requirements at § 495.40 include a reference to the objectives and measures of meaningful use for 2015 through 2017 outlined at § 495.22 which the provider must satisfy.

We are proposing to continue the use of attestation as the method for demonstrating that an EP, eligible hospital, or CAH has met the objectives and measures of meaningful use. Instead of individual Medicare EP attestation through the CMS Registration and Attestation System, we are also proposing to continue the existing optional batch file process for attestation. Further, we are proposing

changes to the deadlines for EPs, eligible hospitals, and CAHs to demonstrate meaningful use in 2015 and 2016; as well as specific changes to the deadlines for providers to demonstrate meaningful use for the first time in order to avoid a payment adjustment in 2015 and 2016.

##### a. Attestation Deadlines for Meaningful Use in 2015 and 2016

In order to accommodate the proposed changes to the EHR reporting period, we are proposing changes to the attestation deadlines for eligible hospitals and CAHs for 2015 and 2016. Currently, in order to demonstrate meaningful use, eligible hospitals and CAHs are required to complete an EHR reporting period within a federal fiscal year. These providers must then attest to that EHR reporting period by the end of the open attestation period 2 months after the close of the federal fiscal year. For 2015, this means that eligible hospitals and CAHs must complete an EHR reporting period between October 1, 2014 and September 30, 2015 and must attest by November 30, 2015. However, we are proposing in section II.B.3.a. of this proposed rule that eligible hospitals and CAHs would instead be required to complete an EHR reporting period for 2015 between October 1, 2014 and the end of the calendar year on December 31, 2015, and to complete an EHR reporting period for 2016 between January 1, 2016 and December 31, 2016.

Therefore, we are proposing a change to the attestation deadlines as follows:

- For an EHR reporting period in 2015, an eligible hospital or CAH must attest by February 29, 2016.
- For an EHR reporting period in 2016, an eligible hospital or CAH must attest by February 28, 2017.

In addition, despite the proposed change to a 90-day EHR reporting period in 2015 discussed previously in this proposed rule, providers would not be able to attest to meaningful use for an EHR reporting period in 2015 prior to January 1, 2016. This would allow us adequate time to make the system changes necessary to accept attestations reflecting the proposals in this proposed rule. This would mean that even if providers successfully complete a continuous 90-day EHR reporting period in the first quarter of FY or CY 2015, they would attest after the close of the fourth quarter of CY 2015. This change would not delay incentive payments for Medicare EPs, because 2015 cannot be an EP's first payment year under section 1848(o)(1)(B)(v) of the Act. Thus, all EPs who qualify for an incentive payment for 2015 would be returning participants

in the program and would have had the full CY 2015 (as their EHR reporting period under our current policy). We understand that this may delay incentive payments for eligible hospitals and CAHs. However, most eligible hospitals and CAHs in the program are beyond their first year of demonstrating meaningful use; thus, would not have been attesting until after September 30, 2015 under our current policy.

Therefore, for most eligible hospitals and CAHs, this change would shift the incentive payment by 1 quarter within the same federal fiscal year. Thus, we believe the potential negative impact of this change would be minimal and outweighed by the opportunity to capitalize on efficiencies created by aligning the EHR reporting periods across EPs, eligible hospitals, and CAHs.

We invite public comment on this proposal.

##### b. New Participant Attestation Deadlines for Meaningful Use in 2015 and 2016 To Avoid a Payment Adjustment

In § 495.4 the definition of an EHR reporting period for a payment adjustment year establishes special deadlines for attestation for EPs and eligible hospitals that are demonstrating meaningful use for the first time in the year immediately preceding a payment adjustment year. Generally stated, a provider must complete an EHR reporting period in the first 3 quarters of the preceding year, and the deadlines for attestation are October 1 for EPs and July 1 for eligible hospitals of the preceding year. For CAHs, the EHR reporting period is within the federal fiscal year that is the payment adjustment year and the deadline for attestation for CAHs is the same for purposes of the incentive payment and the payment adjustment (November 30, 2015). After the October 1 or July 1 deadlines, EPs and eligible hospitals may still attest for an EHR reporting period in the fourth quarter of the CY or FY, respectively. However, if they attest after the respective deadlines, then they would not avoid the Medicare payment adjustment in the subsequent payment adjustment year.

In the Stage 2 proposed rule (77 FR 13769 for EPs and 77 FR 13773 through 13774 for eligible hospitals/CAHs), we explained the rationale for these special deadlines for attestation. We explained that these EHR reporting periods provide adequate time both for the systems changes that will be required for us to apply any applicable payment adjustments and for providers to be informed in advance of the payment year whether a payment adjustment

would apply. Those deadlines also provide appropriate flexibility by allowing more recent adopters of EHR technology a reasonable opportunity to establish their meaningful use of the technology and to avoid application of the payment adjustments. However, we are proposing a later deadline for attestation only for 2015 to allow enough time for all providers to complete a 90-day EHR reporting period after the anticipated effective date of the final rule. As a result of this later deadline, in 2016, providers that are new participants in the EHR Incentive Program may be subject to a payment adjustment on claims submitted prior to attestation to meaningful use for an EHR reporting period in 2015. After successful attestation, the payment adjustment would be removed and any adjustments previously applied to claims in 2016 would be reprocessed and reconciled for the provider. However, as our policies seek to minimize the claims reprocessing burden, we note these are exceptional circumstances caused by the need for a later attestation deadline to accommodate a 90-day EHR reporting period in 2015 after the effective date of the final rule, and this is not an acceptable long-term solution. For the reasons previously stated in the Stage 2 proposed rule, the special deadlines for first-time meaningful EHR users (October 1 for EPs and July 1 for eligible hospitals) are necessary in 2016 and subsequent years where no extenuating circumstances exist. For these reasons, we propose changes to the attestation deadlines for purposes of the payment adjustment years in section II.E.2.(a) through (c) of this proposed rule.

We invite public comment on these proposals.

### 3. Alternate Method of Demonstration for Certain Medicaid Providers Beginning in 2015

At 42 CFR 495.10, redesignated as § 495.60, we defined the requirements for EPs switching between the Medicare and Medicaid EHR Incentive Programs. An EP who qualifies as both a Medicaid EP and a Medicare EP must notify us as to whether he or she elects to participate in the Medicare or the Medicaid EHR Incentive Program, and after receiving at least one incentive payment, may switch between the two EHR incentive programs only one time, and only for a payment year before 2015. For further discussion of this policy we direct readers to (75 FR 44324 through 44325). We are not proposing any changes to the switching requirements under § 495.60.

However, we note that an EP who qualifies as both a Medicaid EP and a

Medicare EP would be subject to the Medicare payment adjustment if the EP fails to demonstrate meaningful use for the applicable EHR reporting period for a payment adjustment year. We recognize it is possible that an EP who receives an incentive payment under the Medicaid EHR Incentive Program for a given year may fail in a subsequent year to meet the eligibility criteria for the Medicaid EHR Incentive Program. For example, the EP would be unable to qualify for a Medicaid EHR incentive payment for 2015, if he or she receives a Medicaid EHR incentive payment for meaningful use for the 2013 payment year, but does not meet the 30 percent Medicaid patient volume requirement for purposes of the 2015 payment year. Under § 495.60(e), in this example in order to avoid the Medicare payment adjustment, the EP would be unable to switch to the Medicare EHR Incentive Program for the 2015 payment year; thus, the EP would not have a way to demonstrate meaningful use for an applicable EHR reporting period for the payment adjustment year. Therefore, for purposes of avoiding the Medicare payment adjustment, we are proposing to establish an additional attestation option to allow EPs who have received at least one incentive payment under the Medicaid EHR Incentive Program (for either AIU or meaningful use) to demonstrate meaningful use by attestation using the EHR Incentive Program Registration and Attestation system. We note that this attestation would not constitute a switch from the Medicaid EHR Incentive Program to the Medicare EHR Incentive Program, and EPs who attest under this option would not earn an incentive payment in either program for the year. We are proposing this attestation option for the purposes of demonstrating meaningful use to avoid the Medicare payment adjustment only. In the prior example, the EP whose Medicaid patient volume was less than the required threshold would be able to attest to meaningful use for an EHR reporting period in 2015 to avoid the 2017 payment adjustment. This EP would continue to be designated a Medicaid EHR Incentive Program participant. In 2016 in order to earn an incentive payment and avoid a Medicare payment adjustment, if the EP meets the Medicaid patient volume threshold with regard to the 2016 payment year, then the EP would be required to demonstrate meaningful use in the Medicaid program for an EHR reporting period.

As stated above, we are proposing that EPs who have previously received an incentive payment under Medicaid for

adopting, implementing, or upgrading to certified EHR technology may also use this alternate attestation option even if it is their first year of demonstrating meaningful use. However, these EPs would be required to demonstrate meaningful use for the EHR reporting periods established for the Medicare EHR Incentive Program for EPs who have never successfully demonstrated meaningful use in a prior year. In the Stage 3 proposed rule (80 FR 16739), we propose that beginning in 2017, EPs who demonstrate meaningful use for the first time under the Medicare EHR Incentive Program must use an EHR reporting period of one full calendar year. Accordingly, under our proposal in this rule, Medicaid providers using this alternate attestation option in 2017 or subsequent years would also be required to use an EHR reporting period of 1 full calendar year even if they are demonstrating meaningful use for the first time.

We invite public comment on this proposal.

### 4. Data Collection for Online Posting, Program Coordination, and Accurate Payments

We propose no changes to the data collection requirements or to the registration requirements under § 495.10, redesignated as § 495.60. As noted in section II.C.2 of the Stage 3 proposed rule, we note that we intend to continue to post meaningful use participation data both at an individual and aggregate level for the purposes of data transparency, program integrity, and for use with aligned CMS quality reporting programs.

### 5. Hospital-Based Eligible Professionals

Section 1848(o)(1)(C)(i) of the Act, as added by section 4101(a) of the HITECH Act, states that hospital-based EPs are not eligible for Medicare incentive payments. Similarly, the majority of hospital-based EPs will not be eligible for Medicaid incentive payments under section 1903(t)(2)(A) of the Act (the only exception to this rule is for those practicing predominantly in an FQHC or RHC). Sections 4101(a) and 4201(a) of the HITECH Act originally defined the term “hospital-based eligible professional” to mean an EP, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of his or her Medicare covered professional services during the relevant EHR reporting period in a hospital setting (whether inpatient or outpatient) through the use of the facilities and equipment of the hospital, including the hospital’s qualified EHRs. Following publication of the Stage 1

proposed rule (75 FR 1844 through 2011), Congress modified the definition of hospital-based EPs. Specifically, on April 15, 2010, President Obama signed into law the Continuing Extension Act of 2010 (Pub. L. 111–157). Section 5 of the Continuing Extension Act of 2010 (Pub. L. 111–157) made the following changes to the Act as it applies to both the Medicare and Medicare EHR incentives for EPs:

- **Qualifications for Clinic-based Physicians**

++ Medicare—Section 1848(o)(1)(C)(ii) of the Act (42 U.S.C. 1395w–4(o)(1)(C)(ii)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

++ Medicaid—Section 1903(t)(3)(D) of the Act (42 U.S.C. 1396b(t)(3)(D)) is amended by striking “setting (whether inpatient or outpatient)” and inserting “inpatient or emergency room setting”.

These amendments were effective as if included in the enactment of the HITECH Act. The previous sections indicate that the determination of whether an EP is a hospital-based EP shall be made on the basis of the site of service, as defined by the Secretary, and without regard to any employment or billing arrangement between the EP and any other provider. For example, the hospital-based determination for an EP would not be affected by whether the EP is an employee of the hospital, under a contractual relationship with the hospital, or with respect to whether he or she has made a reassignment to the hospital for Part B billing purposes. In addition, section 1848(a)(7)(D) of the Act, as added by section 4101(b) of the HITECH Act, exempts hospital-based EPs from the downward payment adjustment applied under section 1848(a)(7)(A)(i) of the Act to covered professional services provided during a payment year by EPs who are not meaningful EHR users for the relevant payment year beginning in 2015.

Based on section 4101(a) of the HITECH Act (and prior to the amendments in the Continuing Extension Act of 2010), we proposed in the Stage 1 proposed rule (75 FR 1904 through 1907) that an EP would be considered a hospital-based EP; therefore, ineligible to receive a Medicare or Medicaid EHR incentive payment if more than 90 percent of their services are provided in the following place of service (POS) codes for HIPAA standard transactions—

- 21—Inpatient Hospital;
- 22—Outpatient Hospital;
- 23—Emergency Room.

In the Stage 1 final rule (75 FR 44439 through 44442), we incorporated the changes to the hospital-based definition, that were included in the Continuing Extension Act of 2010, into our definition of “hospital-based EP” under § 495.4. We defined an EP as hospital-based if he or she furnishes 90 percent or more of his or her covered professional services in sites of service identified as an inpatient hospital (POS 21) or emergency room (POS 23) setting in the year preceding the payment year. We did not include POS 22 for outpatient hospital settings in our final definition.

As noted previously, section 1848(a)(7)(D) of the Act exempts hospital-based EPs who are not meaningful EHR users from the downward payment adjustments under Medicare. In the Stage 2 final rule (77 FR 54102), for purposes of the Medicare payment adjustments, we amended the definition of hospital-based EP under § 495.4 to define a hospital-based EP as an EP who furnishes 90 percent or more of his or her covered professional services in sites of service identified as an inpatient hospital (POS 21) or emergency room (POS 23) setting in either of the 2 years before the year preceding a payment adjustment year.

However, recently several hospital associations, individual providers, and other stakeholders have raised concerns with our current definition of a hospital-based EP. Specifically, these stakeholders asserted that the limitation of hospital-based to POS codes 21 and 23, covering inpatient and emergency room settings only, does not adequately capture all settings where services might be furnished by a hospital-based EP. They stated that POS 22, which covers an outpatient hospital place of service, is also billed by hospital-based EPs, especially in relation to certain CPT codes. These stakeholders expressed the belief that our current definition of hospital-based EP in the regulations is too narrow and will unfairly subject many EPs who are not hospital-based under our definition, but who stakeholders would consider to be hospital-based, to the downward payment adjustment under Medicare in 2015. Accordingly, these stakeholders recommended that we consider adding additional place of service codes or settings to the regulatory definition of hospital-based EP.

We appreciate this feedback from stakeholders and are requesting public comment on our current definition of a hospital-based EP under § 495.4 for the EHR Incentive Programs.

We are seeking public comment on whether additional place of service

codes or settings should be included in our definition of a hospital-based EP. As stated previously, stakeholders specifically identified POS 22 for outpatient hospital settings as an area of concern; therefore, we are especially interested in comments on POS 22 for outpatient hospital settings. In addition, we seek comments on whether and how the inclusion of additional POS codes or settings in our definition of hospital-based EP might affect the eligibility of EPs for the EHR incentive payments under Medicare or Medicaid.

We welcome public comment.

#### *E. Payment Adjustments and Hardship Exceptions*

Sections 4101(b) and 4102(b) of the HITECH Act, amending sections 1848, 1853, and 1886 of the Act, require reductions in payments to EPs, eligible hospitals, and CAHs that are not meaningful users of certified EHR technology, beginning in CY 2015 for EPs, FY 2015 for eligible hospitals, and in cost reporting periods beginning in FY 2015 for CAHs.

##### 1. Statutory Basis for Payment Adjustment and Hardship Exceptions

Section 1848(a)(7) of the Act provides for payment adjustments, effective for CY 2015 and subsequent years, for EPs as defined in § 495.100, who are not meaningful EHR users during the relevant EHR reporting period for the year. Section 1848(a)(7) of the Act provides that in general, beginning in 2015, if an EP is not a meaningful EHR user for the EHR reporting period for the year, then the Medicare physician fee schedule (PFS) amount for covered professional services furnished by the EP during the year (including the fee schedule amount for purposes of determining a payment based on the fee schedule amount) is adjusted to equal the “applicable percent” of the fee schedule amount that would otherwise apply. The term “applicable percent” is defined in section 1848(a)(7)(A)(ii) of the Act as: (I) For 2015, 99 percent (or, in the case of an EP who was subject to the application of the payment adjustment [if the EP was not a successful electronic prescriber] under section 1848(a)(5) of the Act for 2014, 98 percent); (II) for 2016, 98 percent; and (III) for 2017 and each subsequent year, 97 percent.

In addition, section 1848(a)(7)(A)(iii) of the Act provides that if, for CY 2018 and subsequent years, the Secretary finds the proportion of EPs who are meaningful EHR users is less than 75 percent, the applicable percent shall be decreased by 1 percentage point for EPs who are not meaningful EHR users from

the applicable percent in the preceding year, but that in no case shall the applicable percent be less than 95 percent.

Section 1848(a)(7)(B) of the Act provides that the Secretary may, on a case-by-case basis, exempt an EP who is not a meaningful EHR user for the reporting period for the year from the application of the payment adjustment if the Secretary determines that compliance with the requirements for being a meaningful EHR user would result in a significant hardship, such as in the case of an EP who practices in a rural area without sufficient internet access. The exception is subject to annual renewal, but in no case may an EP be granted an exception for more than 5 years.

We established regulations implementing these statutory provisions under 42 CFR 495.102. We refer readers to the Stages 1 and 2 final rules (75 FR 44442 through 44448, 77 FR 54093 through 54102) for more information.

Section 1886(b)(3)(B)(ix)(I) of the Act, as amended by section 4102(b)(1) of the HITECH Act, provides for an adjustment to the applicable percentage increase to the IPPS payment rate for those eligible hospitals that are not meaningful EHR users for the associated EHR reporting period for a payment adjustment year, beginning in FY 2015. Specifically, section 1886(b)(3)(B)(ix)(I) of the Act provides that, for FY 2015 and each subsequent fiscal year, an eligible hospital that is not a meaningful EHR user for an EHR reporting period will receive a reduced update to the IPPS standardized amount. This reduction applies to “three-quarters of the percentage increase otherwise applicable” prior to the application of statutory adjustments under sections 1886(b)(3)(B)(viii), 1886(b)(3)(B)(xi), and 1886(b)(3)(B)(xii) of the Act, or three-quarters of the applicable market basket update. The reduction to three-quarters of the applicable update for an eligible hospital that is not a meaningful EHR user would be “33 1/3 percent for FY 2015, 66 2/3 percent for FY 2016, and 100 percent for FY 2017 and each subsequent FY.” In other words, for eligible hospitals that are not meaningful EHR users, the Secretary must reduce the applicable percentage increase (prior to the application of other statutory adjustments) by—

- 25 percent (33 1/3 of 75 percent) in FY 2015;
- 50 percent (66 2/3 percent of 75 percent) in FY 2016; and
- 75 percent (100 percent of 75 percent) in FY 2017 and subsequent years.

Section 4102(b)(1)(B) of the HITECH Act also provides that the reduction “shall apply only with respect to the FY involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase for a subsequent FY.”

Section 412.64(d) of our regulations sets forth the adjustment to the percentage increase in the market basket index for those eligible hospitals that are not meaningful EHR users for the EHR reporting period for a payment year, beginning in FY 2015.

Section 1886(b)(3)(B)(ix)(II) of the Act, as amended by section 4102(b)(1) of the HITECH Act, provides that the Secretary may, on a case-by-case basis, exempt a hospital from the application of the applicable percentage increase adjustment for a fiscal year if the Secretary determines that requiring such hospital to be a meaningful EHR user would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient internet access. This section of the Act also provides that such determinations are subject to annual renewal, and that in no case may a hospital be granted an exception for more than 5 years.

Section 4102(b)(2) of the HITECH Act amended section 1814(l) of the Act to include an adjustment to a CAH’s Medicare reimbursement for inpatient services if the CAH is not a meaningful EHR user for an EHR reporting period. The adjustment would be made for cost reporting periods that begin in FY 2015, FY 2016, FY 2017, and each subsequent FY thereafter. Specifically, sections 1814(l)(4)(A) and (B) of the Act provide that, if a CAH does not demonstrate meaningful use of CEHRT for an applicable EHR reporting period, then for a cost reporting period beginning in FY 2015, the CAH’s reimbursement shall be reduced from 101 percent of its reasonable costs to 100.66 percent of reasonable costs. For a cost reporting period beginning in FY 2016, its reimbursement would be reduced to 100.33 percent of its reasonable costs. For a cost reporting period beginning in FY 2017 and each subsequent fiscal year, its reimbursement would be reduced to 100 percent of reasonable costs.

However, as provided for eligible hospitals, a CAH, may, on a case by case basis, be granted an exception from this adjustment if CMS or its Medicare contractor determines, on an annual basis, that a significant hardship exists, such as in the cases of a CAH in a rural area without sufficient internet access. However, in no case may a CAH be granted this exception for more than 5 years.

In the Stage 1 final rule (75 FR 44564 and 44574), we finalized the regulations regarding the CAH adjustment at § 495.106(e) and § 413.70(a)(6).

## 2. EHR Reporting Period for a Payment Adjustment Year

Section 1848(a)(7)(E)(ii) of the Act provides the Secretary with broad authority to choose the EHR reporting period that would apply for purposes of determining the payment adjustments for EPs for CY 2015 and subsequent years. In the Stage 2 final rule (77 FR 54095 through 54097), we adopted a policy that the EHR reporting periods for the payment adjustments will begin and end prior to the year of the payment adjustment. We stated that this is based on our desire to avoid creating a situation in which it might be necessary either to recoup overpayments or make additional payments after a determination is made about whether the payment adjustment should apply, and the resulting implications for beneficiary coinsurance. Specifically, we finalized under § 495.4 of our regulations that for EPs, the EHR reporting period for a payment adjustment year is the full calendar year that is 2 years before the payment adjustment year. For example, the full calendar year of 2015 would be the EHR reporting period for the CY 2017 payment adjustment year. We also finalized an exception to this rule for EPs who have never successfully attested to meaningful use. Generally stated, under this exception, for an EP who is demonstrating meaningful use for the first time, the EHR reporting period for a payment adjustment year is any continuous 90-day period. For a full description of this exception, including limitations on when the continuous 90-day period must occur in relation to the payment adjustment year and the deadlines for registration and attestation, we refer readers to the definition of “EHR reporting period for a payment adjustment year” under § 495.4 of our regulations and the discussion in the Stage 2 final rule (77 FR 54095 through 54096). We established that these policies apply for the CY 2015 payment adjustment year and subsequent payment adjustment years.

Similarly, section 1886(b)(3)(B)(ix)(IV) of the Act makes clear that the Secretary has discretion to specify as the EHR reporting period any period (or periods) that will apply with respect to a fiscal year. In the Stage 2 final rule at 77 FR 54104 through 54105, we finalized the applicable EHR reporting period for purposes of determining whether an eligible hospital is subject to the

payment adjustment. As with EPs, we finalized that the EHR reporting period for the payment adjustment year for eligible hospitals will begin and end prior to the year of the payment adjustment. We finalized under § 495.4 of our regulations that for eligible hospitals, the EHR reporting period for a payment adjustment year is the full federal fiscal year that is 2 years before the payment adjustment year. We established this policy beginning with the FY 2015 payment adjustment year and continuing in subsequent years. For example, the full federal fiscal year of 2015 would be the EHR reporting period for the FY 2017 payment adjustment year. We finalized an exception to the general rule of a full federal fiscal year EHR reporting period for eligible hospitals that have never successfully attested to meaningful use. Generally stated, under this exception, for an eligible hospital that is demonstrating meaningful use for the first time, the EHR reporting period for a payment adjustment year is any continuous 90-day period. For a full description of this exception, including limitations on when the continuous 90-day period must occur in relation to the payment adjustment year and the deadlines for registration and attestation, we refer readers to the definition of “EHR reporting period for a payment adjustment year” under § 495.4 of the regulations and the discussion in the Stage 2 final rule (77 FR 54104 through 54105).

In Stage 2, we amended the definition of the EHR reporting period that would apply for purposes of the payment adjustment for CAHs under § 495.4 (77 FR 54109 and 54110). For CAHs, this is the full federal fiscal year that is the same as the payment adjustment year (unless a CAH is in its first year of demonstrating meaningful use, in which case a continuous 90-day EHR reporting period within the payment adjustment year would apply). The adjustment applies based upon the cost reporting period that begins in the payment adjustment year (that is, FY 2015 and thereafter). Thus, if a CAH is not a meaningful EHR user for FY 2015, and thereafter, then the payment adjustment is applied to the CAH’s reasonable costs incurred in a cost reporting period that begins in the affected FY as described in § 413.70(a)(6)(i). We further finalized that CAHs submit their attestations on meaningful use by November 30th of the following FY. For example, if a CAH is attesting that it was a meaningful EHR user for FY 2015, the attestation must be submitted no later than November 30, 2015. Such an attestation or lack

thereof, would then affect interim payments to the CAH made after December 1st of the applicable FY. If the cost reporting period ends prior to December 1st of the applicable FY, then any applicable payment adjustment would be made through the cost report settlement process.

In the Stage 3 proposed rule (80 FR 16774 through 16779), we proposed to eliminate the exception discussed previously for a 90-day EHR reporting period for new meaningful EHR users in the Medicare EHR Incentive Program beginning with the EHR reporting period in 2017, with a limited exception for new meaningful EHR users under the Medicaid EHR Incentive Program. We also proposed for eligible hospitals and CAHs to shift the EHR reporting period for a payment adjustment year from a fiscal year basis to a calendar year basis. We proposed that for EPs and eligible hospitals demonstrating meaningful use under the Medicare EHR Incentive Program, including those who have successfully demonstrated meaningful use in a prior year as well as those who have not, the EHR reporting period for a payment adjustment year would be the full calendar year that is 2 years before the payment adjustment year. For further information on these proposals, we direct readers to the Stage 3 proposed rule (80 FR 16739 and 16740).

In the Stage 3 proposed rule, we also proposed a change to the EHR reporting period that would apply for the payment adjustments for CAHs, beginning with the FY 2017 payment adjustment year. Similar to what we proposed for eligible hospitals, we proposed that the EHR reporting period for a payment adjustment year for CAHs would be a full calendar year, rather than a full federal fiscal year. We proposed the EHR reporting period for a payment adjustment year would be the calendar year that overlaps the last 3 quarters of the federal fiscal year that is the payment adjustment year. For example, in order for a CAH to avoid application of the adjustment to its reasonable costs incurred in a cost reporting period that begins in FY 2017, the CAH must demonstrate it is a meaningful EHR user for an EHR reporting period of the full 2017 calendar year. For further information on these proposals, we direct readers to the Stage 3 proposed rule (80 FR 16777 through 16779).

In the Stage 3 proposed rule, we proposed amendments to the definition of “EHR reporting period for a payment adjustment year” under § 495.4 to reflect these proposals for EPs, eligible hospitals, and CAHs.

In this proposed rule, we are proposing several changes to the definition of the EHR reporting period for a payment adjustment year for EPs, eligible hospitals, and CAHs at § 495.4, in connection with other proposals made in this rule. Specifically, as stated in section I.A.2.b. of this proposed rule, we propose to change the EHR reporting period in 2015 to 90 days for all providers. This 90-day EHR reporting period in 2015 would allow adequate time to accommodate the changes to the objectives and measures of meaningful use proposed in this rule. We are also proposing to move all providers to an EHR reporting period based on the calendar year beginning in 2015 to support program alignment and simplify reporting requirements among provider types (section I.A.2.a. of this proposed rule).

**a. Changes to the EHR Reporting Period for a Payment Adjustment Year for EPs**

We propose a change to our current policy for 2015 only. We propose that for all EPs, including those who have demonstrated meaningful use in a prior year and those who have not, the EHR reporting period for a payment adjustment year would be any continuous 90-day period in CY 2015 and would apply for purposes of the payment adjustments in CY 2016 for EPs demonstrating meaningful use for the first time in 2015 and for purposes of the payment adjustments in CY 2017 for both returning and new participant EPs who demonstrate meaningful use in 2015. We propose the deadline for attestation would be February 29, 2016.

We would maintain our current policy for 2016. Under that policy, if an EP is demonstrating meaningful use for the first time in 2016, the EHR reporting period for a payment adjustment year is any continuous 90-day period in CY 2016 and applies for purposes of the payment adjustments in CYs 2017 and 2018. To avoid the payment adjustment in CY 2017, the 90-day period must occur within the first three quarters of CY 2016 and the EP must attest by October 1, 2016. If an EP has previously demonstrated meaningful use, the EHR reporting period for a payment adjustment year is the full CY 2016 and applies for purposes of the payment adjustment in CY 2018.

We invite comment on this proposal.

**b. Changes to the EHR Reporting Period for a Payment Adjustment Year for Eligible Hospitals**

We propose a change to our current policy for 2015. We propose that for all eligible hospitals, including those that have demonstrated meaningful use in a

prior year and those that have not, the EHR reporting period for a payment adjustment year would be any continuous 90-day period beginning October 1, 2014 and ending December 31, 2015. This EHR reporting period would apply for purposes of the payment adjustments in FY 2016 for eligible hospitals demonstrating meaningful use for the first time in 2015 and for purposes of the payment adjustments in FY 2017 for both returning and new participant eligible hospitals that demonstrate meaningful use in 2015. We propose the deadline for attestation would be February 29, 2016.

We also propose to change our current policy for 2016. We propose that if an eligible hospital is demonstrating meaningful use for the first time in 2016, the EHR reporting period for a payment adjustment year would be any continuous 90-day period in CY 2016 and apply for purposes of the payment adjustments in FYs 2017 and 2018. To avoid the payment adjustment in FY 2017, the 90-day period must occur within the first three quarters of CY 2016, and the eligible hospital must attest by October 1, 2016. If an eligible hospital has previously demonstrated meaningful use, the EHR reporting period for a payment adjustment year would be the full CY 2016, the attestation deadline would be February 28, 2017, and this EHR reporting period would apply for purposes of the payment adjustment in FY 2018.

#### c. Changes to the EHR Reporting Period for a Payment Adjustment Year for CAHs

For CAHs, we are proposing to shift the EHR reporting period for a payment adjustment year from the federal fiscal year that is the payment adjustment year to the calendar year that begins on the first day of the second quarter of the federal fiscal year that is the payment adjustment year. In the Stage 3 proposed rule, we outline how CAHs are different from EPs and eligible hospitals in that the EHR reporting period is aligned with the payment adjustment year, rather than in advance of the payment adjustment year. In the Stage 3 proposed rule, we propose a similar change to this definition for an EHR reporting period for a payment adjustment year beginning in 2017 and explain how this change to the calendar year would work for CAHs. For further discussion of this proposal, we direct readers to the Stage 3 proposed rule (80 FR 16739 through 16740).

In this proposed rule, we propose a change to our current policy for 2015. We propose that for all CAHs, including

those that have demonstrated meaningful use in a prior year and those that have not, the EHR reporting period for a payment adjustment year would be any continuous 90-day period beginning October 1, 2014 and ending December 31, 2015. This EHR reporting period would apply for purposes of the payment adjustments for the cost reporting period that begins in federal FY 2015. We propose the deadline for attestation would be February 29, 2016.

Any CAH that does not demonstrate meaningful use for an EHR reporting period in 2015 would receive a downward adjustment to payments for its reasonable costs incurred in the cost reporting period that begins in federal FY 2015. If a CAH fails to demonstrate meaningful use in 2015 and has a fiscal year that ends between October 1, 2015 and March 1, 2016, then the payment adjustment would be applied through the cost report reconciliation process.

We also propose to change our current policy for 2016. We propose that if a CAH is demonstrating meaningful use for the first time in 2016, the EHR reporting period for a payment adjustment year would be any continuous 90-day period in CY 2016 and apply for purposes of the payment adjustments for the cost reporting period that begins in federal FY 2016. The deadline for attestation would be February 28, 2017. If a CAH has previously demonstrated meaningful use, the EHR reporting period for a payment adjustment year would be the full CY 2016, the attestation deadline would be February 28, 2017, and this EHR reporting period would apply for purposes of the payment adjustments for the cost reporting period that begins in federal FY 2016.

Any CAH that does not demonstrate meaningful use for an EHR reporting period in 2016 would receive a downward adjustment to payments for its reasonable costs incurred in the cost reporting period that begins in federal FY 2016. If a CAH fails to demonstrate meaningful use in 2016 and has a fiscal year that ends between October 1, 2016 and March 1, 2017, then the payment adjustment would be applied through the cost report reconciliation process.

#### 3. Hardship Exceptions

As stated previously, sections 1848(a)(7)(B) and 1886(b)(3)(B)(ix)(II) of the Act provide the Secretary with discretionary authority to exempt, on a case by case basis, a provider from the application of the Medicare payment adjustment if the Secretary determines that compliance with the requirements for being a meaningful EHR user would result in a significant hardship. We have

established various types of hardship exceptions for which providers may apply as well as deadlines for application. For more information, we refer readers to the Stage 2 final rule at 77 FR 54093 through 54113.

In this proposed rule, we propose no changes to the existing hardship exceptions under our regulations.

#### III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to evaluate fairly whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The following is a discussion of the requirements contained in this proposed regulation that we believe are subject to PRA and information collection requirements (ICRs). The projected numbers of EPs, eligible hospitals, and CAHs, MA organizations, MA EPs and MA-affiliated hospitals are based on the numbers used in the impact analysis assumptions as well as estimated federal costs and savings in the section IV.C.3.a. and b. of this proposed rule. The actual burden would remain constant for per year as EPs, eligible hospitals, and CAHs would need to attest that they have successfully demonstrated meaningful use under the proposed definition in 2015 through 2017. For the purposes of this analysis, we are focusing only on 2015, the first year in which a provider may use the proposed definition of meaningful use. We do not believe the burden for EPs, eligible hospitals, and CAHs participating in Stages 1 and 2 prior to 2015 would be different from the Agency Information Collection Activities (75 FR 65354) based on this proposed rule. Beginning in 2012, Medicare EPs, eligible hospitals, and CAHs had the option to electronically report their clinical quality measures through the respective aligned quality reporting programs;

however, for the purposes of defining the burden for 2015 through 2017, we maintain the estimates for attestation to CQM data.

In this proposed rule, the definition of meaningful use with associated reporting requirements would replace all prior definitions and requirements beginning in 2015. At that point, all eligible providers would be required to report meaningful use requirements on an annual basis. For 2017, providers may simply repeat this proposed definition of meaningful use or move on to Stage 3. The same reporting burden would apply to all providers. Consequently, the proposed ICRs reflect the provider burden associated with complying with and reporting of the proposed requirements beginning in 2015 and each subsequent year. We note that the proposals in this rule result in a reduction of the reporting burden on providers attesting to meaningful use as compared to the existing program requirements finalized in the Stage 2 final rule (77 FR 54132).

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

*A. ICR Regarding Demonstration of Meaningful Use Criteria (§ 495.20 Through § 495.60)*

In § 495.40 we propose that to successfully demonstrate meaningful use of certified EHR technology for meaningful use in 2015 through 2017, an EP, eligible hospital, or CAH (collectively referred to as “provider” in this section) must attest, through a secure mechanism in a specified manner, to the following during the EHR reporting period: (1) The provider used certified EHR technology and specified the technology was used; and (2) the provider satisfied each of the applicable objectives and associated

measures in § 495.22. In § 495.40, we stipulate that providers must also successfully report the clinical quality measures selected by CMS to CMS or the states, as applicable. We estimate that the certified EHR technology adopted by the provider captures many of the objectives and associated measures and generate automated numerator and denominator information where required, or generate automated summary reports. We also expect that the provider would enable the functionality required to complete the objectives and associated measures for which they are required to attest.

We propose that EPs would be required to report on a total of 10 objectives and associated measures and eligible hospitals and CAHs would report on a total of 9 objectives and associated measures. In this proposed rule, there are 6 objectives that would require an EP to enter numerators and denominators during attestation. Eligible hospitals and CAHs would have to attest that they have met 6 objectives that require numerators and denominators. For objectives and associated measures requiring a numerator and denominator, we limit our estimates to actions taken in the presence of certified EHR technology. We do not anticipate a provider would maintain 2 recordkeeping systems when certified EHR technology is present. Therefore, we assume that all patient records that would be counted in the denominator would be kept using certified EHR technology. We expect it would take an individual provider or designee approximately 10 minutes to attest to each meaningful use objective and associated measure that requires a numerator and denominator to be generated, as well as approximately 1 hour 30 minutes to attest to CQM requirements.

Additionally, providers would be required to report they have completed

objectives and associated measures that require a “yes” or “no” response during attestation. For EPs, there are 3 objectives that would require a “yes” or “no” response during attestation. For eligible hospitals and CAHs, there are 2 objectives and that would require a “yes” or “no” response during attestation. We expect that it would take a provider or their designee 1 minute to attest to each objective that requires a “yes” or “no” response.

Providers would also be required to attest that they are protecting ePHI. We estimate completion of the analysis required to meet successfully the associated measure for this objective would take approximately 6 hours, which is identical to our estimate for the Stage 1 and Stage 2 requirements. This burden estimate assumes that covered entities are already conducting and reviewing these risk analyses under current HIPAA regulations. Therefore, we have not accounted for the additional burden associated with the conduct or review of such analyses.

Table 7 lists those objectives and associated measures for EPs and eligible hospitals and CAHs. We estimate the objectives and associated measures would take an EP 6 hours 49 minutes to complete, and would take an eligible hospital or CAH 6 hours 48 minutes to complete.

In this proposed rule EPs, eligible hospitals, and CAHs have nearly identical reporting burdens. Eligible hospitals and CAHs are required to report to one additional registry than EPs are required to report; however, EPs have an additional objective, Secure Electronic Messaging, which requires a “yes” or “no” response. Consequently, we have not prepared lowest and highest burdens. Rather, we have computed a burden for EPs and a burden for eligible hospitals and CAHs.

TABLE 7—BURDEN ESTIMATES

Eligible professionals	Eligible hospitals and CAHs	Measures	Burden estimate per respondent (EPs)	Burden estimate per respondent (hospitals)
<b>Objectives and Measures</b>				
Use computerized provider order entry (CPOE) for medication, laboratory and radiology orders directly entered by any licensed healthcare professional who can enter orders into the medical record per state, local and professional guidelines.	Use computerized provider order entry (CPOE) for medication, laboratory and radiology orders directly entered by any licensed healthcare professional who can enter orders into the medical record per state, local and professional guidelines.	More than 60% of medication, 30% of laboratory, and 30% of radiology orders created by the EP or authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using CPOE.	10 minutes .....	10 minutes.



TABLE 7—BURDEN ESTIMATES—Continued

Eligible professionals	Eligible hospitals and CAHs	Measures	Burden estimate per respondent (EPs)	Burden estimate per respondent (hospitals)
Generate and transmit permissible prescriptions electronically (eRx).	Generate and transmit permissible discharge prescriptions electronically (eRx).	More than 50% of all permissible prescriptions, or all prescriptions written by the EP and queried for a drug formulary and transmitted electronically using CEHRT.	10 minutes.	10 minutes.
Use clinical decision support to improve performance on high-priority health conditions.	Use clinical decision support to improve performance on high-priority health conditions.	<p>More than 10% of hospital discharge medication orders for permissible prescriptions (for new, changed, and refilled prescriptions) are queried for a drug formulary and transmitted electronically using CEHRT.</p> <ol style="list-style-type: none"> <li>1. Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in care for the entire EHR reporting period. Absent four clinical quality measures related to an EP, eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to improving healthcare efficiency.</li> <li>2. The EP, eligible hospital or CAH has enabled and implemented the functionality for drug-drug and drug-allergy interaction checks for the entire EHR reporting period.</li> </ol>	1 minute .....	1 minute.
Provide patients the ability to view online, download, and transmit their health information within 4 business days of the information being available to the EP.	Provide patients the ability to view online, download, and transmit information about a hospital admission.	<ol style="list-style-type: none"> <li>1. More than 50% of all unique patients seen by the EP during the EHR reporting period are provided timely (within 4 business days after the information is available to the EP) online access to their health information subject to the EP's discretion to withhold certain information.</li> <li>2. At least 1 patient seen by the EP during the EHR reporting period (or their authorized representatives) views, downloads, or transmits to a third party their health information.</li> </ol> <ol style="list-style-type: none"> <li>1. More than 50% of all patients who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH have their information available online within 36 hours of discharge.</li> <li>2. At least 1 patient (or their authorized representatives) who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH views, downloads or transmits to a third party their information during the reporting period.</li> </ol>	10 minutes.	10 minutes.
Use CEHRT to identify patient-specific education resources and provide those resources to the patient.	Use CEHRT to identify patient-specific education resources and provide those resources to the patient.	<p>Patient-specific education resources identified by CEHRT are provided to patients for more than 10% of all unique patients with office visits seen by the EP during the EHR reporting period.</p> <p>More than 10% of all unique patients admitted to the eligible hospital's or CAH's inpatient or emergency departments (POS 21 or 23) are provided patient-specific education resources identified by CEHRT.</p>	10 minutes .....	10 minutes.
Use secure electronic messaging to communicate with patients on relevant health information.		The secure electronic messaging function was fully enabled for the EHR reporting period.	10 minutes.	

TABLE 7—BURDEN ESTIMATES—Continued

Eligible professionals	Eligible hospitals and CAHs	Measures	Burden estimate per respondent (EPs)	Burden estimate per respondent (hospitals)
The EP who receives a patient from another setting of care or provider of care or believes an encounter is relevant should perform medication reconciliation.	The eligible hospital or CAH who receives a patient from another setting of care or provider of care or believes an encounter is relevant should perform medication reconciliation.	The EP, eligible hospital or CAH performs medication reconciliation for more than 50% of transitions of care in which the patient is transitioned into the care of the EP or admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23).	10 minutes .....	10 minutes.
The EP who transitions their patient to another setting of care or provider of care or refers their patient to another provider of care provides a summary care record for each transition of care or referral.	The eligible hospital or CAH who transitions their patient to another setting of care or provider of care or refers their patient to another provider of care provides a summary care record for each transition of care or referral.	1. The EP, eligible hospital or CAH that transitions or refers their patient to another setting of care or provider of care provides a summary of care record for more than 10% of such transitions and referrals either (a) electronically transmitted using CEHRT to a recipient or (b) where the recipient receives the summary of care record via exchange facilitated by an organization that is a NwHIN Exchange participant or in a manner that is consistent with the governance mechanism ONC establishes for the nationwide health information network.	10 minutes .....	10 minutes.
Active engagement with a public health agency to report public health data.	Active engagement with a public health agency to report public health data.	EPs must attest to at least 2 options out of 5.	1 minute .....	1 minute.
Protect electronic protected health information created or maintained by the CEHRT through the implementation of appropriate technical capabilities.	Protect electronic protected health information created or maintained by the CEHRT through the implementation of appropriate technical capabilities.	Eligible Hospitals and CAHs must attest to at least 3 options out of 6.	6 hours.	
		Conduct or review a security risk analysis in accordance with the requirements under 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of data stored in CEHRT in accordance with requirements under 45 CFR 164.312 (a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the provider's risk management process.		
Time to Attest to Objectives and Measures .....			6 hours 49 minutes.	6 hours 48 minutes.
Time to Attest and Report Clinical Quality Measures .....			1 hour 30 minutes.	1 hour 30 minutes.
Total—Objectives + CQM Reporting .....			8 hours 19 minutes.	8 hours 18 minutes.

In this proposed rule, we estimate that it would take no longer than 6 hours 49 minutes for an EP to attest to each of the applicable objectives and associated measures. The total burden hours for an EP to attest to the meaningful use objectives and measures and to report CQMs would be 8 hours 19 minutes. We estimate that there could be approximately 595,100 nonhospital-based Medicare EPs in 2014. Based on the historical data, we anticipate approximately 60 percent (357,060) of these EPs may attest to the objectives and measures of meaningful use. In addition, we believe approximately 30,000 Medicaid only EPs, or approximately 51 percent of the Medicaid-only EPs, will successfully

demonstrate meaningful use in 2015. The total estimated annual cost burden for all EPs to attest to meaningful use would be \$297,076,291 (387,060 × 8 hours 19 minutes × \$92.25 (mean hourly rate for physicians based on May 2013 BLS data)). Similarly, eligible hospitals and CAHs would attest that they have met the meaningful use objectives and associated measures, and would submit the clinical quality measures. We estimate that it would take no longer than 6 hours 48 minutes to attest to each of the applicable objectives and associated measures. Therefore, the total burden hours for an eligible hospital or CAH to attest to the meaningful use objectives and measures and to report CQMs, would be 8 hours 18 minutes.

We estimate that there are about 4,900 eligible hospitals and CAHs that may attest to the aforementioned criteria in FY 2015 of which 95 percent are expected to successfully demonstrate meaningful use. The total estimated annual cost burden for all eligible hospitals and CAHs to attest to meaningful use would be \$2,451,872 (4,655 eligible hospitals and CAHs × \$63.46 (8 hours 18 minutes × \$63.46 (mean hourly rate for lawyers based on May 2013 BLS) data)).

We provide the estimate of the burden for the approximately 13,635 MA EPs in the MA organization burden section. The total annual burden estimates for meaningful use under this proposed rule are shown in Table 10.

For the purpose of this proposed collection of information, we assumed that all eligible providers would comply with the requirements of Meaningful Use as previously defined if the policies proposed in this rule were not finalized. Therefore, in this proposed rule, we estimate that the policies contained

herein, once finalized, would result in an overall reduction in the reporting burden for providers of 1.45 hours to 1.9 hours for EPs and 2.62 hours for eligible hospitals and CAHs per respondent. While batch reporting for objectives and measures, and group reporting for CQMs, are available for EPs in the

current program; the program is based upon successful individual provider demonstration of meaningful use and so individual totals are used to identify the estimated reduction in provider reporting burden. This reduction of burden is outlined in Table 8.

TABLE 8—REDUCTION IN REPORTING BURDEN HOURS

Burden under current program and proposed modifications	Estimated burden per respondent EPs	Estimated burden per respondent eligible hospitals and CAHs
Total Under Current Stage 2 Requirements at 42 CFR 495.6	9 hours 46 minutes	NA.
Core Set (including CQMs) + Least Burdensome Menu Set Criteria	10 hours 13 minutes	10 hours 55 minutes.
Total Under Current Stage 2 Requirements at 42 CFR 495.6	10 hours 13 minutes	10 hours 55 minutes.
Core Set (including CQMs) + Most Burdensome Menu Set Criteria	8 hours 19 minutes	8 hours 18 minutes.
Total Under Proposed Modifications at 495.22	8 hours 19 minutes	8 hours 18 minutes.
All Objectives and Measures + CQMs	1 hour 27 minutes	NA.
Reduction from Least Burdensome Estimate	1 hour 54 minutes	2 hour 37 minutes.
Reduction from Most Burdensome Estimate	1 hour 54 minutes	2 hour 37 minutes.

Using the hourly costs associated with the reporting burden as mentioned previously, this reduction of 1.45 hours to 1.9 hours for EPs and 2.62 hours for eligible hospitals and CAHs represents a

per response savings of \$133.76 to \$175.28 for EPs and \$166.27 for eligible hospitals and CAHs. The total cost reduction in cost for providers demonstrating meaningful use is

estimated at \$48,534,332 at the lowest and \$63,359,464 at the highest. These estimates are further outlined in Table 9.

TABLE 9—REDUCTION IN BURDEN COST SAVINGS

Number of responses	Burden reduction hours	Hourly cost	Reduction per respondent	Total cost reduction
387,060	1.45	\$92.25	\$133.76	\$51,773,146
387,060	1.9	92.25	175.28	67,843,877
4,655	2.62	63.46	166.27	773,987
Total Least				52,547,132
Total Most				68,617,864

*B. ICRs Regarding Qualifying MA Organizations (§ 495.210)*

In this proposed rule, we estimate that the burden would be significantly less for qualifying MA organizations attesting to the meaningful use of their MA EPs, because qualifying MA EPs use the EHR technology in place at a given location or system, so if certified EHR technology is in place and the qualifying MA organization requires its qualifying MA EPs to use the technology, qualifying MA organizations would be able to determine at a faster rate than individual FFS EPs, that its qualifying MA EPs meaningfully used certified EHR technology. In other words, qualifying MA organizations can make the determination in masse if the certified EHR technology is required to be used at its facilities, whereas under FFS, each EP likely must make the determination on an individual basis. We further note, that these differences also mean the total reduction in burden

for MA organizations resulting from the proposals in this rule would be negligible. We estimate that, on average, it would take an individual 45 minutes to collect information necessary to determine if a given qualifying MA EP has met the meaningful use objectives and measures, and 15 minutes for an individual to make the attestation for each MA EP. Furthermore, the individuals performing the assessment and attesting would not likely be the eligible professional, but non-clinical staff. We believe that the individual gathering the information could be equivalent to a GS 11, step 1 (2015 unadjusted for locality rate), with an hourly rate of approximately \$25.00/hour, and the person attesting (and who may bind the qualifying MA organization based on the attestation) could be equivalent to a GS 15, step 1 (2015 unadjusted for locality rate), or approximately \$50.00/hour. Therefore, for the estimated 13,635 potentially qualifying MA EPs with assumed 100

percent successfully demonstrating meaningful use, we believe it would cost the participating qualifying MA organizations approximately \$426,050 annually to collect the required information and make the attestations  $([10,226 \text{ hours} \times \$25.00] + [3,408 \text{ hours} \times \$50.00])$ .

*C. ICRs Regarding State Medicaid Agency and Medicaid EP and Hospital Activities (§ 495.332 Through § 495.344)*

In this proposed rule, we are proposing no changes to State Medicaid Agency reporting which affect the time and effort associated with completing the single provider election repository and each state's process for the administration of the Medicaid incentive payments, including tracking of attestations and oversight; the submission of the state Medicaid HIT Plan and the additional planning and implementation documents; or the enrollment or reenrollment of providers, or for the collection and submission of the data for providers to demonstrate

that they have adopted, implemented, or upgraded certified EHR technology. We believe the burden associated with these requirements has already been accounted for in our discussion in the

Stage 1 and Stage 2 final rules at (75 FR 44516 through 44544 and 77 FR 54125 through 54135). For the collection and submission of the data for providers to demonstrate that they are meaningful

users of such technology, we believe the burden associated with these requirements has already been accounted for in our discussion of the burden for § 495.20 through § 495.60.

TABLE 10—ESTIMATED ANNUAL REPORTING BURDEN FOR MEANINGFUL USE

Regulation section	OMB Control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting (\$)	Total cost (\$)
§ 495.22—Objectives/Measures/CQMs (EPs) .....	0938-1158	387,060	387,060	8.32	3,220,339	\$92.25	\$297,076,291
§ 495.22—Objectives/Measures/CQMs (hospitals/CAHs) .....	0938-1158	4,655	4,655	8.3	38,637	63.46	2,451,872
§ 495.210—Gather Attestation Information (MA EPs and EHs) .....	0938-1158	13,635	13,635	0.75	10,226	25.00	255,656
§ 495.210—Attest (MA EPs and EHs) .....	0938-1158	13,635	13,635	0.25	3,409	50.00	170,438
Total .....		418,985	418,985		3,272,611		299,954,257

\* To avoid double counting, this number of respondents is only included once in the total.

\*\* There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 10.

If you would like to comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention: CMS Desk Officer*, [CMS-3311-P] *Fax: (202) 395-6974; or Email: OIRA\_submission@omb.eop.gov.*

**IV. Response to Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

**V. Regulatory Impact Analysis**

*A. Statement of Need*

This proposed rule would implement the provisions of the ARRA that provide incentive payments to EPs, eligible hospitals, and CAHs participating in Medicare and Medicaid programs that adopt and meaningfully use certified EHR technology. The proposed rule specifies applicable criteria for demonstrating meaningful use for an EHR reporting period in 2015 through 2017.

*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 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year).

In relation to the existing program requirements outlined in the Stage 2 final rule (77 FR 53967 through 54162), we do not expect this rule to result in more incentives paid or in more providers failing meaningful use and being assessed a payment adjustment. This is due to the nature of the modifications being proposed in this rule, which, while they reduce the reporting burden on providers, do not affect the clinical processes and IT functions required to successfully meet the objectives and measures of meaningful use. The proposals in this rule do not fundamentally change the technology required to support participation in the meaningful use program. Under the current program, the requirement to report data on the measures and objectives which have

been identified as now redundant to other more advanced measures being retained, or are duplicative of other measures using the same certified EHR technology function, is essentially requiring providers to report on the same action or process twice. Therefore, it is not the occurrence of the action or process which is reduced by the proposals in this rule, but the burden associated with the duplicative and redundant reporting. In addition, the objectives and measures which are considered topped out have reached high performance and the statistical evidence demonstrates that the expected result of any provider attesting to meaningful use would be a score near the maximum. However, the analysis of these measures and their identification as topped out also takes into account the statistical likelihood that the functions of measures and the processes behind them would continue even without a requirement to report the results. Therefore, while the proposals result in a reduction in reporting requirements, this does not correlate to a change in the overall achievement of the measures and objective as compared to the current program. Finally, when compared against historical data, the shortened reporting period in 2015, which has been proposed to accommodate the implementation of the policies of this rule, is expected to have a minimal impact on successful demonstration of meaningful use. This expectation of minimal impact is based on a number of factors:

- The shortened period is for 2015 only and not for 2016 or 2017.
- Historical data on attestations shows no strong correlation between a shorter reporting period and the ability of providers to attest to a second year of

meaningful use, no correlation for providers returning to attest to a third or fourth year of meaningful use, and providers who would otherwise be in their first year of meaningful use would already have a 90-day reporting period.<sup>5</sup>

- Performance data shows statistically negligible disparity among providers attesting for a 90-day reporting period and those attesting for a full year reporting period on the measures which have been identified as redundant, duplicative, and topped out.<sup>6</sup>

For these reasons, we do not believe the proposals in this rule would impact the overall estimates for incentive payments, payment adjustments, and the net transfer costs associated with the program. However, these proposals do affect the costs associated with the reporting burden on providers. The impacts directly attributable with the proposals in this rule relate to both an hourly reduction per response an overall reduction in the cost associated with reporting for providers demonstrating meaningful use. The burden analysis in this proposed rule, as compared to the Stage 2 estimates, reduces the reporting burden for attestation for providers by approximately 1.45 hours to 1.9 hours for EPs and 2.62 hours for eligible hospitals and CAHs per respondent. This burden estimate and analysis of the impact of the policies result in a total cost reduction estimated at \$48,534,332 at the lowest and \$63,359,464 at the highest. However, we believe this proposed rule will have additional impacts—most notably, cost savings for hospitals and providers that would have additional time to achieve meaningful use—which cannot be adequately estimated because of the wide variation among provider types, and therefore a designation as an economically significant rule under the Executive Order and a major rule under the Congressional Review Act is still applicable. The burden estimate and analysis of the impact of the policies proposed in this proposed rule are outlined further in section III. of this proposed rule.

<sup>5</sup> CMS Data and Reports: Quarterly Public Use Files for participation, Monthly Reports for performance rates: <http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/DataAndReports.html>.

<sup>6</sup> CMS Data and Reports: Quarterly Public Use Files for participation, Monthly Reports for performance rates: <http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/DataAndReports.html>.

## 1. Overall Effects

### a. Regulatory Flexibility Analysis and Small Entities

The Regulatory Flexibility Act (RFA) requires agencies to prepare an Initial Regulatory Flexibility Analysis to describe and analyze the impact of the proposed rule on small entities unless the Secretary can certify that the rule will not have a significant impact on a substantial number of small entities. In the healthcare sector, Small Business Administration (SBA) size standards define a small entity as one with between \$7 million and \$34 million in annual revenues. For the purposes of the RFA, essentially all non-profit organizations are considered small entities, regardless of size. Individuals and states are not included in the definition of a small entity. Since the vast majority of Medicare providers (well over 90 percent) are small entities within the RFA's definitions, it is the normal practice of HHS simply to assume that all affected providers are "small" under the RFA. In this case, most EPs, eligible hospitals, and CAHs are either nonprofit or meet the SBA's size standard for small business. We also believe that the effects of the incentives program on many and probably most of these affected entities will be economically significant. Accordingly, this RIA section, in conjunction with the remainder of the preamble, constitutes the required Initial Regulatory Flexibility Analysis (RFA).

Data available suggests that more providers have adopted EHR technology since the publication of the Stage 1 final rule. An ONC data brief (No. 16, May 2014) noted that hospital adoption of EHR systems has increased 5 fold since 2008. Nine in ten acute care hospitals possessed CEHRT in 2013, increasing 29 percent since 2011. As of January 1, 2015, more than 95 percent of eligible hospitals had successfully demonstrated meaningful use. In January 2014, a Centers for Disease Control and Prevention (CDC) data brief entitled, "Use and Characteristics of Electronic Health Record Systems Among Office-based Physician Practices: United States, 2001 through 2013 found that 78 percent of office-based used any type of EHR systems, up from 18 percent in 2001. The majority of EPs have already purchased certified EHR technology, implemented this new technology, and trained their staff on its use with over 60 percent earning an incentive payment for participation in the program prior to 2015.

The cost reductions provided by the proposals in this rule offer a benefit to

these providers. Furthermore, we believe that the combination of payment incentives and long-term overall gains in efficiency may compensate for some of the initial expenditures.

### (1) Small Entities

We estimate that EPs would spend approximately \$54,000 to purchase and implement a certified EHR and \$10,000 annually for ongoing maintenance according to the Congressional Budget Office (CBO) (75 FR 44546).

In the paper, Evidence on the Costs and Benefits of Health Information Technology, May 2008, in attempting to estimate the total cost of implementing health IT systems in office-based medical practices, recognized the complicating factors of EHR types, available features and differences in characteristics of the practices that are adopting them. The CBO estimated a cost range of \$25,000 to \$45,000 per physician. Annual operating and maintenance amount was estimated at 12 to 20 percent of initial costs (that is, \$3,000 to \$9,000) per physician. For all eligible hospitals, the range is from \$1 million to \$100 million. Though reports vary widely, we anticipate that the average will be \$5 million for eligible hospitals to achieve meaningful use. We estimate \$1 million for maintenance, upgrades, and training each year per eligible hospital. However, as stated earlier many providers have already purchased systems with expenditures focused on maintenance and upgrades. We believe that future retrospective studies on the costs to implement and EHR and the return on investment (ROI) would demonstrate the actual costs incurred by providers participating in the EHR Incentive Programs. The potential costs savings in this proposed rule would benefit these providers as a reduction in the overall cost of program participation.

### (2) Conclusion

As discussed later in this analysis, we believe that there are many positive effects of adopting EHR on health care providers. Furthermore, we believe that the proposals in this rule will result in an overall reduction in the reporting burden for providers of all types. Accordingly, we believe that the object of the RFA to minimize burden on small entities is met by this proposed rule.

### b. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis (RIA) if a rule will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions

of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. There is no identifiable disparity among this group and the overall success rates for eligible hospitals and CAHs in demonstrating meaningful use; furthermore, 95 percent of eligible hospitals and CAHs have successfully demonstrated meaningful use as of January 1, 2015. Finally, on the whole we anticipate an estimated reduction in the reporting burden on eligible hospitals as a group to be less than \$1 million. Therefore, we do not believe that this proposed rule would have a significant impact on a substantial number of small entities.

c. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates will require spending in any 1 year \$100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately \$144 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly those “federal mandate” costs resulting from—(1) imposing enforceable duties on state, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

This proposed rule imposes no substantial mandates on states. This program is voluntary for states and states offer the incentives at their option. The state role in the incentive program is essentially to administer the Medicaid incentive program. While this entails certain procedural responsibilities, these do not involve substantial state expense. In general, each state Medicaid Agency that participates in the incentive program would be required to invest in systems and technology to comply. States would have to identify and educate providers, evaluate their attestations and pay the incentive. However, the federal government would fund 90 percent of

the state’s related administrative costs, providing controls on the total state outlay. In addition, the changes being made by this proposed rule have very little impact on any state functions.

d. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule would not have a substantial direct effect on state or local governments, preempt state law, or otherwise have a Federalism implication.

2. Effects on EPs, Eligible Hospitals, and CAHs

a. Background and Assumptions

There are no new costs associated with this proposed rule. Furthermore, the estimates for the provisions affecting Medicare and Medicaid EPs, eligible hospitals, and CAHs are somewhat uncertain for the following reasons:

- The program is voluntary although payment adjustments will be imposed on Medicare providers if they are unable to demonstrate meaningful use for the applicable reporting period.
- The potential reduction in burden for EPs rely on relate to assumptions of what options for meaningful use they would otherwise attest to should the policies in this proposed rule not be adopted.
- The net costs and savings for any individual provider may not directly correlate to the total for the organization as larger organizations may employ economies of scale in meaningful use attestations.

However, based on the actual count of providers eligible for the program as of December 31, 2014 which were identified through the process of implementing payment adjustments for 2015, we estimated the numbers of EPs and eligible hospitals, including CAHs under Medicare, Medicaid, and MA for 2015 through 2017 and used the updated estimates throughout the analysis. These total potential eligible providers are as follows:

- About 660,000 Medicare FFS EPs (some of whom will also be Medicaid EPs). About 595,100 non-hospital based Medicare EPs.

- About 58,300 non-Medicare eligible EPs (such as dentists, pediatricians, and eligible non-physicians such as certified nurse-midwives, nurse practitioners, and physicians assistants).

- 4,900 eligible hospitals comprising the following:

- ++ 3,397 acute care hospitals.
- ++ 1,395 CAHs.
- ++ 97 children’s hospitals (Medicaid only).
- ++ 11 cancer hospitals (Medicaid only).
- 16 MA organizations and 13,635 MA EPs

b. Industry Costs and Adoption Rates

In this proposed rule, we are proposing no new policies which would require changes to the development, certification, and implementation of certified EHR technology as compared to the policies in the existing program outlined in the Stage 2 final rule (77 FR 54136 through 54146).

3. Medicare Incentive Program Costs

As noted at the beginning of this analysis, it is difficult to predict the actual impacts of the policies in this proposed rule with certainty. We believe the assumptions and methods described herein are reasonable for estimating the financial impact of the provisions on providers participating in the Medicare and Medicaid programs, but acknowledge the wide range of possible outcomes.

a. Medicare Eligible Professionals (EPs)

In brief, the estimates of Medicare EP burden reduction are based on current participation as of January 1, 2015. We estimate that significant cost reductions for Medicare EPs participating in the EHR Incentive Program will result from the policies in this proposed rule when compared to the requirements of the current program. Our estimates of the reduction in burden cost savings are presented in Table 12. They reflect our assumptions about the proportion of EPs who will demonstrate meaningful use of certified EHR technology outlined in Table 11 based on historical data.

TABLE 11—MEDICARE EPs DEMONSTRATING MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY

	Calendar year		
	2015	2016	2017
Medicare EPs who have claims with Medicare (in thousands) .....	660.0	667.8	675.5
Nonhospital-based Medicare EPs (in thousands) .....	595.1	602.1	609.1
Percent of EPs who are Meaningful Users .....	60	65	70

TABLE 11—MEDICARE EPS DEMONSTRATING MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY—Continued

	Calendar year		
	2015	2016	2017
Meaningful Users (in thousands) .....	357.1	391.4	426.4

TABLE 12—ESTIMATED COST REDUCTION FOR MEDICARE EPS

	Calendar year		
	2015	2016	2017
Meaningful Users (in thousands) .....	357.1	391.4	426.4
Lowest Estimated Cost Savings .....	\$47,760,345.60	\$52,353,664.00	\$57,035,264.00
Highest Estimated Cost Savings .....	\$62,585,476.80	\$68,604,592.00	\$74,739,392.00

b. Medicare Eligible Hospitals and CAHs

In brief, the estimates of hospital burden reduction are based on current participation as of January 1, 2015. We estimate that significant cost reductions

for Medicare eligible hospitals and CAHs participating in the EHR Incentive Program would result from the policies in this proposed rule when compared to the requirements of the current program. Our estimates of the reduction in burden cost savings are presented in

Table 12. They reflect our assumptions about the proportion of eligible hospitals and CAHs that will demonstrate meaningful use of certified EHR technology outlined in Table 13 based on historical data.

TABLE 13—MEDICARE ELIGIBLE HOSPITALS AND CAHs DEMONSTRATING MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY

	Calendar year		
	2015	2016	2017
Eligible Hospitals .....	3,397	3,397	3,397
CAHs .....	1,395	1,395	1,395
Percent Demonstrating Meaningful Use .....	95	97	99
Meaningful Users .....	4,552	4,648	4,744

TABLE 14—ESTIMATED COST REDUCTION FOR MEDICARE ELIGIBLE HOSPITALS AND CAHs

	Calendar year		
	2015	2016	2017
Meaningful Users .....	4,552	4,648	4,744
Estimated Cost Savings .....	\$756,861.04	\$772,822.96	\$788,784.88

4. Medicaid Only EPs

We estimate that significant cost reductions for Medicaid only EPs participating in the EHR Incentive

Program will result from the policies in this proposed rule when compared to the requirements of the current program. Our estimates of the reduction in burden cost savings are presented in

Table 16. They reflect our assumptions about the proportion of Medicaid only EPs who will demonstrate meaningful use of certified EHR technology outlined in Table 15 based on historical data.

TABLE 15—MEDICAID ONLY EPs DEMONSTRATING MEANINGFUL USE

	Calendar year		
	2015	2016	2017
Medicaid only EPs .....	58.3	59.4	60.6
Percent of EPs who are Meaningful Users .....	51	53	55
Meaningful Users (in thousands) .....	30	31.48	33.33

TABLE 16—ESTIMATED COST REDUCTION FOR MEDICAID ONLY EPS

	Calendar year		
	2015	2016	2017
Meaningful Users (in thousands) .....	30,000	31,480	33,330
Lowest Estimated Cost Savings .....	\$4,012,800.00	\$4,210,764.80	\$4,458,220.80
Highest Estimated Cost Savings .....	\$5,258,400.00	\$5,517,814.40	\$5,842,082.40

It should be noted that since the Medicaid EHR Incentive Program provides that a Medicaid EP can receive an incentive payment in their first year because he or she has demonstrated a meaningful use or because he or she has adopted, implemented, or upgraded certified EHR technology, these participation rates include only those Medicaid providers who are expected to demonstrate meaningful use. Providers who are dual-eligible have been included in the Medicare EP program

estimates based on the total current volume of Medicare EPs who have demonstrated meaningful use in either Medicare or Medicaid as of January 1, 2015.

b. Medicaid Only Hospitals

The burden reduction for Medicaid only eligible hospitals assumes a similar participation rate for the demonstration of meaningful use as is applicable for Medicare eligible hospitals. We estimate that significant cost reductions for

Medicaid only eligible hospitals participating in the EHR Incentive Program will result from the policies in this proposed rule when compared to the requirements of the current program. Our estimates of the reduction in burden cost savings are presented in Table 18. They reflect our assumptions about the proportion of Medicaid only eligible hospitals that will demonstrate meaningful use of certified EHR technology outlined in Table 17 based on historical data.

TABLE 17—MEDICAID ONLY ELIGIBLE HOSPITALS DEMONSTRATING MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY

	Calendar year		
	2015	2016	2017
Eligible Hospitals .....	108	108	108
Percent Demonstrating Meaningful Use .....	95	97	99
Meaningful Users .....	103	105	107

TABLE 18—ESTIMATED COST REDUCTION FOR MEDICARE ELIGIBLE HOSPITALS AND CAHS

	Calendar year		
	2015	2016	2017
Meaningful Users .....	4,552	4,648	4,744
Estimated Cost Savings .....	\$17,125.81	\$17,458.35	\$17,790.89

5. Benefits for all EPs and all Eligible Hospitals

In this proposed rule, we have not quantified the overall benefits to the industry, nor to eligible hospitals or EPs in the Medicare, Medicaid, or MA programs. Although information on the costs and benefits of adopting systems that specifically meet the requirements for the EHR Incentive Programs (for example, certified EHR technology) has not yet been collected, and although some studies question the benefits of health information technology, a 2011 study completed by ONC (Buntin et al, 2011 “The Benefits of Health Information Technology: A Review of the Recent Literature Shows Predominantly Positive Results” *Health Affairs*) found that 92 percent of articles published from July 2007 up to February 2010 reached conclusions that showed the overall positive effects of health information technology on key

aspects of care, including quality and efficiency of health care. Among the positive results highlighted in these articles were decreases in patient mortality, reductions in staffing needs, correlation of clinical decision support to reduced transfusion and costs, reduction in complications for patients in hospitals with more advanced health IT, and a reduction in costs for hospitals with less advanced health IT. A subsequent 2013 study completed by the RAND Corporation for ONC (Shekelle et al. 2013 “Health Information Technology: An Updated Systemic Review with a Focus on Meaningful Use Functionalities) found 77 percent of articles published between January 2010 to August 2013 that evaluated the effects of health IT on healthcare quality, safety, and efficiency reported findings that were at least partially positive. The Centers for Disease Control and Prevention publication in January 2014, (Hsiao et

al, “Use and Characteristics of Electronic Health Record Systems Among Office-based Physician Practices: United States, 2001–2013) concluded that the adoption of basic EHR systems by office-based physicians increased 21 percent between 2012 and 2013, varying widely across the states ranging from 21 percent in New Jersey to 83 percent in North Dakota. Another study, at one hospital emergency room in Delaware, showed the ability to download and create a file with a patient’s medical history saved the ER \$545 per use, mostly in reduced waiting times. A pilot study of ambulatory practices found a positive ROI within 16 months and annual savings thereafter (Greiger et al. 2007, A Pilot Study to Document the Return on Investment for Implementing an Ambulatory Electronic Health Record at an Academic Medical Center <http://www.journalacs.org/article/S1072-7515%2807%2900390-0/abstract—article-footnote-1>.) Another



study compared the productivity of 75 providers within a large urban primary care practice over a 4-year period showed increases in productivity of 1.7 percent per month per provider after EHR adoption (DeLeon et al. 2010, “The business end of health information technology”). Some vendors have estimated that EHRs could result in cost savings of between \$100 and \$200 per patient per year. The proposals in this rule focus on a long term goal of moving providers along a continuum from data capture to advanced use of certified EHR technology. The reduction of reporting burden recognizes progress toward key milestones and is intended to allow providers to refocus on leveraging health IT to support health information exchange, patient engagement, and quality improvement. As participation and adoption increases, there will be more opportunities to capture and report on cost savings and benefits.

6. Benefits to Society

According to the CBO study “Evidence on the Costs and Benefits of Health Information Technology” (<http://www.cbo.gov/ftpdocs/91xx/doc9168/05-20-HealthIT.pdf>) when used effectively, EHRs can enable providers to deliver health care more efficiently. For example, the study states that EHRs can reduce the duplication of diagnostic tests, prompt providers to prescribe cost-effective generic medications, remind patients about preventive care, reduce unnecessary office visits, and assist in managing complex care. This is consistent with the findings in the ONC study cited previously. Further, the CBO report claims that there is a potential to gain both internal and external savings from widespread adoption of health IT, noting that internal savings will likely be in the reductions in the cost of providing care, and that external savings could accrue to the health insurance plan or even the patient, such as the ability to exchange information more efficiently. However, it is important to

note that the CBO identifies the highest gains accruing to large provider systems and groups and claims that office-based physicians may not realize similar benefits from purchasing health IT products. At this time, there is limited data regarding the efficacy of health IT for smaller practices and groups, and the CBO report notes that this is a potential area of research and analysis that remains unexamined. The benefits resulting specifically from this proposed regulation are even harder to quantify because they represent, in many cases, the reduction in the time spent per each individual respondent to attest to the meaningful use objectives and measures. While this time may represent a reduced burden and the opportunity to reallocate resources, there is no viable way to estimate that benefit over a wide range of provider types, practice sizes and other potential variables. For example, the reduction of about 2 hours per respondent for a small practice might be insignificant; however, for a practice of 1,000 providers it may represent as many as 2,000 man hours which could be reallocated to making other improvements in clinical processes and patient outcomes. Conversely, a large practice may instead leverage the batch reporting option and only see an overall reduction of 20 man hours as an organization while a small practice may find an even greater reduction than the estimate which may amount to a significantly increased benefit and more time for the provider to spend in patient care.

In the Stage 2 final rule, we discussed research documenting the association of EHRs with improved outcomes among diabetics (Hunt, JS et al. (2009) “The impact of a physician-directed health information technology system on diabetes outcomes in primary care: A pre- and post-implementation study” *Informatics in Primary Care* 17(3):165–74; Pollard, C et al. (2009) “Electronic patient registries improve diabetes care and clinical outcomes in rural community health centers” *Journal of*

*Rural Health* 25(1):77–84) and trauma patients (Deckelbaum, D. et al. (2009) “Electronic medical records and mortality in trauma patients” *The Journal of Trauma: Injury, Infection, and Critical Care* 67(3): 634–636), enhanced efficiencies in ambulatory care settings (Chen, C et al. (2009) “The Kaiser Permanente Electronic Health Record: Transforming and Streamlining Modalities Of Care.” *Health Affairs* 28(2):323–333), and improved outcomes and lower costs in hospitals (Amarasingham, R. et al. (2009) “Clinical information technologies and inpatient outcomes: A multiple hospital study” *Archives of Internal Medicine* 169(2):108–14). The 2013 ONC report cited previously reported findings from their literature review on health IT and safety of care, health IT and quality of care, and health IT and efficiency of care in ambulatory and non-ambulatory care settings. The report indicated that a majority of studies that evaluated the effects of health IT on healthcare quality, safety, and efficiency reported findings that were at least partially positive. The report concluded that their findings “suggested that health IT, particularly those functionalities included in the Meaningful Use . . . , can improve healthcare quality and safety.”

C. Accounting Statement

Whenever a rule is considered a significant rule under Executive Order 12866, we are required to develop an accounting statement indicating the classification of the expenditures associated with the provisions of this proposed rule. This rule is considered economically significant as mentioned previously because the impacts directly attributable with the proposals in this rule would result in an overall reduction in the reporting burden and associated costs for providers demonstrating meaningful use. Monetary annualized benefits and nonbudgetary costs are presented as discounted flows using 3 percent and 7 percent factors.

TABLE 19—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COST REDUCTIONS AND BENEFITS CYs 2015 THROUGH 2017  
[In millions]

Category	Benefits			
		Low estimate	High estimate	
Annualized Monetized Cost Reductions to Private Industry Associated with Reporting Requirements.	2015	52.8	68.9	7%
		52.8	68.9	3%

CY 2015

TABLE 19—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COST REDUCTIONS AND BENEFITS CYs 2015 THROUGH 2017—Continued

[In millions]

Category	Benefits			
		Low estimate	High estimate	
Qualitative—Other private industry and societal benefits associated with the reduction in provider reporting burden and with having additional time to achieve meaningful use.				

In this proposed rule, there is no estimated increase in costs associated with incentive payments or payment adjustments for the Medicare and Medicaid EHR Programs attributable to the proposed policies.

*D. Conclusion*

The previous analysis, together with the remainder of this preamble, provides an RIA. We invite public comments on the analysis and request any additional data that will help us determine more accurately the impact on the EPs and eligible hospitals affected by the proposed rule and on Medicare and Medicaid payments to these entities.

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

**List of Subjects in 42 CFR Part 495**

Administrative practice and procedure, Electronic health records, Health facilities, Health professions, Health maintenance organizations (HMO), Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to further amend 42 CFR part 495, as previously proposed to be amended on March 30, 2015 (80 FR 16732), as follows:

**PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM**

■ 1. The authority citation for part 495 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 495.4 is amended as follows:

■ A. Amend the definition of “EHR reporting period” by:

■ i. In paragraph (1)(i) introductory text removing the phrase “before CY 2017” and adding in its place the phrase “before CY 2015”.

■ ii. Redesignating paragraph (1)(ii) as paragraph (1)(iii).  
 ■ iii. Adding a new paragraph (1)(ii).  
 ■ iv. In paragraph (2)(i) introductory text removing the phrase “before CY 2017” and adding in its place the phrase “before CY 2015”.

■ v. Redesignating paragraph (2)(ii) as paragraph (2)(iii).

■ vi. Adding a new paragraph (2)(ii).

■ B. Amend the definition of “EHR reporting period for a payment adjustment year” by:

■ i. In paragraph (1)(i) introductory text removing the phrase “before CY 2017” and adding in its place the phrase “before 2015”.

■ ii. Redesignating paragraph (1)(ii) as paragraph (1)(iii).

■ iii. Adding a new paragraph (1)(ii).

■ iv. In paragraph (2)(i) introductory text removing the phrase “before CY 2017” and adding in its place the phrase “before CY 2015”.

■ v. Redesignating paragraph (2)(ii) as paragraph (2)(iii).

■ vi. Adding a new paragraph (2)(ii).

■ vii. In paragraph (3)(i) introductory text removing the phrase “before CY 2017” and adding in its place the phrase “before CY 2015”.

■ viii. Redesignating paragraph (3)(ii) as paragraph (3)(iii).

■ ix. Adding a new paragraph (3)(ii).

■ C. Amend the definition of “Meaningful EHR user” by:

■ i. In paragraph (1), by removing the reference “§ 495.8” and adding in its place the reference “§§ 495.40”.

■ ii. In paragraph (1), by removing the reference “§ 495.6 or 495.7” and adding in its place the reference “§§ 495.20, 495.22, and 495.24”.

The additions read as follows:

**§ 495.4 Definitions.**

\* \* \* \* \*

*EHR reporting period.* \* \* \*

(1) \* \* \*

(ii) The following are applicable for 2015 and 2016:

(A) For the CY 2015 payment year, any continuous 90-day period within CY 2015.

(B) For the CY 2016 payment year:

(1) For the EP first demonstrating he or she is a meaningful EHR user, any continuous 90-day period within CY 2016.

(2) For the EP who has successfully demonstrated he or she is a meaningful EHR user in any prior year, the CY 2016.

\* \* \* \* \*

(2) \* \* \*

(ii) The following are applicable for 2015 and 2016:

(A) For the FY 2015 payment year, any continuous 90-day period within the period beginning October 1, 2014 and ending December 31, 2015.

(B) For the FY 2016 payment year for the eligible hospital or CAH—

(1) First demonstrating it is a meaningful EHR user, any continuous 90-day period within CY 2016; or

(2) That has successfully demonstrated it is a meaningful EHR user in any prior year, the CY 2016.

\* \* \* \* \*

*EHR reporting period for a payment adjustment year* \* \* \*

(1) \* \* \*

(ii) The following are applicable for 2015 and 2016:

(A) For an EHR reporting period in 2015:

(1) Except as specified under paragraph (1)(ii)(A)(2) of this definition, any continuous 90-day period within the calendar year that is 2 years before the payment adjustment year.

(2) If in the calendar year that is 2 years before the payment adjustment year and in all prior calendar years, the EP has not successfully demonstrated he or she is a meaningful EHR user, then any continuous 90-day period within the calendar year that is 1 year before the payment adjustment year. The EP must successfully register for and attest to meaningful use by February 29, 2016.

(B) For an EHR reporting period in 2016:

(1) Except as specified in paragraphs (1)(ii)(B)(2) and (3) of this definition, the calendar year that is 2 years before the payment adjustment year.

(2) If an EP is demonstrating he or she is a meaningful EHR user for the first time in the calendar year that is 2 years

before the payment adjustment year, then any continuous 90-day period within such (2 years prior) calendar year.

(3) If in the calendar year that is 2 years before the payment adjustment year and in all prior calendar years, the EP has not successfully demonstrated he or she is a meaningful EHR user, then any continuous 90-day period that both begins in the calendar year 1 year before the payment adjustment year and ends at least 3 months before the end of such prior year. The EP must successfully register for and attest to meaningful use by October 1, 2016.

\* \* \* \* \*

(2) \* \* \*

(ii) The following are applicable for 2015 and 2016:

(A) For an EHR reporting period in 2015:

(1) Except as specified in paragraph (2)(ii)(A)(2) of this definition, any continuous 90-day period within the period beginning on October 1, 2014 and ending on the last day of the calendar year that is 2 years before the payment adjustment year.

(2) If in the calendar year that is 2 years before the payment adjustment year and in all prior years, the eligible hospital has not successfully demonstrated it is a meaningful EHR user, then any continuous 90-day period within the period beginning on October 1, 2014 and ending on the last day of the calendar year that is 1 year prior to the payment adjustment year. The eligible hospital must successfully register for and attest to meaningful use by February 29, 2016.

(B) For an EHR reporting period in 2016:

(1) Except as specified in paragraphs (2)(ii)(B)(2) and (3) of this definition, the calendar year that is 2 years before the payment adjustment year.

(2) If an eligible hospital is demonstrating that it is a meaningful EHR user for the first time in the calendar year that is 2 years before the payment adjustment year, then any continuous 90-day period within such (2 years prior) calendar year.

(3) If in the calendar year that is 2 years before the payment adjustment year and in all prior years, the eligible hospital has not successfully demonstrated it is a meaningful EHR user, then any continuous 90-day period that both begins in the calendar year that is 1 year before the payment adjustment year and ends at least 3 months before the end of such prior calendar year. The eligible hospital must successfully register for and attest to meaningful use by October 1, 2016.

\* \* \* \* \*

(3) \* \* \*

(ii) The following are applicable for 2015 and 2016:

(A) The EHR reporting period for the FY 2015 payment adjustment year is any continuous 90-day period within the period beginning on October 1, 2014 and ending on December 31, 2015. The CAH must successfully register for and attest to meaningful use by February 29, 2016.

(B) For an EHR reporting period in 2016:

(1) Except as provided in paragraph (3)(ii)(B)(2) of this definition, the CY 2016 is the EHR reporting period for the FY 2016 payment adjustment year.

(2) If the CAH is demonstrating it is a meaningful EHR user for the first time, the EHR reporting period for the FY 2016 payment adjustment year is any continuous 90-day period within CY 2016.

\* \* \* \* \*

#### § 495.6 [Redesignated as § 495.20]

■ 3. Redesignate § 495.6 as § 495.20.

■ 4. Newly redesignated § 495.20 is amended by revising the section heading and adding new introductory text to read as follows.

#### § 495.20 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs before 2015.

The following criteria are applicable before 2015:

\* \* \* \* \*

■ 5. Add § 495.22 to read as follows:

#### § 495.22 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs for 2015 through 2017.

(a) *General rules.* (1) The criteria specified in this section are applicable for all EPs, eligible hospitals, and CAHs for 2015 through 2017.

(2) For 2017 only, EPs, eligible hospitals, and CAHs have the option to use the criteria specified for 2018 (as outlined at § 495.24) instead of the criteria specified in this section.

(b) *Criteria for EPs for 2015 through 2017—(1) General rule regarding criteria for meaningful use for 2015 through 2017 for EPs.* Except as specified in paragraph (b)(2) of this section, EPs must meet all objectives and associated measures of the meaningful use criteria specified under paragraph (e) of this section to meet the definition of a meaningful EHR user.

(2) *Exclusion for nonapplicable objectives.* (i) An EP may exclude a particular objective contained in paragraph (e) of this section, if the EP meets all of the following requirements:

(A) Must ensure that the objective in paragraph (e) of this section includes an

option for the EP to attest that the objective is not applicable.

(B) Meets the criteria in the applicable objective that would permit the attestation.

(C) Attests.

(ii) An exclusion will reduce (by the number of exclusions applicable) the number of objectives that would otherwise apply in paragraph (e) of this section.

(c) *Criteria for eligible hospitals and CAHs for 2015 through 2017—(1) General rule regarding criteria for meaningful use for 2015 through 2017 for eligible hospitals and CAHs.* Except as specified in paragraph (c)(2) of this section, eligible hospitals and CAHs must meet all objectives and associated measures of the meaningful use criteria specified under paragraph (e) of this section to meet the definition of a meaningful EHR user.

(2) *Exclusion for nonapplicable objectives.* (i) An eligible hospital or CAH may exclude a particular objective contained in paragraph (e) of this section, if the eligible hospital or CAH meets all of the following requirements:

(A) Must ensure that the objective in paragraph (e) of this section includes an option for the eligible hospital or CAH to attest that the objective is not applicable.

(B) Meets the criteria in the applicable objective that would permit the attestation.

(C) Attests.

(ii) An exclusion will reduce (by the number of exclusions applicable) the number of objectives that would otherwise apply in paragraph (e) of this section.

(d) *Many of the objectives and associated measures in paragraph (e) of this section rely on measures that count unique patients or actions.* (1) If a measure (or associated objective) in paragraph (e) of this section references paragraph (d) of this section, then the measure may be calculated by reviewing only the actions for patients whose records are maintained using certified EHR technology. A patient's record is maintained using certified EHR technology if sufficient data was entered in the certified EHR technology to allow the record to be saved, and not rejected due to incomplete data.

(2) If the objective and associated measure does not reference this paragraph (d) of this section, then the measure must be calculated by reviewing all patient records, not just those maintained using certified EHR technology.

(e) *Meaningful use objectives and measures for 2015 through 2017—(1) Protect patient health information—(i)*

*Objective.* Protect electronic protected health information created or maintained by the Certified EHR Technology through the implementation of appropriate technical capabilities.

(ii) *Measures—(A) EP measure.* Conduct or review a security risk analysis in accordance with the requirements in 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of ePHI created or maintained in Certified EHR Technology in accordance with requirements under 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the EP's risk management process.

(B) *Eligible hospital or CAH measure.* Conduct or review a security risk analysis in accordance with the requirements under 45 CFR 164.308(a)(1), including addressing the security (to include encryption) of ePHI created or maintained in Certified EHR Technology in accordance with requirements under 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), and implement security updates as necessary and correct identified security deficiencies as part of the eligible hospital's or CAH's risk management process.

(2) *Clinical decision support—(i) Objective.* Use clinical decision support to improve performance on high-priority health conditions.

(ii) *EP measures—(A) Measure.* In order for EPs to meet the objective they must satisfy both of the following measures:

(1) Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in patient care for the entire EHR reporting period. Absent four clinical quality measures related to an EP's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions.

(2) Enabled and implemented the functionality for drug-drug and drug-allergy interaction checks for the entire EHR reporting period.

(B) *Exclusion in accordance with paragraph (b)(2) of this section.* An EP who writes fewer than 100 medication orders during the EHR reporting period may be excluded from the measure under paragraph (e)(2)(i)(A)(2) of this section.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015—(1) Alternate exclusion.* An EP previously scheduled to be in Stage 1 in 2015 may meet an alternate measure specified in paragraph

(e)(2)(ii)(C)(2) in place of the measure outlined under paragraph (e)(2)(ii)(A)(1) of this section.

(2) *Alternate objective and measure—(i) Alternate objective.* Implement one clinical decision support rule relevant to specialty or high clinical priority along with the ability to track compliance with that rule.

(ii) *Alternate measure.* Implement one clinical decision support rule.

(iii) *Eligible hospital and CAH measures—(A) Measure.* In order for eligible hospitals and CAHs to meet the objective they must satisfy both of the following measures:

(1) Implement five clinical decision support interventions related to four or more clinical quality measures at a relevant point in patient care for the entire EHR reporting period. Absent four clinical quality measures related to an eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions.

(2) Enabled and implemented the functionality for drug-drug and drug-allergy interaction checks for the entire EHR reporting period.

(B) *Alternate specifications for an EHR reporting period in 2015—(1) Alternate objective and measure.* An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may meet an alternate measure described in paragraph (e)(2)(iii)(B)(2) of this section in place of the measure described in paragraph (e)(2)(iii)(A)(1) of this section.

(i) *Objective.* Implement one clinical decision support rule related to a high priority hospital condition along with the ability to track compliance with that rule.

(ii) *Measure.* Implement one clinical decision support rule.

(3) *Computerized provider order entry—(i) Objective.* Use computerized provider order entry for medication, laboratory, and radiology orders directly entered by any licensed healthcare professional who can enter orders into the medical record per State, local, and professional guidelines.

(ii) *EP measures—(A) Measures.* An EP must meet the following 3 measures, subject to paragraph (d) of this section:

(1) More than 60 percent of medication orders created by the EP during the EHR reporting period are recorded using computerized provider order entry.

(2) More than 30 percent of laboratory orders created by the EP during the EHR reporting period are recorded using computerized provider order entry.

(3) More than 30 percent of radiology orders created by the EP during the EHR

reporting period are recorded using computerized provider order entry.

(B) *Exclusion in accordance with paragraph (b)(2) of this section.* (1) For the measure specified in paragraph (e)(3)(ii)(A)(1) of this section, any EP who writes fewer than 100 medication orders during the EHR reporting period.

(2) For the measure specified in paragraph (e)(3)(ii)(A)(2) of this section, any EP who writes fewer than 100 laboratory orders during the EHR reporting period.

(3) For the measure specified in paragraph (e)(3)(ii)(A)(3) of this section, any EP who writes fewer than 100 radiology orders during the EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015—(1)* An EP previously scheduled to be in Stage 1 in 2015 may meet an alternate measure (e)(3)(ii)(C)(2) in place of the measure outlined under paragraph (e)(3)(ii)(A)(1) of this section, and may exclude the measures outlined under paragraphs (e)(3)(ii)(A)(2) and (3) of this section.

(2) Subject to paragraph (d) of this section—

(i) More than 30 percent of all unique patients with at least one medication in their medication list seen by the EP during the EHR reporting period have at least one medication order entered using CPOE; or

(ii) More than 30 percent of medication orders created by the EP during the EHR reporting period are recorded using computerized provider order entry.

(3) *Alternate exclusions.* An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure—

(i) Specified in paragraph (e)(3)(ii)(A)(2) of this section for an EHR reporting period in 2015.

(ii) Specified in paragraph (e)(3)(ii)(A)(3) of this section for an EHR reporting period in 2015.

(iii) *Eligible hospital and CAH measures—(A)* An eligible hospital or CAH must meet the following 3 measures, subject to paragraph (d) of this section:

(1) More than 60 percent of medication orders created by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

(2) More than 30 percent of laboratory orders created by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

(3) More than 30 percent of radiology orders created by authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

(B) *Alternate exclusions and specifications for an EHR reporting period in 2015.* (1) An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may—

(i) Meet an alternate measure specified in paragraph (e)(3)(iii)(B)(2) of this section in place of the measure outlined under paragraph (e)(3)(iii)(A)(1) of this section; and

(ii) May exclude the measures outlined under paragraphs (e)(3)(iii)(A)(2) and (e)(3)(iii)(A)(3) of this section.

(2) *Alternate measure 1.* Subject to paragraph (d) of this section,

(i) More than 30 percent of all unique patients with at least one medication in their medication list admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) have at least one medication order entered using CPOE; or

(ii) More than 30 percent of medication orders created by the authorized providers of the eligible hospital or CAH for patients admitted to their inpatient or emergency departments (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.

(3) *Alternate exclusions.* An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may exclude the measure specified—

(i) In paragraph (e)(3)(iii)(A)(2) of this section for an EHR reporting period in 2015; or

(ii) In paragraph (e)(3)(iii)(A)(3) of this section for an EHR reporting period in 2015.

(4) *Electronic prescribing—(i) Objective.* For EPs, generate and transmit permissible prescriptions electronically (eRx); and, for eligible hospitals and CAHs, generate and transmit permissible discharge prescriptions electronically (eRx).

(ii) *EP measure—(A) Measure.* Subject to paragraph (d) of this section, more than 50 percent of all permissible prescriptions, or all prescriptions, written by the EP are queried for a drug formulary and transmitted electronically using Certified EHR Technology.

(B) *Exclusion in accordance with paragraph (b)(2) of this section.* Any EP who—

(1) Writes fewer than 100 permissible prescriptions during the EHR reporting period; or

(2) Does not have a pharmacy within his or her organization and there are no pharmacies that accept electronic prescriptions within 10 miles of the EP's practice location at the start of his or her EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An EP previously scheduled to be in Stage 1 in 2015 may meet an alternate measure under paragraph (e)(4)(ii)(C)(2) of this section in place of the measure outlined under paragraph (e)(4)(ii)(A) of this section.

(1) *Alternate measure.* Subject to paragraph (d) of this section, more than 40 percent of all permissible prescriptions written by the EP are transmitted electronically using Certified EHR Technology.

(2) *Alternate exclusion.* There are no alternate exclusions for this measure

(iii) *Eligible hospital and CAH measure—(A) Measure.* Subject to paragraph (d) of this section, more than 10 percent of hospital discharge medication orders for permissible prescriptions (for new, changed, and refilled prescriptions) are queried for a drug formulary and transmitted electronically using Certified EHR Technology.

(B) *Exclusion in accordance with paragraph (c)(2) of this section.* Any eligible hospital or CAH that does not have an internal pharmacy that can accept electronic prescriptions and is not located within 10 miles of any pharmacy that accepts electronic prescriptions at the start of their EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An eligible hospital or CAH previously scheduled to be in—

(1) Stage 1 in 2015 may exclude the measure specified in paragraph (e)(4)(iii)(A) of this section for an EHR reporting period in 2015; or

(2) Stage 2 in 2015 may exclude the measure specified in paragraph (e)(4)(iii)(A) of this section for an EHR reporting period in 2015 if they did not previously intend to select the Stage 2 Electronic Prescribing Menu Objective for an EHR reporting period in 2015.

(5) *Summary of care—(i) Objective.* The EP, eligible hospital or CAH who transitions a patient to another setting of care or provider of care or refers a patient to another provider of care provides a summary care record for each transition of care or referral.

(ii) *EP measure—(A) Measure.* Subject to paragraph (d) of this section, the EP who transitions or refers his or her patient to another setting of care or provider of care must do the following:

(1) Use CEHRT to create a summary of care record.

(2) Electronically transmit such summary to a receiving provider for more than 10 percent of transitions of care and referrals.

(B) *Exclusion in accordance with paragraph (b)(2) of this section.* Any EP who transfers a patient to another setting or refers a patient to another provider less than 100 times during the EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(5)(ii)(A) of this section for an EHR reporting period in 2015.

(iii) *Eligible hospital and CAH measure—(A) Measure.* Subject to paragraph (d) of this section, the eligible hospital or CAH that transitions or refers its patient to another setting of care or provider of care must do the following:

(1) Use CEHRT to create a summary of care record.

(2) Electronically transmit such summary to a receiving provider for more than 10 percent of transitions of care and referrals.

(B) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(5)(iii)(A) of this section for an EHR reporting period in 2015.

(6) *Patient specific education—(i) Objective.* Use clinically relevant information from Certified EHR Technology to identify patient-specific education resources and provide those resources to the patient.

(ii) *EP measure—(A) Measure.* Patient-specific education resources identified by Certified EHR Technology are provided to patients for more than 10 percent of all unique patients with office visits seen by the EP during the EHR reporting period.

(B) *Exclusion in accordance with paragraph (b)(2) of this section.* Any EP who has no office visits during the EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(6)(ii)(A) of this section for an EHR reporting period in 2015 if the EP did not previously intend to select the Stage 1 Patient-Specific Education Resources Menu Objective for an EHR reporting period in 2015.

(iii) *Eligible hospital and CAH measure*—(A) *Measure*. More than 10 percent of all unique patients admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) are provided patient-specific education resources identified by Certified EHR Technology.

(B) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(6)(iii)(A) of this section for an EHR reporting period in 2015 if they did not previously intend to select the Stage 1 Patient-Specific Education Resources Menu Objective for an EHR reporting period in 2015.

(7) *Medication reconciliation*—(i) *Objective*. The EP, eligible hospital or CAH that receives a patient from another setting of care or provider of care or believes an encounter is relevant should perform medication reconciliation.

(ii) *EP measure*—(A) *Measure*. Subject to paragraph (d) of this section, the EP performs medication reconciliation for more than 50 percent of transitions of care in which the patient is transitioned into the care of the EP.

(B) *Exclusion in accordance with paragraph (b)(2) of this section*. Any EP who was not the recipient of any transitions of care during the EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(7)(ii)(A) of this section for an EHR reporting period in 2015 if they did not previously intend to select the Stage 1 Medication Reconciliation Menu Objective for an EHR reporting period in 2015.

(iii) *Eligible hospital or CAH measure*. An eligible hospital or CAH must meet the following measure, subject to paragraph (d) of this section:

(A) *Measure*. Subject to paragraph (d) of this section, the eligible hospital or CAH performs medication reconciliation for more than 50 percent of transitions of care in which the patient is admitted to the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23).

(B) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(7)(iii)(A) of this section for an EHR reporting period in 2015 if they did not

previously intend to select the Stage 1 Medication Reconciliation Menu Objective for an EHR reporting period in 2015.

(8) *Patient electronic access*—(i) *EP objective*. Provide patients the ability to view online, download, and transmit their health information within 4 business days of the information being available to the EP.

(A) *EP measures*. An EP must meet the following 2 measures:

(1) More than 50 percent of all unique patients seen by the EP during the EHR reporting period are provided timely (within 4 business days after the information is available to the EP) online access to their health information subject to the EP's discretion to withhold certain information.

(2) At least 1 patient seen by the EP during the EHR reporting period (or their authorized representatives) views, downloads, or transmits his or her health information to a third party.

(B) *Exclusion in accordance with paragraph (b)(2) of this section*. (1) Any EP who neither orders nor creates any of the information listed for inclusion as part of the measure in paragraph (e)(8)(ii)(A)(1) or (2) of this section, except for "Patient name" and "Provider's name and office contact information," is excluded from both paragraphs (e)(8)(ii)(A)(1) and (2) of this section.

(2) Any EP who conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the Federal Communications Commission on the first day of the EHR reporting period is excluded from paragraph (e)(8)(ii)(A)(2) of this section.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(8)(ii)(A)(2) of this section for an EHR reporting period in 2015.

(ii) *Eligible hospital and CAH objective*. Provide patients the ability to view online, download, and transmit information within 36 hours of hospital discharge.

(A) *Eligible hospital and CAH measures*. An eligible hospital or CAH must meet the following 2 measures:

(1) More than 50 percent of all unique patients who are discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH have their information available online within 36 hours of discharge.

(2) At least 1 patient (or the patient's authorized representative) who is discharged from the inpatient or emergency department (POS 21 or 23) of an eligible hospital or CAH views, downloads or transmits to a third party his or her information during the EHR reporting period.

(B) *Exclusion applicable under (c)(2) of this section*. Any eligible hospital or CAH that is located in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period is excluded from paragraph (e)(8)(iii)(A)(2) of this section.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(8)(iii)(A)(2) of this section for an EHR reporting period in 2015.

(9) *Secure messaging*—(i) *EP objective*. Use secure electronic messaging to communicate with patients on relevant health information.

(ii) *EP measure*—(A) *Measure*. The capability for patients to send and receive a secure electronic message with the EP was fully enabled during the EHR reporting period.

(B) *Exclusion in accordance with paragraph (b)(2) of this section*. An EP may exclude from the measure if he or she—

(1) Has no office visits during the EHR reporting period; or

(2) Conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the Federal Communications Commission on the first day of the EP's EHR reporting period.

(C) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An EP previously scheduled to be in Stage 1 in 2015 may exclude the measure specified in paragraph (e)(9)(ii)(A) of this section for an EHR reporting period in 2015.

(10) *Public Health and Clinical Data Registry reporting*—(i) *EP Public Health and Clinical Data Registry reporting*—(A) *Objective*. The EP is in active engagement with a public health agency or clinical data registry to submit electronic public health data in a meaningful way using certified EHR technology, except where prohibited, and in accordance with applicable law and practice.

(B) *Measures*. In order to meet the objective under paragraph (e)(10)(i)(A) of this section, an EP must choose from measures 1 through 5 (as specified in paragraphs (e)(10)(i)(B)(1) through (e)(10)(i)(B)(5) of this section) and must successfully attest to any combination of two measures. These measures may be met by any combination, including meeting measures specified in paragraph (e)(10)(i)(B)(4) or (5) of this section multiple times in accordance with applicable law and practice.

(1) *Immunization registry reporting*. The EP is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system (IIS).

(2) *Syndromic surveillance reporting*. The EP is in active engagement with a public health agency to submit syndromic surveillance data from a non-urgent care ambulatory setting.

(3) *Case reporting*. The EP is in active engagement with a public health agency to submit case reporting of reportable conditions.

(4) *Public health registry reporting*. The EP is in active engagement with a public health agency to submit data to public health registries.

(5) *Clinical data registry reporting*. The EP is in active engagement to submit data to a clinical data registry.

(C) *Exclusions in accordance with paragraph (b)(2) of this section*. (1) Any EP meeting one or more of the following criteria may be excluded from the immunization registry reporting measure in paragraph (e)(10)(i)(B)(1) of this section if the EP:

(i) Does not administer any immunizations to any of the populations for which data is collected by his or her jurisdiction's immunization registry or immunization information system during the EHR reporting period.

(ii) Operates in a jurisdiction for which no immunization registry or immunization information system is capable of accepting the specific standards required to meet the CEHRT definition at the start of his or her EHR reporting period.

(iii) Operates in a jurisdiction where no immunization registry or immunization information system has declared readiness to receive immunization data from the EP at the start of the EHR reporting period.

(2) Any EP meeting one or more of the following criteria may be excluded from the syndromic surveillance reporting measure described in paragraph (e)(10)(i)(B)(2) of the section if the EP:

(i) Does not treat or diagnose or directly treat any disease or condition associated with a syndromic surveillance system in his or her jurisdiction.

(ii) Operates in a jurisdiction for which no public health agency is capable of receiving electronic syndromic surveillance data from EPs in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health agency has declared readiness to receive syndromic surveillance data from EPs at the start of the EHR reporting period.

(3) An EP meeting one or more of the following criteria may be excluded from the case reporting measure at (e)(10)(i)(B)(3) if the EP:

(i) Does not treat or diagnose any reportable diseases for which data is collected by his or her jurisdiction's reportable disease system during the EHR reporting period.

(ii) Operates in a jurisdiction for which no public health agency is capable of receiving electronic case reporting data in the specific standards required to meet the CEHRT definition at the start of his or her EHR reporting period.

(iii) Operates in a jurisdiction where no public health agency has declared readiness to receive electronic case reporting data at the start of the EHR reporting period.

(4) Any EP meeting at least one of the following criteria may be excluded from the public health registry reporting measure specified in paragraph (e)(10)(i)(B)(4) of this section if the EP:

(i) Does not diagnose or directly treat any disease or condition associated with a public health registry in his or her jurisdiction during the EHR reporting period.

(ii) Operates in a jurisdiction for which no public health agency is capable of accepting electronic registry transactions in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health registry for which the EP is eligible has declared readiness to receive electronic registry transactions at the start of the EHR reporting period.

(5) Any EP meeting at least one of the following criteria may be excluded from the clinical data registry reporting measure specified in paragraph (e)(10)(i)(B)(5) of this section if the EP:

(i) Does not diagnose or directly treat any disease or condition associated with a clinical data registry in his or her jurisdiction during the EHR reporting period.

(ii) Operates in a jurisdiction for which no clinical data registry is capable of accepting electronic registry transactions in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no clinical data registry for which the EP is eligible has declared readiness to receive electronic registry transactions at the start of the EHR reporting period.

(D) *Alternate exclusions and specifications for an EHR reporting period in 2015*. An EP previously scheduled to be in Stage 1 in 2015 may choose from measures 1 through 5 (as specified in paragraphs (e)(10)(i)(B)(1) through (e)(10)(i)(B)(5) of this section) and must successfully attest to any one measure in accordance with applicable law and practice for an EHR reporting period in 2015.

(ii) *Eligible hospital and CAH Public Health and Clinical Data Registry reporting objective—(A) Objective*. The eligible hospital or CAH is in active engagement with a public health agency or clinical data registry to submit electronic public health data in a meaningful way using certified EHR technology, except where prohibited, and in accordance with applicable law and practice.

(B) *Measures*. In order to meet the objective under paragraph (e)(10)(ii)(A) of this section, an eligible hospital or CAH must choose from measures 1 through 6 (as described in paragraphs (e)(10)(ii)(B)(1) through (e)(10)(ii)(B)(6) of this section) and must successfully attest to any combination of three measures. These measures may be met by any combination, including meeting the measures specified in paragraph (e)(10)(ii)(B)(4) or (5) of this section multiple times, in accordance with applicable law and practice:

(1) *Immunization registry reporting*. The eligible hospital or CAH is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system (IIS).

(2) *Syndromic surveillance reporting*. The eligible hospital or CAH is in active engagement with a public health agency to submit syndromic surveillance data from an emergency or urgent care department (POS 23).

(3) *Case reporting*. The eligible hospital or CAH is in active engagement with a public health agency to submit case reporting of reportable conditions.

(4) *Public health registry reporting*. The eligible hospital or CAH is in active engagement with a public health agency

to submit data to public health registries.

(5) *Clinical data registry reporting.* The eligible hospital or CAH is in active engagement to submit data to a clinical data registry.

(6) *Electronic reportable laboratory result reporting.* The eligible hospital or CAH is in active engagement with a public health agency to submit electronic reportable laboratory results.

(C) *Exclusions in accordance with paragraph (c)(2) of this section.* (1) Any eligible hospital or CAH meeting one or more of the following criteria may be excluded from the immunization registry reporting measure specified in paragraph (e)(10)(ii)(B)(1) of this section if the eligible hospital or CAH:

(i) Does not administer any immunizations to any of the populations for which data is collected by its jurisdiction's immunization registry or immunization information system during the EHR reporting period.

(ii) Operates in a jurisdiction for which no immunization registry or immunization information system is capable of accepting the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no immunization registry or immunization information system has declared readiness to receive immunization data from the eligible hospital or CAH at the start of the EHR reporting period.

(2) Any eligible hospital or CAH meeting one or more of the following criteria may be excluded from the syndromic surveillance reporting measure specified in paragraph (e)(10)(ii)(B)(2) of this section if the eligible hospital or CAH:

(i) Does not have an emergency or urgent care department.

(ii) Operates in a jurisdiction for which no public health agency is capable of receiving electronic syndromic surveillance data from eligible hospitals or CAHs in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health agency has declared readiness to receive syndromic surveillance data from eligible hospitals or CAHs at the start of the EHR reporting period.

(3) An eligible hospital or CAH meeting one or more of the following criteria may be excluded from the case reporting measure specified in paragraph (e)(10)(ii)(B)(3) of this section if the eligible hospital or CAH:

(i) Does not treat or diagnose any reportable diseases for which data is collected by its jurisdiction's reportable disease system during the EHR reporting period.

(ii) Operates in a jurisdiction for which no public health agency is capable of receiving electronic case reporting data in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health agency has declared readiness to receive electronic case reporting data at the start of the EHR reporting period.

(4) Any eligible hospital or CAH meeting at least one of the following criteria may be excluded from the public health registry reporting measure specified in paragraph (e)(10)(ii)(B)(4) of this section if the eligible hospital or CAH:

(i) Does not diagnose or directly treat any disease or condition associated with a public health registry in their jurisdiction during the EHR reporting period.

(ii) Operates in a jurisdiction for which no public health agency is capable of accepting electronic registry transactions in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health registry for which the eligible hospital or CAH is eligible has declared readiness to receive electronic registry transactions at the start of the EHR reporting period.

(5) Any eligible hospital or CAH meeting at least one of the following criteria may be excluded from the clinical data registry reporting measure specified in paragraph (e)(10)(ii)(B)(5) of this section if the eligible hospital or CAH:

(i) Does not diagnose or directly treat any disease or condition associated with a clinical data registry in their jurisdiction during the EHR reporting period.

(ii) Operates in a jurisdiction where no clinical data registry for which no clinical data registry is capable of accepting electronic registry transactions in the specific standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no clinical data registry for which the eligible hospital or CAH is eligible has declared readiness to receive electronic registry transactions at the beginning of the EHR reporting period.

(6) Any eligible hospital or CAH meeting one or more of the following criteria may be excluded from the electronic reportable laboratory result

reporting measure specified in paragraph (d)(10)(ii)(B)(6) of this section if the eligible hospital or CAH:

(i) Does not perform or order laboratory tests that are reportable in the eligible hospital's or CAH's jurisdiction during the EHR reporting period.

(ii) Operates in a jurisdiction for which no public health agency that is capable of accepting the specific ELR standards required to meet the CEHRT definition at the start of the EHR reporting period.

(iii) Operates in a jurisdiction where no public health agency has declared readiness to receive electronic reportable laboratory results from eligible hospitals or CAHs at the start of the EHR reporting period.

(D) *Alternate exclusions and specifications for an EHR reporting period in 2015.* An eligible hospital or CAH previously scheduled to be in Stage 1 in 2015 may choose from measures 1 through 6 (as specified in paragraphs (e)(10)(ii)(B)(1) through (e)(10)(ii)(B)(6) of this section) and must successfully attest to any 2 measures. These measures may be met by any combination, including meeting the measures specified in paragraph (e)(10)(ii)(B)(4) or (5) of this section multiple times, in accordance with applicable law and practice.

**§ 495.7 [Redesignated as § 495.24]**

■ 6. Redesignate § 495.7 as § 495.24.

**§ 495.8 [Redesignated as § 495.40]**

■ 7. Redesignate § 495.8 as § 495.40.

■ 8. Newly redesignated § 495.40 is amended by:

■ A. In paragraph (a) introductory text by removing the cross-reference "under § 495.6 or § 495.7" and adding in its place the cross-reference "under § 495.20 or § 495.24".

■ B. In paragraph (a)(1)(i)(B) by removing the cross-reference "under § 495.6 or § 495.7" and adding in its place the cross-reference "under § 495.20 or § 495.24".

■ C. In paragraph (a)(1)(iii) by removing the cross-reference "in § 495.6 or § 495.7 and § 495.8" and adding in its place the cross-reference "in § 495.20 or § 495.24 and § 495.40".

■ D. Revising paragraph (a)(2)(i)(B).

■ E. In paragraph (a)(2)(i)(D) by removing the cross-reference "under § 495.6(a)(4) or (h)(3)" and adding in its place the cross-reference "in § 495.20(a)(4) or (h)(3)".

■ F. Redesignating paragraph (a)(2)(i)(E) as paragraph (a)(2)(i)(F).

■ G. Adding a new paragraph (a)(2)(i)(E).

■ H. Revising newly redesignated paragraph (a)(2)(i)(F).



- I. Adding paragraph (a)(2)(i)(G).
  - J. In paragraph (a)(2)(iv) by removing the cross-reference “in § 495.6 or § 495.7 and § 495.8” and adding in its place the cross-reference “in § 495.20 or § 495.24 and § 495.40”.
  - K. In paragraph (b)(1)(i)(B) by removing the cross-reference “under § 495.6 or § 495.7” and adding in its place the cross-reference “under § 495.20 or § 495.24”.
  - L. In paragraph (b)(1)(iii) by removing the cross-reference “in § 495.6 or § 495.7 and § 495.8” and adding in its place the cross-reference “in § 495.20 or § 495.24 and § 495.40”.
  - M. Revising paragraph (b)(2)(i)(B).
  - N. In paragraph (b)(2)(i)(D) by removing the cross-reference “under § 495.6(b)(4) or (i)(3)” and adding in its place the cross-reference “in § 495.20(b)(4) or (h)(3)”.
  - O. Redesignating paragraph (b)(2)(i)(E) as paragraph (b)(2)(i)(F).
  - P. Adding a new paragraph (b)(2)(i)(E).
  - Q. Revising newly redesignated paragraph (b)(2)(i)(F).
  - R. Adding paragraph (b)(2)(i)(G).
- The revisions and additions read as follows:

**§ 495.40 Demonstration of meaningful use criteria.**

(a) \* \* \*

- (2) \* \* \*
- (i) \* \* \*
- (B) For calendar years before 2015, satisfied the required objectives and associated measures under § 495.20 for the EP’s stage of meaningful use.
- \* \* \* \* \*
- (E) For CYs 2015 through 2017, satisfied the required objectives and associated measures under § 495.22(e) for meaningful use.
- (F) For CY 2017 only, an EP may satisfy either of the following objectives and measures for meaningful use:
  - (1) Objectives and measures specified in § 495.22(e).
  - (2) Objectives and measures specified in § 495.24(d).
- (G) For CY 2018 and subsequent years, satisfied the required objectives and associated measures under § 495.24(d) for meaningful use.
- \* \* \* \* \*
- (b) \* \* \*
- (2) \* \* \*
- (i) \* \* \*
- (B) For fiscal years before 2015, satisfied the required objectives and associated measures under § 495.20 for the eligible hospital or CAH’s stage of meaningful use.
- \* \* \* \* \*

(E) For CYs 2015 through 2017, satisfied the required objectives and

associated measures under § 495.22(e) for meaningful use.

(F) For CY 2017 only, an eligible hospital or CAH may satisfy either of the following objectives and measures for meaningful use:

(1) Objectives and measures specified at § 495.22(e); or

(2) Objectives and measures specified at § 495.24(d).

(G) For CY 2018 and subsequent years, satisfied the required objectives and associated measures under § 495.24(h) for meaningful use.

\* \* \* \* \*

**§ 495.10 [Redesignated as § 495.60]**

- 9. Redesignate § 495.10 as § 495.60.

Dated: April 2, 2015.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 8, 2015.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

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# FEDERAL REGISTER

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Part IV

The President

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Proclamation 9253—National Volunteer Week, 2015

Proclamation 9254—Pan American Day and Pan American Week, 2015



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# Presidential Documents

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Title 3—

Proclamation 9253 of April 10, 2015

The President

National Volunteer Week, 2015

**By the President of the United States of America****A Proclamation**

As a Nation, our greatest resource is our people. We each have the power to strengthen the fabric of our society and make the world a better place. Every day, Americans across the country realize this enormous potential through service to others and by giving back to their communities. During National Volunteer Week, we recognize those who embrace a life of active, energetic, and engaged citizenship, and we reaffirm our belief that all people have something to contribute to the American story.

This spirit of service is deeply embedded in our culture and vital to our national character. It reflects the idea that we are each our brothers' and our sisters' keepers, and it is a core part of being an American. Through service, ordinary people can make an extraordinary impact. In times of tragedy, volunteers are a source of comfort and resilience; in places of great need, they offer hope and renew our faith that a brighter day lies ahead; and in small neighborhoods and bustling cities, these dedicated individuals help build ladders of opportunity for people of all ages and backgrounds. Volunteers—often with few resources and little recognition—make enormous sacrifices to lift up the people around them as well as those they may never meet. As they do, they give new life to the values that bind us together as Americans and to the promise that those who love their country can change it.

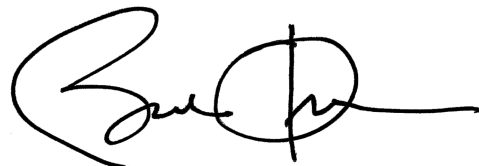
My Administration is working to empower more Americans with opportunities to give back to their neighborhoods and to our country, and we are committed to supporting those who already do. That is why we created a task force to find new ways to expand and improve national service. And last year we launched the Employers of National Service initiative because we know those who are passionate about making a difference in their communities have the talents and experience to bolster our Nation's workforce. Through the Corporation for National and Community Service, we are investing in programs like AmeriCorps and Senior Corps, and we have expanded the scope of these opportunities—initiatives such as School Turnaround AmeriCorps, justice AmeriCorps, and STEM AmeriCorps are focusing on some of our country's most pressing needs.

The unending task of perfecting our Nation does not fall to any one person or to our Government alone—and the solutions to the problems we face do not lie beyond our reach. We must enlist all Americans in the effort to build a better future for the next generation, and we should each make service a lifelong commitment. Together, we can work to meet our Nation's challenges, not just for one day, but every day. This week, let us renew our commitment to this important cause and rededicate ourselves to the work ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 12 through April 18, 2015, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country

and pledging to make service a part of their daily lives. To find a service opportunity nearby, visit [www.Serve.gov](http://www.Serve.gov).

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, 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.



## Presidential Documents

Proclamation 9254 of April 10, 2015

### Pan American Day and Pan American Week, 2015

By the President of the United States of America

#### A Proclamation

One hundred and twenty-five years ago, delegates from countries throughout the Western Hemisphere came together to establish the International Union of American Republics, the forerunner to what is today the oldest regional international organization in the world: the Organization of American States. In the years since, our nations have collaborated to address regional challenges and improve the lives of people across the Americas. On Pan American Day and during Pan American Week, we reaffirm our hemisphere's enduring friendship, and we recommit to working as equal partners to support robust civil societies and expand opportunity.

The United States and our regional neighbors are bound by our mutual desire for peace and stability, and the common yearning of all our peoples—to build a better life for themselves and their families. We share vibrant people-to-people connections and extensive economic links. These ties are vital to our security and prosperity, and when we work together to strengthen them, we help ensure a brighter future for the next generation.

My Administration is dedicated to joining with our Pan American partners to promote and protect human rights, open markets, expand fair trade, and advance the values of democracy and freedom. Last December, we began a new chapter in this commitment. In the most significant changes to our policy in more than 50 years, the United States is beginning to normalize our relations with Cuba. As we extend a hand of friendship to the Cuban people, we have the potential to lift up a nation and end a legacy of mistrust in our hemisphere.

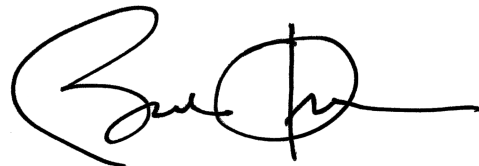
We continue to expand trade among the nations of the Americas because we know when we allow businesses to grow their markets it extends opportunity to a wider circle of people. We are fostering small business connections throughout the Americas and bolstering women-owned and managed enterprises. Through the *100,000 Strong in the Americas* initiative, the United States is striving to increase educational exchanges that open doors to new markets, innovative research, and region-wide prosperity. And as our nations face common energy and environmental concerns, my Administration is working with leaders and experts from the region to ensure every person in the Western Hemisphere will have access to the electricity they need at a price they can afford—in a manner that is socially responsible and environmentally beneficial.

As we head into this week, I will attend the Summit of the Americas in Panama. As leaders from across the Pan American community come together, we will continue our work to address the shared challenges our countries face today. When our people—our leaders, our civil society members, and all the sons and daughters of the Americas—join in a spirit of mutual interest and mutual respect, we can build a future of greater peace, security, and possibility for every person who calls the Americas home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2015,

as Pan American Day and April 12 through April 18, 2015, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of the other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, 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.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by 'arack' and 'Obama' in a cursive style.

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