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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1036; Directorate Identifier 2010–SW–088–AD; Amendment 39–16819; AD 2011–20–08]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model AB139 and AW139 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Agusta model helicopters. This action requires inspecting certain modules and related connectors for corrosion. If there is corrosion on the connectors, this AD requires cleaning the connectors before further flight. If there is corrosion on a module, before further flight, this AD requires replacing the module with an airworthy module. This AD also requires modifying the Number 2 Modular Avionic Unit (MAU) ventilation duct. This amendment is prompted by some in-flight emergencies due to internal corrosion of the MAU circuit card assemblies. The actions specified in this AD are intended to detect corrosion of certain modules to prevent the display of misleading data to the flight crew, disengagement of the flight director modes of the autopilot or other alert system, increased workload of the flight crew, and subsequent loss of control of the helicopter.

DATES: Effective November 21, 2011.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 21, 2011.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2012.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, *telephone* 39 0331–229111, *fax* 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, *telephone* (817) 222–5114, *fax* (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2010–0189, dated September 23, 2010, to correct an unsafe condition for the Agusta Model AB139 and AW139 helicopters. EASA advises of some in-flight emergencies resulting from internal corrosion of the MAU2 circuit card assemblies. Analysis of the in-flight emergencies identified salt water and extreme moisture as contributory factors. The corrosion resulted from the MAU2 being exposed to external moisture as a result of the ventilation duct installation that routes external air directly on the MAU2 modules. When exposed to high levels of moisture, EASA states the MAU can cause the system to provide false indications or misleading data to be displayed to the flight crew. Also, misleading data may cause disengagement of the flight director modes of the autopilot or other alerting system anomalies. They also state that these failures and anomalies would significantly increase the workload of the flight crew and could ultimately lead to loss of control of the helicopter.

Related Service Information

Agusta has issued Bollettino Tecnico No. 139–166, dated April 6, 2009 (BT), which specifies inspecting the MAU2 cards to ensure they are corrosion free. Also, the BT specifies procedures for modifying to reroute the direct flow of air coming from the ventilation duct outlet MAU2 ventilation away from the MAU2 cabinet and modules. EASA classified this service information as mandatory and issued AD No. 2010–0189, dated September 23, 2010, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

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

Differences Between This AD and the EASA AD

We do not require reporting inspection results nor coordinating with the manufacturer in returning modules as indicated in the BT that EASA

references. Also, we have used a different compliance time for the action.

FAA's Determination and Requirements of This AD

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to detect corrosion of certain modules, to prevent the display of misleading data, disengagement of the flight director modes of the autopilot or other alert system anomalies, increased workload of the flight crew, and subsequent loss of control of the helicopter. This AD requires, at a specified interval, inspecting certain modules and related connectors for corrosion. If there is corrosion on the connectors, this AD requires cleaning the connectors before further flight. If there is corrosion on a module, this AD requires replacing the module with an airworthy module. This AD also requires modifying the MAU2 ventilation duct.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting, replacing, or modifying certain modules is required within a very short compliance time, 30 hours time-in-service or 1 month, whichever occurs first, so this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD will affect about 26 helicopters of U.S. registry. We also estimate that it will take 6 work hours to remove, inspect the modules for corrosion, and replace the corroded modules, and 2 work hours to reroute the ventilation tube. The average labor rate is $85 per work-hour. Required parts will cost about $360,738 per helicopter to replace corroded modules and $440 for parts to modify the ventilation tube. Based on these figures, we estimate the cost of this AD on U.S. operators is $361,858 per helicopter or $9,408,308 for the U.S. fleet, assuming the modules would be replaced on the entire fleet.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2011–1036; Directorate Identifier 2010–SW–088–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 with FAA personnel concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

For the reasons discussed above, I certify that the 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); and

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2011–20–08 AGUSTA S.p.A.: Amendment 39–16819; Docket No. FAA–2011–1036; Directorate Identifier 2010–SW–088–AD.

Applicability: Models AB139 and AW139 helicopters, serial number (S/N) 31005 through S/N 31157 (except S/Ns 31007, 31094 and 31149) and S/N 41001 through S/N 41023, certificated in any category.

Compliance: Within 30 hours time-in-service (TIS) or 30 days, whichever occurs earlier, unless done previously:

To detect corrosion of certain modules, to prevent the display of misleading data to the flight crew, disengagement of the flight director modes of the autopilot or other alert system, increased workload of the flight crew, and subsequent loss of control of the helicopter, do the following:

(a)(1) Remove the following items related to the Numbers 1 and 2 Modular Avionics Unit (MAU):

(i) Power supply (PS) module, part number (P/N) 7024440–1901;

(ii) Custom Input/Output (CSIO) module, P/N 7025410–1901;

(iii) Control Input/Output (CIO) module, P/N 7026534–1902;

(iv) MAU cabinet; and

(2) Inspect the PS, CSIO, CIO, and MAU cabinet and all related connectors for corrosion.

(i) If there is corrosion on a connector, before further flight, clean the connector.

(ii) If there is corrosion on a module, before further flight, replace the module with an airworthy module.

(b) Modify the Number 2 MAU ventilation duct by following the Compliance Instructions, paragraphs 6 through 11, of Agusta Bollettino Tecnico No. 139–166, dated April 6, 2009 (BT).

(c) Install and operationally test the Number 1 and Number 2 MAUs and the related PS module, CSIO module, CIO module, MAU cabinet, and all related connectors.

(d) Reinstall the AFT right float assembly or the lower panel, P/N 3P5340A01631, whichever was removed during the modification process required by paragraph (b) of this AD.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

(f) The Joint Aircraft System/Component (JASC) Code is 3425: Navigation, Integrated Flight Director System.

(g) Modifying the ventilation duct shall be done by following specified portions of Agusta Bollettino Tecnico No. 139–166, dated April 6, 2009. The Director of the **Federal Register** approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(h) This amendment becomes effective on November 21, 2011.

Note: The subject of this AD is addressed in the European Aviation Safety Agency (Italy) AD No. 2010–0189, dated September 23, 2010.

Issued in Fort Worth, Texas, on August 29, 2011.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–27772 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1075; Directorate Identifier 2011–SW–011–AD; Amendment 39–16836; AD 2011–21–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 C–2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for ECD Model MBB–BK 117 C–2 helicopters. This action requires revising the Rotorcraft Flight Manual (RFM) by inserting certain temporary pages into the Emergency and Performance Data sections of the RFM to alert the operators to monitor the power display when a generator is deactivated and provides appropriate actions. This amendment is prompted by reports of too high a current flow when one generator is deactivated. The actions specified in this AD are intended to prevent failure of the remaining generator when one generator is deactivated, loss of electrical power, loss of systems necessary for flight safety, and subsequent loss of control of the helicopter.

DATES: Effective November 21, 2011.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2011.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2012.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, *telephone* (800) 232–0323, *fax* (972) 641–3710, or at *http://www.eurocopter.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, *telephone* (817) 222–5114, *fax* (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2010–0268–E, dated December 21, 2010, to correct an unsafe condition for the ECD Model MBB–BK 117 C–2 helicopters. EASA advises of reports that on some helicopters a too high current flow was detected when one generator was deactivated (for example, during the ENGINE POWER CHECK). EASA also advises that this situation, if not detected and corrected, could lead to failure of the generator, likely resulting in loss of electrical power and inducing loss of systems that are necessary for safe flight. Therefore, the EASA AD requires additional RFM procedures to include visual monitoring of the electrical power display during switching of a generator. Also, EASA advises that their AD is an interim measure pending the development of a final solution that will prevent this particular mode of generator failure.

Related Service Information

ECD has issued Alert Service Bulletin ASB MBB BK117 C–2–24A–008, dated December 20, 2010 (ASB). The ASB specifies inserting certain pages from the ASB into the RFM to alert operators to visually monitor the power display generator amperes (GEN AMPS) on the Vehicle and Engine Multifunction

Display (VEMD) for too high a current flow when a generator has been deactivated; for example, during the ENGINE POWER CHECK. In such a situation, the revised RFM provides instructions for switching off the two main electrical buses (BUS TIEs) on the overhead panel to prevent the operating generator from being damaged. The ASB states that failure of the generator could result in subsequent loss of electrical power and loss of systems. EASA classified this ASB as mandatory and issued AD No. 2010–0268–E, dated December 21, 2010, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of the Federal Republic of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with the Federal Republic of Germany, EASA, their technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

FAA's Determination and Requirements of This AD

This unsafe condition is likely to exist or develop on other helicopters of the same type design. This amendment adopts a new AD for ECD Model MBB–BK 117 C–2 helicopters. This action requires revising the Emergency Procedures and Performance Data sections of the RFM BK117 C–2 by copying or cutting out the temporary pages 7, 8, and 11 of the ASB and inserting the pages into RFM BK 117 C–2. This amendment is prompted by reports of too high a current flow when one generator is deactivated. The actions specified in this AD are intended to revise the RFM by inserting temporary pages into the Emergency Procedures and Performance Data sections. The revisions to the RFM are intended to alert pilots to visually monitor the power display GEN AMPS on the VEMD when a generator is deactivated to detect too high a current flow and to switch off the two BUS TIEs on the overhead panel to prevent the operating generator from being damaged. Accomplish the actions by copying or cutting out pages 7, 8, and 11 of the ASB described previously and inserting them into the Emergency Procedures and Performance Data sections of the RFM.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, revising the Emergency and Performance Data sections of the RFM is required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD will affect about 232 helicopters of U.S. registry. We also estimate that it will take a minimal amount of time to copy and insert the pages into the RFM. Therefore, the cost of the AD will be minimal.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2011–1075; Directorate Identifier 2011–SW–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 with FAA personnel concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

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

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

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

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

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

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2011–21–13 EUROCOPTER DEUTSCHLAND GmbH (ECD):

Amendment 39–16836; Docket No. FAA–2011–1075; Directorate Identifier 2011–SW–011–AD.

Applicability: Model MBB–BK 117 C–2 helicopters, certificated in any category.

Compliance: Before further flight, unless accomplished previously.

To prevent failure of a generator, loss of electrical power, loss of systems necessary for flight safety, and subsequent loss of control of the helicopter, do the following:

(a) Revise the ''Emergency and Malfunction Procedures'' and the ''Performance Data'' sections of the Rotorcraft Flight Manual (RFM) BK117 C–2 by copying or cutting out temporary pages 7, 8, and 11 (RFM pages 3–3 and 3–3a for ''Emergency and Malfunction Procedures'' and page 5–7 for ''Performance Data'') of ECD Alert Service Bulletin No. ASB MBB BK117 C–2–24A–008, dated December 20, 2010, and inserting the pages into RFM BK 117 C–2.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, ATTN: George Schwab, Aviation Safety Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 2435: Starter-Generator, 2437: DC Indicating System, and 2430: DC Generator System.

(d) Revise the Emergency Procedures and Performance Data sections of RFM BK 117 C–2 by inserting the specified portions of ECD Alert Service Bulletin No. ASB MBB BK117 C–2–24A–008, dated December 20, 2010, into the RFM. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on November 21, 2011.

Note: The subject of this AD is addressed in The European Aviation Safety Agency (the Federal Republic of Germany) AD No. 2010–0268–E, dated December 21, 2010.

Issued in Fort Worth, Texas, on September 29, 2011.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–27776 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1182; Directorate Identifier 2010–SW–010–AD; Amendment 39–16853; AD 2011–23–02]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell), Model 205A–1, 205B, 210, and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Bell Model 205B and 212 helicopters with certain main rotor blade (blade) assemblies installed. That AD currently requires washing the upper and lower surfaces of each blade and visually inspecting the grip plates, doublers, and the remaining upper and lower surfaces of the blades in the area between blade stations 24.5 to 40 for an edge void, corrosion, or a crack. This amendment retains the requirements of that AD for the affected part-numbered blades but increases the scope and frequency of the inspections and expands the applicability to include the Model 205A–1 and 210 helicopters, additional blade part numbers, and all helicopter serial numbers for the affected helicopter models. This amendment also requires applying a light coat of preservative oil (C–125) to all surfaces of the blade in addition to the inspection areas as required in the existing AD. This amendment is prompted by an additional report of a fatigue crack on a blade installed on a Model 212 helicopter. The actions specified by this AD are intended to detect an edge void, corrosion, or a crack on a blade, and to prevent loss of a blade and subsequent loss of control of the helicopter.

DATES: Effective November 21, 2011.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 21, 2011.

We must receive comments on this AD by January 3, 2012.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On December 21, 2009, we issued AD 2010–03–03, Amendment 39–16186 (75 FR 5681, February 4, 2010), to require at specified intervals washing the upper and lower surfaces of each blade and visually inspecting the grip plates, doublers, and the remaining upper and lower surfaces of the blades in the area from blade stations 24.5 to 40 for an edge void, corrosion, or a crack using a 3x power or higher magnifying glass. That AD was prompted by two reports of fatigue cracks on blades installed on Model 212 helicopters. The cause of the cracks has been attributed to inadequate adhesive bonding during manufacture in the area between the grip plate and mating doubler surface. A crack first appears in the grip plate, which can be detected visually with the blade installed on the helicopter. That condition, if not detected, could result in loss of a blade and subsequent loss of control of the helicopter.

Since issuing AD 2010–03–03 (75 FR 5681, February 4, 2010), we have received another report of a fatigue crack on a blade installed on a Model 212 helicopter. The crack at the blade

attachment bolt hole has been attributed to a large disbond, which developed in the adhesive between the lower grip plate and mating doubler. The lower grip plate was not cracked. The disbond initiated at the tip of the grip plate and propagated to the blade attachment bolt hole. Corrosion was found on the doubler suggesting an edge void was present for an extended amount of time and went undetected by the inspections being performed by the operator. Further analysis and investigation by the manufacturer have revealed that the inspections on the blade as required by the current AD need to be expanded and performed at an increased frequency and on additional part-numbered blades of similar design and manufacture, which can also be installed on the Model 210 and 212 helicopters.

We have also determined that blade part numbers listed in the current AD may also be installed on Model 205A–1 helicopters modified in accordance with Supplemental Type Certificate (STC) No. SH5132NM or SH5976NM. The affected blade can also be installed on all helicopter serial numbers for the affected helicopter models. Therefore, this amendment retains the same requirements as AD 2010–03–03 (75 FR 5681, February 4, 2010) for the affected part-numbered blades but increases the scope and frequency of the inspections and expands the applicability to include the Model 205A–1 and 210 helicopters, additional blade part numbers, and all helicopter serial numbers for the affected helicopter models. Finally, after further investigation, we discovered the requirement of the current AD to apply the oil only to the specified inspection areas was not the original intent of the AD. Therefore, this AD also requires applying a light coat of preservative oil (C–125) to all surfaces of the blade to prevent corrosion from the process of washing the blade surfaces in preparation for the inspections in addition to those areas as required in the current AD.

We have reviewed Bell Helicopter Alert Service Bulletin (ASB) No. 205B–08–51 and ASB No. 212–08–130, both Revision B and dated January 11, 2011, applicable to Model 205B and Model 212 helicopters, respectively, and ASB No. 210–08–03, Revision B, dated January 10, 2011, applicable to Model 210 helicopters, which describe procedures for initial and repetitive inspections of certain part-numbered blades on certain serial-numbered helicopters for signs of an edge void, corrosion, or a crack, including a hair-line crack in the blade paint finish in the inspection area as shown in Figure 1 of the ASBs between blade stations 24.5 and 85.

This AD differs from the ASBs as follows:

• We specifically require only wiping each of the bond lines at the edges of both grip plates and each of the layered doublers (bond lines) on the upper and lower surfaces of each affected blade with an alcohol-soaked cloth. This is required immediately before performing a visual inspection using a 3x or higher magnifying glass and a bright light to detect an edge delamination along any of the bond lines. This was done to avoid any possible confusion with having to wipe the entire surface blade area from blade station 24.5 to 85, which could make performing a reliable inspection difficult. The ASBs state to ''wipe the area to be inspected with an alcohol-soaked cloth.''

• The ASBs use the phrase ''bond lines between doublers, grip plates, and skin'' to describe the bond lines, and we use ''bond lines at the edges of both grip plates and each of the layer doublers.''

• The ASBs use the phrase ''cracks in the bond lines between doublers or grip plates'' to describe a separation of the doubler or grip plate along an edge, and we use the term ''edge delamination.''

• We do not specify each helicopter serial number (S/N) in our AD; the ASBs do specify the helicopter S/Ns.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of these same type designs, this AD supersedes AD 2010–03–03 (75 FR 5681, February 4, 2010), retaining the same requirements for the affected part-numbered blades but increasing the scope and frequency of the inspections and expanding the applicability to include the Model 205A–1 and 210 helicopters, additional blade part numbers, and all helicopter serial numbers for the affected helicopter models.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the AD must be issued immediately to require the following actions within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 25 hours TIS:

• Washing the upper and lower blade surfaces using a solution of cleaning compound (C–318) and water.

• Visually inspecting each of the upper and lower grip plates and doublers of the blade for their entire length and chord width for an edge void, any corrosion, or a crack.

• Wiping each of the bond lines at the edges of both grip plates and each of the layered doublers (bond lines) on the upper and lower surfaces of each affected blade with an alcohol-soaked cloth (C–385) in the area from blade stations 24.5 to 85.

• Immediately thereafter, using a 3x power or higher magnifying glass and a bright light, visually inspecting each of the bond lines on the upper and lower surfaces of the blade in the inspection area for any edge delamination, as indicated by a dark line located along any bond line, or a crack in the paint finish.

• Applying a light coat of preservative oil (C–125) to all surfaces of the blade.

• Removing paint from areas in which an edge delamination along any bond line of a grip plate or doubler, or a crack in the blade paint finish is discovered, by sanding with 180–220 grit paper to determine if an edge void or a crack exists in the blade.

• Replacing any blade that has a crack in any grip plate or doubler with an airworthy blade.

• Replacing any blade that has an edge void or any corrosion with an airworthy blade or repairing the blade if the damage is within the maximum repair damage limits. The maximum repair damage limitations are contained in the applicable Component and Repair Overhaul Manual.

• Replacing any blade that has a crack in the blade skin with an airworthy blade, or repairing the blade if the damage is within the maximum repair damage limits.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 132 helicopters in the U.S. registry. We also estimate that washing and visually inspecting each blade will take about 1 work hour. If an edge void, corrosion, or a crack is found, replacing a blade with an airworthy blade will take about 24 work hours. The average labor rate is $85 per work hour. Required parts will cost about $85,597 for a replacement blade. Based on these figures, we estimate the total cost of the AD on U.S. operators to be $356,917, assuming that 24 inspections are done each year on each helicopter and that 1 blade is replaced.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and

we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2011–1182; Directorate Identifier 2010–SW–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–03–03; Amendment 39–16186 (75 FR 5681, February 4, 2010), and by adding a new AD to read as follows:

2011–23–02 Bell Helicopter Textron, Inc.: Amendment 39–16853; Docket No. FAA–2011–1182; Directorate Identifier 2010–SW–010–AD. Supersedes AD 2010–03–03, Amendment 39–16186 (75 FR 5681, February 4, 2010), Docket No. FAA–2010–0065, Directorate Identifier 2009–SW–01–AD.

Applicability: Model 205A–1, 205B, 210 and 212 helicopters with a main rotor blade (blade), part number (P/N) 204–012–001–023 or –033; 210–015–001–101; 212–015–501–005, –111, –113, –115, –117, –119, or –121, installed, certificated in any category.

Note 1: Bell Helicopter Model 205A–1 helicopters, modified by Supplemental Type Certificate (STC) No. SH5132NM or SH5976NM, may have affected part-numbered blades installed.

Compliance: Required as indicated.

To detect an edge void, corrosion, or a crack on a blade, to prevent the loss of a blade and subsequent loss of control of the helicopter, do the following:

(a) Within 25 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS:

(1) Wash the upper and lower surfaces of each affected blade with a solution of cleaning compound (C–318) and water. Rinse thoroughly and wipe dry.

(2) Visually inspect each of the upper and lower grip plates and doublers of the blade for their entire length and chord width for an edge void, any corrosion, or a crack. Pay particular attention to any crack in the paint finish near or at a bond line that follows the outline of a grip plate or doubler.

Note 2: The inspections required by paragraphs (a)(2) and (a)(4) of this AD do not require removal of the blades from the main rotor hub and can be accomplished while the blades are installed on the helicopter.

(3) Wipe each of the bond lines at the edges of both grip plates and each of the layered doublers (bond lines) on the upper and lower surfaces of each affected blade with an alcohol-soaked cloth (C–385) in the area from blade stations 24.5 to 85 (inspection area) as depicted in Figure 1 of Bell Helicopter Alert Service Bulletin (ASB) No. 205B–08–51 for the Model 205B helicopters or ASB No. 212–08–130 for the Model 212 helicopters (and the Model 205A–1 helicopters), both Revision B, and both dated January 11, 2011; or ASB No. 210–08–03, Revision B, dated January 10, 2011, for the Model 210 helicopters, as appropriate for your model helicopter. Wipe dry with a clean cloth.

(4) Immediately after accomplishing paragraph (a)(3) of this AD, using a 3x power or higher magnifying glass and a bright light, visually inspect each of the bond lines on the upper and lower surfaces of the blade in the inspection area for any edge delamination, as indicated by a dark line located along any bond line, or a crack in the paint finish. An edge delamination is defined as a separation of the detail parts along an edge.

Note 3: An edge delamination along the edge of a grip plate or doubler, or ''any potential cracks in the bond lines between doublers or grip plates'' as described in the ASBs, is indicated by the presence of excess alcohol bleeding out of an edge void. The excess alcohol in the void will appear as a dark line along the bond line. A crack in the paint finish which follows the outline of a grip plate or doubler may indicate a possible edge void.

(5) If there is no edge void, corrosion, crack, an edge delamination, or a crack in the paint finish, apply a light coat of preservative oil (C–125) to all surfaces of the blade.

(b) Before further flight:

(1) If there is any edge delamination along any bond line of a grip plate or doubler, or a crack in the paint finish:

(i) Remove the paint in the affected area by lightly sanding with 180–220 grit paper in a span-wise direction to determine if there is an edge void, or if the grip plate, doubler, or skin is cracked. If any parent material is removed during the sanding operation, replace the blade with an airworthy blade or repair the blade if the amount of parent material removed is within the maximum repair damage limits.

Note 4: The maximum repair damage limits are contained in the applicable Component and Repair Overhaul Manual.

(ii) If there is an edge void, determine the depth and length using a .0015 inch feeler gauge.

(iii) If there is an edge void in a grip plate or doubler near the outboard tip, tap inspect the affected area to determine the size and shape of the void.

(iv) Repair the blade if the edge void is within the maximum repair damage limits or replace the blade with an airworthy blade.

(v) If there is not an edge void or a crack, refinish the sanded area.

(2) If there is a crack in any grip plate or doubler, replace the blade with an airworthy blade.

(3) If there is a crack in the blade skin, replace the blade with an airworthy blade, or repair the blade if the damage is within the maximum repair damage limits.

(4) If there is any corrosion, replace the blade with an airworthy blade or repair the blade if the damage is within the maximum repair damage limits.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office, Attn: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

(d) The inspection area is depicted in Figure 1 of Bell Helicopter Alert Service Bulletin No. 205B–08–51 or No. 212–08–130, both Revision B, and both dated January 11, 2011; or No. 210–08–03, Revision B, dated January 10, 2011. The incorporation by reference of these documents was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Joint Aircraft System/Component (JASC) Code

(e) The JASC Code is 6210: Main Rotor Blades.

(f) This amendment becomes effective on November 21, 2011.

Issued in Fort Worth, Texas, on October 21, 2011.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–28355 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1163; Directorate Identifier 2011–NM–022–AD; Amendment 39–16857; AD 2011–23–06]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat Passenger Seat Assemblies, Installed on, But Not Limited to, ATR–GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sicma Aero Seat Model 9401, 9402, 9404, 9405, 9406, 9407, 9408, and 9409 series passenger seat assemblies, installed on, but not limited to, ATR–GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several occurrences of cracked central and lateral spreaders on passenger seats models 9401 and 9402 * * *.

This condition, if not corrected, can lead to further cracking of the seat spreaders, causing injury to passengers or crew members during heavy turbulence in flight or in the event of an emergency landing.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 21, 2011.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of November 21, 2011.

We must receive comments on this AD by December 19, 2011.

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the 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: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; email: *jeffrey.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0097, dated May 20, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several occurrences of cracked central and lateral spreaders on passenger seats models 9401 and 9402 have been reported to Sicma Aero Seat.

This condition, if not corrected, can lead to further cracking of the seat spreaders, causing injury to passengers or crew members during heavy turbulence in flight or in the event of an emergency landing.

For the reasons stated above, this [EASA] Airworthiness Directive (AD) requires repetitive [detailed] inspections of the affected seats and, depending on findings, the repair or replacement of damaged spreaders with an improved design ('Amendment B' standard). The replacement of all spreaders (*i.e.* modification to 'Amendment B' standard) terminates the repetitive inspection requirements.

* * * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Sicma Aero Seat has issued the following service information. The actions described in this service information are intended to correct the

unsafe condition identified in the MCAI.

- Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008.
- Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.
- Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1163; Directorate Identifier 2011–NM–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 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 determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–23–06 Sicma Aero Seat: Amendment 39–16857. Docket No. FAA–2011–23–06; Directorate Identifier 2011–NM–022–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sicma Aero Seat Model 9401, 9402, 9404, 9505, 9406, 9407, 9408, and 9409 series passenger seat assemblies, all part numbers, except front row and aft facing seats, and those modified to ''Amendment B'' standard. These passenger seat assemblies are installed on, but not limited to, ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes.

Note 1: This AD applies to Sicma Aero Seat passenger seat assemblies as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Subject

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

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

Several occurrences of cracked central and lateral spreaders on passenger seats models 9401 and 9402 * * *.

This condition, if not corrected, can lead to further cracking of the seat spreaders, causing injury to passengers or crew members during heavy turbulence in flight or in the event of an emergency landing.

* * * * *

Compliance

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

Repetitive Inspections, Repair, and Replacement

(g) Within 6 months after the effective date of this AD, perform a detailed inspection for cracking of the central and lateral spreaders of the affected seats, in accordance with paragraph 2/A1., ''Checking procedures of lateral and central spreaders,'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

(1) If no cracking is found on any central spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (h) of this AD is done.

(2) If no cracking or only cracks that are shorter than 8 millimeters (mm) (0.315 inch) are found on any lateral spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (h) of this AD is done.

(3) If all cracks found on any central spreader are shorter than 8 mm (0.315 inch), before further flight, repair the affected spreader, in accordance with paragraphs 2/A through C2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008. Within 550 flight hours after doing the repair, do the detailed inspection specified in paragraph (g) of this AD, and repeat the inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (h) of this AD is done.

(4) If one or more cracks are found that are 8 mm (0.315 inch) or longer on any lateral or central spreader, before further flight, replace the affected spreader, in accordance with paragraphs 2/A through D2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

Optional Terminating Action

(h) Replacing all central and lateral spreaders on an affected seat assembly (modify to ''Amendment B'' standard), in accordance with paragraphs 2/A through D2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008, terminates the inspections required by this AD for that seat assembly.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions done before the effective date of this AD in accordance with Sicma Aero Seat Service Bulletin 94–25–011, Issue 2, dated November 6, 2007; and Sicma Aero Seat Service Bulletin 94–25–012, dated September 25, 2007; are acceptable for compliance with the corresponding actions of this AD.

Parts Installation

(j) As of 6 months after the effective date of this AD, no person may install any passenger seat assembly identified in paragraph (c) of this AD, on any airplane, unless it has been modified to ''Amendment B'' standard in accordance with the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; email; *jeffrey.lee@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(l) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency AD 2008–0097, dated May 20, 2008; Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008; Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008; and Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008; for related information.

(m) Contact Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; email; *jeffrey.lee@faa.gov,* for more information about this AD.

Material Incorporated by Reference

(n) You must use Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008; Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008; and Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 ISSOUDUN, France, telephone: +33 (0) 2 54 03 39 39; fax: +33 (0) 2 54 03 39 00; email *Customerservices.sas@zodiacaerospace.com;* Internet *http://www.sicma.zodiacaerospace.com.*

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

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

Issued in Renton, Washington, on October 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–28357 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0031; Directorate Identifier 2010–NM–135–AD; Amendment 39–16860; AD 2011–23–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705),

and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N [part number] 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.
>
> * * * * *
>
> The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 9, 2011.

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

FOR FURTHER INFORMATION CONTACT: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; *telephone* (516) 228–7345; *fax* (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 25, 2011 (76 FR 4264). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N [part number] 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.
>
> In order to avoid future axle failures, which could potentially result in gear collapse and collateral damage, this [Canadian] directive mandates repetitive visual inspection [for damage and corrosion of the protective coating] and repair, as necessary, of the MLG piston axles, P/N 49203–3 and 49203–5.

The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Include Additional Piston Axle Part Numbers

Comair, Inc. (Comair) requested that we revise paragraph (g) of the NPRM (76 FR 4264, January 25, 2011) to include MLG piston axles having P/Ns 49263–1 and 49263–3. Comair explained that it has been in contact with Goodrich regarding these part numbers. Comair expressed that Goodrich's response supports what Comair surmised from the Goodrich component maintenance manual (CMM) for P/N 49000, which was that P/Ns 49263–1 and 49263–3 are a next higher assembly (NHA) part number consisting of a piston axle with a metering pin assembly installed. Comair stated that the Goodrich CMM for P/N 49000 uses the following nomenclature, ''Piston/Axle/Metering Pin Assy (Pre SB 32–45).''

Comair also explained that there have been several instances where Comair has sent Goodrich Landing Gear Services a piston/axle having P/N 49203–3 for repair. Comair stated that while the piston/axle was at Goodrich, a metering pin was installed.

Comair expressed that when the piston/axle was returned, the authorized release certificate (Form One) only contained P/N 49263–1, and that Form One does not list the part number for the piston/axle and metering pin, only the higher assembly part number. Comair further explained that when they received the piston/axle back into stock, the part number had changed from 49203–3 to 49263–1, during the receiving process. Comair stated that, consequently, when the piston/axle is installed on the airplane, it shows that P/N 49263–1 is installed; therefore, as the NPRM is written, Comair asserted that the NPRM would not apply by part number. Comair suggested that if P/Ns 49203–3 and 49203–5 exhibit an unsafe condition, then P/Ns 49263–1 and 49263–3 should be considered to have the same fretting concern and the same unsafe condition.

We agree, for clarification, to include MLG piston axles having P/Ns 49263–1 and 49263–3, in a note in the final rule. It has also come to our attention that several operators failed to do the inspection because the MLG rework paperwork (Form One) from Goodrich only annotated piston/axle/metering pin assembly NHA having P/N 49263–1 or 49263–3, while the NPRM only proposed to require inspection for MLG piston axles having P/N 49203–3 or 49203–5. While neither this AD nor Canadian AD CF–2010–15, dated May 13, 2010, require inspection for MLG piston axles having P/N 49263–1 or 49263–3, we want to avoid the possibility of an operator overlooking the intent of this final rule simply because the operator's overhaul paperwork is the only document that references the NHA part number. This change has been coordinated with Transport Canada Civil Aviation. We have revised this final rule to include new Note 2 to inform operators that MLG piston axles having P/N 49203–3 or 49203–5 that are installed on the airplane could be identified as having P/N 49263–1 or 49263–3. We have re-identified subsequent notes accordingly.

Request To Extend the Proposed Compliance Time

Mesa Airlines (Mesa) requested that we revise the NPRM (76 FR 4264, January 25, 2011) to extend the proposed compliance time of 12 months for the initial inspection specified in paragraph (h)(1) of the NPRM to 24 months. Mesa explained that its request is due to the number of applicable components, the size of its fleet, repair vendor capacity, and the turn time for the piston axle if needed.

We disagree to extend the compliance time specified in paragraph (h)(1) of the final rule. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required inspection within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to the manufacturer, an ample number of required parts will be available to modify the airplanes identified in the Applicability section of this final rule within the compliance time. In consideration of these items, we have determined that a 12-month compliance time for the initial inspection in paragraph (h)(1) of this final rule is appropriate. However, under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an

acceptable level of safety. We have not changed the final rule in this regard.

Request To Add a Compliance Time for Proposed Terminating Action

In its request to extend the proposed compliance time for the initial inspection, Mesa added the following statement, ''6,000 hrs. to terminate.'' Mesa did not provide any explanation for this request.

From this statement, we infer that Mesa requested that we include a compliance time of 6,000 flight hours after the initial inspection for the terminating action required by paragraph (j) of the final rule. We disagree with adding a compliance time to paragraph (j) of the final rule. Mesa has not provided any justification for this request. Further, including an additional compliance time would necessitate additional rulemaking, and we do not consider that delaying this action until that time is warranted, since the actions required by this AD are adequate to ensure continued safety of the affected fleet. We have not changed the final rule in this regard.

Request To Add a Provision for Piston Axles That Require Overhaul

Mesa also requested that we revise the NPRM (76 FR 4264, January 25, 2011) to add a paragraph to paragraph (h) of the NPRM to allow for a provision for MLG piston axles which are scheduled for overhaul. Mesa suggested the following wording: ''(4) For any piston axle that has been in service more than 48 months, of the effective date of this AD and is due to be overhauled within 36 months of the effective date of this AD, must be complied with at schedule overhaul.''

We disagree to include a provision for MLG axles which are scheduled for overhaul. Mesa has not provided any technical justification for this request. However, affected operators may request to allow for a provision for MLG piston axles which are scheduled for overhaul, under the provisions of paragraph (l) of this final rule by submitting data, substantiating that the change would provide an acceptable level of safety. We have not changed the final rule in this regard.

Request To Clarify Paragraph (i) of the NPRM (76 FR 4264, January 25, 2011)

Mesa also requested that we clarify paragraph (i) of the NPRM (76 FR 4264, January 25, 2011). Mesa has not specified what aspect of the requirement it wants clarified, nor has it provided any reason for this request.

We agree to clarify paragraph (i) in this comment section of this final rule. Paragraph (i) of this final rule states the compliance time for doing the inspections specified in paragraph (h) of this AD for airplanes that have the mark ''32–45'' in the MOD STATUS field on the piston axle nameplate, or for airplanes that have done one of the repair engineering orders listed in the service information in paragraph (i) of this AD; within the compliance times required in paragraph (i) of this AD, these airplanes do the inspection and repeat the inspection as required by paragraph (h) of this AD. We have also added paragraphs (i)(1), (i)(2), and (i)(3) to the final rule to clarify the compliance times for paragraph (i).

Clarification

We have revised paragraph (g) of this final rule to clarify that the compliance times for doing the inspection required by paragraph (g) of this final rule are the same as the applicable compliance times specified in paragraphs (h) and (i) of this final rule.

We have also added Note 3 to this final rule to clarify that the MCAI specifies to inspect only airplanes having certain serial numbers that are part of the MCAI applicability. Because the affected part could be rotated onto any of the airplanes listed in the applicability, this AD requires the inspection be done on all airplanes.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 380 products of U.S. registry. We also estimate that it will take about 22 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $710,600, or $1,870 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 4264, January 25, 2011), the regulatory evaluation, any comments received, and other information. The street address for

the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–23–09 Bombardier, Inc.: Amendment 39–16860. Docket No. FAA–2011–0031; Directorate Identifier 2010–NM–135–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

Note 1: This AD is not applicable to piston axles having part number (P/N) 49203–7 or P/N 49203–9, which were installed in production on Bombardier, Inc. Model CL–600–2C10 airplanes having serial numbers (S/Ns) 10266 and subsequent; and Models CL–600–2D15 and CL–600–2D24 airplanes having S/Ns 15155 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There have been two reported cases of failure of the MLG [main landing gear] piston axle, P/N 49203–3 or 49203–5, resulting from fretting between the inboard axle sleeve and axle thrust face, damage to the protective coating and consequent stress corrosion. In both cases, the MLG did not collapse.

* * * * *

The unsafe condition is failure of the MLG, which could adversely affect the airplane's safe landing.

Compliance

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

Inspection and Repair

(g) At the applicable time in paragraph (h)(1), (h)(2), (h)(3) or (i) of this AD, inspect to determine whether the airplane has a main landing gear piston axle having P/N 49203–3 or 49203–5. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the main landing gear piston axle can be conclusively determined from that review.

Note 2: Operators should be aware that the Goodrich authorized release certificate (Form One) provided for MLG piston axles following overhaul, refers to only the higher assembly P/N 49263–1 or 49263–3; therefore, it is possible that MLG piston axles having P/N 49203–3 or 49203–5 that are installed on the airplane could be identified as having P/N 49263–1 or 49263–3.

(h) Except as required by paragraph (i) of this AD, if, during the inspection required by paragraph (g) of this AD, the landing gear piston axle is determined to have P/N 49203–3 or 49203–5: At the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, do a detailed inspection for corrosion and damage of the inboard and outboard piston axles, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009. Before further flight, repair any corrosion or damage found, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009. Within 30 months after the initial inspection, or within 12 months after the effective date of this AD, whichever occurs later, do the inspection specified in this paragraph; and repeat the inspection thereafter at intervals not to exceed 30 months.

(1) For any piston axle that has been in service for 48 months or more as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(2) For any piston axle that has been in service for 24 months or more, but less than 48 months, as of the effective date of this AD: Inspect within 24 months after the effective date of this AD.

(3) For any piston axle that has been in service for less than 24 months as of the effective date of this AD: Inspect within 36 months after the effective date of this AD.

(i) For airplanes that have mark ''32–45'' in the MOD STATUS field of the piston axle nameplate or that have incorporated one of the Bombardier repair engineering orders listed in paragraph 1.D. of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009: At the latest of the applicable times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, do the inspection specified in paragraph (h) of this AD and repeat the inspection thereafter at the time specified in paragraph (h) of this AD:

(1) Within 30 months after marking ''32–45'' in the MOD STATUS field of the piston axle nameplate.

(2) Within 30 months after incorporating one of the Bombardier repair engineering orders listed in paragraph 1.D. of Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009.

(3) Within 12 months after the effective date of this AD.

Terminating Action

(j) Installing a piston axle having P/N 49203–7 or P/N 49203–9 on any airplane constitutes a terminating action for the requirements of paragraphs (h), (h)(1), (h)(2), and (h)(3) of this AD, for that airplane.

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Inspections and repairs accomplished before the effective date of this AD according to any service bulletin specified in table 1 of this AD, are considered acceptable for compliance with the corresponding inspections and repairs specified in paragraph (h) of this AD.

TABLE 1—CREDIT FOR ACCOMPLISHMENT OF PREVIOUS SERVICE INFORMATION

Document	Revision	Date
Bombardier Service Bulletin 670BA–32–023	Original	October 24, 2007.
Bombardier Service Bulletin 670BA–32–023	A	January 7, 2008.
Bombardier Service Bulletin 670BA–32–023	B	March 5, 2008.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: The MCAI specifies to inspect only airplanes having certain serial numbers that are part of the MCAI applicability. Because the affected part could be rotated onto any of the airplanes listed in the applicability, this AD requires the inspection be done on all airplanes.

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA,

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

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

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2010–15, dated May 13, 2010; and Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009; for related information.

Material Incorporated by Reference

(n) You must use Bombardier Service Bulletin 670BA–32–023, Revision C, dated January 29, 2009, including Appendix A, Revision B, dated March 5, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(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;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on October 21, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–28360 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 110620342–1659–03]

RIN 0648–BB55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 15B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule makes effective the collection-of-information requirements published on November 16, 2009, and identified below.

DATES: The amendments to 15 CFR 902.1 in this rule are effective December 5, 2011. Amendments to §§ 622.5(a)(1)(iv), (b)(1), and (b)(2); § 622.8(a)(6); and § 622.18(b)(1)(ii) published at 74 FR 58902 (November 16, 2009) are effective December 5, 2011.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; and OMB, by email at *OIRASubmission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: (727) 824–5305.

SUPPLEMENTARY INFORMATION: On November 16, 2009 (74 FR 58902), NMFS published a final rule to implement Amendment 15B to the FMP. That final rule contained collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that were pending OMB approval at the time of publication. The rule delayed the effectiveness of those provisions of the rule with public reporting requirements until NMFS published OMB's approval of the collections. OMB approved these collection-of-information requirements on January 4, 2010 and January 27, 2010, under OMB control number 0648–0603 (South Atlantic snapper-grouper reporting requirements), and on April 12, 2011, under OMB control number 0648–0593 (South Atlantic snapper-grouper observer coverage requirements). Accordingly, this final rule makes effective the collection-of-information requirements at § 622.5(a)(1)(iv), (b)(1), and (b)(2); § 622.8(a)(6); and § 622.18(b)(1)(ii) on December 5, 2011. The collection-of-information requirement at § 622.5(g), which includes reporting requirements for the South Atlantic snapper-grouper recreational sector, will not be submitted for approval until further information on burden hour estimates can be obtained from the fishery.

Classification

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

This final rule contains collection-of-information requirements subject to the PRA which have been approved under OMB control numbers 0648–0603 and 0648–0593. The public reporting burdens for these collections of information are estimated to average: (1) 4 minutes for each notification of a vessel trip, (2) 20 minutes for each vessel and gear characterization form, (3) 31 minutes for each electronic logbook installation and data download, (4) 8 hours for each video monitor installation and data download, and (5) 20 minutes for each change of ownership. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: November 1, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by revising the OMB control numbers for §§ 622.5, 622.8, and 622.18, to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
622.5	–0013, –0016, –0392, and –0593.
* * * * * * *	
622.8	–0205 and –0593.
* * * * * * *	
622.18	–0205 and –0593.
* * * * * * *	

[FR Doc. 2011–28662 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF STATE

22 CFR Part 123

RIN 1400–AC91

[Public Notice 7674]

Amendment to the International Traffic in Arms Regulations: Filing, Retention, and Return of Export Licenses and Filing of Export Information

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect changes in the requirements for the return of licenses. Applicants are no longer required to return certain expired DSP–5s. This change will reduce the administrative burden on applicants.

DATES: *Effective Date:* This rule is effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Memos, Office of Defense Trade Controls Policy, Bureau of Political-Military Affairs, Department of State, (202) 663–2829 or FAX (202) 261–8199; Email *memosni@state.gov,* Attn: ITAR Amendment—License Return.

SUPPLEMENTARY INFORMATION: The Department of State is amending § 123.22(c) to institute changes in the requirements for the return of licenses. With this change, applicants with DSP–5 licenses that have been issued electronically by the Directorate of Defense Trade Controls (DDTC) and decremented electronically by the U.S. Customs and Border Protection (CBP) through the Automated Export System (AES) are no longer required to return them to DDTC when they expire, to include when the total authorized value or quantity has been shipped. The return of these licenses is redundant and unnecessary as all of the export information has been captured and saved electronically. If a DSP–5 license issued electronically is decremented physically in one or more instance the license must be returned to the Department of State.

All other DSP–5 licenses that do not meet the criteria described above, and all DSP–61, DSP–73, and DSP–85 licenses, and DSP–94 authorizations, must be returned by the applicant, or the government agency with which the license or authorization was filed, to DDTC, as these licenses and authorizations are not decremented electronically, even if an Electronic Export Information is filed via AES.

New § 123.22(c)(3) addresses the return of the DSP–94 authorization.

New § 123.22(c)(4) provides that licenses issued but not used by the applicant do not need to be returned to DDTC.

New § 123.22(c)(5) provides that licenses which have been revoked by DDTC are considered expired.

Section 123.21(b) is amended to conform to the changes to § 123.22(c).

This rule was first presented as a proposed rule for public comment on July 14, 2011. That comment period ended August 29, 2011. Three comments were received. The Department's evaluation of the written comments and recommendations are as follows.

One commenting party recommended the Department revise the provision regarding the return of the DSP–85, as the issued license is not held by the applicant, but by an officer of the Defense Security Service. The Department accepted this recommendation, and has revised § 123.22(c)(2) to provide that ''the government agency with which the license or authorization was filed'' may also return an expired license or authorization to the Department.

One commenting party recommended revising the sentence in § 123.22(c)(1) addressing the maintenance of records. The commenting party correctly pointed out that, as drafted in the proposed rule, the requirement to maintain records of an electronically issued and decremented DSP–5 pertained only when the license was fully decremented or expired, when in fact the requirement, per ITAR § 122.5, is for record maintenance on an ongoing basis. Section (c)(1) is revised accordingly.

One commenting party recommended revising a section of the ITAR not the subject of this rule. The Department,

though, takes this opportunity to address the recommendation. The commenting party recommended revising ITAR § 123.22(a)(1) to allow the exporter to present to CBP an electronically issued DSP–5 license at the time of permanent export, and not prior to filing the license in the Automated Export System. This procedure is a requirement set by CBP, for enforcement purposes, and not by the Department.

One commenting party recommended the elimination of the requirement to return any expired license to the Department, stating that it is inefficient, redundant of other recordkeeping requirements, and not in keeping with the Department's initiative to provide end-to-end electronic licensing. The Department observes that while it has instituted electronic processes for the majority of defense trade licensing transactions, it has not completed this initiative. Therefore, certain requirements cannot be completed electronically by the public. This includes providing the Department with a record of certain expired licenses. As an alternative, the commenting party suggested providing D-Trade, the Department's electronic licensing system, as a means of returning certain expired licenses, but D-Trade is currently not configured to support this function. The Department also observes that the recordkeeping requirement of ITAR § 122.5 pertains to registrants; for enforcement purposes, the Department also must have record of which exports were completed from approved authorizations. For the foregoing reasons, the Department did not accept this commenting party's recommendation.

Having thoroughly reviewed and evaluated the written comments and recommended changes, the Department has determined that it will accept, and hereby does adopt with the noted changes, the proposed rule as a final rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rule will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 123 is amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

■ 2. Section 123.21 is amended by revising the section heading and paragraph (b) to read as follows:

§ 123.21 Duration, renewal, and disposition of licenses.

* * * * *

(b) Unused, expired, suspended, or revoked licenses must be handled in accordance with § 123.22(c) of this subchapter.

■ 3. Section 123.22 is amended by revising paragraph (c) to read as follows:

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

* * * * *

(c) *Return of licenses.* Per § 123.21 of this subchapter, all DSP licenses issued by the Directorate of Defense Trade Controls (DDTC) must be disposed of in accordance with the following:

(1) A DSP–5 license issued electronically by DDTC and decremented electronically by the U.S. Customs and Border Protection through the Automated Export System (AES) is not required to be returned to DDTC. If a DSP–5 license issued electronically is decremented physically in one or more instance the license must be returned DDTC. A copy of the DSP–5 license must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(2) DSP–5, DSP–61, DSP–73, and DSP–85 licenses issued by DDTC but not decremented electronically by the U.S. Customs and Border Protection through AES (*e.g.,* oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant, or the government agency with which the license was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped. A copy of the license must be maintained by the applicant in accordance with § 122.5 of this subchapter. AES does not decrement the DSP–61, DSP–73, and DSP–85 licenses. Submitting the Electronic Export Information is not considered to be decremented electronically for these licenses.

(3) A DSP–94 authorization filed with the U.S. Customs and Border Protection must be returned by the applicant, or the government agency with which the authorization was filed, to DDTC upon expiration, to include when the total authorized value or quantity has been shipped, or when all shipments against the Letter of Offer and Acceptance have been completed. AES does not decrement the DSP–94 authorization. Submitting the Electronic Export Information is not considered to be decremented electronically for the DSP–94. A copy of the DSP–94 must be maintained by the applicant in accordance with § 122.5 of this subchapter.

(4) A license issued by DDTC but not used by the applicant does not need to be returned to DDTC, even when expired.

(5) A license revoked by DDTC is considered expired and must be handled in accordance with paragraphs (c)(1) and (c)(2) of this section.

Dated: October 27, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–28548 Filed 11–3–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 7675]

RIN 1400–AC97

Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2009

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the additional modifications to the United Nations Security Council arms embargo of Libya adopted in September 2011.

DATES: *Effective Date:* This rule is effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Charles B. Shotwell, Director, Office of Defense Trade Controls Policy, Department of State, by *telephone:* (202) 663–2792; *fax:* (202) 261–8199; or *email: DDTCResponseTeam@state.gov.* ATTN: Part 126, Libya.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the United Nations Security Council adopted resolution 2009, which modifies the arms embargo against Libya put in place by the adoption in February and March of resolutions 1970 and 1973, respectively.

Resolutions 1970 and 1973, and the May 2011 ITAR Amendment Regarding Libya

On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UN Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. On May 24, 2011, the Department amended the ITAR to implement the Security Council's actions by adding Libya to § 126.1(c), which identifies countries subject to UN Security Council arms embargoes. *See* 76 FR 30001. The Department also revised the previous policy on Libya contained in § 126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

Resolution 2009

To the existing exceptions to the arms embargo, delineated in resolutions 1970 and 1973, resolution 2009 adds the supply, sale, or transfer to Libya of arms and related materiel, including technical assistance, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related materiel for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel. License applications submitted pursuant to these exceptions are notified in advance to the Committee of the Security Council concerning Libya, and are eligible for approval in the absence of a negative decision by the Committee within five working days of such a notification.

Accordingly, the ITAR is amended to reflect these exceptions.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Since this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Libya, that notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 808(2).

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly

or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this rule will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Orders 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117.

■ 2. Section 126.1 is amended by revising paragraph (k) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(k) *Libya.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification; or

(3) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

* * * * *

Dated: October 27, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–28544 Filed 11–3–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0942]

RIN 1625–AA08

Special Local Regulations; Key West World Championship, Atlantic Ocean; Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the Atlantic Ocean located southwest of Key West, Florida during the Key West World Championship, a series of high-speed boat races. The event is scheduled to take place on Wednesday, November 9, 2011; Friday, November 11, 2011; and Sunday, November 13, 2011. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. The special local regulations will temporarily restrict vessel traffic in certain waters of the Atlantic Ocean. The special local regulations will establish the following four areas: A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining; and two spectator areas, where all vessels are prohibited from anchoring unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective from 9 a.m. on November 9, 2011 through 5 p.m. on November 13, 2011. This rule will be enforced daily from 9 a.m. until 5 p.m. on November 9, 2011; November 11, 2011; and November 13, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0942 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0942 in the ''Keyword''

box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Marine Science Technician First Class William G. Winegar, Sector Key West Prevention Department, Coast Guard; *telephone* (305) 292–8809, *email William.G.Winegar@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory 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 notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event until October 4, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

For the same reason discussed above, 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**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect race participants, participant vessels, spectators, and the general public from the hazards associated with high-speed boat races.

Discussion of Rule

On November 9, 11, and 13, 2011, Super Boat International Productions, Inc. is hosting the Key West World Championship, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean located southwest of Key West, Florida. Approximately 70 high-speed power boats will be participating in the races. It is anticipated that at least 100 spectator vessels will be present during the races. Although this event occurs annually, and special local regulations for this event are in the Code of Federal Regulations at 33 CFR 100.701, the Coast Guard has determined that additional safety measures are necessary in the special local regulations, including a buffer zone and two spectator areas. Therefore, the special local regulations set forth in 33 CFR 100.701 are inapplicable for this event.

The special local regulations encompass certain waters of the Atlantic Ocean located southwest of Key West, Florida. The special local regulations will be enforced daily from 9 a.m. until 5 p.m. on November 9, 2011; November 11, 2011; and November 13, 2011. The special local regulations consist of the following four areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining; and (3) two spectator areas, where all vessels are prohibited from anchoring unless authorized by the Captain of the Port Key West or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area, the buffer zone, or the spectator areas by contacting the Captain of the Port Key West by telephone at (305) 292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area, the buffer zone, or the spectator areas is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Regulatory Planning and Review, and 12866, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will only be in enforced for a total of 24 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area and buffer zone, or anchor in the spectator areas, without authorization from the Captain of the Port Key West or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area and buffer zone, or anchor in the spectator areas, during the enforcement periods if authorized by the Captain of the Port Key West or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), 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.

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 may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the special local regulations from 9 a.m. until 5 p.m. on November 9, 2011 through November 13, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

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.

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.

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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine event. Under figure 2–1, paragraph (34)(h), of the Instruction an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0942 to read as follows:

§ 100.T07–0942 Special Local Regulations; Key West World Championship, Atlantic Ocean; Key West, FL.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°32′08″ N, 81°50′19″ W; thence east to Point 2 in position 24°32′23″ N, 81°48′58″ W; thence northeast to Point 3 in position 24°33′14″ N, 81°48′47″ W; thence northeast to Point 4 in position 24°33′54″ N, 81°48′22″ W; thence west to Point 5 in position 24°33′54″ N, 81°48′25″ W; thence southwest back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′26″ N, 81°49′02″ W; thence southwest to Point 2 in position 24°32′22″ N, 81°50′39″ W; thence south to Point 3 in position 24°31′53″ N, 81°50′39″ W; thence northeast to Point 4 in position 24°32′06″ N, 81°48′35″ W thence northwest to back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) *Spectator Area 1.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′26″ N, 81°49′02″ W; thence northeast to Point 2 in position 24°33′36″ N, 81°48′49″ W; thence northwest to Point 3 in position 24°33′39″ N, 81°49′26″ W; thence southwest to Point 4 in position 24°33′24″ N, 81°49′28″ W; thence northeast back to origin. All vessels are prohibited from anchoring in spectator area 1. On-scene designated representatives will direct spectator vessels to spectator area 1.

(4) *Spectator Area 2.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′41″ N, 81°48′44″ W; thence northeast to Point 2 in position 24°33′55″ N, 81°48′34″ W; thence southwest to Point 3 in position 24°33′52″ N, 81°48′42″ W; thence southwest back to origin. All vessels are prohibited from anchoring in spectator area 2. On-scene designated representatives will direct spectator vessels to spectator area 2.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Key West by telephone at (305) 292–8727, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* This rule is effective from 9 a.m. on November 9, 2011 through 5 p.m. on November 13, 2011. This rule will be enforced daily from 9 a.m. until 5 p.m. on November 9, 2011; November 11, 2011; and November 13, 2011.

Dated: October 18, 2011.

Pat DeQuattro,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2011–28587 Filed 11–3–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0556; FRL–9486–2]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the North Dakota State Implementation Plan (SIP) that the Governor of North Dakota submitted with a letter dated April 6, 2009. The revisions affect North Dakota's air pollution control rules regarding general provisions (including rules regarding shutdowns and malfunctions), ambient air quality standards, emissions of particulate matter, permitting, and fees. In addition, EPA is making administrative corrections to the regulatory text for North Dakota that will be codified in the Code of Federal Regulations; we made errors in the identification of plan table when we approved the North Dakota State Implementation Plan revisions for Interstate Transport of pollution, which the Governor also submitted on April 6, 2009. EPA proposed approval of these rules on May 5, 2011 and received no adverse comments. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This action is effective on December 5, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2009–0556. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or *ostendorf.jody@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

(i) The words or initials *Act* or *CAA* mean or refer to the Federal Clean Air

Act, unless the context indicates otherwise.

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

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(v) The words *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

(vi) The initials *NDDH* mean or refer to the North Dakota Department of Health.

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I. Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to us. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing notice, held a public hearing on October 7, 2008 to consider the revisions to the Air Pollution Control Rules. Following the public hearing, comment period, and legal review by the North Dakota Attorney General's Office, NDDH adopted the revisions. The revisions to the Air Pollution Control Rules became effective on April 1, 2009. The North Dakota Governor submitted the SIP revisions to us with a letter dated April 6, 2009. This submittal also included (1) SIP revisions to address Interstate Transport requirements related to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, which we acted on in 2010 (75 FR 31290, June 3, 2010, and 75 FR 71023, November 22, 2010), and (2) SIP revisions (commonly referred to as ''infrastructure'' requirements) to address implementation of current NAAQS for PM_{10}, $PM_{2.5}$, and ozone, which we will be acting on separately. In our June 3, 2010 and November 22, 2010 actions on North Dakota's Interstate Transport SIP revisions, we made errors in the identification of plan table located in 40 CFR 52.1820(e). We describe these errors in section III, below.

II. Analysis of SIP Revisions

The SIP revisions in the April 6, 2009 submittal that we are acting on in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01, ''General Provisions;'' 33–15–02, ''Ambient Air Quality Standards;'' 33–15–05, ''Emissions of Particulate Matter Restricted;'' 33–15–14, ''Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate;'' and 33–15–23, ''Fees.'' The following is our description and analysis of the revisions.

A. Chapter 33–15–01, N.D.A.C., General Provisions

The State revised sections 33–15–01–04, 33–15–01–05, and 33–15–01–13 and submitted the entire revised sections to us for approval. In section 33–15–01–04, the State made the following changes: (1) The State revised the definition of ''air contaminant'' to add the words, ''emitted to the ambient air'' to the end of the definition; (2) the State added definitions for ''excess emissions'' and ''$PM_{2.5}$;'' (3) the State re-numbered the definitions to account for the addition of new definitions; and (4) the State cross-referenced and incorporated by reference the version of 40 CFR 51.100(s) as it existed on March 1, 2008 for purposes of defining ''volatile organic compounds'' (the prior date used was January 1, 2006). These changes are minor and are consistent with relevant CAA and regulatory requirements.

In section 33–15–01–05, the State added abbreviations for PM and $PM_{2.5}$. These revisions are minor and are consistent with the CAA.

The State made several revisions to 33–15–01–13, ''Shutdown and Malfunction of an Installation—Requirement for notification.'' In 33–15–01–13.1, ''Maintenance shutdowns,'' the State adopted new subdivision f, which reads, ''Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.'' Previously, we had been concerned that the language of 33–15–01–13.1 could be construed as exempting from enforcement excess emissions during shutdown of air pollution control equipment for scheduled maintenance. EPA's interpretation is that the CAA requires that all periods of excess emissions, regardless of cause, be treated as violations and that automatic exemptions from emissions limits are not appropriate.[1] Subdivision f clarifies that excess emissions are not authorized during maintenance shutdowns. Subdivision f is consistent with CAA requirements.

In 33–15–01–13.2, ''Malfunctions,'' the State removed certain language and added other language. In 33–15–01–13.2.a, the State removed language indicating that the State could permit the continued operation of an installation during a malfunction resulting in a violation of an emissions limit. We were concerned that this language could be construed to exempt excess emissions caused by malfunctions when the State granted permission to continue operations. EPA's interpretation is that such an exemption would be inconsistent with the CAA. The removal of the language is consistent with CAA requirements.

The State added 33–15–01–13.2.c to 33–15–01–13.2. This new subdivision c identifies procedures sources and the State will follow with respect to unavoidable malfunctions. Where a source believes that excess emissions have resulted from an unavoidable malfunction, the source must submit a written report to the State that includes evidence relevant to six criteria specified in the rule. The report must be submitted within thirty days of the end of the calendar quarter in which the malfunction occurred or within thirty days of a written request by North Dakota, whichever is sooner. The rule provides that North Dakota will evaluate

[1] This interpretation has been expressed in several documents. Most relevant to this action are the following: memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' (the 1982 Memorandum); a clarification to that memorandum from Kathleen M. Bennett issued on February 15, 1983 (the 1983 Memorandum); and a memorandum dated September 20, 1999 entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation (the 1999 Memorandum). As explained in these memoranda, because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS and compliance with other CAA requirements, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, EPA will disapprove SIP revisions that automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, as made explicit in the 1999 Memorandum, EPA will disapprove SIP revisions that give discretion to a state director to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

the information submitted by the source on a case-by-case basis to determine whether to pursue an enforcement action and that North Dakota may elect not to pursue an enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The rule also provides that the burden of proof is on the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred.

Under EPA's interpretations of the CAA as set forth in the 1982, 1983, and 1999 Memoranda, if a state in its SIP chooses to address violations that occur as a result of claimed malfunctions, the state may take two approaches. The first, the ''enforcement discretion'' approach, allows a state director to refrain from taking an enforcement action for a violation if certain criteria are met. The second, the ''affirmative defense'' approach, allows a source to avoid penalties if it can prove that certain conditions are met. North Dakota's 33–15–01–13.2.c follows the enforcement discretion approach.

We have evaluated North Dakota's enforcement discretion provisions for excess emissions caused by unavoidable equipment malfunctions and find that they are consistent with EPA's interpretations of the CAA as described in the memoranda above. In particular, the criteria specified in 33–15–01–13.2.c that the State will consider in deciding whether to pursue an enforcement action generally parallel the criteria outlined in the 1982 and 1983 Memoranda.

As noted in footnote 1, above, the 1999 Memorandum also discusses a point not explicitly addressed in North Dakota's new rule—*i.e.,* EPA will not approve SIP revisions that recognize or appear to recognize a state's decision not to pursue enforcement as barring enforcement action by EPA or citizens. Rule 33–15–01–13.2.c only addresses the State's exercise of its enforcement discretion and contains no language suggesting that a State decision not to pursue an enforcement action for a particular violation bars EPA or citizens from taking an enforcement action. Therefore, EPA interprets the rule, consistent with EPA's interpretations of the CAA, as not barring EPA and citizen enforcement of violations of applicable requirements when the State declines enforcement.

In 33–15–01–13.3, ''Continuous emission monitoring system failures,'' the State removed the phrase, ''acceptable to the department,'' from the text, ''When a failure of a continuous emission monitoring system occurs, an alternative method, acceptable to the department, for measuring or estimating emissions must be undertaken as soon as possible.'' Following this sentence, the State added a new sentence that reads as follows: ''The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate.'' We had asked the State to remove the language ''acceptable to the department'' from the rule and find that the new language is consistent with CAA requirements.

In previous rulemakings, we referenced an April 11, 2003 submission of revisions to 33–15–01–13 and indicated that we would act on that submission at a later date. See 69 FR 61762, October 21, 2004; 70 FR 45539, October 8, 2005; and 71 FR 3764, January 24, 2006. However, in an August 17, 2009 letter, North Dakota advised EPA that the April 11, 2003 submission erroneously indicated there had been revisions to 33–15–01–13.1.d, and that in fact the cited revisions to 33–15–01–13.1.d had not been adopted and were not submitted to EPA with the Governor's April 11, 2003 letter. Therefore, there are no remaining revisions from the April 11, 2003 submittal awaiting EPA's action.

B. Chapter 33–15–02, N.D.A.C., Ambient Air Quality Standards

Table 1 was revised to amend the PM_{10} and ozone standards and to add the 2006 $PM_{2.5}$ standard. These revisions were made to reflect the Federal standards and are consistent with CAA requirements.

C. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

The State removed section 33–15–05–03.2.2.d., which provided that the State could approve continued operation of a trash incinerator during a malfunction of combustion equipment, emission control equipment, monitoring equipment, or waste charging equipment. We were concerned that section 33–15–05–03.2.2.d could be construed to exempt excess emissions at trash incinerators caused by malfunctions when the State granted permission to the source to continue operations. EPA's interpretation is that such an exemption would be inconsistent with the CAA. We asked the State to address our concern. The removal of section 33–15–05–03.2.2.d addresses our concern and is consistent with CAA requirements. The SIP will no longer provide a potential exemption to trash incinerators operating during malfunctions based on State approval of continued operation during such periods. Instead, malfunctions at trash incinerators would be treated the same as malfunctions at other sources subject to SIP requirements—*i.e.,* the source would need to follow the procedures contained in section 33–15–01–13.2.

D. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate

In section 33–15–14–01, ''Designated Air Contaminant Sources,'' the State revised the list of sources ''capable of causing or contributing to air pollution.'' Specifically, the State added the word ''major'' to 33–15–14–01.14 so that it now reads as follows: ''Any major source to which a national emission standard for hazardous air pollutants for source categories (40 CFR 63) would apply.'' This change only affects the applicability of certain permitting requirements contained in Chapter 33–15–14. It does not affect emission limits in the SIP or other requirements that would affect ambient concentrations of criteria pollutants. It also does not affect the applicability of 40 CFR part 63 requirements. This change is consistent with CAA requirements.

E. Chapter 33–15–23, N.D.A.C., Fees

The State revised section 33–15–23–03, ''Minor source permit to operate fees.'' The State simplified the definition of a ''designated'' source. (The rule establishes a fee for designated sources.) The State also expanded the exemption from fees for State government facilities to include local government facilities. This latter revision simply codified the State's standing practice of not collecting fees from local governments. In addition, the State made a minor change to the due date for sources to submit the annual permit fee; the fee is now due within 60 days following the date of the State's fee notice rather than within 60 days of receipt of the fee notice. These are minor clarifying changes that do not impact compliance with CAA requirements.

III. Corrections to Regulatory Text

On June 3, 2010 and November 22, 2010 we published final rules approving portions of the revised North Dakota SIP for Interstate Transport of Pollution for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS. See 75 FR 31290 and 75 FR 71023. When we published those rules, we included regulatory text that was incorrect. Specifically, we made errors in the ''Identification of plan'' table contained in 40 CFR 52.1820(e), ''EPA-

approved nonregulatory provisions.'' As published in our November 22, 2010 action (which augmented and revised the table contained in our June 3, 2010 action), the first portion of the explanation for item (1) In the table read as follows: ''Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 2.11, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; subsections 7.8.1.B., 7.8.1.D., and 8.3.1.'' [2] It should have read, ''Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1.'' We also incorrectly listed the submittal date for items (21) and (22) in the table as 4/09/09 instead of 4/06/09. We are also revising part of the explanation for item (21) without changing its meaning. Therefore, we are correcting the identification of plan table in 40 CFR 52.1820(e) accordingly.

IV. Response to Comments

EPA did not receive any adverse comments on our May 5, 2011 proposal.

V. Section 110(l)

Under section 110(l) of the CAA, EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. As described in section II, above, most of the revisions we are approving conform the North Dakota SIP to relevant CAA requirements. In particular, the State revised shutdown and malfunction provisions to comport with CAA requirements. The other changes we are approving are minor and will not interfere with attainment or reasonable further progress toward attainment of the NAAQS [3] or any other CAA requirements.

VI. Final Action

EPA is approving revisions to the North Dakota SIP that the Governor of North Dakota submitted with a letter dated April 6, 2009 and that were State-effective April 1, 2009. Specifically, EPA is approving North Dakota's revisions to the following portions of the North Dakota Administrative Code: Chapter 33–15–01, ''General Provisions,'' sections 33–15–01–04, 33–15–01–05, and 33–15–01–13; Chapter 33–15–02, ''Ambient Air Quality Standards,'' section 33–15–02, Table 1; Chapter 33–15–05, ''Emissions of Particulate Matter Restricted,'' subsection 33–15–05–03.2.2; Chapter 33–15–14, ''Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate,'' subsection 33–15–14–01.14; and Chapter 33–15–23, ''Fees,'' section 33–15–23–03. See section II of this action, above, for a description of these revisions.

In addition, EPA is making administrative corrections to the regulatory text for North Dakota that will appear in the Code of Federal Regulations. Specifically, we are changing the identification of plan table that will appear at 40 CFR 52.1820(e) as follows:

a. We are changing the first portion of the explanation for item (1) in the table to read, ''Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1.''

b. We are changing the submittal dates for items (21) and (22) in the table to read, ''4/06/09,'' and revising part of the explanation for item (21) without changing its meaning.

See section III of this action, above, for further information regarding these corrections.

VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds, Incorporation by reference.

Dated: October 25, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

[2] As of the date of signature of this action, the official, published version of 40 CFR 52.1820 was current as of July 1, 2010 and does not reflect the regulatory language contained in our November 22, 2010 action. The regulatory language as contained in our November 22, 2010 action does appear in the unofficial electronic CFR on the GPOAccess Web site: *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4d2eed6d6a2a14bd914c123a19f553c3&rgn=div8&view=text&node=40:4.0.1.1.1.16.1.1&idno=40.*

[3] North Dakota has no nonattainment areas. Thus, CAA part D requirements, including the requirement to make reasonable further progress toward attainment, do not apply in North Dakota.

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended as follows:

■ a. In paragraph (c) by revising the table entries for ''33–15–01–04;'' ''33–15–01–05;'' ''33–15–01–13,'' ''33–15–02, Table 1;'' ''33–15–05–03.2;'' ''33–15–14–01;'' and ''33–15–23–03;'' and by removing the entry for ''33–15–14–01.1''.

■ b. In paragraph (e) by revising the table entries for ''(1)'', ''(21)'', and ''(22).''

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

STATE OF NORTH DAKOTA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
*	* *	*	* *	*
33–15–01–04	Definitions	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
33–15–01–05	Abbreviations	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*
33–15–01–13	Shutdown and malfunction of an installation—Requirement for notification.	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*
33–15–02, Table 1	Ambient Air Quality Standards.	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*
33–15–05–03.2	Refuse incinerators	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*
33–15–14–01	Designated air contaminant sources.	8/1/95	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*
33–15–23–03	Minor source permit to operate fees.	4/1/09	11/4/11, [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide	Submitted: 1/24/72; Adopted: 1/24/72.	5/31/72, 37 FR 10842	Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
Chapters:				
1. Introduction		Clarification submitted: 6/14/73, 2/19/74, 6/26/74, 11/21/74, 4/23/75.	With all clarifications: 3/2/76, 41 FR 8956.	
2. Legal Authority.				
3. Control Strategy.				
4. Compliance Schedule.				
5. Prevention of Air Pollution Emergency Episodes.				

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
7. Review of New Sources and Modifications. 8. Source Surveillance. 9. Resources. 10. Inter-governmental Cooperation. 11. Rules and Regulations. With subsequent revisions to the chapters as follows:				
*	*	*	* *	* *
(21) Section 7.8, Interstate Transport of Air Pollution (only 7.8.1.A, portions of 7.8.1.B, and 7.8.1.C, see explanation).	Statewide	Submitted: 4/6/09; Adopted: 4/01/09.	6/3/10, 75 FR 31290 ...	Includes portions of Subsection 7.8.1 as indicated below: 7.8.1.A, ''Overview,'' the language of Subsection 7.8.1.B, ''Nonattainment and Maintenance Area Impact,'' that specifically addresses the ''significant contribution to nonattainment'' requirement of CAA Section 110(a)(2)(D)(i), and all of 7.8.1.C.
(22) Section 7.8, Interstate Transport of Air Pollution (only portion of 7.8.1.B).	Statewide	Submitted: 4/6/09; Adopted: 4/01/09.	11/22/10, 75 FR 71023	Includes portions of Subsection 7.8.1.B, ''Nonattainment and Maintenance Area Impact,'' that specifically address the ''interference with maintenance'' requirement of CAA Section 110(a)(2)(D)(i).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2011–28527 Filed 11–1–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1225]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically

excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Jefferson	Unincorporated areas of Jefferson County (11–04–4802P).	August 10, 2011; August 17, 2011; *The Alabama Messenger*.	The Honorable David Carrington, President, Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Suite 230, Birmingham, AL 35203.	September 6, 2011	010217
Mobile	Unincorporated areas of Mobile County (11–04–0759P).	August 2, 2011; August 9, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 7, 2011	015008
Mobile	Unincorporated areas of Mobile County (11–04–0760P).	August 2, 2011; August 9, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 7, 2011	015008
Mobile	Unincorporated areas of Mobile County (11–04–0761P).	August 11, 2011; August 18, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 16, 2011	015008
Mobile	Unincorporated areas of Mobile County (11–04–0762P).	August 4, 2011; August 11, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 5, 2011	015008
Arizona: Yavapai	Town of Clarkdale (11–09–1419P).	August 3, 2011; August 10, 2011; *The Verde Independent*.	The Honorable Doug Von Gausig, Mayor, Town of Clarkdale, 39 North 9th Street, Clarkdale, AZ 86324.	December 8, 2011	040095
California:					
Alameda	City of Fremont (11–09–0580P).	August 25, 2011; September 1, 2011; *The Argus*.	The Honorable Bob Wasserman, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	August 16, 2011	065028
San Luis Obispo	City of Morro Bay (10–09–3119P).	August 16, 2011; August 23, 2011; *The Tribune*.	The Honorable William Yates, Mayor, City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442.	December 21, 2011	060307
Yuba	Unincorporated areas of Yuba County (11–09–0045P).	August 25, 2011; September 1, 2011; *The Appeal-Democrat*.	The Honorable Roger Abe, Chairman, Yuba County Board of Supervisors, 915 8th Street, Suite 109, Marysville, CA 95901.	December 30, 2011	060427
Colorado: Jefferson	City of Lakewood (11–08–0637P).	August 25, 2011; September 1, 2011; *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	August 16, 2011	085075
Florida:					
Charlotte	Unincorporated areas of Charlotte County (11–04–5839P).	August 5, 2011; August 12, 2011; *The Charlotte Sun*.	The Honorable Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	July 28, 2011	120061
Lake	Unincorporated areas of Lake County (11–04–4633P).	August 12, 2011; August 19, 2011; *The Daily Commercial*.	The Honorable Jennifer Hill, Chair, Lake County Board of Commissioners, 315 West Main Street, Tavares, FL 32778.	December 19, 2011	120421
St. Lucie	Unincorporated areas of, St. Lucie County (11–04–4362P).	August 5, 2011; August 12, 2011; *The St. Lucie News-Tribune*.	The Honorable Chris Craft, Chairman, St. Lucie County Board of Commissioners, 2300 Virginia Avenue, Fort Pierce, FL 34982.	July 28, 2011	120285
Sumter	Unincorporated areas of Sumter County (11–04–5885P).	August 4, 2011; August 11, 2011; *The Sumter County Times*.	The Honorable Don Burgess, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	July 28, 2011	120296
Maryland: Washington.	Unincorporated areas of Washington County (10–03–2211P).	June 3, 2011; June 10, 2011; *The Herald-Mail*.	The Honorable Terry L. Baker, President, Washington County Board of Commissioners, 100 West Washington Street, Room 226, Hagerstown, MD 21740.	October 10, 2011	240070

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Jersey:					
Middlesex	Township of North Brunswick (11–02–1340P).	August 24, 2011; August 31, 2011; *The North and South Brunswick Sentinel*.	The Honorable Francis Womack III, Mayor, Township of North Brunswick, 710 Hermann Road, North Brunswick, NJ 08902.	December 29, 2011	340271
Middlesex	Township of South Brunswick (11–02–1340P).	August 24, 2011; August 31, 2011; *The North and South Sentinel*.	The Honorable Frank Gambatese, Mayor, Township of South Brunswick, 540 Ridge Road, Monmouth Junction, NJ 08852.	December 29, 2011	340278
North Carolina:					
Buncombe	Unincorporated areas of Buncombe County (11–04–2928P).	August 24, 2011; August 31, 2011; *The Asheville Citizen-Times*.	Ms. Wanda Greene, Buncombe County Manager, 205 College Street, Suite 300, Asheville, NC 28801.	August 15, 2011	370031
Forsyth	Town of Kernersville (11–04–0470P).	July 21, 2011; July 28, 2011; *The Kernersville News* and *The Winston-Salem Journal*.	The Honorable Dawn H. Morgan, Mayor, Town of Kernersville, 134 East Mountain Street, Kernersville, NC 27284.	November 25, 2011	370319
Forsyth	Unincorporated areas of Forsyth County (11–04–0470P).	July 21, 2011; July 28, 2011; *The Kernersville News* and *The Winston-Salem Journal*.	Mr. J. Dudley Watts, Jr., Forsyth County Manager, 201 North Chestnut Street, Winston-Salem, NC 27101.	November 25, 2011	375349
Oklahoma: Oklahoma.	City of Oklahoma City (10–06–3231P).	August 4, 2011; August 11, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102.	August 29, 2011	405378
Pennsylvania: Delaware.	Township of Haverford (11–03–0098P).	July 5, 2011; July 12, 2011; *The Daily Times*.	The Honorable William F. Wechsler, President, Township of Haverford Board of Commissioners, 2325 Darby Road, Havertown, PA 19083.	November 9, 2011	420417
South Carolina:					
Charleston	Town of Mount Pleasant (11–04–5533P).	August 4, 2011; August 11, 2011; *The Post and Courier*.	The Honorable Billy Swails, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	July 28, 2011	455417
Charleston	Unincorporated areas of Charleston County (11–04–5329P).	August 4, 2011; August 11, 2011; *The Post and Courier*.	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	July 28, 2011	455413
Tennessee:					
Greene	City of Tusculum (11–04–3995P).	June 30, 2011; July 7, 2011; *The Greeneville Sun*.	The Honorable John Foster, Mayor, City of Tusculum, 145 Alexander Street, Greeneville, TN 37745.	June 23, 2011	470329
Greene	Town of Greeneville (11–04–3995P).	June 30, 2011; July 7, 2011; *The Greeneville Sun*.	The Honorable W. T. Daniels, Mayor, Town of Greeneville, 200 North College Street, Greeneville, TN 37745.	June 23, 2011	470069
Texas:					
Bexar	City of Selma (11–06–0764P).	August 11, 2011; August 18, 2011; *The Daily Commercial Recorder*.	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	December 16, 2011	480046
Dallas	City of Garland (11–06–2614P).	August 3, 2011; August 10, 2011; *The Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	July 27, 2011	485471
Denton and Tarrant.	City of Fort Worth (11–06–1407P).	June 28, 2011; July 5, 2011; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	November 2, 2011	480596
Denton	City of Lewisville (11–06–3720P).	August 10, 2011; August 17, 2011; *The Lewisville Leader*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	December 15, 2011	480195
El Paso	City of El Paso (11–06–2150P).	August 11, 2011; August 18, 2011; *The El Paso Times*.	The Honorable John F. Cook, Mayor, City of El Paso, 2 Civic Center Plaza, 10th Floor, El Paso, TX 79901.	August 4, 2011	480214
Gregg and Harrison.	City of Longview (11–06–0244P).	August 3, 2011; August 10, 2011; *The Longview News-Journal*.	The Honorable Jay Dean, Mayor, City of Longview, 300 West Cotton Street, Longview, TX 75601.	August 25, 2011	480264
Tarrant	City of Euless (10–06–3064P).	March 4, 2011; March 11, 2011; *The Fort Worth Star-Telegram*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039.	July 11, 2011	480593
Tarrant	City of Keller (10–06–0163P).	April 8, 2010, April 15, 2010, *The Fort Worth Star-Telegram*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	April 1, 2010	480602
Tarrant	City of Keller (11–06–0636P).	July 14, 2011; July 21, 2011; *The Fort Worth Star-Telegram*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	July 7, 2011	480602
Tarrant	City of Keller (11–06–2181P).	June 24, 2011; July 1, 2011; *The Fort Worth Star-Telegram*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	October 31, 2011	480602
Tarrant	City of North Richland Hills (11–06–0636P).	July 14, 2011; July 21, 2011; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	July 7, 2011	480607

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Travis	Unincorporated areas of Travis County (11–06–0223P).	August 11, 2011; August 18, 2011; *The Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	August 4, 2011	481026
Williamson	City of Georgetown (11–06–2998P).	August 17, 2011; August 24, 2011; *The Williamson County Sun*.	The Honorable George Garver, Mayor, City of Georgetown, 113 East 8th Street, Georgetown, TX 78626.	December 22, 2011	480668
Williamson	Unincorporated areas of Williamson County (10–06–3690P).	July 27, 2011; August 3, 2011; *The Williamson County Sun*.	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	December 2, 2011	481079

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 17, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–28562 Filed 11–3–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1206).	City of Orange Beach (11–04–0533P).	May 6, 2011; May 13, 2011; *The Islander*.	The Honorable Tony Kennon, Mayor, City of Orange Beach, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	April 29, 2011	015011
Jefferson (FEMA Docket No.: B–1199).	Unincorporated areas of Jefferson County (10–04–7732P).	April 6, 2011; April 13, 2011; *The Alabama Messenger*.	The Honorable David Carrington, President, Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	August 11, 2011	010217
Arizona:					
Maricopa (FEMA Docket No.: B–1199).	City of Tolleson (10–09–3593P).	April 26, 2011; May 3, 2011; *The West Valley Business*.	The Honorable Adolfo F. Gámez, Mayor, City of Tolleson, 9555 West Van Buren Street, Tolleson, AZ 85353.	April 18, 2011	040055
Mohave (FEMA Docket No.: B–1199).	City of Lake Havasu City (10–09–2386P).	April 7, 2011; April 14, 2011; *Today's News-Herald*.	The Honorable Mark S. Nexsen, Mayor, City of Lake Havasu City, 2330 McCulloch Boulevard, Lake Havasu City, AZ 86403.	March 28, 2011	040116
Yavapai (FEMA Docket No.: B–1199).	Unincoporated areas of Yavapai County (11–09–0165P).	April 7, 2011; April 14, 2011; *The Daily Courier*.	The Honorable Carol Springer, Chair, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	August 12, 2011	040093
Colorado: Mesa (FEMA Docket No.: B–1199).	Unincorporated areas of Mesa County (11–08–0384P).	May 3, 2011; May 10, 2011; *The Daily Sentinel*.	The Honorable Janet Rowland, Chair, Mesa County Board of Commissioners, 544 Rood Avenue, Old Courthouse, Grand Junction, CO 81501.	April 26, 2011	080115
Florida:					
Monroe (FEMA Docket No.: B–1199).	Unincorporated areas of Monroe County (11–04–2239P).	April 6, 2011; April 13, 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 530 Whitehead Street, Key West, FL 33040.	August 11, 2011	125129
Orange (FEMA Docket No.: B–1211).	Unincorporated areas of Orange County (11–04–2514P).	April 7, 2011; April 14, 2011; *The Orlando Weekly*.	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	August 12, 2011	120179
Pasco (FEMA Docket No.: B–1206).	Unincorporated areas of Pasco County (10–04–8088P).	May 6, 2011; May 13, 2011; *The Tampa Tribune*.	The Honorable Ann Hildebrand, Chair, Pasco County Board of Commissioners, 7530 Little Road, New Port Richey, FL 34654.	April 29, 2011	120230
St. Lucie (FEMA Docket No.: B–1206).	Unincorporated areas of St. Lucie County (11–04–1456P).	May 6, 2011; May 13, 2011; *The St. Lucie News-Tribune*.	The Honorable Chris Craft, Chairman, St. Lucie County Board of Commissioners, 2300 Virginia Avenue, Ft. Pierce, FL 34982.	April 27, 2011	120285
Volusia (FEMA Docket No.: B–1199).	Unincorporated areas of Volusia County (10–04–4834P).	April 7, 2011; April 14, 2011; *The Beacon*.	Mr. James Dinneen, Volusia County Manager, 123 West Indiana Avenue, DeLand, FL 32720.	August 12, 2011	125155
Georgia:					
Bryan (FEMA Docket No.: B–1199).	Unincorporated areas of Bryan County (10–04–4427P).	April 6, 2011; April 13, 2011; *The Bryan County News*.	The Honorable Jimmy Burnsed, Chairman, Bryan County Board of Commissioners, 51 North Courthouse Street, Pembroke, GA 31321.	August 11, 2011	130016
Forsyth (FEMA Docket No.: B–1199).	Unincorporated areas of Forsyth County, (11–04–1171P).	March 23, 2011; March 30, 2011; *The Forsyth County News*.	The Honorable Brian R. Tam, Chairman, Forsyth County Board of Commissioners, 110 East Main Street, Suite 210, Cumming, GA 30040.	July 28, 2011	130312
Mississippi: DeSoto (FEMA Docket No.: B–1195).	City of Olive Branch (10–04–5201P).	March 31, 2011; April 7, 2011; *The DeSoto Times Tribune*.	The Honorable Sam Rikard, Mayor, City of Olive Branch, 9200 Pigeon Roost Road, Olive Branch, MS 38654.	August 5, 2011	280286
Montana: Yellowstone (FEMA Docket No.: B–1199).	Unincorporated areas of Yellowstone County (10–08–0854P).	March 31, 2011; April 7, 2011; *The Billings Gazette*.	The Honorable Bill Kennedy, Chairman, Yellowstone County Board of Commissioners, 217 North 27th Street, Room 403A, Billings, MT 59107.	August 5, 2011	300142
Nevada: Douglas (FEMA Docket No.: B–1199).	Unincorporated areas of Douglas County (10–09–3566P).	April 6, 2011; April 13, 2011; *The Record-Courier*.	The Honorable Michael A. Olson, Chairman, Douglas County Board of Commissioners, 3605 Silverado Drive, Carson City, NV 89705.	August 11, 2011	320008
New Mexico:					
Roosevelt (FEMA Docket No.: B–1203).	City of Portales (11–06–1696P).	May 6, 2011; May 13, 2011; *The Portales News-Tribune*.	The Honorable Sharon King, Mayor, City of Portales, 100 West 1st Street, Portales, NM 88130.	April 29, 2011	350054
Roosevelt (FEMA Docket No.: B–1203).	Unincorporated areas of Roosevelt County (11–06–1696P).	May 6, 2011; May 13, 2011; *The Portales News-Tribune*.	Ms. Charlene Hardin, Roosevelt County Manager, 109 West 1st Street, 4th Floor, Portales, NM 88130.	April 29, 2011	350053
Santa Fe (FEMA Docket No.: B–1205).	City of Santa Fe (10–06–0575P).	December 21, 2010; December 28, 2010; *The Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, 200 Lincoln Avenue, Santa Fe, NM 87504.	November 22, 2010	350070
Santa Fe (FEMA Docket No.: B–1205).	Unincorporated areas of Santa Fe County (10–06–2504P).	December 29, 2010; January 5, 2011; *The Santa Fe New Mexican*.	The Honorable Harry B. Montoya, Chairman, Santa Fe County Board of Commissioners, 102 Grant Avenue, Santa Fe, NM 87501.	May 5, 2011	350069

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New York:					
Monroe (FEMA Docket No.: B–1205).	Town of Irondequoit (10–02–0839P).	September 24, 2010; September 30, 2010; *The Messenger-Post*.	The Honorable Mary J. D'Aurizio, Supervisor, Town of Irondequoit, 1280 Titus Avenue, Rochester, NY 14617.	March 17, 2011	360422
Oneida (FEMA Docket No.: B–1206).	City of Sherrill (10–02–0242P).	June 11, 2010; June 17, 2010; *The Oneida Daily Dispatch*.	Mr. Robert A. Comis, Sherrill City Manager, 377 Sherrill Road, Sherrill, NY 13461.	December 3, 2010	360544
Rockland (FEMA Docket No.: B–1205).	Town of Orangetown (10–02–0398P).	October 8, 2010; October 15, 2010; *The Journal News*.	The Honorable Paul Whalen, Supervisor, Town of Orangetown, 26 Orangeburg Road, Orangeburg, NY 10962.	April 4, 2011	360686
North Carolina: Buncombe (FEMA Docket No.: B–1195).	Town of Montreat (10–04–3559P).	March 10, 2011; March 17, 2011; *The Black Mountain News*.	The Honorable Letta Jean Taylor, Mayor, Town of Montreat, 96 Rainbow Terrace, Montreat, NC 28757.	July 15, 2011	370476
Oklahoma: Cleveland (FEMA Docket No.: B–1201).	City of Norman (10–06–1004P).	October 6, 2010; October 13, 2010; *The Norman Transcript*.	The Honorable Cindy S. Rosenthal, Mayor, City of Norman, 201 West Gray Street, Norman, OK 73069.	September 29, 2010	400046
Pennsylvania: Cumberland (FEMA Docket No.: B–1201).	Township of Upper Allen (10–03–1016P).	November 15, 2010; November 22, 2010; *The Patriot-News*.	The Honorable James G. Cochran, President, Township of Upper Allen Board of Commissioners, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	March 22, 2011	420372
South Carolina:					
Lexington (FEMA Docket No.: B–1211).	City of Columbia (11–04–3465P).	May 5, 2011; May 12, 2011; *The Lexington County Chronicle*.	The Honorable Steve Benjamin, Mayor, City of Columbia, 1737 Main Street, Columbia, SC 29201.	June 13, 2011	450172
Lexington (FEMA Docket No.: B–1211).	Unincorporated areas of Lexington County (11–04–3465P).	May 5, 2011; May 12, 2011; *The Lexington County Chronicle*.	The Honorable James E. Kinard, Jr., Chairman, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	June 13, 2011	450129
Texas:					
Bexar (FEMA Docket No.: B–1205).	Unincorporated areas of Bexar County (09–06–3226P).	November 12, 2010; November 19, 2010; *The San Antonio Express-News*.	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78204.	November 5, 2010	480035
Bexar (FEMA Docket No.: B–1205).	Unincorporated areas of Bexar County (10–06–0377P).	September 28, 2010; October 5, 2010; *The San Antonio Express-News*.	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78204.	February 2, 2011	480035
Collin (FEMA Docket No.: B–1205).	City of Allen (10–06–0342P).	September 30, 2010; October 7, 2010; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	September 21, 2010	480131
Collin (FEMA Docket No.: B–1201).	City of Royse City (10–06–1217P).	September 22, 2010; September 29, 2010; *The Royse City Herald Banner*.	The Honorable Jerrell Baley, Mayor, City of Royse City, 305 North Arch Street, Royse City, TX 75189.	January 27, 2011	480548
Collin (FEMA Docket No.: B–1201).	Unincorporated areas of Collin County (10–06–1217P).	September 22, 2010; September 29, 2010; *The Dallas Morning News*.	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	January 27, 2011	480130
Hays (FEMA Docket No.: B–1205).	Village of Wimberley (10–06–1474P).	September 29, 2010; October 6, 2010; *The Wimberley View*.	The Honorable Bob Flocke, Mayor, Village of Wimberley, 221 Stillwater Road, Wimberley, TX 78676.	January 27, 2011	481694
Montgomery (FEMA Docket No.: B–1205).	City of Conroe (10–06–1318P).	February 11, 2011; February 18, 2011; *The Conroe Courier*.	The Honorable Webb K. Melder, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77305.	June 20, 2011	480484
Tarrant (FEMA Docket No.: B–1205).	City of Arlington (10–06–1764P).	December 15, 2010; December 22, 2010; *The Fort Worth Star-Telegram*.	The Honorable Robert Cluck, M.D., Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004.	April 21, 2011	485454
Tarrant (FEMA Docket No.: B–1201).	City of Fort Worth (10–06–1954P).	October 5, 2010; October 12, 2010; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 9, 2011	480596
Tarrant (FEMA Docket No.: B–1203).	City of Fort Worth (11–06–1741P).	April 5, 2011; April 12, 2011; *The Commercial Recorder*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 29, 2011	480596
Tarrant (FEMA Docket No.: B–1205).	City of Mansfield (10–06–0859P).	February 23, 2011; March 2, 2011; *The Fort Worth Star-Telegram*.	The Honorable David Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	March 18, 2011	480606
Tarrant (FEMA Docket No.: B–1201).	City of North Richland Hills (10–06–1455P).	September 3, 2010; September 10, 2010; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, P.O. Box 820609, Richland Hills, TX 76182.	August 26, 2010	480607
Tarrant (FEMA Docket No.: B–1201).	City of North Richland Hills (10–06–1292P).	November 5, 2010; November 12, 2010; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, Richland Hills, TX 76182.	February 28, 2011	480607
Tarrant (FEMA Docket No.: B–1205).	City of Saginaw (10–06–0960P).	January 12, 2011; January 19, 2011; *The Fort Worth Star-Telegram*.	The Honorable Gary Brinkley, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	May 19, 2011	480610

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Webb (FEMA Docket No.: B–1205).	Unincorporated areas of Webb County (10–06–0114P).	May 13, 2010; May 20, 2010; *The Laredo Morning Times*.	The Honorable Danny Valdez, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	September 17, 2010	481059
Utah: Salt Lake (FEMA Docket No.: B–1206).	City of West Jordan (11–08–0575P).	April 29, 2011; May 6, 2011; *The Salt Lake Tribune*.	The Honorable Melissa K. Johnson, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	April 25, 2011	490108

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 17, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–28565 Filed 11–3–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–118]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Structure and Practices of the Video Relay Service Program, Second Report and Order (Second Report and Order). The information collection requirements were approved on October 20, 2011 by OMB.

DATES: The final rule published at 76 FR 47469, August 5, 2011 amending 47 CFR 64.606(a)(2), (g), (h)(2) and (3), is effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559–5158 (voice and videophone), or *email: Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on October 20, 2011, OMB approved, for a period of three years, the information collection requirements contained 47 CFR 64.606(a)(2), (g), (h)(2) and (3). The Commission publishes this document to announce the effective date of these rule sections. *See,* In the Matter of Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51; FCC 11–118, published at 76 FR 47469, August 5, 2011. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1150, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on October 20, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 64.606(a)(2), (g), (h)(2), and (3).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1150.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–28650 Filed 11–3–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 384

[Docket No. FMCSA–2011–0039]

RIN 2126–AB33

Commercial Driver's License Information System State Procedures Manual, Release 5.2.0

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate by reference the most recent edition of the American Association of Motor Vehicle Administrators, Inc.'s (AAMVA) Commercial Driver's License Information System (CDLIS) State Procedures Manual (the Manual) (Release 5.2.0). This final rule requires all State driver licensing agencies (SDLAs) to use this recent edition of the Manual to develop the process required to transmit, receive, record, and update information on a CDLIS driver record. This information includes, but is not limited to, the commercial driver's license (CDL) holder's physical description, commercial and noncommercial driving status, medical certification status, convictions, disqualifications and accidents. This final rule is intended to ensure the uniform application of CDLIS procedures among all States.

DATES: *Effective Date:* This final rule takes effect on December 5, 2011. *Compliance Date:* Compliance is required by January 30, 2012. The incorporation by reference of the publication listed in the rule is approved by the Director of the Office of the Federal Register as of December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Senior Transportation Specialist, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–

0001; *Telephone:* (202) 366–5014; *Email address: robert.redmond@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

The electronic file of this document is available from the following: the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*; the Federal eRulemaking Portal at *http://www.regulations.gov* and searching the Agency name and docket number (FMCSA–2011–0039).

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VII. Regulatory Analyses

I. Legal Basis

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313) required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for State issuance of CDLs. The Act also granted FMCSA authority to prescribe procedures and requirements the States must observe in issuing CDLs and CDL learner permits and specified information States must include on each CDL (49 U.S.C. 31308).

FMCSA is required by statute to maintain an information system that serves as the clearinghouse and depository of information about the licensing, identification and disqualification of operators of CMVs (49 U.S.C. 31309). CDLIS is the information system that serves that function. To avoid loss of Federal-aid highway funds, 49 U.S.C. 31314 requires each State to comply substantially with 49 U.S.C. 31311(a), which prescribes the requirements for State participation in the CDL program. To ensure that the States are able to exchange information about CDL holders efficiently and effectively through CDLIS, as required by 49 U.S.C. 31311(a)(5)–(9), (15), (18)–(19), and (21), this rule requires States issuing CDLs and CDL learner permits to follow all the procedures described in Version 5.2.0 of the CDLIS State Procedures Manual when posting, transmitting, and receiving all information on a CDL driver's CDLIS driver record.

II. Background

In 1988, the Federal Highway Administration (FHWA) entered into a designation agreement with AAMVA's affiliate AAMVAnet, Inc. to create and operate CDLIS. Under that agreement, CDLIS had to contain all the information required in 49 U.S.C. 31309(b). The 1988 agreement stated that AAMVAnet will ''cooperate fully with FHWA with respect to the operation of CDLIS including, but not limited to, information content and the development of standards relating to access to CDLIS by States and various employers and employees.'' Pursuant to section 106(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, 1757, 49 U.S.C. 113 note), the 1988 agreement automatically transferred to FMCSA upon the Agency's establishment and remained in effect until FMCSA and AAMVA, the party that inherited the responsibilities of its affiliate AAMVAnet, Inc., entered into a superseding agreement in 2008. Copies of the 1988 and 2008 agreements are in the public docket for this rulemaking.

In August 2005, section 4123 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) authorized FMCSA to establish a modernization plan for CDLIS (Pub. L. 109–59, 119 Stat. 1144, 1734, partly codified at 49 U.S.C. 31309(e) *et seq.*). Section 4123 also authorized grants to States or organizations representing States for the modernization of CDLIS (49 U.S.C. 31309(f)).

On May 2, 2006, FMCSA published the CDLIS Modernization Plan in the **Federal Register** (71 FR 25885). The Plan detailed the statutory requirements for modernization, the phases of the modernization plan, and the availability of grant funding for AAMVA and the States to comply with CDLIS modernization requirements. Since May 2006, AAMVA has received grants from FMCSA to complete the tasks enumerated in the Modernization Plan.

On June 9, 2008, FMCSA and AAMVA entered into a new cooperative agreement regarding the operation, maintenance, and modernization of CDLIS. While FMCSA authorizes AAMVA to maintain and operate CDLIS, FMCSA does not own CDLIS and it is not a Federal system of records. FMCSA and AAMVA work closely together to monitor State compliance with the CDLIS specifications, as set forth in the May 2, 2006 **Federal Register** notice, and the States' annual grant agreements. FMCSA has awarded AAMVA Federal financial assistance grants to maintain an active Help Desk for State personnel, to conduct regularly occurring CDLIS training courses for State personnel, and to provide States with regular CDLIS transaction and error reports to improve their compliance efforts.

The goals of the 2008 agreement, to which any amendments must be made in writing and signed by all parties, are to provide a framework for the ongoing operation, maintenance, administration, enhancement, and modernization of CDLIS by AAMVA. The modernization will ensure compliance with applicable Federal information technology security standards; electronic exchange of all information including the posting of convictions; self-auditing features to ensure that data are being posted correctly and consistently by the States; and integration of an individual's CDL and the medical certificate as required in the final rule on ''Medical Certification Requirements as Part of CDL'' (73 FR 73096, December 1, 2008). Finally, the agreement provides a schedule for modernization of the system. The updated Release 5.2.0 of the Manual implements the CDLIS modernization effort.

III. Purpose and Scope of the CDLIS State Procedures Manual

The Manual (Release 5.2.0, February 2011) outlines the standard administrative practices required of the fifty States and the District of Columbia when participating in CDLIS. The 13 Canadian provinces and territories and the Mexican General Directorship of Federal Motor Carrier Transportation (DGAF) will also adopt the Release 5.2.0. This updated Release 5.2.0 supersedes the Manual (Release 4.1.0) of September 2007.

The primary audience for this Manual is State personnel involved in CDL programs, and their counterparts in Canada and Mexico, including administrative employees involved in driver licensing and computer-technology staff supporting the CDLIS transactions. The Manual (Release 5.2.0) contains background information about the laws mandating CDLIS and discusses types of CDLIS users. This Manual also includes descriptions, excerpted from the CDLIS System Specifications (Release 5.2.0), of the nation-wide computerized data-exchange transactions used to electronically record and report driver information. Further, the Manual (Release 5.2.0) provides guidance on administrative driver licensing procedures that involve CDLIS, including issuing, renewing, transferring, withdrawing, and reinstating a driver's license, and posting convictions. The Manual (Release 5.2.0) does not address CDL or CDL learner's permit program

requirements outside the scope of CDLIS.

The Manual (Release 5.2.0) addresses changes that were made as part of the modernization effort to make CDLIS more efficient in handling the increasing number of driver records and data transactions. These changes include new rules for processing transactions, procedures for handling data transaction errors and clarifications of existing rules and procedures for processing data transactions. The following is a summary of the changes:

Comply With Applicable Federal Information Technology Security Standards

- The network was upgraded to comply with National Institute of Standards and Technology (NIST) and other Federal standards, including the encryption of messages (note: all States have completed this upgrade).
- FMCSA has encouraged States to follow the NIST standards in their internal systems that maintain driver history information used in messages sent via CDLIS.
- Because the CDLIS Central Site stores a significant accumulation of personally identifiable information (PII), FMCSA has overseen a Certification and Accreditation by independent auditors to ensure that it provides sufficient safeguards and mitigates the risk of that data being compromised or accessed by unauthorized personnel.

Provide for the Electronic Exchange of all Information, Including Posting of Convictions

- Medical Certificate information, driver self-certification of operating status, medical certification status, information regarding variances and exemptions from medical requirements have all been added to the driver history record exchanged via CDLIS.
- A new nationwide driver license restriction code of 'V' was created to be used on the license document and CDLIS messages to ensure law enforcement would ask the driver to provide variance information during a traffic stop.
- A new CDLIS message will allow FMCSA to quickly locate a driver's State and license number after a crash.

Contain Self-Auditing Features to Ensure That Data Is Being Posted Correctly and Consistently by the States

- Message edit-checks were added to ensure that data in driver history is being posted correctly and consistently by the States.
- Reports have been created to assist FMCSA in monitoring State compliance with Federal regulations related to timeliness, data quality, and various capabilities.
- States will be required to provide data from their licensing systems to verify that it matches the information on the Central Site; States will be provided error reports to take action to correct any data conflicts.
- Non-PII data will be used to create statistical reports related to the national CDL program.

The Manual also addresses the rules and procedures for recording and transmitting the new medical certification data that is being added to CDLIS driver records.

IV. Incorporation by Reference

Section 552(a)(1) of Title 5, U.S.C., authorizes agencies, with the approval of the Director of the Federal Register, to incorporate by reference into regulations materials already published elsewhere. This reduces the volume of material published in the **Federal Register** and the Code of Federal Regulations. This final rule is part of the process of incorporating the Manual (Release 5.2.0) by reference. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, would then have the force and effect of law.

When the regulatory requirements for State participation in the CDL program were adopted as 49 CFR part 384 (59 FR 26029, May 18, 1994), they included the provision that the States must adhere to program requirements specified by the Agency and the designated operator of CDLIS. Section 384.231(d) states that each ''State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219.'' In fact, the information collection requirements built into CDLIS were specified broadly by FHWA in 1988 and more precisely by FMCSA in 2008. Those requirements have formed the basis for several editions of the Manual. In 2002, FMCSA, therefore, incorporated by reference into § 384.231(d) Version 2.0 of the Manual (67 FR 49742, July 31, 2002) and later updated the rule to incorporate the Manual (Version 4.1.0) (73 FR 73096, December 1, 2008).

FMCSA believes that uniform practices among the States can only be ensured by incorporating by reference the latest Manual (Release 5.2.0), published in February 2011. This most recent version of the Manual (Release 5.2.0) is available for inspection at the Department of Transportation Library and the National Archives and Records Administration. Copies of the Manual may also be obtained through AAMVA. Further details, contact addresses, and telephone numbers are provided in 49 CFR 384.107. While AAMVA plans to update this version of the Manual as needed to reflect changing legal requirements and best practices in the operation of CDLIS, incorporating the Manual (Release 5.2.0) by reference, however, ensures that each State complies with the specific version required by FMCSA.

V. Discussion of Comments and Responses

FMCSA published a notice of proposed rulemaking (NPRM) on April 6, 2011, and provided for a 60-day public comment period (76 FR 19023). During the comment period, FMCSA received one comment from an anonymous source.

Comment

The commenter agreed overall with the proposed rule. However, there was concern that the NPRM did not explain with specificity the types of convictions, disqualifications and accidents that will be listed on a driver's CDLIS record. The commenter further stated that convictions, disqualifications, and accidents that occurred outside the scope of a driver's use of his or her CDL should not be posted on a driver's CDLIS record. The commenter stated that the following should not be included in a driver's CDLIS record: (1) Convictions outside the scope of the use of the CDL, for example, battery; and (2) information about accidents in vehicles that do not require the driver to hold a CDL.

The commenter also stated that certain information not related to a driver's use of a CDL should be included in his or her CDLIS record, such as all events resulting from chemical abuse and child molestation.

The commenter stated that implementing these changes would benefit FMCSA by reducing the risk of a challenge to the rule on privacy or equal protection grounds, would assist law enforcement in determining whether a CDL holder will be a safe driver and would act as a deterrent to CDL holders.

FMCSA Response

The purpose of this final rule is to incorporate by reference the Manual (Release 5.2.0), which will be more efficient in handling the increasing

number of driver records and data transactions. The Manual (Release 5.2.0) includes new rules for processing transactions, procedures for handling data transaction errors and clarifications of existing rules and procedures for processing data transactions.

This final rule does not make any changes to the types of convictions, disqualifications, and accidents that are required to be reported to CDLIS. As a result, the comment on what types of convictions, disqualifications or accidents should or should not be included in CDLIS are outside the scope of this rulemaking.

VI. Summary of Final Rule

This final rule amends the regulations at § 384.107 (b) to incorporate by reference the Manual (Release 5.2.0), and at § 384.301 to add paragraph (g) specifying that the State must comply with requirements of this rule by January 30, 2012. In the NPRM, FMCSA proposed adding the incorporation by reference to paragraph (e) of § 384.301; the Agency has now codified this provision in paragraph (g) as a result of other changes to the regulations that were codified after the NPRM was published.

This final rule requires States to comply with the Manual (Release 5.2.0) by January 30, 2012. The Agency believes the standard 3-year phase-in period is unnecessary because, under the modernization plan, the States are currently working to pass required implementing legislation, modify their information systems to comply with the new modernized CDLIS, begin recording the medical examiner's certificate information onto the CDLIS driver record, and make that information available from the CDLIS driver record beginning on January 30, 2012.

VII. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final 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 (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Agency does not believe implementing this rule will create new costs or cause an adverse economic impact on the industry or the public. Therefore, a full regulatory evaluation is unnecessary.

This final rule is directed to SDLAs. It will merely incorporate the CDLIS State Procedures Manual (Release 5.2.0). Separate regulations require States to comply with the substantive requirements of the Manual(Release 5.2.0), which merely sets processes and procedures to ensure that these other regulations are uniformly implemented. As a result, this rule will not impose significant costs on the States.

The only new statutory requirements that are addressed in the Manual are related to the merging of the medical examiner's certificate into the CDLIS driver record and those listed in the May 2, 2006 **Federal Register** notice detailing the plan to modernize CDLIS. The costs associated with the implementation of the new medical examiner's certificate requirements were addressed in the final rule on ''Medical Certification Requirements as Part of the CDL,'' published on December 1, 2008 (72 FR 73096). The costs associated with the modernization of CDLIS were addressed in the ''CDLIS Modernization Plan,'' published on May 2, 2006 (71 FR 25885).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether rules could have a significant economic impact on a substantial number of small entities. This rule will primarily affect States and their processes and procedures for maintaining electronic driver history records. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This final 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

Executive Order 13132 (Federalism)

FMCSA analyzed this final rule in accordance with the principles and criteria of Executive Order 13132, ''Federalism,'' and has determined that it does not have federalism implications.

The Federalism Executive Order applies to ''policies that have federalism implications,'' which is defined as regulations and other actions that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Sec. 1(a). Further, Section 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.''

The final rule amends the CDL program authorized by CMVSA. States have been issuing CDLs in accordance with Federal standards for over two decades. The CDL program does not have preemptive effect because it is voluntary. States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes only small, though numerous, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act,

2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule requires States to adopt uniform processes and procedures to maintain electronic driver history records in CDLIS, but does not require the collection of PII.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The CDLIS records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this final rule does not affect a currently-approved information collection covered by the OMB Control No. 2126–0011 titled, ''Commercial Driver Licensing and Test Standards'' or create the need for any new information collection.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(s) and (t) of the Order (69 FR 9703). That CE relates to regulations regarding the CDL and related activities to assure CDL information is exchanged between States. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Executive Order 13211 (Energy Effects)

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

List of Subjects in 49 CFR Part 384

Administrative practice and procedure, Highway safety, Incorporation by reference, and Motor carriers.

For the reasons set forth in the preamble, FMCSA amends part 384 of title 49, Code of Federal Regulations (49 CFR part 384) as follows:

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 1. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

■ 2. Revise § 384.107(b) to read as follows:

§ 384.107 Matter incorporated by reference.

* * * * *

(b) *Materials incorporated.* The AAMVA ''Commercial Driver's License Information System (CDLIS) State Procedures Manual,'' Release 5.2.0, February 2011, incorporation by reference approved for §§ 384.225 and 384.231.

* * * * *

■ 3. Revise § 384.301 to add a new paragraph (g) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(g) A State must come into substantial compliance with the requirements of subpart B of this part, which is effective as of December 5, 2011, as soon as practicable, but not later than January 30, 2012.

Issued on: October 14, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–28517 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110620342–1659–03]

RIN 0648–BA66

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950, as amended, (Act) to implement decisions of the Inter-American Tropical Tuna Commission (IATTC). At its 82nd Meeting in July 2011, the IATTC adopted a number of resolutions, some of which require rulemaking to implement domestically in the United States. This rule implements three of these decisions: the Resolution on Tuna Conservation 2011–2013 (C–11–01); the Resolution Prohibiting Fishing on Data Buoys (C–11–03); and the Resolution Prohibiting the Retention of Oceanic Whitetip Sharks (C–11–10). This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This rule becomes effective on December 5, 2011, except for the amendments to § 300.24(m) and (n) and § 300.25(f) which become effective November 4, 2011.

ADDRESSES: Copies of the proposed and final rules, Small Business Compliance Guide, and the Regulatory Impact Review for this action are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov,* and are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Written comments regarding the burden-hour estimates or other aspects of the collection-of-

information requirements contained in this final rule may be submitted to NMFS Southwest Regional Office and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, (562) 980–4036.

SUPPLEMENTARY INFORMATION: On September 30, 2011, NMFS published a proposed rule in the **Federal Register** (76 FR 560790) to revise regulations at 50 CFR part 300, subpart C, in order to implement certain decisions of the IATTC. The proposed rule was open to public comment through October 17, 2011. NMFS also published an Advanced Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (76 FR 39808, July 7, 2011) to request public comment on implementing two of the three IATTC measures being implemented with this final rule.

Background on the IATTC

The IATTC was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna. In 2003, the IATTC adopted a resolution that approved the Convention for Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica (Antigua Convention), a major revision of the 1949 Convention. The Antigua Convention entered into force on August 27, 2010. The objective of the Antigua Convention is to ensure the long-term conservation and sustainable use of fish stocks covered by this Convention. The IATTC Convention Area (Convention Area) includes the waters bounded by the coast of the Americas, the 50°N. and 50°S. parallels, and the 150°W. meridian.

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951–961) authorizes the Secretary of Commerce, after approval of IATTC recommendations by the Secretary of State, to promulgate such regulations as may be necessary to carry out the obligations of the United States. The authority to promulgate regulations has been delegated to NMFS.

The IATTC convened its 82nd Meeting in July 2011 and adopted by consensus twelve new resolutions. This final rule implements the following three resolutions adopted by the IATTC at the 82nd Meeting: the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean in 2011–2013 (C–11–01); the Resolution Prohibiting Fishing on Data Buoys (C–11–03); and the Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (C–11–10). All of the other resolutions that were adopted in 2011 either do not require further rulemaking or will be implemented in one or more separate subsequent rulemakings. All active resolutions and recommendations are available on the following IATTC Web site: *http://www.iattc.org/ResolutionsActiveENG.htm.*

Changes to Tuna Conservation Measures for 2011–2013

Resolution C–11–01 is very similar to the tuna conservation measure adopted by the IATTC in 2009 (Resolution C–09–01). NMFS implemented Resolution C–09–01 at 50 CFR part 300, subpart C (74 FR 61046, November 23, 2009). Similar to Resolution C–09–01, the main objectives of Resolution C–11–01 are to not increase the fishing mortality of yellowfin tuna (*Thunnus albacares*) and to reduce the fishing mortality of bigeye tuna (*Thunnus obesus*) in the Convention Area over the period 2011–2013.

NMFS is reducing the duration of the closure period of the Convention Area for tuna purse seine vessels class sizes 4–6 (182 metric tons carrying capacity or greater) in 2011 from 73 days, which was established under Resolution C–09–01, to 62 days, which was established under Resolution C–11–01, and continuing the closure period of 62 days in the years 2012 and 2013. The shorter closure period was agreed to by the members of the IATTC based on the 2011 bigeye and yellowfin tuna stock assessments. NMFS is also giving applicable purse seine vessel owners the ability to choose between the two possible closure periods established by the IATTC for 2012 and 2013. In 2009, 2010, and 2011, NMFS chose the later closure period for the entire U.S. purse seine fleet based on historical fishing operations; however, other members of the IATTC are allowing vessel owners to choose between the two closure periods to give fleets greater flexibility. In order to give comparable flexibility to the U.S. fleet, NMFS is providing this choice to the U.S. fleet as well in 2012 and 2013. Therefore, vessel owners of purse seine vessels that are subject to these requirements will be required by July 1, 2012, and July 1, 2013, to notify the NMFS Southwest Regional Administrator of his or her choice of closure period for the year. The two options are July 29 to September 28, or November 18 to January 18 of the following year for 2012 and 2013. This option is not available for 2011 since the earlier closure period has already passed. If a vessel owner fails to notify the Regional Administrator of his or her choice by the July 1 deadline for each year, the vessel will be subject to the later closure period (November 18 to January 18 of the following year) by default.

The high seas time/area closure for tuna purse seine vessels class sizes 4–6 will also continue to be in effect in 2012 and 2013. The area consists of the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude. The high seas time/area closure was originally established under Resolution C–09–01 and has been in place since 2009.

In addition, NMFS is extending in 2012 and 2013 the annual bigeye tuna quota of 500 metric tons applicable to the bigeye catch in the Convention Area by U.S. longline vessels over 24 meters in overall length in accordance with the requirements in Resolution C–11–01. This quota has been in place since 2009 and has never been reached or exceeded. The members of the IATTC agreed to continue the bigeye tuna quotas in the Convention Area after review and analysis of the 2011 bigeye and yellowfin tuna stock assessments.

NMFS is also renewing the tuna retention program that requires all bigeye, skipjack, and yellowfin tuna caught by a U.S. purse seine vessel of class sizes 4–6 be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size. The single exemption to this provision is the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. This measure is meant to reduce discards of juvenile (undersized) bigeye, yellowfin, and skipjack tunas that are often caught by purse seine vessels that fish on fish aggregating devices (FADs), reduce overall catches of bigeye tuna, and provide an incentive to fishermen to avoid large catches of juvenile bigeye tuna. The catch retention requirement will go into effect on January 1, 2012, and remain in effect unless the members of the IATTC agree to remove the measure in 2013 or beyond. NMFS is proposing to not include an expiration date for this requirement because NMFS expects it to be included by the IATTC in future tuna conservation and management resolutions. If a decision is made to remove the measure, NMFS

will take appropriate action to remove the regulation.

Prohibition on Fishing Around Data Buoys

The Resolution Prohibiting Fishing on Data Buoys (Resolution C–11–03) was adopted to reduce vandalism and damage to data buoys caused by fishing vessels that often leads to loss of data critical to weather forecasting, tsunami warnings, search and rescue efforts, and research of the marine environment. Resolution C–11–03 defines data buoys as floating devices, either drifting or anchored, that are deployed by governmental or recognized scientific organizations or entities for the purpose of electronically collecting environmental data, and not in support of fishing activities.

This rule prohibits all U.S. fishing vessels that are used to target HMS in the Convention Area from interacting with data buoys. According to Resolution C–11–10, interactions include, but are not limited to, encircling the buoy with fishing gear, tying up to or attaching the vessel, fishing gear, or any part or portion of the vessel to a data buoy, or cutting its anchor line. In addition, this rule prohibits all U.S. longline and purse seine vessels that are used to fish for HMS in the Convention Area from using fishing gear within one nautical mile of an anchored data buoy. The one-nautical-mile distance will be measured from the data buoy to the nearest portion of the vessel or items associated with the vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. These measures only apply to data buoys that have been identified to the IATTC. In addition, the Web site of NOAA's National Data Buoy Center (NDBC) at *http://www.ndbc.noaa.gov/* contains detailed information regarding data buoys maintained by NDBC and its partner organizations, including location and owner information. The Web site of the Observing System Monitoring Center, maintained by NOAA's Office of Climate Observations at *http://osmc.noaa.gov/Monitor/OSMC/OSMC.html,* also provides information regarding the location of data buoys. The Western and Central Pacific Fisheries Commission (WCPFC) also adopted a similar measure in December 2009 (CMM 2009–05) and issued an information package on May 18, 2010, that provides sample information on the type of data buoys that may be encountered by fishermen. The information package is available on the WCPFC's Web site at *http://www.wcpfc.int/conservation-and-management-measures.* The prohibition does not apply if the fishing vessel is operating as part of a scientific research program that notified the IATTC of its intent, or is conducting work on behalf of the IATTC.

Other requirements include prohibiting U.S. fishing vessels used to target HMS in the Convention Area from taking onboard a data buoy unless specifically authorized or requested to do so by the entity responsible for the data buoy, requiring U.S. fishing vessels used for fishing for HMS in the Convention Area that become entangled with data buoys to remove the entangled fishing gear with as little damage to the data buoy as possible, and requiring vessels to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with drifting data buoys. NOAA has also previously issued news releases asking the fishing, shipping, and boating communities to protect data buoys voluntarily by taking specific steps, such as: never boarding or tying up to a buoy; never fishing around or under a buoy; and giving the buoy a wide berth to avoid entangling the mooring or other equipment suspended from the buoy—500 yards for vessels which are trailing gear and at least 20 yards for all others.

Conservation of Oceanic Whitetip Sharks

The Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (Resolution C–11–10) was adopted to reduce the fishing pressure on oceanic whitetip sharks (*Carcharhinus longimanus*), which are caught incidentally and targeted in some oceanic and coastal fisheries. During the IATTC's 82nd Meeting, IATTC scientific staff showed estimates illustrating a dramatic decline in the catch per unit of effort of this species, which may be indicative of a decline in the population of this species in the EPO.

This rule prohibits all U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks. All applicable U.S. vessels are required to release unharmed, to the extent practicable, oceanic whitetip sharks when brought alongside the vessel. Members and cooperating non-members of the IATTC are required to implement Resolution C–11–10 by January 1, 2012.

Technical Correction to Vessel Capacity Regulations

This rule also makes a technical change to § 300.22(b)(7)(ii) to reflect changes made in a previous rulemaking on vessel capacity. The total capacity limitation for the U.S. purse seine fishery in the Convention Area is 31,775 cubic meters, but NMFS inadvertently failed to state that number into this paragraph when the change was made in § 300.22(b)(4)(i)(A). NMFS is correcting this oversight in this rulemaking.

Response to Public Comments

NMFS received two public comments during the ANPR public comment period. One comment expressed general opposition to the action because it did not go far enough in terms of conservation and advocated banning all longline fishing and further restricting tuna fisheries beyond the scope of this action. In addition, the National Park Service, Pacific West Region, noted that they did not have comments on the subject action. NMFS also received one public comment during the proposed rule public comment period from NOAA Pacific Marine Environmental Laboratory (PMEL). Only one individual participated in the public hearing via teleconference and did not provide substantive comments.

Comment 1: The NOAA PMEL Tropical Atmosphere Ocean (TAO) project fully supports NOAA's planned implementation of the Resolution Fishing on Data Buoys (C–11–03) in the IATTC Convention Area. The eastern tropical Pacific Ocean TAO data buoys experience the highest amount of damage due to fishing activity when compared to all other sites in the array. Loss of critical TAO data results in decreased ability to detect and forecast El Niño and La Niña, which degrades the accuracy of advisories issued for the protection of life and property. In addition, millions of taxpayer dollars are wasted on repairs or replacements to moorings damaged or lost by fishing activity. The benefits of this resolution to the nation in terms of public health and safety far outweigh any inconvenience resulting from the restriction of fishing activity around these crucial environmental measurement platforms.

Response: NMFS acknowledges this comment in support of the action.

Changes From the Proposed Rule

There were a few minor changes to the proposed regulatory text. The subject of the sentence at § 300.25(e)(4) regarding the oceanic whitetip shark

provision, was changed from the vessel itself to the vessel crew, operator, or owner of the vessel given the nature of the provision. In addition, vessel length was clarified throughout the regulations to be ''overall length,'' which is defined by the U.S. Coast Guard at 46 CFR 69.203 as the horizontal distance between the outboard side of the foremost part of the stern and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments. Finally, the option to mail in notification to the Regional Administrator of a chosen purse seine closure period was added to § 300.25(f)(ii)(3).

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable law.

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

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the portion of the rule that is shortening the purse seine closure period in the Convention Area by 11 days. One purpose of this rule is to allow U.S. fishing vessel owners to maximize their fishing opportunities while still conserving and sustainably managing the bigeye tuna and yellowfin tuna fish stocks in the Convention Area consistent with U.S. obligations as a member of the IATTC. Currently, regulations prohibit purse seine vessels of class size 4–6 (more than 182 metric tons carrying capacity) from fishing in the Convention Area from November 7, 2011, to January 18, 2012. However, these regulations amend current regulations to delay the start date of the purse seine closure period to November 18, 2011, consistent with Resolution C–11–01. If this rule is not effective for 30 days, then U.S. fishing vessels will lose the additional fishing opportunities afforded them through the agreement made at the 82nd IATTC Meeting. Because the delay would undermine the purpose of this rule, and would prevent U.S. fishermen from using the additional fishing days to maximize their fishing opportunities, the delay in effectiveness is contrary to the public interest. Accordingly, there is good cause to waive the 30-day delay in effectiveness for the regulations at § 300.24(m) and (n) and § 300.25(f), which will become effective immediately, while all other regulations being issued will become effective 30 days after publication of this final rule.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Data Buoy and Oceanic Whitetip Shark Measures

The data buoy and oceanic whitetip shark provisions in the rule apply to owners and operators of U.S. vessels targeting HMS in the Convention Area, including, longline, purse seine, troll and baitboat, drift gillnet, harpoon, and commercial passenger fishing vessels. All of these vessels are considered small business entities under the Regulatory Flexibility Act (RFA) (*i.e.,* they have annual gross revenues of less than $4 million) except for the large purse seiners. Some of the data buoy provisions also specifically apply to longline and purse seine vessels. However, in the case of the data buoy provisions, it is unlikely that this rulemaking will result in a significant change in fishing operations, as NMFS is unaware of U.S. fishing vessels interacting with data buoys in the Convention Area in the past, or U.S. longline or purse seine vessels deploying gear within one nautical mile of anchored data buoys in the Convention Area. If, in the past, there have been vessels fishing within one nautical mile of anchored data buoys, the longline and purse seine measures could result in some negligible affects to the operating costs of vessels in terms of a potential increase in search time if there is less fishing success when not fishing around anchored buoys. Also, such vessels are required to avoid fishing in areas where anchored data buoys are located, which could slightly reduce the available fishing grounds and could cause some shift in the spatial distribution of fishing effort. Operators and crew are also required to take additional precautions when encountering data buoys anywhere in the Convention Area, which could create new burdens that could increase operating costs by increasing the time spent at sea. For example, the operator and crew of any vessel that has gear that becomes entangled with a data buoy will need to make sure to disentangle the gear carefully, in order to cause as little damage to the data buoys as possible. However, since the measures are limited to fishing around anchored data buoys and longline and purse seine vessels can still fish in essentially the same fishing grounds as long as they avoid the circular 3.14 nm^2 prohibited fishing zone around each anchored data buoy, it is likely that there will be no real changes in fishing operations or associated revenues.

The longline and purse seine fleets that currently fish around anchored data buoys could also see some change in the composition of their catch due to no longer being allowed to fish around anchored data buoys that can act as fish aggregating devices; however, this is rather unlikely. This provision could lead to an increase in the proportion of yellowfin tuna and a decrease in the proportion of bigeye tuna, skipjack tuna, and other species that tend to be caught around floating objects. Some studies suggest that seabirds, sea turtles, and marine mammals aggregate in association with floating objects, so there could be some minor beneficial effects on protected resources from implementation of the rule. However, this impact is difficult, if not impossible, to estimate and in all likelihood there will not be changes in fishing operations and catch compositions resulting from the rule. In addition, purse seine vessels still can fish using FADs that they deploy and it is presumed that longline vessels tend to avoid fishing in close proximity to anchored buoys to prevent damage and entanglement of gear.

NMFS compared the effects of the data buoy provisions in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations that do not prohibit U.S. vessels targeting HMS in the Convention Area from interacting with data buoys as stipulated in Resolution C–11–03. Under this alternative, there would be no effects to vessel owners compared to the status quo. Vessel owners would potentially benefit from not implementing the data buoy provisions; however, the United States would not be implementing Resolution C–11–03 and would therefore not be satisfying its international obligations as a member of the IATTC.

The oceanic whitetip shark conservation measures are also unlikely to result in changes to fishing operations or significant economic impacts to small entities as U.S. fisheries that target HMS rarely retain, transship, land, or sell this species in the Convention Area. The Hawaii longline fishery (both deep-set and shallow-set sectors) catches the majority, if not all, of the oceanic whitetip sharks caught by U.S. fisheries that target HMS in the Convention Area. According to observer data from 1995–2010 for the U.S. longline fleet based out of Hawaii, the majority (90.1 percent) of observed sets caught zero oceanic whitetip sharks. On average, 0.141 oceanic whitetip sharks were

caught per set during the same time period. Since 2000, there has been a national ban on shark finning, which has greatly increased the number of sharks, including oceanic whitetip sharks, that are released after being caught. From 2004–2006, only 4.9 percent and 1.7 percent of the oceanic whitetip sharks that were caught were retained in the deep-set and shallow-set longline fisheries, respectively. The overwhelming majority of the oceanic whitetip sharks (99.3 percent) caught on observed fishing trips in this fishery are caught outside of the Convention Area, west of 150°W. longitude. Thus, the prohibition is expected to result in no change in fishing operations and only a de minimis reduction in associated revenues.

NMFS compared the effects of the oceanic whitetip provisions to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations in order to prohibit U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip shark, as stipulated in Resolution C–11–10. Under this alternative, there would be no effects to vessel owners compared to the status quo. Vessel owners would potentially benefit from not implementing the oceanic whitetip provisions; however, the United States would not be implementing Resolution C–11–10 and would therefore not be satisfying its international obligations as a member of the IATTC.

In summary, all entities that have the potential to be affected by the data buoy and oceanic whitetip shark measures are believed to be small entities except the large purse seine vessels; however, it is likely that none of these entities will be significantly impacted by the rule as fishing operations and revenues will most likely remain the same.

Tuna Conservation Measures

The tuna conservation measures affect longline vessels over 24 meters overall length and U.S. purse seine vessels class sizes 4–6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. This rule makes only slight adjustments to the existing tuna conservation measures, and extends the effective period for two additional fishing years; thus impacts to vessel owners are expected to be minimal. The bigeye tuna quota in the longline fishery will remain at 500 mt and remain in force for 2012 and 2013. This quota has not been reached in 2009 or 2010 and it is not expected to be reached in 2011. In addition, the purse seine closure in the Convention Area will be shortened by 11 days in 2011 and will remain in force for 2012 and 2013. Additionally, the purse seine vessel owners will be given a choice as to when to implement the closure giving them greater flexibility while maintaining the same level of conservation, the high seas purse seine time/area closure will remain in force for 2012 and 2013, and the tuna catch retention measures will be extended to 2012 and beyond.

NMFS compared the effects of the tuna conservation measures in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations to continue the bigeye tuna quota in 2012 and 2013 in the longline fishery, no changes to the purse seine closure periods, no option to select a preferred closure period, and no extension of the tuna retention measures as stipulated in Resolution C–11–01. Under this alternative, the longline and purse seine fisheries operating in the Convention Area would maintain the status quo. The longline vessel owners would benefit from not continuing the bigeye tuna quota; however, since this quota has not been reached in the past, the effects would likely be similar to the measures being implemented. The purse seine vessel owners would be disadvantaged by not shortening the purse seine closure period in the Convention Area by 11 days in 2011 and not giving them the option to choose a preferred closure period; however, they would benefit if the closure period in the Convention Area and the high seas time/area closure were not continued in 2012 and 2013 and the tuna retention measures were not continued in 2012 and beyond. Under this alternative, the United States would not be fully implementing Resolution C–11–01 and would therefore not be satisfying its international obligations as a member of the IATTC.

The total number of affected longline vessels is approximated by the average number of U.S. longline vessels greater than 24 meters in overall length (large-scale longline vessels) that have caught bigeye tuna in the Convention Area in 2005–2010. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the Convention Area was 18, 8, 18, and 30, respectively. Thus, approximately 19 longline vessels on average have the potential to be affected by this rule. The majority of the longline vessels that may be affected by this rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that is affected by the rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets.

Most of the Hawaii and American Samoa fleets' fishing effort has traditionally been outside of the Convention Area in the western and central Pacific Ocean (WCPO), but fishing has also taken place in the EPO. The proportion of the large-scale longline vessels annual bigeye tuna catches that were captured in the EPO from 2005 through 2009 ranged from about 5 percent to 26 percent, and averaged 19 percent. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2009 were about $63 million. Given the number of vessels active during that period (128, on average), this indicates an average of about $490,000 in annual revenue per vessel. All of the businesses affected by the longline measures are considered small business entities.

For the purpose of projecting baseline conditions for the longline fishery under no action, this analysis relies on fishery performance from 2005 through 2010, since prior to 2005 the longline fishery regulations underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Large-scale longline vessels fishing in the Convention Area caught about 166, 51, 118, 325, 204, and 408 mt of bigeye tuna in 2005–2010, respectively. Thus, it is unlikely that the limit will be reached in 2011–2013.

In summary, all entities affected by the bigeye quota in longline fisheries are believed to be small entities, so small entities will not be disproportionately affected relative to large entities. In addition, this part of the rule is not likely to have a significant impact on a substantial number of small entities because it is unlikely that the bigeye landings limit for large-scale longline vessels will be reached in any given year.

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the Convention Area. As of October 18, 2011, there were eleven U.S. purse seine vessels listed on the IATTC Vessel Register; five are class size 6 (greater than 363 mt carrying capacity), one is class size 5 (273—363 mt carrying capacity), and five are class sizes 1–3 (less than 182 mt carrying capacity). Thus six purse seine vessels may be affected by the rule in the near future

since these regulations only apply to purse seine vessels class size 4–6. There is also the potential for other U.S. purse seine vessels based out of the WCPO to become authorized to fish in the EPO; however, there are capacity limits on purse seine vessels fishing in the EPO and it is estimated that at a maximum 15 additional vessels could be added to the current authorized list of active purse seine vessels. Purse seine vessels class sizes 5 and 6 usually fish outside U.S. waters and deliver their catch to U.S. (*e.g.,* American Samoa) or foreign (*e.g.,* Ecuador, Mexico, Colombia, Costa Rica) ports. Skipjack and yellowfin tuna are the primary target species in the purse seine fishery, and bigeye tuna is incidentally targeted. Class size 6 vessels are required to have 100 percent observer coverage, while class size 5 vessels are not required to carry an observer. Purse seine vessels class size 5 or smaller are considered small business entities. It is estimated that from 2004–2010, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than $0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about $4 to $5 million per year.

It is estimated that purse seine sets will be prohibited for 17 percent of the year in 2011–2013 (62 day closure/365 days), thus catches could be negatively affected unless effort is shifted to areas outside of the Convention Area during the closure period, or to different times of the year when there is no closure. The affected vessels are capable of fishing outside of the closure area (*i.e.,* in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round in the EPO, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. Fishing in the WCPO may produce additional costs to some of the affected vessels that are based out of the U.S. West Coast and primarily fish in the EPO due to the increase in costs associated with fishing further away from port. In addition, there is a FAD purse seine closure period in the WCPO from July 1 to September 30 in 2011 that further constrains purse seine fishing effort in the WCPO. The closure may be extended into 2012 and beyond, depending on the tuna conservation and management measures that are adopted by the WCPFC at their annual meeting in December 2011.

Other factors that have the potential to inhibit these vessels from fishing outside of the Convention Area include licensing availability and costs, and effort limits for purse seine vessels fishing in the WCPO. It is assumed that fishing in the WCPO is the only practical geographic alternative for these vessels. Purse seine vessels fishing in the WCPO under the South Pacific Tuna Treaty (SPTT) are required to license their vessels; the maximum number of licensed vessels allowed in the U.S. purse seine fishery in the WCPO is 40 and currently there are 37 licensed vessels as of September 2011. The vessel registration fee is about $3,250 per vessel. The five class size 6 purse seine vessels that are authorized to fish in the Convention Area are already registered under the SPTT. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of the smaller carrying capacity and the increased costs associated with fishing far from port.

In summary, one small business entity and five large business entities may be affected by the purse seine measures, thus small entities will not be disproportionately affected relative to large entities. In addition, the purse seine closure periods are not likely to have a significant impact on a substantial number of small entities because only one small business entity may be affected and it is estimated that its fishing effort will not change significantly from the status quo.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0387. Reporting burden for purse seine vessel owners or managers when providing written notification (via fax) to NMFS declaring which purse seine closure period he or she will be adhering to in 2012 and 2013, is estimated to be 10 minutes per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian federation, Transportation, Treaties, Wildlife.

Dated: October 31, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

■ 2. In § 300.21, a definition of ''Data buoy'' is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Data buoy means, for the purpose of § 300.25, a floating device, either drifting or anchored, which is deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities, and which has been reported to the IATTC by a Member or Cooperating non-Member of the Commission.

* * * * *

■ 3. In § 300.22, paragraph (b)(7)(ii) is revised to read as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

* * * * *

(b) * * *

(7) * * *

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 31,775 cubic meters and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

* * * * *

■ 4. In § 300.24, paragraphs (e), (m) and (n) are revised, and new paragraphs (o) through (t) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.25(e)(1).

* * * * *

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(7).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1), (f)(2), (f)(5), or (6).

(o) Use a U.S. longline or purse seine fishing vessel used to fish for HMS within one nautical mile of an anchored data buoy while the fishing vessel is in the Convention Area in contravention of § 300.25(g)(1).

(p) Use a U.S. fishing vessel used for fishing for HMS, or any gear, equipment, or watercraft deployed by such a fishing vessel, to interact with a data buoy in the Convention Area in contravention of § 300.25(g)(2).

(q) Remove from the water a data buoy and place it on board or tow a data buoy with a U.S. fishing vessel used for fishing for HMS while the vessel is in the Convention Area without authorization by the owner of the data buoy or the owner's authorized representative in contravention of § 300.25(g)(3).

(r) In the event of an entanglement of a data buoy with a U.S. fishing vessel, or its fishing gear, equipment, or associated watercraft, used for fishing for HMS in the Convention Area, fail to promptly remove the data buoy with as little damage to the data buoy and its mooring and anchor lines as possible, in contravention of § 300.25(g)(4).

(s) Fail to take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys in contravention of § 300.25(g)(5).

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain onboard, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.25(e)(4).

■ 5. In § 300.25, paragraphs (b), (e)(1), and (f) are revised, and new paragraphs (e)(4) and (g) are added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the Convention Area.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2011, 2012, and 2013, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in overall length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in overall length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in overall length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in overall length—other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting—is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.* (1) As of January 1, 2012, bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(4) The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(f) *Purse seine closures in the Convention Area.* (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 62 days in each of the years 2011, 2012, and 2013 during one of the following two periods:

(i) From 0000 hours on July 29 to 2400 hours on September 18, or

(ii) From 0000 hours on November 18 to 2400 hours on January 18 of the following year.

(2) For 2011, all U.S. purse seine vessels subject to the requirements under paragraph (f)(1) of this section shall adhere to the closure period under paragraph (f)(1)(ii) of this section.

(3) A vessel owner of a vessel that is subject to the requirements under paragraph (f)(1) of this section must in 2012 and 2013 provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (f)(1) of this section to which his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980–4047 or mail (see § 300.21 of this chapter) and must be received no later than July 1 in each of the years 2012 and 2013. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) If written notification is not submitted per paragraph (f)(3) of this section for a vessel subject to the requirements under paragraph (f)(1) of this section, that vessel must adhere to the closure period under paragraph (f)(1)(ii) of this section.

(5) A vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(6) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2012 and 2013 to fish with purse seine gear within the area bounded at the east and west by 96° and 110°W. longitude and bounded at the north and south by 4°N. and 3°S. latitude.

(7) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(6) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

(g) *Restrictions on fishing in proximity to data buoys.* (1) A longline or purse seine fishing vessel of the United States may not be used to fish for HMS within one nautical mile of an anchored data buoy in the Convention Area. The one-nautical-mile distance shall be measured from the data buoy to the nearest portion of the fishing vessel or items associated with the fishing vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.

(2) A fishing vessel of the United States used to fish for HMS, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while the fishing vessel is in the Convention Area. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include but that are not limited to the following: encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring; or cutting a data buoy anchor line.

(3) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS may not remove a data buoy or any parts thereof from the water and place it on board the fishing vessel or tow a data buoy when in the Convention Area unless authorized to do so by the owner of the data buoy or an authorized representative or agent of the owner. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (*e.g.,* fax, email) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.

(4) In the event that a fishing vessel of the United States that is used to fish for HMS or any of its fishing gear, equipment, or associated watercraft, becomes entangled with a data buoy while the fishing vessel is in the Convention Area, the owner and operator of the fishing vessel must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible.

(5) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

[FR Doc. 2011–28661 Filed 11–3–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110606316–1652–02]

RIN 0648–BB15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26 and Amendment 29 Supplement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to supplement the regulations implementing Amendments 26 and 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 26 established an individual fishing quota (IFQ) program for the red snapper commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). Amendment 29 established a multi-species IFQ program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf EEZ. This rule implements transferability measures for the red snapper IFQ program contained in Amendment 26 that are required to be effective as of January 1, 2012. This rule also requires all Gulf IFQ applicants and participants to certify their status as U.S. citizens or permanent resident aliens to meet current Gulf IFQ program and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements. Additionally, this rule revises the codified text to remove outdated language specific to the Gulf IFQ programs. The intent of this rule is to specify the process for the general public to participate in the Gulf red snapper IFQ program and ensure efficient functioning of both IFQ programs in the Gulf of Mexico.

DATES: This rule is effective December 5, 2011.

ADDRESSES: Electronic copies of Amendments 26 and 29, which include a final environmental impact statement (FEIS), a regulatory impact review (RIR), and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GulfReefFishIFQ.htm.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and the Office of Management and Budget, by email at *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, *telephone:* (727) 824–5305; *email: Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On November 22, 2006, NMFS published a final rule (71 FR 67447) to implement Amendment 26 to the Reef Fish FMP (Amendment 26), which established the Gulf of Mexico Red Snapper IFQ program. The program became effective on January 1, 2007. In addition to the initial implementation of the Gulf red snapper IFQ program, Amendment 26 implemented a provision to allow general public participation within the red snapper IFQ program 5 years after program implementation. The general public participation provision becomes effective on January 1, 2012.

In 2009, NMFS published a final rule implementing Amendment 29 to the Reef Fish FMP (74 FR 44732, August 31, 2009), which established the Gulf of Mexico IFQ program for groupers and tilefishes. The reauthorized Magnuson-Stevens Act of 2006, requires any participant in an IFQ program to be a U.S. citizen or permanent resident alien. Currently, information regarding an IFQ participant's status as a U.S. citizen or permanent resident alien is not collected on Federal Gulf reef fish permit applications or through the Gulf IFQ system. This rule requires that all Gulf IFQ program participants certify their citizenship status to participate in a Gulf IFQ program.

On August 17, 2011, NMFS published a proposed rule to supplement the regulations implementing Amendments 26 and 29 (76 FR 50979). This rule establishes an information collection to meet the January 1, 2012 requirements of the Gulf red snapper IFQ program outlined in Amendment 26, and to meet the requirements of the reauthorized Magnuson-Stevens Act for the grouper-tilefish IFQ program implemented through Amendment 29. This rule also describes the procedures that are necessary for all qualified entities to apply for and maintain an IFQ online account. Additionally, this rule revises the codified text to remove outdated language for the red snapper and grouper-tilefish IFQ programs. Specifically, this rule removes regulatory language that was applicable to the initial implementation of the red snapper and grouper-tilefish IFQ programs but that is no longer needed.

Comments and Responses

NMFS received public comments from seven individuals or groups on the proposed rule. One commenter did not directly comment on the rulemaking, but requested information regarding the Red Snapper IFQ program. One comment from a Federal Agency indicated they had no comments to the proposed rule. The remaining comments expresses general opposition to allowing public participation in the Red Snapper IFQ program outside of reef fish permit holders. All comments received were either outside the scope of the rule or non-substantive in nature. Therefore, no changes were made to this final rule as a result of public comment.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the effective management of the IFQ programs in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act, and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) applicable to participants in Gulf IFQ programs; namely, a requirement to complete and submit an application for an IFQ Online Account to certify a participant's U.S. citizenship status and to update and confirm their application every 2 years.

This requirement has been approved by the OMB under control numbers 0648–0551 and 0648–0587. The public reporting burden for this collection-of-information is estimated to average 10 minutes per applicant/participant every 2 years. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall be subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 31, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Revise § 622.16 to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial red snapper component of the Gulf reef fish fishery. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. As of January 1, 2012, IFQ shares and

allocation can only be transferred to U.S. citizens and permanent resident aliens. See § 622.16(b)(9) regarding eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section regarding the harvest and possession of Gulf IFQ red snapper apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.,* registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1-(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA mailed initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1–(866) 425–7627 to obtain information necessary to set up the required IFQ online account. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to establish an IFQ online account. As of January 1, 2012, all current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.,* mailing address, corporate shareholdings, *etc.*) is up to date. See § 622.16(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased.

(5) *Initial shareholder IFQ account setup information.* As soon as possible after an IFQ Online Account is established, the RA will provide IFQ account holders information pertinent to the IFQ program. This information will include:

(i) General instructions regarding procedures related to the IFQ online system; and

(ii) A user identification number—the personal identification number (PIN) is provided in a subsequent letter.

(6) *Dealer notification and IFQ account setup information.* As soon as possible after November 22, 2006, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (b)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.,* a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with the reporting form(s) and instructions

provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN when the transaction report is submitted. After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov.* The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf red snapper landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–(866) 425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov.* As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* or by calling IFQ Customer Service at 1–(866) 425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by

the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.,* they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, *i.e.,* has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov.* Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request cannot be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–(866) 425–7627.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ

shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable shares. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (b)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012.* The provisions of paragraph (b)(9) of this section apply to all eligible participants for the Gulf red snapper IFQ program beginning January 1, 2012. In addition to eligible participants who already participate in the Gulf red snapper IFQ program, as of January 1, 2012, all U.S. citizens and permanent resident aliens who are in compliance with the provisions of this section are eligible and may participate in the Gulf red snapper IFQ program as shareholders and allocation holders. The requirements to meet the definition of a U.S. citizen are described in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens are those individuals who have been lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws. In order to harvest and possess Gulf IFQ red snapper, the requirements for a Gulf red snapper IFQ vessel account, as specified in § 622.4(a)(2)(ix), or a Gulf IFQ dealer endorsement, as specified in § 622.4(a)(4)(ii) apply.

(i) *Gulf red snapper IFQ program participation for current red snapper IFQ account holders.* (A) A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. The IFQ account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account.

(B) A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account, with an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the participant's IFQ online account until a completed application is submitted. After January 1, 2012, participants who certify that they are either not U.S. citizens or permanent resident aliens will be ineligible to receive shares or allocation through transfer.

(ii) *Gulf red snapper IFQ program participation for entities that do not currently possess an IFQ online account.* The following procedures apply to U.S citizens or permanent resident aliens who are not otherwise described in either paragraphs (a) or (b)(9)(i) of this section.

(A) To establish an IFQ online account, a person must first complete the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov.* An applicant for an IFQ online account under this paragraph must provide the following;

(*1*) Name; address; telephone number; date of birth; tax identification number; certification of status as either a U.S. citizen or permanent resident alien; and if a corporation, a list of all officers, directors, shareholders, and registered agents of the business; and other identifying information as specified on the application.

(*2*) Any other information that may be necessary for the establishment or administration of the IFQ online account.

(B) Completed applications and all required supporting documentation must be submitted to the RA. There is no fee to access the Web site or establish an IFQ online account. An applicant that submits an incomplete application will be contacted by the RA to correct any deficiencies. If an applicant fails to correct the deficiency within 30 days of being notified of the deficient application, the application will be considered abandoned.

(C) After an applicant submits a completed application for an IFQ online account, the RA will mail the applicant general instructions regarding procedures related to the IFQ online system, including how to set up an online account and a user identification number—the personal identification number (PIN) will be provided in a subsequent letter.

(D) A participant who has established an IFQ online account must notify the RA within 30 days after there is any change in the information submitted through the application for an IFQ Online Account. The IFQ online account is void if any change in the application information is not reported within 30 days.

(E) A person who has established an IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will mail each participant who has established an online account an application approximately 2 months prior to the Account Validity Date. A participant who does not receive an application at least 45 days prior to the Account Validity Date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the

suspension of the IFQ online account until a completed application is submitted.

(F) For information regarding transfer of IFQ shares and allocation, the IFQ share cap, and the annual recalculation and notification of IFQ shares and allocation, see paragraphs (b)(4), (b)(6), and (b)(8) of this section, respectively.

(G) Participation in the Gulf red snapper IFQ program beyond transferring IFQ shares and allocation is explained in paragraphs (a) through (b)(8) of this section.

■ 3. Revise § 622.20 to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind, and scamp, but only as specified in paragraph (b)(2)(vi) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper, and warsaw grouper and speckled hind, but only as specified in paragraph (b)(2)(v) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, and tilefishes, and the annual commercial catch allowance (meaning the SWG quota minus gag and red grouper) for other SWG species, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, *e.g.,* registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, *e.g.* Internet Explorer or Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1–(866) 425–7627 to obtain information necessary to set up the required IFQ online account. All current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.,* mailing address, corporate shareholdings, *etc.*) is up to date. See § 622.20(b)(9) regarding requirements for the application for an IFQ Online Account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1–(866) 425–7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, and tilefishes; and times the annual commercial catch allowance for other SWG. If a quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota is increased.

(5) *Red grouper and gag multi-use allocation*—(i) *Red grouper multi-use allocation.* At the beginning of each fishing year, 4 percent of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(ii) *Gag multi-use allocation.* At the beginning of each fishing year, 8 percent of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's gag allocation has been landed and sold, or transferred; and possess, land or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section.

(6) *Warsaw grouper and speckled hind classification.* Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) *Scamp classification.* Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(8) *Initial shareholder and IFQ account setup information.* On or about October 1, 2009, the RA mailed each Gulf reef fish commercial vessel permittee with grouper and tilefish landings history during the qualifying years, information pertinent to the IFQ program. This information included:

(i) Gulf grouper and tilefish landings associated with the Gulf reef fish commercial vessel permit during each year of the applicable landings history;

(ii) The highest average annual grouper and tilefish landings, in each of the five share categories, based on the permittee's best 5 out of 6 years of applicable landings history;

(iii) The permittee's initial IFQ share, in each of the five share categories, based on the highest average annual landings associated with the permittee's best 5 out of 6 years of applicable landings history;

(iv) The initial IFQ allocation, in each of the five share categories, as well as their total IFQ allocation;

(v) Instructions for appeals;

(vi) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(vii) A user identification number; and a personal identification number (PIN) that was provided in a subsequent letter.

(9) *Dealer notification and IFQ account setup information.* On or about October 1, 2009, the RA mailed each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *IFQ operations and requirements*—(1) *IFQ Landing and transaction requirements.* (i) Gulf groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (b)(1)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, *i.e.* a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov*. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program as described in the Magnuson-Stevens Act. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel price of Gulf groupers and tilefishes landed per trip under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register.**

(i) *Payment responsibility.* The IFQ account holder specified in the documented IFQ landing transaction report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ Web site and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability*—(i) *Advance notice of landing.* For the purpose of this paragraph (b), landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–(866) 425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the Web-based form available on the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov.* As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes.* At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers or tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* or by calling IFQ Customer Service at 1–(866) 425–7627, at any time; however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable water;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard; animal; a posted sign restricting access to the site; or any other physical deterrent.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred only to a U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or tilefishes are required to possess (at and after the time of the advance notice of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, *i.e.,* they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share

transfer transaction that remains in pending status, *i.e.,* has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov.* An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the Web site, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: Amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (b)(6) of this section. Thereafter, share transferee eligibility will only include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions*—(A) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* entering the required information, including but not limited to, the name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the Web site will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions*—(*1*) *Red grouper multi-use allocation.* Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(*2*) *Gag multi-use allocation.* Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–(866) 425–7627.

(6) *IFQ share and allocation caps.* A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred and at the time of renewal of the application for an IFQ Online Account

(ii) *Total allocation cap.* No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares proportionately among remaining shareholders (subject to cap restrictions)

based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ Web site at *http://ifq.sero.nmfs.noaa.gov,* of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of IFQ shares. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Gulf grouper and tilefish IFQ program participation for current grouper and tilefish IFQ account holders.* (i) A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site *http://sero.nmfs.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. The account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account.

(ii) A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1–(866) 425–7627 and request an application. Failure to submit a completed application prior to the participant's account validity date will lead to the suspension of the participant's access to his IFQ online account until a completed application is submitted. Participants who certify that they are either not a U.S. citizens or permanent resident alien will be ineligible to receive shares or allocation through transfer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100223162–1268–01]

RIN 0648–XA551

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #5 Through #26

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces 22 inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border.

DATES: The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Inseason actions remain in effect until the closing date of the 2011 salmon season announced in the 2011 annual management measures or until modified by additional inseason action. Comments will be accepted through November 21, 2011.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0171, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0171 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–6349.
- *Fax:* (206) 526–6736, *Attn:* Peggy Mundy.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at (206) 526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2011 annual management measures for ocean salmon fisheries (76 FR 25246, May 4, 2011), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2011, and 2012 salmon seasons opening earlier than May 1, 2012.

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border).

Inseason Actions

The table below lists the inseason actions announced in this document.

Inseason action No.	Effective date	Salmon fishery affected
5	May 28, 2011	Commercial fishery from U.S./Canada border to U.S./Mexico border.
6	June 21, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
7	July 15, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
8	July 18, 2011	Commercial fishery from Oregon/California border to Humboldt South Jetty, California.
9	August 1, 2011	Commercial fishery from Oregon/California border to Humboldt South Jetty, California.
10	August 1, 2011	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea).
11	August 1, 2011	Recreational fishery from U.S./Canada border to Cape Alava, Washington (Neah Bay subarea) and Cape Alava, Washington to Queets River, Washington (La Push subarea).
12	July 29, 2011	Commercial fishery from U.S./Canada border to U.S./Mexico border.
13	August 2, 2011	Commercial fishery from Oregon/California border to Humboldt South Jetty, California.
14	August 7, 2011	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea) and from Leadbetter Point, Washington to Cape Falcon, Oregon (Columbia River Subarea).
15	August 12, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
16	August 14, 2011	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea) and from Leadbetter Point, Washington to Cape Falcon, Oregon (Columbia River Subarea).
17	August 19, 2011	Recreational fishery from U.S./Canada border to Cape Falcon, Oregon.
18	August 19, 2011	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea).
19	August 19, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
20	August 29, 2011	Recreational fishery from U.S./Canada border to Cape Falcon, Oregon.
21	August 27, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
22	September 1, 2011	Recreational fishery from Cape Falcon, Oregon to Humbug Mountain, Oregon.
23	September 3, 2011	Commercial fishery from U.S./Canada border to Cape Falcon, Oregon.
24	August 31, 2011	Recreational fishery from U.S./Canada border to Cape Alava, Washington (Neah Bay subarea) and from Cape Alava to Queets River, Washington (La Push subarea).
25	September 5, 2011	Recreational fishery from U.S./Canada border to Cape Falcon, Oregon.
26	September 7, 2011	Recreational fishery from Cape Falcon, Oregon to Humbug Mountain, Oregon.

Inseason Action #5

The RA consulted with representatives of the Council, International Pacific Halibut Commission (IPHC), Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) on May 26, 2011. The information considered during this consultation related to catch to date for halibut incidentally caught in the commercial salmon fishery which was approaching the preseason allocation of halibut recommended by the IPHC (76 FR 14300, March 16, 2011).

Inseason action #5 closed retention of halibut caught incidentally in the ocean salmon commercial fishery from the U.S./Canada border to the U.S./Mexico border. This action was taken to prevent exceeding the preseason allocation. On May 26, 2011, the states recommended this action and the RA concurred; inseason action #5 took effect on May 28, 2011. This inseason action remained in effect until superseded by inseason action #12 which took effect on July 29, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #6

The RA consulted with representatives of the Council, WDFW, and ODFW on June 20, 2011. The information considered during this consultation related to catch of Chinook salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery. The objectives for the May/June commercial salmon fishery north of Cape Falcon were to remain within the quota of 20,600 Chinook salmon and to allow the fishery to remain open through June, if possible, to maximize the value of the commercial harvest (50 CFR 660.408(c)(1)(ix)(B)). Catch rates to date suggested that, without taking inseason action to protract the fishery, the quota would be met prematurely.

Inseason action #6 closed the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon at 11:59 p.m., June 21, 2011; and reopened the fishery at 12:01 a.m., June 23, 2011 through June 30, 2011, with an open period landing limit of 30 Chinook salmon per vessel. This action was taken to prevent exceeding the quota on Chinook salmon established preseason and to allow the fishery to meet the management objective of remaining open through June. On June 20, 2011, the states recommended this action and the RA concurred; inseason action #6 took effect on June 21, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #7

The RA consulted with representatives of the Council, WDFW, and ODFW on July 14, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook and coho salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery north of Cape Falcon. The objectives for this fishery were to remain within the 10,300 preseason Chinook salmon guideline and the 12,800 marked coho quota and to extend the season into September, if possible. The rate of catch to date suggested that, without inseason action, the Chinook salmon guideline would be harvested well ahead of the coho quota. This would potentially require closure of the commercial fishery well in advance of the

September 15 objective and, therefore, prevent the commercial fishery from fully accessing the coho quota.

Inseason action #7 adjusted the open period landing limit from 50 Chinook and 50 coho per vessel to 30 Chinook and 50 coho per vessel. This action was taken to prevent exceeding the quota on Chinook salmon established preseason and to allow the fishery to meet the management objectives of remaining open throughout the summer and allow access to the coho salmon quota. On July 14, 2011, the states recommended this action and the RA concurred; inseason action #7 took effect on July 15, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Actions #8 and #9

The RA consulted with representatives of the Council, ODFW, and California Department of Fish and Game (CDFG) on July 18, 2011 and July 28, 2011. The information considered during these consultations related to catch of Chinook salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery in the Klamath Management Zone (KMZ). This fishery had a July quota of 1,400 Chinook salmon. At the time of the consultation on July 18, 1,462 Chinook were known to have been harvested in this fishery. The management measures established preseason did not allow transfer of quota from the August fishery to the July fishery to accommodate exceeding the July quota. Chinook harvested in excess of the July quota would have to be accounted for by modifying the August quota. At the time of the follow-up consultation on July 28, the estimated harvest in the July fishery was 1,564. Because harvest exceeded the quota for the July fishery, the Salmon Technical Team (STT) was asked to calculate the impact neutral [1] adjustment for the August quota; that adjustment reduced the August quota established preseason from 1,000 Chinook to 880 Chinook.

Inseason action #8 closed the commercial salmon fishery from Oregon/California border to Humboldt South Jetty (California KMZ) at 11:59 p.m. (midnight), July 18, 2011. This action was taken due to projected attainment of the quota for this fishery. On July 18, 2011, the states and the RA consulted on this action. Automatic closure of a fishery due to projected attainment of quota is authorized by 50 CFR 660.409(a)(1).

Inseason action #9 adjusted the quota for the August commercial salmon fishery in the California KMZ and modified the season and landing limit to August 1 through August 5 with a daily landing limit of 30 Chinook salmon per vessel. This action was taken to meet the management objectives established preseason, specifically to keep harvest within the established quotas. On July 28, 2011, the states recommended this action and the RA concurred; inseason action #9 took effect on August 1, 2011 and remained in effect until superseded by inseason action #13, which took effect on August 2, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Actions #10 and #11

The RA consulted with representatives of the Council, WDFW, and ODFW on July 28, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. At the time of the consultation, Chinook salmon catch rates were projected to result in unutilized quota if no action was taken to modify the open periods and landing limits.

Inseason action #10 modified the recreational fishery from Queets River to Leadbetter Point (Westport Subarea) from 5 days per week (Sunday through Thursday) to 7 days per week, consistent with the subareas north and south of Westport. Inseason action #11 modified the landing limits in the recreational fishery from U.S./Canada Border to Cape Alava (Neah Bay Subarea) and from Cape Alava to Queets River (La Push Subarea) to allow retention of 2 Chinook salmon per angler per day. These actions were taken to allow the recreational fishery greater access to available Chinook salmon. On July 28, 2011, the states recommended these actions and the RA concurred; inseason actions #10 and #11 took effect on August 1, 2011. Inseason action #10 remained in effect until superseded by inseason action #18 which took effect on August 19, 2011. Inseason action #11 remained in effect until superseded by inseason action #20 which took effect on August 29, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #12

The RA consulted with representatives of the Council, IPHC, WDFW, and ODFW on July 28, 2011. The information considered during this consultation related to catch of halibut and Chinook salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason. As discussed above, inseason action #5 closed retention of halibut caught incidental to the commercial salmon fishery, effective May 28, 2011. Updated catch statistics presented by the states determined that a modest amount of halibut quota remained unharvested, amounting to somewhat less than 3,000 pounds of halibut (landed, head-on) or approximately 118 to 148 halibut.

Inseason action #12 re-opened incidental halibut retention in the commercial salmon fishery with a landing limit of 1 halibut per vessel for each 7 consecutive days, Friday through Thursday. On July 28, 2011, the states recommended this action and the RA concurred; inseason action #12 took effect on July 29, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #13

The RA consulted with representatives of the Council, ODFW, and CDFG on August 2, 2011. The information considered during this consultation related to catch of Chinook salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery in the Klamath Management Zone (KMZ). The quota, landing limit, and duration of this fishery were modified under inseason action #9 to mitigate the impact of exceeding the July quota; the modified August quota was 880 Chinook salmon, the modified season was August 1 through August 5 with a daily landing limit of 30 Chinook salmon per vessel. In the first day of this fishery, estimated landings totaled 325 Chinook salmon, leaving only 555 Chinook. The STT was of the opinion that catch rates were not likely to decrease during this short fishery, and stable or increasing catch rates would result in exceeding the quota. Additional inseason action was necessary to avoid exceeding the quota for the August fishery.

Inseason action #13 closed the commercial salmon fishery from

[1] *Impact neutral:* Inseason transfers of quota alter the timing and location of catch from what was projected preseason; therefore, a one-to-one transfer is not appropriate and the transfer must be re-modeled by the STT to determine an impact neutral basis, which is a catch level that produces the same fishery mortality on the most constraining stock in the fishery as projected during the preseason management process.

Oregon/California border to Humboldt South Jetty (California KMZ) at 11:59 p.m. (midnight), August 2, 2011. This action was taken due to projected attainment of the quota for this fishery. On August 2, 2011, the states and the RA consulted on this action. Automatic closure of a fishery due to projected attainment of quota is authorized by 50 CFR 660.409(a)(1).

Inseason Action #14

The RA consulted with representatives of the Council, WDFW, and ODFW on August 3, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. Due to reduced fishing effort as compared with last year, Chinook salmon catch was lower than anticipated preseason.

Inseason action #14 modified the daily bag limit in the recreational fishery from Queets River to Leadbetter Point (Westport subarea) and from Leadbetter Point to Cape Falcon (Columbia River subarea) to allow retention of 2 Chinook salmon per angler per day. This action was taken to allow recreational fisheries access to available Chinook salmon. On August 3, 2011, the states recommended this action and the RA concurred; inseason action #14 took effect on August 7, 2011 and remained in effect until superseded by inseason action #16, which took effect on August 14, 2011. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #15

The RA consulted with representatives of the Council, WDFW, and ODFW on August 11, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery north of Cape Falcon, Oregon. The management objectives for the summer commercial fishery were to fully utilize the allowable catch of Chinook and coho salmon while not exceeding the quota, and to provide opportunity for salmon harvest into September. At the time of the consultation on August 11, increased participation in the fishery had resulted in increased landings, with the result that 90 percent of the Chinook guideline had been harvested; therefore, inseason action was necessary to stay within the Chinook salmon guideline set preseason.

Inseason action #15 suspended the commercial fishery, north of Cape Falcon, scheduled to be open August 12 through August 16. This action was taken to avoid exceeding the Chinook salmon guideline while managers determined exactly how much allowable Chinook salmon catch remained. On August 11, 2011, the states recommended this action and the RA concurred; inseason action #15 took effect on August 12, 2011 and remained in effect until superseded by inseason action #19, which was effective on August 19, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #16

The RA consulted with representatives of the Council, WDFW, and ODFW on August 12, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. Recent upsurge in effort and catch per unit effort in the Westport subarea resulted in accelerated harvest that threatened to utilize the available Chinook salmon ahead of the management objective to allow recreational fishing into September.

Inseason action #16 modified the daily landing limit for the recreational fishery from Queets River to Leadbetter Point (Westport subarea) and from Leadbetter Point to Cape Falcon (Columbia River subarea) to allow retention of two salmon per angler per day, only one of which could be a Chinook salmon. On August 12, 2011, the states recommended this action and the RA concurred; inseason action #16 took effect on August 14, 2011. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Actions #17 and #18

The RA consulted with representatives of the Council, WDFW, and ODFW on August 16, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. The spring recreational fishery ended June 25 with a remaining quota of 2,500 mark-selective Chinook salmon unharvested; the STT calculated that unutilized spring quota would be equivalent to 1,200 non-mark-selective Chinook salmon in the summer fishery and should be distributed proportionally among the four subareas. Even with the additional quota, without further inseason adjustment, the Westport subarea was at risk of exceeding its allowable catch of Chinook salmon.

Inseason action #17 rolled-over unutilized Chinook salmon quota from the spring recreational fishery north of Cape Falcon to the summer recreational fishery on an impact neutral basis, and distributed the adjusted quota proportionally among the four subareas as follows: Columbia River (+310 Chinook), Westport (+700 Chinook), La Push (+60 Chinook), and Neah Bay (+130 Chinook). This action was taken to allow fishing opportunity on unutilized quota.

Inseason action #18 modified the recreational fishery in the Westport subarea (Queets River to Leadbetter Point) by limiting fishing to Sunday through Thursday. This action superseded inseason action #10, which took effect August 1, 2011. This action was taken to prevent the Westport subarea from exceeding its allowable catch of Chinook salmon.

On August 16, 2011, for inseason actions #17 and #18, the states recommended these actions and the RA concurred; both inseason actions took effect on August 19, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #19

The RA consulted with representatives of the Council, WDFW, and ODFW on August 17, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery north of Cape Falcon, Oregon. The management objectives for the summer commercial fishery were to fully utilize the allowable catch of Chinook and coho salmon while not exceeding the quota, and to provide opportunity for salmon harvest into September. Inseason action #15 suspended the commercial salmon fishery north of Cape Falcon on August 12. Consultation on August 17 indicated 1,070 Chinook salmon remained from the guideline set preseason.

Inseason action #19 provided a one-day opening of the commercial salmon fishery from the U.S./Canada border to Cape Falcon, Oregon on Friday, August 19, 2011, with a landing limit of 12 Chinook and 50 coho per vessel. On

August 17, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #20

The RA consulted with representatives of the Council, WDFW, and ODFW on August 23, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. With limited Chinook salmon remaining to be caught, the management concern was to keep the fishery open to access available coho quota.

Inseason action #20 modified the recreation salmon fishery from the U.S./Canada border to Cape Falcon, Oregon to allow fishing seven days per week with no retention of Chinook salmon, effective August 29, 2011. On August 23, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #21

The RA consulted with representatives of the Council, WDFW, and ODFW on August 24, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery north of Cape Falcon, Oregon. The management objective for this fishery is to fully access the available coho quota while not exceeding the available Chinook salmon guideline.

Inseason action #21 provided a three-day opening of the commercial salmon fishery from the U.S./Canada border to Cape Falcon, Oregon, from August 27 through August 29, 2011, with a landing limit of 12 Chinook and 75 coho per vessel. On August 24, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #22

The RA consulted with representatives of the Council, ODFW, and CDFG on August 25, 2011. The information considered during this consultation related to catch of coho salmon to date and coho salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery south of Cape Falcon. The 2011 salmon management measures (76 FR 25246, May 4, 2011) specified that any remainder of the mark selective coho quota from the July-August fishery would be transferred on an impact neutral basis to the September non-selective coho quota. The STT calculated the transfer would add 2,959 coho to the September quota, resulting in an adjusted quota of 5,959 coho for September. The management objective for this fishery is to allow access to all available quota.

Inseason action #22 modified the recreational salmon fishery from Cape Falcon to Humbug Mountain, Oregon, opening the non-mark-selective coho fishery September 1 through September 10, 2011 or until attainment of the adjusted quota of 5,959 coho, all salmon, two fish per day. On August 25, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #23

The RA consulted with representatives of the Council, WDFW, and ODFW on August 31, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the commercial salmon fishery north of Cape Falcon, Oregon. At the time of the consultation a modest quantity of Chinook salmon remained available, as well as a significant amount of the coho quota. The management objective for this fishery was to access fully the available coho quota while not exceeding the available Chinook salmon guideline.

Inseason action #23 provided two four-day openings of the commercial salmon fishery from the U.S./Canada border to Cape Falcon, Oregon, from September 3 through September 6, 2011 and from September 10 through September 13, 2011, with a landing limit of 20 Chinook and 100 coho per vessel. On August 31, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Actions #24 and #25

The RA consulted with representatives of the Council, WDFW, and ODFW on August 31, 2011. The information considered during this consultation related to catch of Chinook and coho salmon to date and Chinook salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery north of Cape Falcon, Oregon. Management objectives are to fully access available coho quota without exceeding the Chinook guideline and to keep the recreational fisheries open through the Labor Day holiday (50 CFR 660.408(h)(3)). Taken as a whole, the north of Cape Falcon recreational fishery had sufficient coho to remain open; one subarea, La Push, had almost exhausted its coho quota. At the time of the consultation, it was estimated that 2,721 Chinook remained available for harvest.

Inseason action #24 transferred unutilized coho quota from the Neah Bay subarea to the La Push subarea on an impact neutral basis. The STT calculated that removing 1,000 coho from Neah Bay would achieve an effective transfer of 850 coho to La Push.

Inseason action #25 superseded inseason action #20 to allow retention of one Chinook salmon per day per angler in the recreational fishery north of Cape Falcon, effective September 5, 2011.

On August 31, 2011, the states recommended these actions and the RA concurred. Inseason action #24 took effect immediately. Inseason action #25 took effect September 5, 2011. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #26

The RA consulted with representatives of the Council, ODFW, and CDFG on September 6, 2011. The information considered during this consultation related to catch of coho salmon to date and coho salmon catch rates compared to quotas and other management measures established preseason for the recreational salmon fishery south of Cape Falcon. At the time of the consultation, catch data for September 1 through 5 indicated that catch per unit effort was greatly exceeding expectations and exceeding the quota would likely occur due to the time needed to notify the public of further inseason action. Inseason action was necessary to limit the amount by which the quota would be exceeded.

Inseason action #26 modified the recreational salmon fishery from Cape Falcon to Humbug Mountain, Oregon. The non-mark-selective coho fishery was closed at 11:59 p.m. (midnight), September 7, 2011; the all salmon except coho fishery resumed on September 8, 2011. On September 6, 2011, the states recommended this action and the RA concurred. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i). Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

All other restrictions and regulations remain in effect as announced for the 2011 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number (206) 526–6667 and (800) 662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (76 FR 25246, May 4, 2011), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2011.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–28663 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 100819383–1652–02]

RIN 0648–BA18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). These regulations amend the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action is necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: This final rule is effective on December 5, 2011, except for the provisions at § 679.91(h)(3)(ii) and (iii), which are effective November 4, 2011.

ADDRESSES: Electronic copies of Amendment 93, the final Environmental Assessment (EA) and Regulatory Impact Review (RIR); Initial Regulatory Flexibility Analysis (IRFA); and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The proposed rule to implement Amendment 93 also may be accessed at this Web site.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone off Alaska are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendment 80 to the FMP implemented the Amendment 80 Program. Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668). These regulations are located at 50 CFR part 679.

Background

The Amendment 80 Program is commonly known as a limited access privilege program. Eligible fishery participants may receive exclusive access to specific fishery resources if certain conditions are met. Under the Amendment 80 Program, NMFS issues a quota share (QS) permit to a person holding the catch history of an original qualifying non-American Fisheries Act (AFA) trawl catcher/processor that met specific criteria designated by Congress under the Capacity Reduction Program (CRP) (Pub. L. 108–447). NMFS determined that 28 vessels met the criteria specified in the CRP. These vessels comprise the originally qualifying Amendment 80 vessels. NMFS determined the amount of QS issued based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea and Aleutian Islands Management Area, from 1998 through 2004, derived from the 28 originally qualifying non-AFA trawl catcher/processors.

Generally, the Amendment 80 Program is intended to facilitate the formation of fishing cooperatives, which have been shown to improve fishery management. Amendment 80 participants who join a fishing cooperative receive cooperative quota, which are exclusive harvest privileges for a portion of these fishery resources.

The allocation of CQ allows vessel operators to make operational choices to improve fishing practices and reduce discards of fish, because the incentives to maximize catch rates to capture a share of the available catch are removed. Cooperatives fishing under an exclusive harvest privilege can tailor their operations to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. Participants in the limited access fishery do not receive an exclusive harvest allocation, and may have little incentive to coordinate harvest strategies if they perceive a benefit by competing with other participants in a race for fish. A person who chooses to join a cooperative must designate the catch derived from his QS to the cooperative, the specific vessels that will be fishing for that cooperative, and the License Limitation Program (LLP) licenses assigned to each designated vessel.

Amendment 93 results in two changes to the Amendment 80 Program. First, it reduces the minimum number of persons and licenses required to form a harvesting cooperative. Previously, the Amendment 80 program required that a minimum of three unique persons and nine QS permits must be assigned to a cooperative. Reducing the number of unique persons and number of QS permits could provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish. The Council and NMFS expect that relaxing the Amendment 80 cooperative formation standards by reducing the number of QS permits that must be assigned and the number of unique vessel owners required will (1) provide additional opportunities to QS holders to form cooperatives because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

The second revision under Amendment 93 requires that a person assign all QS permits either to one or more cooperatives or to the limited access fishery, but not to both during the same calendar year. This revision is needed to reduce the incentive for a cooperative member to prevent another person from forming a cooperative in order to force them into a race for fish in the limited access fishery. Excluding a person from cooperative membership could benefit a cooperative, or specific members of a cooperative who choose to participate in both a cooperative and the limited access fishery. For example, if a cooperative member who holds multiple QS permits and vessels can assign one vessel and QS permit to the limited access fishery and another vessel and QS permit to a cooperative, that member could harvest more fish in the limited access fishery than would be derived from their QS if it were assigned to a cooperative. A person participating in both a cooperative and the limited access fishery has an incentive to exclude participants in the limited access fishery from joining a cooperative or creating an additional cooperative. For example, a person participating in a cooperative and the limited access fishery could seek to exclude a person from fishing in a cooperative if the person to be excluded was unlikely to be able to join another cooperative. Under that scenario, the person excluded from a cooperative could be forced into the Amendment 80 limited access fishery. If the person participating in the cooperative also assigned a vessel to the Amendment 80 limited access fishery that was capable of effectively competing against the other Amendment 80 limited access fishery participants, that person could maximize their catch in a race for fish. Under that scenario, a person with participation in both an Amendment 80 cooperative and the limited access fishery would have little incentive to allow a person to join a cooperative because they would lose access to fish that would otherwise be available in the Amendment 80 limited access fishery.

The revision under Amendment 93 requiring a person to assign all QS permits either to a cooperative or to the limited access fishery, but not both, is not applicable until the first fishing year 2 years after the final rule effective date. Because this final rule is effective in 2011, this requirement does not apply until the 2014 fishing year and QS holders must assign all QS permits and vessels to one or more cooperatives or to the limited access fishery by the Amendment 80 annual cooperative application deadline of November 1, 2013. The 2-year delay allows vessel owners time to coordinate with other participants in the fishery and determine if they will assign all of their QS permits to either one or more cooperatives, or the limited access fishery. NMFS will not allow owners to assign QS permits or vessels to one or more cooperatives and the Amendment 80 limited access fishery on the annual cooperative applications submitted to NMFS by the November 1, 2013 deadline.

NMFS published a notice of availability for Amendment 93 on July 28, 2011 (76 FR 45219). The public comment period on Amendment 93 ended on September 26, 2011. On August 10, 2011, NMFS published a proposed rule to implement Amendment 93 (76 FR 49417). The public comment period for the proposed rule ended on September 9, 2011. Additional information on this action was provided in the preamble of the proposed rule and is not repeated here.

NMFS received three comments on Amendment 93 and the proposed rule during the public comment period for the proposed rule. One public comment did not directly address Amendment 93 or the proposed rule, but was a general comment related to the Federal Government's management of marine resources and provided a general criticism of fishery management. The other two comments were in support of this action. All comments are addressed in the Response to Comment section for this rule. The Secretary of Commerce approved Amendment 93 on October 25, 2011. No modifications were made to the proposed rule.

Response to Comments

Comment 1: The commenter raises general concerns about NMFS' management of fisheries, asserting that fishery policies have not benefited American citizens. The commenter also believes that NMFS should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside the scope of this action. The commenter did not raise new relevant issues or concerns that have not been addressed in the preamble to the proposed rule or the EA/RIR/FRFA prepared to support this action.

Comment 2: The commenter strongly supports Amendment 93 and the proposed regulations. The commenter strongly urges NMFS to implement the action at the earliest possible time, preferably in time to be effective for the 2012 fishing year, in order to maximize the benefits of this amendment.

Response: NMFS agrees that this action is beneficial to participants in the

Amendment 80 sector and should be implemented as soon as possible.

Comment 3: The commenter supports Amendment 93 and continues to support the objective to promote full participation of Amendment 80 vessels in cooperatives to facilitate optimal harvest of Amendment 80 QS through intra and inter-sector trades throughout the year. The commenter anticipates that Amendment 93 will result in open and productive interactions between all cooperatives within the Amendment 80 sector, but expressed concern about cooperatives that may be unwilling to transfer unharvested allocations, which could result in harvest of an Amendment 80 species that is less than the TAC established for that species. The commenter is concerned that unharvested cooperative allocations of Amendment 80 species could result in the Council reducing the TAC of Amendment 80 species because it assumes the unharvested QS indicates that TACs were set too high. For this reason, the commenter may seek changes in the allocation system in the future if some cooperatives are unwilling to transfer unused QS.

Response: NMFS agrees that Amendment 93 promotes full participation of Amendment 80 vessels in cooperatives and expects productive interactions between Amendment 80 cooperatives. The commenter may approach the Council in the future with suggestions for changes to the Amendment 80 program.

Changes From the Proposed Rule

NMFS did not make any changes to the proposed rule published on August 10, 2011 (76 FR 49417).

Classification

The Administrator, Alaska Region, NMFS, determined that FMP Amendment 93 is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the MSA and other applicable laws.

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

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for 50 CFR 679.91(h)(3)(ii) and (iii) as amended in this rule. The 30-day delay in effectiveness of these sections is impracticable and contrary to the public interest. Amendment 93 reduces the number of unique persons and number of QS permits required to form a cooperative in the Amendment 80 Program. Reducing the number of unique persons and number of QS permits can provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish. The annual Amendment 80 Cooperative Quota Permit Application deadline is November 1 of each year and NMFS has informed Amendment 80 participants that they may submit cooperative applications under the minimum formation thresholds established by Amendment 93. However, NMFS cannot process these applications until the new minimum formation thresholds contained in 50 CFR 679.91(h)(3)(ii) and (iii) are effective. Immediate effectiveness of these sections will allow NMFS to process applications submitted for Amendment 80 cooperatives in a timely manner which will provide the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new cooperative formation requirements before the start of the 2012 fishing year in January. A 30-day delay in effectiveness would prevent NMFS from processing Amendment 80 cooperative applications in a timely manner and would create uncertainty within the industry and frustrate the affected industry's ability to plan for the upcoming fishing year. For these reasons, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) for 50 CFR 679.91(h)(3)(ii) and (iii). NMFS is not waiving the 30-day delay in effectiveness for 50 CFR 679.91(h)(3)(xii) because immediate effectiveness of that section is not necessary.

Pursuant to section 604 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* a FRFA was prepared for this action. The FRFA incorporates the IRFA, and includes a summary of the significant issues raised by public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule to implement Amendment 93 on August 10, 2011 (76 FR 49417), and the public comment period closed on September 9, 2011. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS received three public comments on Amendment 93 and the proposed rule. None of these comments addressed the IRFA.

This action modifies the cooperative formation standards and requirements for assigning QS and Amendment 80 vessels to either a cooperative or the limited access fishery. Six alternative approaches for modifying cooperative formation criteria were considered. Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative. Alternative 2: Reduce the number of unique QS holders required to form a cooperative from the existing three QS holders to two or one unique QS holder. Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing nine permits to eight, seven, six, or three permits. Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above). Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent, or 30 percent of the sector QS. Alternative 6: Require that a cooperative accept all persons who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members. The Council recommended Alternative 4, reducing the number of unique QS holders to two unique persons and reducing the number of QS permits required to form a cooperative to seven QS permits, as its preferred alternative. The Council rejected Alternatives 2, 3, 5, and 6 because public comments and the analysis prepared for this action indicated these alternatives likely would not offer substantially greater cooperative formation opportunities or have substantially different economic implications than the status quo alternative.

Two alternative approaches were considered for the QS and vessel assignment provision. Alternative 1: status quo. QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives and the limited access fishery. Alternative 2: QS holders with multiple QS permits and vessels may assign those QS permits and vessels to one or more cooperatives or the limited access fishery, but not both. Alternative 2 would be effective two years after the effective date of the final rule. The Council rejected the status quo alternative because experience under

the Amendment 80 program has indicated that the status quo cooperative formation criteria may disadvantage limited access fishery participants and create incentives to discourage fishing cooperative formation.

Collectively, the alternatives and options considered under these two proposed actions provided a broad suite of alternatives from which the Council chose to modify the factors affecting cooperative formation.

The overall impact of this action to small entities is expected to be positive. Impacts from Amendment 93 would accrue differentially (i.e., some entities could be negatively affected and others positively affected). The Council considered an extensive range of alternatives and options as it designed and evaluated the potential for changes to the Amendment 80 sector, including the ''no action'' alternative.

Compared with the status quo, the action selected by the Council minimizes the adverse economic impacts on the directly regulated small entity. The alternatives implemented in this final rule are expected to provide greater opportunity for cooperative formation among the various Amendment 80 businesses. In no case are these combined impacts expected to be substantial. Alternative 4 for the cooperative formation standards, which requires two unique persons and seven QS permits to form a cooperative, is not expected to adversely affect the existing Amendment 80 cooperatives, but could provide additional cooperative formation opportunities for participants in the Amendment 80 limited access fishery. For the QS and Amendment 80 vessel assignment component of this action, Alternative 2 will reduce the incentive for owners of multiple vessels to exclude a person from a cooperative. This alternative is expected to enhance the likelihood of cooperative formation.

For purposes of a FRFA, the U.S. Small Business Administration has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. The FRFA estimates that 28 non-AFA trawl catcher/processors could generate Amendment 80 QS, based on the provisions of the Amendment 80 Program. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders will be directly regulated by this action. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment QS holders are categorized as large entities for the purpose of the RFA under the principles of affiliation, due to their participation in a harvest cooperative or through known ownership of multiple vessels, co-ownership and ''shares'' ownership among vessels, and other economic and operational affiliations. Thus, the FRFA estimates that only one small entity will be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as a large entity, but complete information is not available to determine any such linkages.

This final rule will not change existing reporting, recordkeeping, or other compliance requirements. This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has posted a small entity compliance guide on its Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm.* A letter to permit holders that also serves as a small entity compliance guide was prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 1, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.91, paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(3)(xii) are revised to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(h) * * *

(3) * * *

(ii) What is the minimum number of Amendment 80 QS permits that must be assigned to an Amendment 80 cooperative to allow it to form?.	Any combination of at least seven Amendment 80 QS permits which would include Amendment 80 LLP/QS licenses.
(iii) How many Amendment 80 QS holders are required to form an Amendment 80 cooperative?.	At least two Amendment 80 QS holders each of whom may not have a ten percent or greater direct or indirect ownership interest in any of the other Amendment 80 QS holders.

*	*	*	*	*	*	*	*

(xii) Can an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel be assigned to an Amendment 80 cooperative and the Amendment 80 limited access fishery?.	No, an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 vessel assigned to an Amendment 80 cooperative may not be assigned to the Amendment 80 limited access fishery for that calendar year. Prior to the 2014 fishing year, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels is not required to assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to the same Amendment 80 cooperative or the Amendment 80 limited access fishery. Starting with the 2014 fishing year and thereafter, a person holding multiple Amendment 80 QS permits, Amendment 80 LLP licenses, or owning multiple Amendment 80 vessels must assign all Amendment 80 QS permits, Amendment 80 LLP licenses, or Amendment 80 vessels to either one or more Amendment 80 cooperatives, or the Amendment 80 limited access fishery.

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[FR Doc. 2011–28665 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 0812081573–1645–03]

RIN 0648–AX47

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 30 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 30 amends the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) to modify procedures for producing and submitting documents that are required under the arbitration system to resolve price, delivery, and other disputes between harvesters and processors. This action is necessary to improve the quality and timeliness of market information used to conduct arbitration proceedings. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Effective December 5, 2011.

ADDRESSES: Electronic copies of Amendment 30, the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) and the categorical exclusion prepared for this action—as well as the Environmental Impact Statement (EIS) prepared for the CR Program—may be obtained from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* In addition, copies of Amendment 30 and the RIR/FRFA for this action are available from *http://www.regulations.gov.* NMFS determined that this action is categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; by email to *OIRA_Submission@omb.eop.gov;* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Forrest R. Bowers, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendments 18 and 19 to the FMP implemented the CR Program. Regulations implementing the FMP, including the CR Program, are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit providing an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS pool in a crab fishery would receive IFQ to harvest 1 percent of the annual total allowable catch in that crab fishery. Catcher processor license holders were allocated catcher processor vessel owner (CPO) QS for their history as catcher processors; and catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their history as a catcher vessel.

Under the CR Program, 97 percent of the initial allocation of QS was issued to vessel owners as CPO or CVO QS; the remaining 3 percent was issued to vessel captains and crew as crew QS based on their harvest histories as crew members onboard crab fishing vessels. Ninety percent of the annual CVO IFQ is issued as A shares, or Class A IFQ, which are subject to landing requirements in specific geographic regions, and must be delivered to a processor holding unused individual processor quota (IPQ). The remaining 10 percent of the annual CVO IFQ is issued as B shares, or Class B IFQ, which may be delivered to any processor and are not subject to regionalization. CPO, CPC, and CVC IFQ are not subject to regionalization and are not required to be matched with a processor holding IPQ.

NMFS also issued processor quota shares (PQS) to processors based on their qualifying processing histories in the BSAI crab fisheries during a specific time period. These PQS yield annual IPQ, which represent a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued in an amount equivalent to the Class A IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. Prior to the start of a crab

fishing season, Class A IFQ and IPQ holders match their shares with one another, thereby determining their markets for the coming year. These matches may be modified during the crab season, but both parties must consent to any modifications.

Arbitration System

The CR Program requires holders of Class A IFQ to deliver their catch to processors holding IPQ for a specific crab fishery within a specific geographic region. Potential disputes among harvesters and processors during price and delivery negotiations can occur, and the share matching requirements can exacerbate these disputes. To fairly address potential price and delivery disputes that may arise between Class A IFQ holders and IPQ holders, the CR Program includes an arbitration system. Disputes are most likely to occur in cases where the Class A IFQ holder is not affiliated with an IPQ holder through common ownership or control and the IPQ holder will not consent to modification of the preseason share matching, thereby allowing the IPQ holder to dictate prices or other conditions without the ability of the Class A IFQ holder to move to an alternative market. Class A IFQ holders who are unaffiliated, or independent, of IPQ holders are commonly known as unaffiliated Class A IFQ holders. Conversely, Class A IFQ holders who are affiliated with IPQ holders through common ownership and control are known as affiliated Class A IFQ holders. Affiliated Class A IFQ holders are not eligible to use the arbitration system to settle price or other disputes. Affiliated Class A IFQ holders do not require an arbitration system, because they are integrated with IPQ holders and do not have distinct and potentially adversarial negotiating positions as may be the case with unaffiliated Class A IFQ and IPQ holders.

In the event of a dispute, the arbitration system allows unaffiliated Class A IFQ holders to initiate an arbitration proceeding to allow an independent third party to review harvester and processor negotiation positions and provide an independent and binding resolution to issues under dispute. Regulations describing the arbitration system are found at 50 CFR 680.20. An extensive discussion of the components of the arbitration system is found in the preamble to the proposed rule (October 24, 2004; 69 FR 63200) and final rule (March 2, 2005; 70 FR 10174) that implemented the CR Program, as well as in the final EIS prepared for the CR Program, and is not reiterated here (see **ADDRESSES**).

To facilitate arbitration proceedings, the arbitration system establishes a series of contractual requirements that CVO QS, PQS, Class A IFQ, and IPQ holders must meet that dictate how the arbitration system will function. Regulations require that all unaffiliated CVO QS and Class A IFQ holders join an Arbitration Organization (AO). Similarly, affiliated CVO QS and Class A IFQ holders are required to join a separate AO. PQS and IPQ holders are required to join a third AO. Regulations further require that these three AOs enter into a series of contracts that will allow the arbitration system to function. Although affiliated Class A IFQ and IPQ holders must join AOs, the primary role of the arbitration system is to facilitate negotiations among the unaffiliated Class A IFQ and IPQ holders. Therefore, this final rule would primarily affect unaffiliated Class A IFQ and IPQ holders. For clarity in this final rule, the AO representing unaffiliated CVO QS and Class A IFQ holders will be called the unaffiliated Class A IFQ arbitration organization, the AO representing affiliated CVO QS and Class A IFQ holders will be called the affiliated Class A IFQ arbitration organization, and the AO representing PQS and IPQ holders will be called the IPQ arbitration organization.

Under the arbitration system, all AOs must establish contracts to hire an independent third-party data provider, who will provide up-to-date information on matches between Class A IFQ and IPQ holders for crab deliveries and contracts to hire independent experts to facilitate arbitration proceedings. Only the unaffiliated Class A IFQ AOs and the IPQ AOs can enter into contracts to hire: (1) A market analyst, who provides a pre-season market report of likely market conditions for each crab fishery to aid in price negotiations and arbitrations; (2) a formula arbitrator, who prepares a non-binding price formula that describes the historic division of first whole-sale values among harvesters and processors that can be used in price negotiations and arbitrations; and (3) a contract arbitrator, who reviews the positions of the parties during an arbitration proceeding and issues a binding decision based on a last-best offer form of arbitration.

Under current regulations, contracts with the market analyst, formula arbitrator, and contract arbitrator must be established by June 1 and can only be established by the mutual agreement of unaffiliated Class A IFQ AOs and IPQ AOs. ''Mutual agreement,'' as defined in 50 CFR 680.2, requires the consent and agreement of unaffiliated Class A IFQ AOs that represent an amount of unaffiliated Class A IFQ equal to more than 50 percent of all the unaffiliated Class A IFQ in a fishery, and IPQ AOs that represent an amount of IPQ equal to more than 50 percent of all the IPQ in a fishery based upon the Annual Arbitration Organization Reports. This mutual agreement requirement is intended to ensure that the majority of the unaffiliated Class A IFQ and IPQ holders reach agreement on the contracts that will provide necessary services for the functioning of the arbitration system, but avoid the potential that the process could be compromised by the inability of all unaffiliated Class A IFQ or IPQ holders to reach unanimity on the contracts.

During an arbitration proceeding, the contract arbitrator is required to consider the market report and the non-binding price formula when considering the offers provided by the parties to the arbitration proceeding. Because the market report and the non-binding price formula play a central role in the decision-making process of the contract arbitrator, the information used in their preparation and the timing of their production can affect their utility and importance.

As the CR Program has progressed, it has become clear to the unaffiliated Class A IFQ and IPQ holders—as well as to the market analyst, the formula arbitrator, and the contract arbitrator—that certain aspects of the existing requirements for the timing and content of the market report and non-binding price formula limit the effectiveness of the arbitration system. This amendment modifies four aspects of the arbitration system to improve its effectiveness by (1) Allowing AOs to mutually agree to establish contracts that would forgo the preparation of market reports and non-binding price formulas if a CR Program crab fishery is unlikely to (and does not) open; (2) modifying the timeline for release of the non-binding price formula for the western Aleutian Islands golden king crab (WAG) and eastern Aleutian Islands golden king crab (EAG) fisheries; (3) modifying the information used in the market report and allowing AOs to mutually agree to modify the timing for release of the market report in each CR Program fishery; and (4) clarifying the authority of the AOs, market analyst, formula arbitrator, contract arbitrators, and third-party data provider to adopt additional arbitration system procedures that are not in conflict with arbitration system regulations. The need for and effect of each of these actions are described in greater detail below.

Action 1: Allow AOs To Forgo Preparation of Market Reports and Non-Binding Price Formulas If a Crab Fishery Is Unlikely To and Does Not Open

This action allows AOs representing unaffiliated Class A IFQ holders and IPQ holders to mutually agree that when a crab fishery is unlikely to open, neither a market report nor a non-binding formula would be prepared for the fishery. If mutual agreement is reached, this action requires the AOs representing unaffiliated Class A IFQ holders and IPQ holders to include provisions in the contracts with the market analyst and formula arbitrator that reflect the mutual agreement of the AOs to forgo preparation of a market report and non-binding price formula for the fishery; requires preparation of the market report and non-binding price formula in the event that an opening is later announced for the fishery; and specifies a timeline for the production of the market report and non-binding price formula, which must occur before June 30.

This action allows the AOs, and, by extension, the unaffiliated Class A IFQ and IPQ holders who are members of the AOs and who pay the costs for producing these reports, the option to forgo incurring expenses associated with the production of those reports when it appears unlikely that a fishery will open. The potential cost savings to the AOs could range from a few thousand to several tens of thousands of dollars.

Status of stocks for CR Program crab fisheries is assessed annually and it is possible that some CR Program crab fisheries will not open in a given year. For example, during the first five years of the CR Program, the western Aleutian Islands red king crab and Pribilof Islands red and blue king crab fisheries have failed to open, and the Saint Matthew Island blue king crab fishery has only been open during the 2009–2010 and 2010–2011 fishing seasons. Regardless of whether a fishery is scheduled to open, regulations at 50 CFR 680.20(e)(4)(ii) require that the market report and non-binding price formula must be prepared for each crab fishery no later than 50 days before the opening date for the first crab fishing season for that crab QS fishery. Because most crab fisheries have an October 15 season opening date, most of the market reports and non-binding price formulas must be produced by August 26 each year. However, in most cases, the State of Alaska does not announce whether a CR Program crab fishery will be open or closed until October 1.

This action allows the AOs to mutually agree to forgo the production of the market report and non-binding price formula if a fishery is unlikely to and does not open. This agreement must be included in the contract the AOs establish with the market analyst and formula arbitrator. If the AOs mutually agree to include this provision in their contract with the market analyst and the formula arbitrator, the contract also must require the production of the market report and non-binding price formula in the event that a fishery previously not anticipated to open does actually open. The revised regulations at § 680.20(f) and (g) leave the details about the timeline for producing these reports in the event of a fishery opening to the mutual agreement of the AOs, only requiring that the market report and non-binding price formula be produced prior to June 30. The mutual agreement to forgo the issuance of a market report must be incorporated into the contract with the market analyst.

Regulations at § 680.20(e)(5) require that the AOs provide NMFS with the names of the persons serving as the market analyst and provide copies of the contracts with the market analyst and formula arbitrator no later than June 1 of each year. Therefore, the contract with the market analyst and formula arbitrator, including any terms that would allow forgoing the production of a market report and non-binding price formula for a fishery, must be incorporated in the contract between the AOs and the market analyst no later than June 1. If the AOs do not reach mutual agreement on these terms by June 1, then the existing regulatory requirements to produce a market report and non-binding price formula no later than 50 days before a fishery opening apply.

As discussed above, most fisheries have an October 15 opening date, and under this action, most market reports must be produced no later than August 26. The Council recommended this approach so that AOs unable to reach mutual agreement on whether to forgo production of market reports and non-binding price formulas would have sufficient time to comply with the 50-day requirements at § 680.20 for their production.

The Council determined, and NMFS agrees, that production of a market report for fisheries unlikely to open is unnecessary and presents a financial burden to fishery participants. Elimination of the requirement to produce a market report for fisheries unlikely to open presents a minor risk that participants in a fishery will have inadequate information to inform price negotiations in the event that a fishery unexpectedly opens; however, NMFS agrees with the Council that this risk is mitigated by the requirement that AOs develop a contingency plan for describing how a market report will be produced when a fishery unexpectedly opens or when AOs disagree concerning whether a fishery will open.

Action 2: Modify the Timing for Release of the Aleutian Islands Golden King Crab Fishery Non-Binding Price Formula

Under current State of Alaska regulations, the EAG and WAG fisheries open on August 15 of each year. This opening date means that the non-binding price formula developed for both fisheries must be released no later than June 26, as current regulations require that the formula be released at least 50 days prior to the opening date for these fisheries. However, the opening date for the EAG and WAG fisheries prevents the formula arbitrator from using the most current information from the Commercial Operators Annual Report (COAR), which is a key source of information on wholesale prices used in the non-binding price formula. COAR documents are typically not available until early July; therefore, data from the preceding season is not incorporated in the non-binding price formula.

This action amends regulations at § 680.20(g) to require release of the non-binding price formula at least 30 days prior to the start of these fisheries to provide the formula arbitrator time to incorporate data from the most recent COAR. NMFS does not anticipate that producing the non-binding price formula at least 30 days prior to the start of the fisheries, rather than at least 50 days prior to the start of the fisheries, will adversely affect price negotiations. Participants in the fisheries noted that a more complete and current non-binding price formula using COAR data from the most recent EAG and WAG fisheries outweighs any potential disadvantage of a slightly shorter period of time to review the non-binding price formula before fishing begins. The Council determined and NMFS agrees that this action will provide the affected fishing industry with the most recent data for use in the non-binding price formula while providing as much lead time as possible before the start of the fisheries for consideration of the non-binding price formula in any potential negotiations.

Action 3: Modify the Information Used and Timing for Release of the Market Report

Existing regulations at § 680.20(f) require that the market report be released no later than 50 days prior to the opening of a fishery and that it cannot be supplemented with additional information once released. Existing regulations permit the inclusion of publicly available information, as well as data from proprietary sources in the market report. The CR Program established the 50-day release date and prohibition on subsequent supplements to the market report to reduce the risk that the market report could contain proprietary data released during a fishing season. Any such data could unduly influence the results of the market report by creating incentives for processors or harvesters to present data that cannot be reviewed publicly and have that data incorporated in a manner that would influence the results of the market report for the benefit of one party, thereby increasing the risk of tainting the market report with information that could be used for anticompetitive purposes.

To address these concerns, regulations at § 680.20(f)(2)(v) require that any price information contained in the market report (1) include only data that is based on information regarding activities occurring more than three months prior to the generation of the market report; (2) include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and (3) be sufficiently aggregated such that any information disseminated in the market report would not identify specific price information by an individual provider of information. These provisions are intended to prevent the use of private information in the report that could skew the conclusions reached by the market analyst in a manner that might benefit a specific private interest and could therefore be anticompetitive.

While these requirements limit the potential for a harvester or processor to submit data for his or her benefit, these requirements also limit the usefulness of the market report because much of the data contained in the report are no longer indicative of market conditions by the time the market report is released. Furthermore, aggregation of data across five or more sources may not always be possible in the small market of crab producers, limiting the availability of data from private sources for any market report.

To address these concerns, the AOs recommended that, no later than 50 days prior to a fishery opening, the AOs representing the unaffiliated Class A IFQ and IPQ holders should be permitted to mutually agree to the timeline for release of the market report, and that these AOs could mutually agree to allow supplements to the market report at any time prior to June 30. Additionally, the AOs recommended that the market report use only publicly available information and that the AOs be provided discretion in recommending contents of the market report. The Council agreed that the current requirement for market reports to be complete at least 50 days prior to the season prevents inclusion of the most current and relevant pricing information and that the prohibition on supplements to the report prevents subsequent report modification to provide useful market information inseason or after completion of the initial report. The Council concurred with the AOs that market reports would be more timely and informative if those reports can be produced and supplemented at any time and recommended that the market report contain only publicly available information to reduce the risk that any information provided by a private source could taint the market report for anticompetitive purposes. For the purposes of this action, publicly available information means data and information published in a manner that makes them available, either for a fee or at no cost, to the public at large. The Council also recommended allowing the AOs to negotiate the timing of release of the market report and the inclusion of any supplements to enhance the timeliness, accuracy, and usefulness of the market report.

NMFS agrees with the Council that the flexibility afforded by this final rule should allow AOs to provide the most useful, timely information to participants in need of market information for price negotiations. This final rule presents some risk that majority QS and PQS holders could assert their position in the AOs to provide a market report that is not particularly beneficial to holders of relatively small amounts of QS or PQS, and who may be likely to derive the greatest benefit from the market reports. The Council and NMFS find the risk to be minor and that the benefits of the action outweigh this slight and unlikely risk.

To be consistent with the Council's recommendations, this final rule amends regulations at § 680.20(f) to remove the ability for IFQ and IPQ holders to submit proprietary data for inclusion in the market report, require that the information that the market analyst considers be publicly available, and allow AOs to mutually agree to negotiate the content and the timing for release of the market report. As with Action 1, while this amendment allows the AOs to mutually agree to a date for release of the market report, regulations require release of the market report prior to June 30. NMFS also amends regulations at § 680.20(f) to clarify that if the AOs cannot mutually agree to the contents, timing for release, or a provision addressing whether any supplements for the market report will be permitted, the market report would have to be released 50 days prior to the start of a crab fishery, and supplements to the market report would not be permitted. This provision will ensure that a market report will be prepared for each fishery if the AOs cannot reach mutual agreement. The Council recommended that existing requirements should apply if mutual agreement is not possible to ensure that all parties have some market report available for consideration during price negotiations even if the data in that report may not be as current as that available later in the year.

Action 4: Clarify the Authority of the AOs, Market Analyst, Formula Arbitrator, Contract Arbitrators and Third-Party Data Provider

The arbitration program established by the CR Program requires AOs to enter into a series of contracts with harvesters, processors, market analysts, arbitrators, and, if desirable, a third-party data provider. Regulations require each of these contracts to contain several specific provisions. However, the regulations do not specify all aspects of the arbitration system. For example, regulations at § 680.20(f) and (g) do not provide specific details about how the market reports and non-binding price formula documents should be released, how specific data-quality issues within these documents should be considered and addressed, or how new information should be incorporated. Because the regulations are specific on certain requirements and silent as to other aspects, arbitration administrators (*i.e.,* the AO representatives, contract arbitrators, formula arbitrators, market analysts, and third party data providers) have questioned their authority to agree to provisions or develop procedures that could improve the arbitration program but that are not explicitly contained in regulation. Absent a regulation that

clearly specifies this authority, it could be argued that these actions are beyond the scope of an arbitration administrator's powers.

As a result, arbitration administrators have expressed some concern that potential liability could influence decision making. For example, if an arbitrator is concerned that a participant may litigate if the arbitrator makes a certain finding, the arbitrator's independence could be compromised. Likewise, arbitration organizations might choose not to make changes in the arbitration structure that are agreed to by participants in both harvesting and processing sectors, but are not addressed by the regulations, if they fear potential lawsuits related to those changes. At the extreme, the threat of liability could make it difficult to find persons willing to perform arbitration services.

Although not specifically stated in the regulations originally developed to implement the CR Program, a review of the EIS prepared for the CR Program supports the conclusion that the Council intended for arbitration administrators to have the discretion to adapt the arbitration system to address perceived problems in program administration. Specifically, the EIS notes that administration of the arbitration system ''would be undertaken primarily by industry, avoiding government involvement in the price setting process and providing greater flexibility to adopt agreed to modifications without government action.''

This flexibility was viewed by the Council and NMFS as necessary to avoid time consuming and costly processes of the Council and NMFS to amend the program through the standard regulatory process. The Council believed that broader administrative authority by the arbitration administrators would improve the efficiency of administration of the arbitration system. Although many industry participants have argued that the arbitration administrators have broad authority to adopt provisions to improve the operations of the arbitration system, absent a regulation clearly specifying this authority, it could be argued that these actions are beyond the scope of their powers.

For these reasons, the Council recommended that the regulations be modified to specifically state that arbitration administrators have the authority to establish procedures and make administrative decisions concerning the arbitration program that are in addition to those requirements specified in regulation, provided those actions are not in conflict with any of the regulatory requirements. NMFS agrees with the Council's recommendations and adds this additional clarification in a new paragraph at § 680.20(i). This clarification of authority is intended to remove any inhibitions of arbitration administrators to adopt procedures and make decisions that would improve the operation of the arbitration system.

Public Comment

NMFS received three unique letters during the public comment period for Amendment 30 and the proposed rule. One comment letter (Comment 1) submitted by an industry group representing participants in the BSAI crab fisheries was supportive of Amendment 30 and recommended implementation without any modification. The other two comments were submitted by AOs formed and authorized under the arbitration system regulations. These comments were substantive and are summarized below along with NMFS's responses. Public comment letters received by NMFS for this action may be obtained from *http://www.regulations.gov.*

Comment 2: The title of § 680.20(i) is broader than the substance of the regulation. The title states ''Other Procedures, Policies, and Decisions'' whereas the text of the regulation refers to ''procedures.'' The title and text should conform to prevent ambiguity.

Proposed regulations at § 680.20(i) state ''The arbitration organizations, market analysts, arbitrators, or third party data providers are authorized * * *'' The term ''arbitrators'' is assumed to refer to both ''Contract Arbitrator(s)'' and ''Formula Arbitrator.'' Referencing both functions rather than using the single term provides clarity and prevents ambiguity.

The proposed regulation refers to the plural ''market analysts'' whereas the existing regulations refer to one Market Analyst for each fishery. Use of the singular term avoids ambiguity.

The existing regulations capitalized the terms ''Market Analyst, Formula Arbitrator, Contract Arbitrator(s) and Third-Party Data Provider'' whereas the proposed regulation uses the lower case. Use of the capitalized terms provides consistency with the rest of the regulations.

Response: NMFS agrees that the title and text of § 680.20(i) published in the proposed rule were not in agreement. As explained in the response to Comment 3, the title and text of § 680.20(i) have been revised, so that the title and text of the paragraph are in agreement. NMFS agrees with the other grammatical and technical concerns mentioned in this comment and has modified the regulatory text based on those comments.

Comment 3: The third comment also relates to § 680.20(i) and suggests that the proposed authority granted to Arbitration Organizations, Market Analysts, Contract Arbitrators, Formula Arbitrators, and the Third Party Data Provider in the regulatory text is not broad enough and that the regulatory text should include not only the authority to adopt procedures, but also the authority to adopt policies and make administrative decisions.

Response: NMFS explained in the preamble to the proposed rule that the Council and agency intended to provide arbitration administrators with the authority to establish procedures and make administrative decisions concerning the arbitration program. NMFS agrees with the commenter that additional clarity in the regulatory text concerning the scope of authority would be beneficial and has modified the title and text of § 680.20(i) to clearly reference authority to make administrative decisions.

Changes From the Proposed Rule

Proposed regulatory text at § 680.20(i) was clarified by removing authority to establish policies granted to Arbitration Organizations, Market Analysts, Contract Arbitrators, Formula Arbitrators, and the Third Party Data Provider and adding authority to make administrative decisions, consistent with the description of the action in the proposed rule preamble and with the Council's recommendations for this action. In addition, minor grammatical and technical changes were made to this paragraph to improve clarity.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendment 30 on July 25, 2011 (76 FR 44297), with a public comment period that closed on September 23, 2011. NMFS published the proposed rule to implement Amendment 30 on August 10, 2011 (76 FR 49423), and the public comment period closed on September 9, 2011. NMFS received three public comments during the public comment periods. As explained above, based on the three comments received, NMFS made minor, technical changes were made to one subsection of the final rule to improve clarity and consistency within the arbitration system regulations.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 30 is necessary for the conservation and management of the fisheries managed under the CR Program and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), notes that no public comments on the IRFA were submitted, and summarizes the analyses completed to support the action. Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA prepared for this final rule incorporates by reference an extensive RIR and FRFA prepared for the CR Program that detailed its impacts on small entities.

NMFS published the proposed rule to implement Amendment 30 on August 10, 2011 (76 FR 49423), and the public comment period closed on September 9, 2011. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS received three letters of public comment on Amendment 30 and the proposed rule. None of these comments addressed the IRFA or the economic impacts of this rule more generally.

The description of this action, its purpose, and its legal basis are described in the preamble to the final rule and are not repeated here.

The primary objective of this rule is to modify several specific areas of the arbitration system that have been identified as preventing the arbitration system from functioning as intended. The Council considered two alternatives for this action: the action alternative and the status quo. The action alternative recommends changes to four separate areas of the arbitration program. Specifically the action alternative provides the AOs with the discretion not to produce a market report and non-binding price formula if a fishery does not open, thereby reducing costs to the quota holders directly regulated; requires that a non-binding price formula be prepared at least 30 days prior to the fishery opening, thereby ensuring that relevant price information can be incorporated in the non-binding price formula; provides the AOs with the discretion to mutually agree to negotiate the timing for release of a market report and to include any supplements to help provide a timely, accurate, and more useful product; and clarifies that AOs can establish procedures and make administrative decisions concerning the arbitration program that are not explicitly specified in the regulations provided those actions are not in conflict with any requirement contained in the arbitration system regulations.

The Council determined and NMFS agrees that these actions are consistent with the Council's original intent in developing the arbitration program and that they will reduce costs to the industry by eliminating the requirement that a market report be produced for fisheries not anticipated to open and will allow for use of more timely, publicly available market information, thereby adding to the utility of the market reports. Under the status quo, some of these market reports are perceived as having limited utility and they are expensive to produce for fisheries that are not expected to open. In addition, modifications to timing of when arbitration products must be made available for the Aleutian Islands golden king crab fishery, which has a different fishery start date than other CR Program fisheries, will make the market reports more relevant for that particular fishery relative to the status quo. Clarifying the role of participants in the arbitration process will reduce ambiguity for participants in the CR Program fisheries relative to the status quo.

With regard to Action 1, alternatives that would rely on preliminary notice of intent to close a fishery from State or Federal managers, after which the arbitration organizations would not be required to contract for a market report or non-binding formula for the fishery were considered and not advanced for analysis. The need for a formal notice from managers could be misinterpreted by participants and disruptive to planning for fishing in the upcoming season. Additionally, alternatives that would create a strict time frame for applying the exemption, as well as for producing the market report and non-binding formula were considered and not advanced for analysis. These alternatives were believed to be overly restrictive and administratively burdensome, limiting the ability of the arbitration organizations to appropriately respond to changes in circumstances in providing the reports and formulas.

In evaluating Action 3, the Council alternatives that would establish strict timelines and fully defined contents for market reports were considered, but not advanced for analysis. These alternatives were believed to be overly prescriptive, limiting the ability of arbitration organizations (and participants) to agree to terms for the production of market reports that would be most useful and informative to participants. In addition, an alternative to remove the requirement for any market report was also considered, but not advanced for analysis. The market report is thought to provide beneficial baseline market information for negotiations. In addition, small, independent participants in the program are thought to derive benefit from the information in the report, which might otherwise be costly for them to gather. As a consequence, the alternative to remove the market report requirement was determined to be inconsistent with the basic program objectives for price arbitration in the crab fisheries.

An alternative that would grant immunity to arbitration administrators for their actions taken in the administration of the arbitration system was considered, but not advanced for analysis for Action 4. NMFS regulations that grant arbitral immunity would effectively restrict the ability of courts to adjudicate certain actions against specific persons. While there are clear benefits to arbitration systems from arbitral immunity, and courts have applied arbitral immunity for arbitrators and arbitration organizations, it was questioned whether the Council and NMFS are authorized to promulgate regulations that grant such immunity. The Council stated its belief that the preferred alternative (by clarifying the scope of authority of arbitration administrators) would strengthen any argument that common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures).

Under each of the actions described in this amendment, holders of CVO QS and holders of PQS would be regulated in the contracts that they must establish as a condition of receiving Class A IFQ and IPQ, respectively. The holders of these shares are the entities that are directly regulated by this action. Of the estimated 221 QS holders in the fisheries, 210 are estimated to be small entities. Of the estimated 25 PQS holders, 17 are estimated to be small entities. All of the directly regulated persons would be expected to benefit from this action relative to the status quo alternative because the action is expected to reduce the costs of compliance with the arbitration system, provide more timely and useful market reports and non-binding price formulas for use in negotiations, and provide

clarity concerning the administration of the arbitration system.

The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by this amendment.

The actions in this rule modify existing recordkeeping and reporting requirements, but do not impose any additional recordkeeping and reporting requirements. Specifically, the actions modify the timing, preparation, and release of information used in the market reports and non-binding price formulas and are not expected to increase the recordkeeping and reporting burden for affected participants.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0516. Public reporting burden for the market report is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**); email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm*) to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: November 1, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.20,
■ a. Revise paragraphs (e)(4)(i), (e)(4)(ii), and (f)(1);
■ b. Revise paragraphs (f)(2)(i) and (f)(2)(ii), and remove paragraphs (f)(2)(iii) through (v);
■ c. Redesignate paragraphs (f)(2)(vi) through (f)(2)(viii) as paragraphs (f)(2)(iii) through (f)(2)(v) respectively, and revise newly redesignated paragraph (f)(2)(v);
■ d. Revise paragraphs (f)(4)(i), (f)(4)(ii) introductory text, and (g)(1);
■ e. Revise paragraph (g)(2)(viii)(B); and
■ f. Add new paragraph (i) to read as follows:

§ 680.20 Arbitration system.

* * * * *

(e) * * *

(4) * * *

(i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraphs (f)(4)(i) and (g)(2)(viii)(B) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery. The contractual obligations of the Market Analyst, the Formula Arbitrator, and Contract Arbitrators will be enforced by the parties to the contract.

* * * * *

(f) * * *

(1) Except as provided in paragraph (f)(1)(ii) of this section:

(i) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for each crab QS fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(ii) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations may, by mutual agreement, include a provision in the contract with the Market Analyst to forgo production of a Market Report for a crab QS fishery if the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations anticipate that the crab QS fishery will not open for fishing during a crab fishing year. If such a provision is included in the contract with the Market Analyst, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations must include a provision in the contract with the Market Analyst to produce a Market Report not later than the June 30 for the crab QS fishery that was expected to remain closed but subsequently opens for fishing during the crab fishing year.

(2) * * *

(i) The Market Analyst will base the Market Report on a survey of the market for crab products produced by the fishery.

(ii) The Market Analyst will note generally the sources from which he or she gathered information. The Market Report must include only publicly available data and information. Data and information will be considered publicly available if they are published in a manner that makes them available, either for a fee or at no cost, to the public at large.

* * * * *

(v) The Market Analyst must not issue interim or supplemental reports for any crab QS fishery unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst for the production of interim or supplemental reports for a crab QS fishery. If the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations have a mutual agreement to produce interim or supplemental reports, the contract with the Market Analyst must specify the terms and conditions under which those interim or supplemental reports will be produced.

* * * * *

(4) * * *

(i) In all subsequent years and except as provided in paragraph (f)(1)(ii) of this section, the Market Report for each crab QS fishery must be produced not later than 50 days prior to the first crab

fishing season for that crab QS fishery, unless the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations, by mutual agreement, include a provision in the contract with the Market Analyst to establish a different date for production of the Market Report for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide the Market Report in that crab fishing year to:

* * * * *

(g) * * *

(1) Except as provided in paragraph (g)(1)(ii) of this section:

(i) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to produce a Non-Binding Price Formula for each crab QS fishery.

(ii) The Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations may, by mutual agreement, include a provision in the contract with the Formula Arbitrator to forgo production of a Non-Binding Price Formula for a crab QS fishery if the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations anticipate that the crab QS fishery will not open for fishing during a crab fishing year. If such a provision is included in the contract with the Formula Arbitrator, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations must include a provision in the contract with the Formula Arbitrator to produce a Non-Binding Price Formula not later than June 30 for the crab QS fishery that was expected to remain closed but subsequently opens for fishing during the crab fishing year.

* * * * *

(2) * * *

(viii) * * *

(B) In all subsequent years and except as provided in paragraph (g)(1)(ii) of this section, the Non-Binding Price Formula must be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery, except that the Non-Binding Price Formulas for the western Aleutian Islands golden king crab fishery and the eastern Aleutian Islands golden king crab fishery must be produced not later than 30 days prior to the first crab fishing season for those crab QS fisheries.

* * * * *

(i) *Other procedures and administrative decisions.* The Arbitration Organizations, Market Analyst, Contract Arbitrator, Formula Arbitrator, and the Third Party Data Provider are authorized to adopt arbitration system procedures and make administrative decisions, including additional provisions in the various contracts, provided those actions are not inconsistent with any other provision in the regulations.

[FR Doc. 2011–28664 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 214
Friday, November 4, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1165; Directorate Identifier 2011–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 and –300 Series 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 The Boeing Company Model 777–200 and –300 series airplanes. This proposed AD would require replacing certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets. This proposed AD would also require, for certain airplanes, installing new bonding jumpers, and measuring the resistance of the modified installation to verify resistance is within specified limits. This proposed AD was prompted by reports of two failures of the single-tabbed bracket on the rudder. We are proposing this AD to prevent failure of the bonding jumper bracket, which could result in loss of lightning protection ground path, which could lead to increased lightning-induced currents and subsequent damage to composite structures, hydraulic tubes, and actuator control electronics. In the event of a lightning strike, loss of lightning ground protection could result in the loss of control of the airplane.

DATES: We must receive comments on this proposed AD by December 19, 2011.

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:* 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, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590; *email: georgios.roussos@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–2011–1165; Directorate Identifier 2011–NM–002–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 two failures of the single-tabbed bracket on the rudder. The bracket was discolored and melted, the tab was completely severed and burned, and the bonding jumpers were detached from the bracket. We also received a report of a similar failure of the ground clip that connects to the other end of the jumpers to the vertical stabilizer. Boeing has determined that the root cause of these failures was a combination of electromagnetic forces on the jumpers and resistive heating of the bracket and ground clip during lightning strikes. This condition, if not corrected, could result in loss of lightning protection ground path, which could lead to increased lightning-induced currents and could subsequently damage composite structures, hydraulic tubes, and actuator control electronics. In the event of a lightning strike, loss of lightning ground protection could result in loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010. This service bulletin describes procedures for replacing certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets.

Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010, specifies prior or concurrent accomplishment of Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001, for installing new bonding jumpers, and measuring the resistance of the modified installation to verify resistance is within specified limits.

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.

Costs of Compliance

We estimate that this proposed AD affects 87 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
Replacement	21 work-hours × $85 per hour = $1,785	$1,235	$3,020	$262,740

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	66 work-hours × $85 per hour = $5,610	$2,668	$8,278	$248,340

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):

The Boeing Company: Docket No. FAA–2011–1165; Directorate Identifier 2011–NM–002–AD.

Comments Due Date

(a) We must receive comments by December 19, 2011.

Affected ADs

(b) None.

Applicability

(c) The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55: Stabilizers.

Unsafe Condition

(e) This AD was prompted by reports of two failures of the single-tabbed bonding bracket on the rudder. We are issuing this AD to prevent failure of the bonding jumper bracket, which could result in loss of lightning protection ground path, which could lead to increased lightning-induced currents and subsequent damage to composite structures, hydraulic tubes, and actuator control electronics. In the event of a lightning strike, loss of lightning ground protection could result in loss of control of the airplane.

Compliance

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

Replacement

(g) Within 48 months after the effective date of this AD, replace certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010.

Concurrent Requirements

(h) For airplanes identified in Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001: Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, install new bonding jumpers, and do resistance measurements of the modified installation to verify resistance is within the limits specified in the Accomplishment Instructions of Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Replacing certain single-tabbed bonding brackets with two-tabbed bonding brackets in accordance with Boeing Alert Service Bulletin 777–55A0014, dated May 8, 2008, before the effective date of this AD, is acceptable for compliance with the corresponding modification required by paragraph (g) of this AD.

(j) Installing new bonding jumpers, and doing resistance measurements of the modified installation that verify the resistance is within the specified limits, in accordance with Boeing Alert Service Bulletin 777–55A0010, dated October 26, 2000, before the effective date of this AD, is acceptable for compliance with the corresponding modification required by paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

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

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

Issued in Renton, Washington, on October 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–28568 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1164; Directorate Identifier 2011–NM–084–AD]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Model MYSTERE-FALCON 900 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all DASSAULT AVIATION Model MYSTERE-FALCON 900 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several Mystere-Falcon 900 aeroplanes experienced fuel leakage from a defective fuel high-level sensor located in the wing front spar.

Investigations revealed that the leakage was due to a defective fuel quantity sensor * * *.

This condition, if not detected and corrected, could lead to an internal fuel leakage with significant fuel vapours, which could result in a fire hazard.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 19, 2011.

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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone (201) 440–6700; Internet *http://www.dassaultfalcon.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone: (425) 227–1137; fax: (425) 227–1149.

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–2011–1164; Directorate Identifier 2011–NM–084–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0049, dated March 21, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several Mystere-Falcon 900 aeroplanes experienced fuel leakage from a defective fuel high-level sensor located in the wing front spar.

Investigations revealed that the leakage was due to a defective fuel quantity sensor Part Number (P/N) 722105–2.

This condition, if not detected and corrected, could lead to an internal fuel leakage with significant fuel vapours, which could result in a fire hazard.

To address this unsafe condition, Dassault Aviation have developed an improved fuel quantity sensor with a new concept of sealing.

For the reasons described above, this AD requires the identification of the affected sensors and replacement with the improved part.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F900–410, dated December 20, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 110 products of U.S. registry. 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. Required parts would cost about $4,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $477,400, or $4,340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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); and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DASSAULT AVIATION: Docket No. FAA–2011–1164; Directorate Identifier 2011–NM–084–AD.

Comments Due Date

(a) We must receive comments by December 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to DASSAULT AVIATION Model MYSTERE-FALCON 900 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several Mystere-Falcon 900 aeroplanes experienced fuel leakage from a defective fuel high-level sensor located in the wing front spar.

Investigations revealed that the leakage was due to a defective fuel quantity sensor * * *.

This condition, if not detected and corrected, could lead to an internal fuel leakage with significant fuel vapours, which could result in a fire hazard.

* * * * *

Compliance

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

Part Identification and Replacement

(g) Within 440 flight hours or 9 months after the effective date of this AD, whichever occurs first, do the following actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Inspect the fuel quantity sensors to determine whether part number (P/N) 722105–2 is installed.

(2) Replace all P/N 722105–2 fuel quantity sensors with new P/N 722105–3 fuel quantity sensors, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900–410, dated December 20, 2010.

Parts Installation

(h) As of the effective date of this AD, no person may install a fuel quantity sensor having P/N 722105–2 on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI specifies, for certain airplanes, to not install fuel quantity sensor P/N 722105–2 after doing the modification This AD prohibits, for all airplanes, installation of fuel quantity sensor P/N 722105–2 after the effective date of this AD.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone: (425) 227–1137; fax: (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0049, dated March 21, 2011; and Dassault Service Bulletin F900–410, dated December 20, 2010; for related information.

Issued in Renton, Washington, on October 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–28578 Filed 11–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114749–09]

RIN 1545–BI63

Tax Accounting Elections on Behalf of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: These proposed regulations would clarify the rules for controlling domestic shareholders to adopt or change a method of accounting or taxable year on behalf of a foreign corporation. The regulations affect United States persons that own stock in certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by February 2, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–114749–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114749–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC 20224 or sent electronically via the Federal Rulemaking Portal at *http://www.regulations.gov* (IRS REG–114749–09).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Oluwafunmilayo (Funmi) Taylor (202) 622–7180; concerning the regulations, Joseph W. Vetting (202) 622–3402 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On April 17, 1991, a notice of proposed rulemaking (INTL–939–86) under sections 953, 954, 964, 1248, and 6046 of the Internal Revenue Code (Code) was published in the **Federal Register** (56 FR 15540) (the 1991 proposed regulations). No comments were received with respect to the proposed amendments under section 964, which would provide a special definition of controlling domestic shareholders for certain controlled foreign corporations with insurance income. Comments were received on other provisions of the 1991 proposed regulations, but no public hearing was requested and none was held.

On July 1, 1992, a notice of proposed rulemaking (INTL–0018–92) under sections 952 and 964 of the Code was published in the **Federal Register** (57 FR 29246). A correction to the notice of proposed rulemaking was published on October 8, 1992, in the **Federal Register** (57 FR 46355). The proposed regulations would modify the regulations relating to required book-to-tax adjustments in respect of depreciation and inventory accounting. Comments were received. A public hearing was not requested and none was held.

Final regulations published on June 10, 2009 (TD 9452) provided guidance for shareholders of certain foreign corporations to elect or change a method of accounting or a taxable year on behalf of the foreign corporation under section 964 of the Code.

Explanation of Provisions

These proposed regulations provide clarification of the required book-to-tax adjustments, including those in respect of depreciation and amortization, and additional examples illustrating the application of § 1.964–1(a) and (c). The proposed regulations also would delete § 1.964–1(b)(3), *Example 2.* The example refers to section 963, which was repealed for taxable years beginning after December 31, 1975. Additionally, the proposed regulations provide rules regarding IRS-initiated method changes.

The Treasury Department and the IRS again request comments on whether the special control group definition contained in the 1991 proposed regulations should be adopted.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying at *http://www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Joseph W. Vetting, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part I

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on July 1, 1992 (57 FR 29246) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.964–1 is amended as follows:

1. Adding a new paragraph (a)(4).

2. In paragraph (b)(3), revising the introductory text, redesignating *Example (1)* as *Example,* and removing *Example (2).*

3. Revising the first sentence of paragraph (c)(1).

4. Revising paragraph (c)(1)(iii) and removing paragraphs (c)(1)(iii)(*a*), (c)(1)(iii)(*b*), and (c)(1)(iii)(*c*).

5. Revising paragraph (c)(1)(v).

6. Inserting a sentence after the fourth sentence of paragraph (c)(2), revising the fifth sentence of paragraph (c)(2), and adding a sentence at the end of paragraph (c)(2).

7. Revising paragraph (c)(8).

8. Adding a new paragraph (c)(9).

9. Revising paragraph (d).

The additions and revisions read as follows:

§ 1.964–1 Determination of the earnings and profits of a foreign corporation.

* * * * *

(a)(4) *Example.* The rules of this paragraph (a) are illustrated by the following example.

Example. (i) *Facts.* P, a domestic corporation, owns all of the outstanding stock of FX, a controlled foreign corporation. In preparing its books for purposes of accounting to its shareholders, FX uses an accounting method (Local Books Method) to determine the amount of its depreciation expense that does not conform to accounting principles generally accepted in the United States (U.S. GAAP) or to U.S. income tax accounting standards as described in paragraph (c). The amount of the adjustment necessary to conform the depreciation expense determined under the Local Books Method with the amount that would be determined under U.S. GAAP for purposes of paragraph (a)(1)(ii) of this section if FX were a domestic corporation is not material. However, the adjustment necessary to conform the amount of the depreciation expense under the Local Books Method to U.S. income tax accounting standards for purposes of paragraph (a)(1)(iii) of this section is material.

(ii) *Result.* Although FX is not required to make the adjustment necessary to conform the amount of its tax expense reserve deduction determined under the Local Books Method to the amount that would be determined under U.S. GAAP, FX is required to make the adjustment necessary to conform the amount of the depreciation expense determined under the Local Books Method to the amount of depreciation expense for the current year that would be allowed under U.S. income tax accounting standards as described in paragraph (c).

(b) * * *

(3) *Example.* The rules of this paragraph (b) are illustrated by the following example.

* * * * *

(c) * * * (1) *In general.* Except as otherwise provided in the Code and regulations (for example, section 952(c)(3) (earnings and profits determined without regard to section 312(n)(4)–(6) for purposes of section 952(c)), the tax accounting standards to be applied in making the adjustments required by paragraph (a)(1)(iii) of this section shall be those applied to domestic corporations, including but not limited to the following:

* * * * *

(iii) *Depreciation and amortization.* Depreciation and amortization shall be computed in accordance with the provisions of section 312(k) and the regulations under that section. In the case of a foreign corporation described in section 312(k)(4) (one with less than 20 percent U.S.-source gross income), depreciation and amortization of items that are not described in section 312(k)(2) or (k)(3) shall be determined under the rules for determining taxable income. For example, amortization for amortizable section 197 intangibles (as defined in section 197(c)) is calculated in accordance with section 197, and depreciation for real property is calculated in accordance with section 168(g)(2)(C)(iii). For any taxable year beginning before July 1, 1972, depreciation shall be computed in accordance with section 167 and the regulations under that section.

* * * * *

(v) *Taxable years.* The period for computation of taxable income and earnings and profits known as the taxable year shall reflect the provisions of sections 441 and 898 and the regulations under those sections.

* * * * *

(2) *Adoption or change of method or taxable year.* * * * Once adopted, a method of accounting or taxable year may be changed by or on behalf of the foreign corporation only in accordance with the applicable provisions of the Code and regulations. Adjustments to the appropriate separate category (as defined in § 1.904–5(a)(1)) of earnings and profits and income of the foreign corporation (including a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)) shall be required under section 481 to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any change in a method of accounting. * * * See paragraph (c)(9) of this section for rules if the change in method of accounting is required in connection with an audit of the foreign corporation's controlling domestic shareholders (as defined in paragraph (c)(5) of this section).

* * * * *

(8) *Examples.* The following examples illustrate the application of paragraph (c) of this section:

Example 1. P, a domestic corporation, owns all of the outstanding stock of FX, a controlled foreign corporation organized in 2012. In maintaining its books for the

purpose of accounting to its shareholders, FX deducts additions to a reserve for bad debts. Assume that if FX were a domestic corporation, it would be required to use the specific charge-off method under section 166 with respect to allowable bad debt losses. In accordance with paragraph (c)(1)(i) of this section, FX's reserve deductions must be adjusted (if the adjustments are material) in order to compute its earnings and profits in accordance with U.S. income tax accounting standards as described in paragraph (c). Accordingly, P must compute FX's earnings and profits using the specific charge-off method of accounting for bad debts in accordance with section 166.

Example 2. FX, a controlled foreign corporation, maintains its books for the purpose of accounting to its shareholders by capitalizing research and experimental expenses. A, B, and C, the United States shareholders (as defined in section 951(b)) of FX, own 45 percent, 30 percent, and 25 percent, respectively, of its only class of outstanding stock. For the first taxable year of FX, pursuant to paragraph (c)(3) of this section, B and C adopt on its behalf the section 174 method of currently deducting research and experimental expenses. Regardless of whether A objects to this action or receives the notice required by paragraph (c)(3)(iii) of this section, adjustments must be made to reflect the use of the section 174 method in computing the earnings and profits of FX with respect to A as well as with respect to B and C.

Example 3. (i) P, a calendar year domestic corporation that uses the fair market value method of apportioning interest expense, owns all of the outstanding stock of FX, a controlled foreign corporation organized in 2002 that uses the calendar year as its taxable year for foreign tax purposes. On June 1, 2012, FX makes a distribution to P. Prior to that distribution, none of the significant events specified in paragraph (c)(6) of this section had occurred. In addition, neither P nor FX had ever made or adopted, or been required to make or adopt, an election or method of accounting or taxable year for United States tax purposes with respect to FX. FX does not act to make any election or adopt any method of accounting or a taxable year for United States tax purposes.

(ii) P must compute FX's earnings and profits for FX's 2002 through 2012 taxable years in order to determine if any portion of the 2012 distribution is taxable as a dividend and to determine P's deemed paid foreign tax credit on such portion under section 902. Under paragraph (c)(2) of this section, P may make an election or adopt a method or methods of accounting and a taxable year on behalf of FX by satisfying the requirements of paragraph (c)(3) of this section by the due date (with extensions) of P's Federal income tax return for 2012, its taxable year with which ends FX's 2012 taxable year. Under paragraph (c)(4) of this section, any such election or adoption will govern the computation of FX's earnings and profits for its taxable years beginning in 2002 and subsequent taxable years for purposes of determining the Federal income tax liability of P and any subsequent shareholders of FX in 2012 and subsequent taxable years, unless the Commissioner consents to a change.

(iii) If P fails to satisfy the requirements under paragraph (c)(3) of this section and such failure is not shown to the satisfaction of the Commissioner to be due to reasonable cause, the earnings and profits of FX will be computed on the basis of a calendar taxable year as if no elections were made and any permissible methods of accounting not requiring an election and reflected in FX's books were adopted. Any subsequent attempt by FX or P to change an accounting method or taxable year of FX shall be effective only if the Commissioner consents to the change.

Example 4. (i) The facts are the same as in *Example 3,* except that P owns 80 percent, rather than all, of the outstanding stock of FX. M, a calendar year domestic corporation, owns the remaining 20 percent of the stock of FX beginning in 2002. M uses the tax book value method to allocate its interest expense under section 864(e)(4).

(ii) M, but not P, must compute FX's earnings and profits beginning in 2002 in order to determine the adjustment under § 1.861–12(c) and § 1.861–12T(c) to M's basis in the stock of FX for M's 2002 through 2011 taxable years. Because P, the controlling domestic shareholder of FX, has not made or adopted, or been required to make or adopt, an election or a method of accounting or taxable year with respect to FX, the earnings and profits of FX for 2002 through 2011 will be computed on the basis of a calendar taxable year as if no elections were made and any permissible methods of accounting not requiring an election and reflected in FX's books were adopted. However, a properly filed, timely election or adoption of a method of accounting or taxable year by, or on behalf of, FX with respect to FX's taxable year ending in 2012, when FX's earnings and profits are first significant for United States tax purposes for P, FX's controlling domestic shareholder, shall not be treated as a change in accounting method or a change in taxable year for any pre-2012 taxable year of FX. M will not be required to recompute its basis adjustments for 2002 through 2011 by reason of P's adoption of a method or methods of accounting or taxable year with respect to FX for 2012. See paragraph (c)(4)(iii) of this section. However, any method of accounting or taxable year adopted on behalf of FX by P pursuant to this paragraph (c) with respect to FX is binding on P, FX, and M for purposes of computing FX's earnings and profits in 2002 and subsequent taxable years for purposes of determining the Federal income tax liability of P, M, and any subsequent shareholders of FX in 2012 and subsequent taxable years, unless the Commissioner consents to a change.

Example 5. (i) In 1987, P, a calendar year domestic corporation that uses the tax book value method to allocate its interest expense under section 864(e)(4), acquired 50 percent of the outstanding stock of 10/50 Corp, a noncontrolled section 902 corporation organized in 1980. For taxable years beginning on or before April 25, 2006, the provisions of this paragraph (c) did not provide a mechanism for shareholders of noncontrolled section 902 corporations to make elections or adopt methods of accounting or a taxable year on behalf of noncontrolled section 902 corporations. However, P had to compute 10/50 Corp's earnings and profits in order to determine the adjustment under § 1.861–12(c) and § 1.861–12T(c) to P's basis in the stock of 10/50 Corp beginning with P's 1987 taxable year.

(ii) For taxable years beginning on or before April 25, 2006, P was required to compute 10/50 Corp's earnings and profits as if any permissible method of accounting not requiring an election and reflected in 10/50 Corp's books had been adopted. See paragraph (c)(4)(ii) of this section. In taxable years beginning after April 25, 2006, in accordance with paragraph (c)(3) of this section P may request the consent of the Commissioner to change any method of accounting or the taxable year on behalf of 10/50 Corp.

(9) *Change of method on audit.* If, in connection with an audit (or audits) of one or more shareholders of the foreign corporation who collectively would constitute the foreign corporation's controlling domestic shareholder(s) if they undertook to act on the corporation's behalf, the Commissioner determines that a method of accounting of the foreign corporation does not clearly reflect income, the computation of earnings and profits shall be made in a manner which, in the opinion of the Commissioner, does clearly reflect income. See section 446 and the related regulations. The Commissioner shall provide written notice of the change in method of accounting to each such shareholder and to all other persons known by the Commissioner to be domestic shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. However, the failure of the Commissioner to provide such notice to any such other person shall not invalidate the change of method, which shall bind both the foreign corporation and all of its domestic shareholders as to the computation of the foreign corporation's earnings and profits for the taxable year of the foreign corporation for which the method of accounting is changed and in subsequent taxable years unless the Commissioner consents to a change.

(d) *Effective/applicability date.* This section applies in computing earnings and profits of foreign corporations in taxable years of foreign corporations beginning on or after the date of publication of these regulations as final regulations in the **Federal Register**, and taxable years of shareholders with or within which such taxable years of the foreign corporations end. See 26 CFR 1.964–1 (revised as of April 1, 2011) for

rules applicable to taxable years beginning before such date.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–28658 Filed 11–3–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140280–09]

RIN 1545–BK16

Tax Return Preparer Penalties Under Section 6695; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document cancels a public hearing on notice of proposed rulemaking and notice of public hearing (REG–140280–09) that would modify existing regulations related to the tax return preparer penalties under section 6695 of the Internal Revenue Code.

DATES: The public hearing, originally scheduled for November 7, 2011 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, October 11, 2011 (76 FR 62689) announced that a public hearing was scheduled for November 7, 2011, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 6695 of the Internal Revenue Code.

The public comment period for a notice of proposed rulemaking expires on November 10, 2011. Outlines of topics to be discussed at the hearing were due on November 1, 2011. A notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of November 2, 2011, no one has requested to speak. Therefore, the public hearing scheduled for November, 7, 2011 is cancelled.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–28660 Filed 11–3–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2011–0008; Notice No. 122]

RIN 1513–AB84

Proposed Revision to Vintage Date Requirements

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to amend its wine labeling regulations to allow a vintage date to appear on a wine that is labeled with a country as an appellation of origin. The proposal would provide greater grape sourcing and wine labeling flexibility to winemakers, both domestic and foreign, while still ensuring that consumers are provided with adequate information as to the identity and quality of the wines they purchase.

DATES: Comments must be received on or before January 3, 2012.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0008 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2011–0008. A direct link to this docket is also available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 122. You may also view copies of this notice and any comments received about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA, 24014; telephone 202–453–1039.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act and the regulations promulgated under it.

Current Vintage Date Requirements

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.27 of the TTB regulations (27 CFR 4.27) sets forth rules regarding the use of a vintage date on wine labels. Section 4.27(a) provides that vintage wine is wine labeled with the year of harvest of the grapes and that the wine ''must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling).'' Rules regarding appellation of origin labeling are contained in § 4.25 of the TTB regulations (27 CFR 4.25).

In addition, § 4.27(a)(1) provides that for American or imported wines labeled with a viticultural area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year. For American or imported wines labeled with an appellation of origin other than a country or viticultural area (or its foreign equivalent), § 4.27(a)(2) provides that at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

The requirement that vintage wine must be labeled with an appellation of origin other than a country derives from T.D. ATF–53, published in the **Federal Register** (43 FR 37672) by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), on August 23, 1978. Prior to that time the applicable regulations required that grapes used to make vintage wine must have been grown in the same ''viticultural area,'' a term then undefined by the regulations.

In amended Notice No. 304, a notice of proposed rulemaking preceding T.D. ATF–53 and published in the **Federal Register** (42 FR 30517) on June 15, 1977, ATF noted that the wine industry advocated that the then current requirement that 95 percent of the grapes used to make vintage wine be grown in the labeled appellation area be reduced to 75 percent. This mirrored the requirement that to bear an appellation of origin, at least 75 percent of the grapes used to make a wine must be grown in the appellation area indicated on the label. The industry position, according to ATF, was that ''vintage means only that the grapes were grown in the specified year, and that the place in which the grapes were grown is unimportant.'' ATF stated in that notice that it did not agree, commenting as follows

> A good year in one part of California, for example, does not necessarily mean a good year in another part, any more than a good year in Burgundy means a good year in Bordeaux. For a vintage to be meaningful to consumers, they must have assurance that the grapes were grown in the place stated on the label. We believe that a 95 percent requirement provides greater assurance than a 75 percent requirement.

However, in T.D. ATF–53, the agency modified its position somewhat stating that it concurred with the industry position that a vintage date should refer only to the year of harvest. Accordingly, a new regulatory provision regarding appellations of origin, also adopted in T.D. ATF–53, required that the percentage of grapes required to come from the labeled appellation area depended upon whether the appellation was a viticultural area (85 percent), a State, county or foreign equivalent (75 percent), or a multicounty or multistate appellation (100 percent), but in each case without reference to vintage date usage. The rulemaking record for T.D. ATF–53 does not explain why ATF decided that vintage wine must be labeled with an appellation other than a country, but it does indicate that the agency believed that a vintage date should provide consumers information about harvest conditions.

European Commission Petition

The European Commission submitted a petition to TTB to amend § 4.27(a) to allow the use of a country appellation for vintage labeling. The petitioner states that the current regulation prohibiting a country appellation presents a significant difficulty for its member countries.

The petitioner notes that some of its member countries are much smaller in size than certain U.S. States, counties, and even certain American viticultural areas (AVAs). To illustrate this, it compares the areas of Malta (246 sq. km), Luxembourg (2,586 sq. km), and Austria (83,871 sq. km) with the Lodi AVA (2,230 sq. km) and the Ohio River Valley AVA (67,000 sq. km). The petitioner argues that there is no convincing rationale for a rule that allows vintage dating for a wine with an appellation of ''California'' (423,970 sq. km), but not for a wine labeled with the appellation ''Portugal'' (92,391 sq. km).

The petitioner also contrasts the vintage date rule in question with the general varietal (grape type) labeling rule contained in 27 CFR 4.23(a), under which the names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25. Because § 4.25 includes countries within the definition of an appellation of origin, a wine labeled with a varietal designation may be labeled with a country appellation. The petitioner contends that these regulatory rules are inconsistent and that it would seem more logical to apply a coherent approach and allow vintage labeling for wines labeled with a country appellation.

Finally, the petitioner asserts that the language in Article 7(1) of the 2006 agreement on trade in wine between the United States and the European Community (EC) supports the proposed change. (See *http://www.ttb.gov/agreements/eu-wine-agreement.pdf*.) TTB notes that Article 7 concerns names of origin, which include the country names of the Member States of the European Union. However, because the use of vintage dates is not specifically addressed in that provision, TTB does not consider this assertion to be particularly supportive of the proposed change.

TTB Analysis

TTB believes that the petitioner has generally presented persuasive arguments for consideration of the proposed change and that there are three reasons why the proposed change would be consistent with the FAA Act mandate to ensure that consumers have adequate information about the quality and identity of the product.

First, TTB believes that its most recent rulemaking action regarding vintage date requirements supports a reconsideration of this issue since the current proposal, like the earlier action, would liberalize the vintage date requirements in § 4.27. See T.D. TTB–45, published in the **Federal Register** (71 FR 25748) on May 2, 2006. In that earlier rulemaking, TTB liberalized the vintage date requirements by reducing the percentage of wine derived from grapes required to be harvested in the labeled calendar year from 95 percent to 85 percent for wine labeled with an appellation of origin other than a country or a viticultural area (or its foreign equivalent). The percentage remained at 95 for wines bearing a viticultural area (or its foreign equivalent) as an appellation of origin. Blending wine from different vintages could result in a more consistent product and provide a better value for consumers, according to the proponents of the earlier liberalization of vintage date labeling.

Similarly, under the current proposal, winemakers, domestic or foreign, would have the flexibility to use grapes from a wider area to produce more consistent wines for consumers while still providing the year date of harvest information to the consumer.

Second, as noted in the public comment discussion in the preamble of T.D. TTB–45, not all consumers use vintage dates as an indication of harvest conditions. That discussion quoted two commenters as stating that many consumers, particularly those who purchase moderately priced wines, use the vintage date to ensure that they are not purchasing a wine that is too old or too young for their preferences. The consumer makes this particular use of the vintage date regardless of whether the appellation of origin is a country or a smaller region within a country.

Finally, TTB believes that the use of a country appellation of origin on vintage wine would not detract from the statutory mandate to provide consumers with adequate information as to the identity and quality of the wines they purchase. Even though the use of a country appellation for a large country such as the United States or Australia might not be a useful indication of harvest conditions, it would not necessarily be misleading to consumers: purchasers of a wine labeled ''United States'' likely understand that harvest conditions are not uniform for the entire United States. On the other hand,

vintage dates for smaller appellations, such as Napa Valley or Bordeaux, will still provide useful information to consumers who do make purchases based on harvest conditions attributable to a particular vintage.

Based on the above, TTB believes the petitioner's proposal merits consideration and public comment. Accordingly, this document sets forth proposed amendments to § 4.27 to allow vintage labeling for wines labeled with a country as an appellation of origin. In addition, the proposed amendments to § 4.27 require a conforming amendment in § 4.34(b)(5) to remove the reference to the requirement that an appellation of origin for vintage wine shall be other than a country.

Public Participation

Comments Sought

TTB requests comments from interested members of the public. TTB is particularly interested in how effectively the proposed changes will serve the mandate under the FAA Act of providing consumers with adequate information about the identity and quality of wines and preventing consumer confusion. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this notice within Docket No. TTB–2011–0008 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A link to the docket is available under Notice No. 122 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 122 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB will not acknowledge receipt of comments, and will consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the ''Organization'' blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments received about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 122. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.* All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments received about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies for 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely provide optional, additional flexibility in wine labeling decisions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, part 4 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.27 [Amended]

2. Section 4.27 is amended:

a. In the second sentence of the introductory text of paragraph (a), by removing the words ''other than a country (which does not qualify for vintage labeling)''; and

b. In paragraph (a)(2), by removing the words ''country or''.

3. Section 4.34(b)(5) is amended by removing the last sentence.

Signed: September 10, 2010.

John J. Manfreda,

Administrator.

Approved: October 8, 2011.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–28645 Filed 11–3–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 165

[DOD–2009–OS–0030/RIN 0790–AI45]

Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD.

ACTION: Proposed rule.

SUMMARY: This rule updates policy, responsibilities, and procedures to conform with section 21(e)(1)(B) of Public Law 90–629, as amended, and section 9701 of title 31, United States Code (U.S.C.), for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

DATES: Comments must be received by January 3, 2012.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Claire Nelson, (703) 602–0250.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563 ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 165 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 165 does not contain a Federal mandate that may result in expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 165 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 165 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 165 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 165

Armed forces, Arms and munitions, Government contracts.

Accordingly 32 CFR part 165 is revised to read as follows:

PART 165—RECOUPMENT OF NONRECURRING COSTS (NCS) ON SALES OF U.S. ITEMS

Sec.

165.1 Purpose.
165.2 Applicability.
165.3 Definitions.
165.4 Policy.
165.5 Responsibilities.
165.6 Procedures.
165.7 Waivers (including reductions).

Authority: 31 U.S.C. 9701; 22 U.S.C. 2761(e).

§ 165.1 Purpose.

This part updates policy, responsibilities, and procedures to conform with section 21(e)(1)(B) of Public Law 90–629, as amended, and section 9701 of title 31, United States Code (U.S.C.) for calculating and assessing NC recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

§ 165.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) This part does not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

(c) The policies and procedures in this part apply to all sales on or after the effective date of this part, and supersede application thresholds and charges previously established. Previous application thresholds and charges continue to govern sales made prior to the applicable effective date of this part. Such previously established NC recoupment thresholds and charges shall be eliminated or revised in accordance with this part.

§ 165.3 Definitions.

Cost pool. Represents the total cost to be distributed across the specific number of units, normally the number of units produced plus those planned to be produced. The nonrecurring research, development, test, and evaluation cost pool comprises the costs described in definition for nonrecurring research, development, test and

evaluation costs. The nonrecurring production cost pool comprises costs described in definition for nonrecurring production costs.

Foreign military sale. A sale by the U.S. Government of defense items or defense services to a foreign government or international organization under authority of the Arms Export Control Act (AECA); section 21(e)(1)(B) of Public Law 90–629, as amended. Except as waived by Under Secretary of Defense for Policy (USD(P)), foreign military sales are the only sales subject to NC recoupment charges.

Major defense equipment. Any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than 50 million dollars or a total production cost of more than 200 million dollars. The determination of whether an item meets the major defense equipment dollar threshold for research, development, test, and evaluation shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

Model. A basic alpha-numeric designation in a weapon system series; *e.g.,* a ship hull series, equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models in the same F–5 system series.

Nonrecurring production costs. Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those NCs include DoD expenditures for preproduction engineering; special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the Defense Federal Acquisition Regulation Supplement.[1]

Nonrecurring research, development, test and evaluation costs. Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

Pro rata recovery of NCs. An equal distribution (proration) of a pool of NCs to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

Significant change in NCs recoupment charge. A significant change occurs as follows:

a. A new calculation shows a change of 30 percent of the current system NC charge.

b. The NC unit charge increases or decreases by 50,000 dollars or more.

c. Where the potential for a 5 million dollar change in recoupment exists.

The total collections may be estimated based on the projected sales quantities. A significant change occurs when potential collections increase or decrease by 5 million dollars.

''Special'' research, development, test, and evaluation and nonrecurring production costs. Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

§ 165.4 Policy.

It is DoD policy that:

(a) The NC recoupment charge shall be imposed for sales of major defense equipment only as required by an Act of Congress (Section 21(e)(1)(B) of Public Law 90–629, as amended). The USD(P) may grant a waiver to recoupment charges in accordance with § 165.7 of this part.

(b) The NC charges shall be based on the amount of the Department of Defense nonrecurring investment in an item.

§ 165.5 Responsibilities.

(a) Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO)) shall provide necessary financial management guidance.

(b) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall take appropriate action to revise the Defense Federal Acquisition Regulation Supplement in accordance with this part.

(c) The USD(P) shall:

(1) Monitor the application of this part.

(2) Review and approve NC recoupment charges and NC recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

(3) Ensure publication of a listing of items developed for or by the Department of Defense to which NC recoupment charges are applicable.

(4) USD(P) may grant a waiver to recoupment charges in accordance with § 165.7 of this part.

(d) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from USD(C)/CFO when a military equipment asset type is considered a candidate for sale.

(2) Validate and provide recommended charges to USD(P). Supporting documentation will be retained until the item has been eliminated from the NC recoupment charge listing.

(3) Review approved NC recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a NC recoupment charge and, if there is a significant change in a NC recoupment charge, provide a recommended change to USD(P).

(4) Collect charges on foreign military sales, in accordance with DoD 7000.14–R.[2]

(5) Deposit collections to accounts as prescribed by USD(C)/CFO.

(6) Request guidance from USD(P), within 90 days of issue identification, if an issue concerning a recoupment charge cannot be resolved.

§ 165.6 Procedures.

(a) The NC recoupment charge to be reimbursed shall be a pro rata recovery of NCs for the applicable major defense equipment. Recovery of NC recoupment charges shall cease upon the recovery of total DoD costs. Such charges shall be

[1] Available at *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.*

[2] Available at *http://www.defenselink.mil/comptroller/fmr/.*

based on a ''cost pool'' as defined in § 165.3 of this part. For a system that includes more than one component, a ''building block'' approach (*i.e.,* the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

(b) The NC recoupment charge shall not apply when a waiver for the specific customer/case has been approved by USD(P), in accordance with § 165.7 of this part, or when sales are financed with U.S. Government funds made available on a non-repayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When major defense equipment is sold at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of ''special'' research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added ''special'' research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special NCs exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of the ''Letter of Offer and Acceptance'' DoD 5105.38–M,[3] by the original customer, unless otherwise authorized by USD(P). The U.S. Government shall not be charged any NC recoupment charges if it adopts the features for its own use or provides equipment with such features under a U.S. grant aid or similar program.

(e) For co-production, co-development and cooperative development, or cooperative production DoD agreements, the policy in this part shall determine the allocation basis for recouping from the third-party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this part to sales to third parties by any of the parties to the agreement and for the distribution of recoupment among the parties to the agreement.

[3] Available at *http://www.dsca.osd.mil/samm/.*

§ 165.7 Waivers (including reductions).

(a) Section 21(e)(10)(B) of Public Law 90–629, as amended, requires the recoupment of a proportionate amount of NCs of major defense equipment from foreign military sales customers but Section 21(e)(2) authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance U.S. Government interests and the furtherance of mutual defense treaties between the United States and certain countries. Waivers may also be authorized if imposition of a NC recoupment charge likely would result in the loss of the sale; or, in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, result in savings to the United States on the cost of the equipment procured for the Armed Forces, through a resulting increase in the total quantity of equipment purchased from the source of the equipment causing a reduction in the unit cost of the equipment, substantially offsetting the revenue foregone by reason of waiving the charge. Any increase in a NC recoupment charge previously considered appropriate under Section 21(e)(1)(B) may be waived if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge.

(b) Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver.

(1) Blanket waiver requests should not be submitted and shall not be considered. The term ''blanket waiver'' refers to a NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

(2) A waiver request shall not be considered for a sale that was accepted without a NC recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request.

(3) Requests for waivers shall be processed expeditiously, and a decision normally made to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–28601 Filed 11–3–11; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0801; FRL–9487–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia, and West Virginia; Determinations of Attainment of the 1997 Fine Particle Standard for the Metropolitan Washington and Martinsburg-Hagerstown Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) and Martinsburg-Hagerstown, West Virginia-Maryland (WV-MD) fine particle ($PM_{2.5}$) nonattainment areas (hereafter referred to as ''Areas'') have attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 5, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0801 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email*: *fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0801, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2011–0801. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

This supplementary information section is arranged as follows:

I. What is EPA proposing?
II. What is the background of these actions?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of these actions?
V. Statutory and Executive Order Reviews

I. What is EPA proposing?

In accordance with section 179(c)(1) of the CAA, EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ nonattainment area and the Martinsburg-Hagerstown, WV-MD $PM_{2.5}$ nonattainment area have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^3$ (the ''1997 24-hour standard''). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas were designated nonattainment for the 1997 $PM_{2.5}$ NAAQS during this designations process. *See* 40 CFR part 81.309 (the District), 40 CFR 81.321 (Maryland), 40 CFR 81.347 (Virginia), and 40 CFR 81.349 (West Virginia).

The Metropolitan Washington 1997 annual $PM_{2.5}$ nonattainment area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. The Martinsburg-Hagerstown 1997 annual $PM_{2.5}$ nonattainment area consists of Washington County in Maryland and Berkley County in West Virginia.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). On November 13, 2009, EPA designated the Martinsburg-Hagerstown, WV-MD and Metropolitan Washington, DC-MD-VA areas as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that these geographical Areas were designated as nonattainment for the annual standard, but attainment for the 1997 24-hour standard (40 CFR part 81.309 for the District, 40 CFR part 81.321 for Maryland, 40 CFR part 81.347 for Virginia, and 40 CFR part 81.349 for West Virginia). Today's action, however, does not address attainment designations of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

EPA previously made clean data determinations related to the 1997 annual $PM_{2.5}$ NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). Determinations were made for the Metropolitan Washington Area on January 12, 2009 (74 FR 1146) and for the Martinsburg-Hagerstown Area on November 20, 2009 (74 FR 60199). These clean data determinations remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. The determination of attainment is not equivalent to a redesignation, and the states must still meet the statutory requirements for redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified $PM_{2.5}$ air quality monitoring data recorded in the EPA Air Quality System (AQS) database for 2007 through 2009, show that the Metropolitan Washington, DC-MD-VA and the

Martinsburg-Hagerstown, WV-MD nonattainment areas attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment date of April 5, 2010.

III. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the data in the EPA AQS database for the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas for the monitoring period from 2007 through 2009. On the basis of that review, EPA has concluded that the Areas attained the 1997 annual $PM_{2.5}$ NAAQS based on data for the 2007–2009 monitoring period.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentrations, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 $\mu g/m^3$, at all relevant monitoring sites. The values calculated in accordance with 40 CFR part 50, appendix N, are referred to as design values, and these values are used to determine if an area is attaining the $PM_{2.5}$ NAAQS. According to the $PM_{2.5}$ implementation rule, the attainment date for these Areas is April 5, 2010 and the monitoring data from 2007 through 2009 is used to determine if the Areas attained by April 5, 2010.

Table 1 shows the annual $PM_{2.5}$ design values for each monitor in the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas for the years 2007–2009. All 2007–2009 design values are below 15.0 $\mu g/m^3$. Based on these data, the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas have attained the 1997 annual $PM_{2.5}$ NAAQS by the attainment date. A detailed summary of EPA's rationale for proposing these determinations may be found in the Technical Support Document (TSD) for this action which is available on line at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2011–0801.

TABLE 1—1997 ANNUAL $PM_{2.5}$ DESIGN VALUES FOR THE METROPOLITAN WASHINGTON, DC-MD-VA AND MARTINSBURG-HAGERSTOWN, WV-MD AREAS *

State	County	Monitor ID	2007 Annual mean	2008 Annual mean	2009 Annual mean	Certified design value 2007–2009 ($\mu g/m^3$)
Metropolitan Washington, DC-VA-MD						
DC	District of Columbia	110010041	13.6	12.0	10.5	12.0
	District of Columbia	110010042	13.7	12.3	10.1	12.1
	District of Columbia	110010043	13.0	11.6	10.2	11.6
VA	Alexandria	No monitor				
	Arlington	510130020	13.8	12.0	10.1	11.9
	Fairfax	510590030	12.5	11.1	9.8	11.1
	Farifax County	510591005	13.3	11.2	9.5	11.3
	Fairfax	510595001	13.5	11.8	9.7	11.7
	Falls Church	No monitor				
	Loudoun	511071005	12.8	11.5	9.2	11.2
	Manassas	No monitor				
	Manassas Park	No monitor				
MD	Charles	No monitor				
	Frederick	No monitor				
	Montgomery	240313001	11.7	10.8	9.4	10.7
	Prince George's	240330025	14.1	12.4	10.7	12.4
	Prince George's	240330030	11.8	10.9	8.7	10.5
	Prince George's	240338003	12.4	11.2	8.8	10.8
Martinsburg-Hagerstown, WV-MD						
WV	Berkley	240430009	12.9	11.8	9.7	11.5
MD	Washington	540030003	15.6	14.2	12.1	14.0

* The data presented in Table 1 are available at *http://www.epa.gov/air/airtrends/values.html*.

IV. What are the effects of these actions?

If EPA's proposed determination that the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas have attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c) of the CAA to make a determination based on the Areas' air quality data as of the attainment date that the Areas attained the standard by that date. The action described above is a proposed determination regarding the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD Areas' attainment of the 1997 annual $PM_{2.5}$ NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Areas to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving maintenance plans for the Areas as required under section 175A of the CAA, nor would it find that the Areas have met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and take action to redesignate the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas.

EPA is soliciting comment on the action discussed in this document. These comments will be considered before EPA takes final action. Please note that if EPA receives adverse comment on either of the proposed determinations described above and if that determination may be severed from the remainder of the final agency action, EPA may adopt as final these provisions of the final agency action that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would not, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these proposed $PM_{2.5}$ NAAQS attainment determinations for the Metropolitan Washington and Martinsburg-Hagerstown Areas, do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 25, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2011–28648 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0605; FRL–9487–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pennsylvania Clean Vehicles Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision contains Pennsylvania's Clean Vehicle Program, which adopts California's second generation low emission vehicle program for light-duty vehicles (LEV II). The Clean Air Act (CAA) contains specific authority allowing any state to adopt new motor vehicle emissions standards that are identical to California's standards in lieu of applicable Federal standards. Pennsylvania has adopted a Clean Vehicle Program that incorporates by reference provisions of California's LEV II rules and specifies a transition mechanism for compliance with these clean vehicle standards in Pennsylvania. The intended effect of this action is to approve, consistent with the CAA, a control strategy that will help Pennsylvania to achieve and maintain attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: Written comments must be received on or before December 5, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0605 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0605, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2011–0605. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On May 31, 2007, the Commonwealth of Pennsylvania submitted a revision to its SIP for the Pennsylvania Clean Vehicles Program.

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I. Description of Pennsylvania's Clean Vehicle Program SIP Revision

A. Pennsylvania and the Ozone NAAQS

Under the Clean Air Act (CAA) Amendments of 1990, Pennsylvania had thirty-three counties designated nonattainment under the former 1-hour ozone NAAQS. These thirty-three counties were divided into twenty-four separate nonattainment areas, with ozone attainment deadlines varying by area. There were twelve additional Pennsylvania counties that were designated nonattainment, but that had incomplete monitoring data to classify them under the former 1-hour ozone standard. Of the twenty-four 1-hour ozone NAAQS nonattainment areas (with classifications ranging from marginal to severe-15), two were redesignated to attainment prior to the revocation of the 1-hour ozone standard on June 15, 2005, per 40 CFR 50.9(b).

On June 15, 2004, thirty-seven counties in Pennsylvania were designated nonattainment with respect to the 1997 8-hour ozone NAAQS, and classified as part of seventeen separate nonattainment areas. Of these, all but two of these areas have been redesignated to attainment and are currently maintenance areas. The exceptions are the Pittsburgh and the multi-state Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas, which continue to be nonattainment.

B. Background on Pennsylvania's Clean Vehicle Program

1. Pennsylvania's 1998 Clean Vehicle Program Rule and NLEV Opt-In SIP Revision

The Commonwealth adopted emissions control measures to address the ozone NAAQS, one of which was the NLEV program. The NLEV program was a voluntary framework agreement between EPA, vehicle manufacturers, and the states. In 1998, EPA adopted an NLEV rule to formalize this agreement whereby vehicle manufacturers would comply with a 49-state standard that was more stringent than the federal motor vehicle standards that were in effect at that time (referred to as the Tier 1 standards). NLEV took effect only after all auto manufacturers and a sufficient number of states opted to participate, upon which time EPA issued a finding that the NLEV program was in effect on March 2, 1998 (63 FR 11374).

Pennsylvania, and eight other Northeast Ozone Transport Commission (OTC) states that opted to participate in the NLEV program, subsequently formalized their participation in the NLEV program by submitting NLEV program ''opt-in'' SIPs to EPA.

Pennsylvania adopted the NLEV program as part of its Clean Vehicle Program rule on December 5, 1998 (28 Pa.B. 5873). Under Pennsylvania's December 1998 Clean Vehicle Program rule, the Commonwealth adopted California's Low Emission Vehicle Program (California LEV) under the authority of section 177 of the CAA. This CAA provision allows states to adopt vehicle emissions standards identical to California's, provided EPA has granted California a waiver for those standards and that the state adopting California's standards provides at least two years lead time before the model year the standards take effect. Pennsylvania's Clean Vehicle Program rule incorporated by reference California's first generation Low Emission Vehicle (LEV) program, but allowed NLEV to serve as a compliance alternative to the California LEV program.

Pennsylvania's December 1998 Clean Vehicle Program rule incorporated by reference California's first generation LEV standards (adopted by California in 1991, and also known as LEV I standards) for passenger cars and light trucks, but did not incorporate by reference California's Zero Emission Vehicle (ZEV) provisions or emissions control warranty systems statement provisions.

Pennsylvania submitted its Clean Vehicle Program (adopted in 1998) as an NLEV opt-in SIP submitted to EPA on January 8, 1999. EPA had granted a Federal preemption waiver to California for its LEV I standards on January 13, 1993 (58 FR 4166). EPA issued a direct final rule to approve that Pennsylvania Clean Vehicle Program SIP revision on December 28, 1999 (64 FR 72564).

The NLEV program, under the framework established in EPA's NLEV final rule, extended until model year 2006, unless EPA issued more stringent federal standards under the CAA. Since EPA issued more stringent Tier 2 Federal vehicle emission standards on February 10, 2000 (65 FR 6698), which were in effect beginning with the 2004 model year. Per the NLEV framework, Federal Tier 2 standards superseded NLEV standards in model year 2004—for those states that had not opted into the California LEV program under the authority of section 177 of the CAA. California also revised its LEV Program rules in 1996, with a second generation program referred to as LEV II, effective on model year 2004 and newer California cars. EPA granted a Federal preemption waiver for California's LEV II program on April 22, 2003 (68 FR 19811).

2. Pennsylvania's 2007 Clean Vehicle Program SIP Revision

Pennsylvania adopted its revised Clean Vehicles Program rule and published it as a final rule in December 9, 2006 edition of the *Pennsylvania Bulletin* (36 Pa.B. 7424).

On May 31, 2007, Pennsylvania submitted a SIP revision to EPA seeking Federal approval of its revised Clean Vehicle Program.

Pennsylvania's revised Clean Vehicle Program rule was meant to formalize the cessation of the NLEV program, to delay

the start date for the Pennsylvania Clean Vehicle Program from model year 2006 to model year 2008, to make changes to the Clean Vehicle Program to reflect post-1998 changes made by California to their program (since Pennsylvania first adopted California's LEV program by reference), and to specify a 3-year early credit earning period within which vehicle manufacturers could comply with the program's fleet average non-methane organic gases (NMOG) requirements.

Specifically, Pennsylvania's revised Clean Vehicle Program final rule made the following changes:

(a) Amended section 126.412(a) to postpone the date by which subject Pennsylvania vehicles must comply with the California Air Resources Board (CARB) certification to model year 2008);

(b) Amended section 126.412(b) to change the first model year for which compliance by manufacturers with the NMOG fleetwide average is required to model year 2008;

(c) Removed reference in section 126.412(d) to continue the exclusion of the California ZEV program from the prior Pennsylvania Clean Vehicles Program, since CARB moved those ZEV provisions from the section of California's rule previously referenced therein;

(d) Deleted provisions in chapter 126 related to the cessation of the NLEV program;

(e) Added and removed several definitions in chapter 121 to reference the California LEV program rather than the NLEV program, due to cessation of the NLEV program;

(f) Revised section 126.411(a) to include vehicles titled in the Commonwealth, rather than those offered for sale, lease, import, rented, delivered, purchased, acquired, or registered in the Commonwealth.

(g) Revised section 126.411 to update cross-references to reflect changes made by California to its LEV rule with respect to California's ZEV program, in order to continue to exclude California's ZEV program from Pennsylvania's Clean Vehicle Program;

(h) Revised section 126.412(d) to specify a 3-year early-credit earning period (between model year 2008 to 2010) within which manufacturers were to comply with the NMOG fleet average;

(i) Revised section 126.413(a)(2) to allow a vehicle dealer to transfer a non-CARB certified new vehicle as long as the vehicle will not ultimately be sold in Pennsylvania as a new vehicle;

(j) Revised section 126.413(a)(6) to add clarification language regarding applicability (in accordance with the rules of the International Registration Plan) to vehicles ''held for daily lease or rental to the general public which are registered and principally operated outside the Commonwealth;''

(k) Revised section 126.413(a)(11) to conform the model year cutoff for compliance with the program to the model year 2008 program start date for CARB certification and NMOG fleet average requirements;

(l) Added paragraph 13 to section 126.413(a) to exempt vehicles transferred for the purpose of salvage, to allow salvage operations in Pennsylvania to accept salvaged new motor vehicles that do not have CARB certification;

(m) Revised section 126.413(b) to require a person seeking to title or register an exempted vehicle to provide satisfactory evidence that the exemption is applicable;

(n) Revised sections 126.421(b), 126.422(b), 126.423(b), 126.424(b), and 126.425(b), with respect to new motor vehicle testing provisions, to require vehicle manufacturers to provide CARB testing determinations and findings to the Pennsylvania Department of Environmental Protection (PA DEP) upon request;

(o) Revised section 126.431(b) to allow a vehicle manufacturer to submit to the PA DEP (when requested in writing) copies of the reports the manufacturer submitted to CARB for purposes of compliance with respect to this subsection of Pennsylvania's rule;

(p) Added paragraph (c) to section 126.431 to clarify that any voluntary or influenced emissions-related recall campaign initiated by a vehicle manufacturer under California's LEV program shall extend to vehicles covered by the Pennsylvania Clean Vehicle Program, except where the manufacturer demonstrates to the satisfaction of PA DEP in writing (within 30 days of CARB's approval of the campaign) that said campaign is not applicable to vehicles sold in Pennsylvania;

(q) Added paragraph (d) to section 126.432 providing that recalls prompted by a CARB order or an enforcement action taken by CARB to correct noncompliance by a vehicle manufacturer shall extend to vehicles covered by the Pennsylvania Clean Vehicles Program, except where the manufacturer demonstrates to the satisfaction of PA DEP in writing (within 30 days of CARB's approval of the campaign) that said campaign is not applicable to vehicles sold in Pennsylvania;

(r) Revised section 126.432(a), changing the start date (to model year 2008) when each vehicle manufacturer must begin to submit to the PA DEP an annual report on vehicle deliveries of each ''test group'' for the latest model year;

(s) Revised section 126.441 restating the prohibition on new vehicle dealers from selling, offering for sale or lease, or delivering a vehicle subject to Pennsylvania's program unless it has received the requisite CARB certification; and

(t) Added section 126.451 requiring the PA DEP to monitor CARB rulemaking actions on the California LEV program, to submit comments on such CARB rulemakings, and to apprise the Pennsylvania Environmental Quality Board of proposed changes to California's LEV program.

C. What are the relevant EPA and CAA requirements?

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA may grant a waiver of the section 209(a) prohibition to any state that adopted its own vehicle emission standards prior to March 30, 1966. As California is the only state to meet this test, California is thereby granted authority under this section to adopt its own motor vehicle emissions standards. Section 209(b) of the CAA requires California to show that its newly adopted standards will be ''* * * in the aggregate, at least as protective of public health and welfare as applicable Federal standards. * * *'' Section 209(b) further provides that EPA will grant a waiver to California for such standards unless it finds that: (1) The State's determination is ''arbitrary and capricious,'' (2) the State ''does not need such State standards to meet compelling and extraordinary conditions,'' or (3) the State's standards and accompanying enforcement procedures are ''not consistent'' with CAA section 202(a).

Section 177 of the CAA allows other states to adopt and enforce California's standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition, section 177 of the CAA requires that a state choosing to adopt California standards must do so at least two years prior to the commencement of the model year to which the standards will apply. Pennsylvania has met the requirements of section 177.

D. What is the California LEV II program and how does it relate to Pennsylvania's Clean Vehicle Program?

1. California's Low Emission Vehicle Program

CARB adopted the first generation LEV I regulations in 1990, which were effective through the 2003 model year. CARB adopted California's second generation LEV II regulations in August 1999. On February 10, 2000, EPA adopted its Tier 2 Federal motor vehicle standards rule (65 FR 6698). In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811).

In 2006, CARB adopted technical amendments to its LEV II program that amend the evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These technical amendments align each of California's test procedures and label requirements with its Federal counterpart, in an effort to streamline and harmonize the California and Federal programs and to reduce manufacturer testing burdens and increase in-use compliance. On July 30, 2010, EPA published a notice in the **Federal Register** confirming that CARB's 2006 technical amendments are within-the-scope of existing waivers of preemption for CARB's LEV II program.

Under California's LEV II program, each vehicle manufacturer must show that their overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits become progressively lower each model year. The LEV II program requires auto manufactures to include a ''smog index'' label on each vehicle sold, which is intended to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

In addition to the LEV II requirements, California requires that minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer to be ZEVs, referred to as a ZEV mandate. Pennsylvania did not incorporate California's ZEV provisions into the Pennsylvania Clean Vehicle Program.

EPA concluded in its OTC LEV Program for the Northeast Transport Region final rule, published in the January 24, 1995 **Federal Register** (60 FR 4712), that states adopting a CAA section 177 program need not adopt California's ZEV requirements to comply with the CAA requirements under section 177 for identical standards. Section 177 of the CAA does not require adoption of all California LEV program standards. However, if a state adopts California vehicle standards, those standards must be identical to California standards for which California has been granted a waiver of preemption by EPA.

2. California and Federal Greenhouse Gas Standards

On October 15, 2005, California amended its rules to add regulatory provisions for greenhouse gas related emissions from new cars and trucks. Specifically, California's greenhouse gas standards require manufacturers to comply with fleet average emission standards for emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride on new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in California. California approved regulations to reduce greenhouse gas emissions from passenger vehicles in September 2004, effective beginning with model year 2009. CARB adopted a new approach, combining for the first time the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of standards. After initially denying California's request for a waiver of CAA preemption, EPA later granted California the authority to implement greenhouse gas emission reduction standards in a waiver published in the July 8, 2009 edition of the **Federal Register** (74 FR 32744).

EPA and the National Highway Traffic Safety Administration (NHTSA) subsequently issued a joint final rule in the May 7, 2010 **Federal Register** (75 FR 25324) establishing a national program for greenhouse gas standards and improved fuel economy for model year 2012 to 2016 light-duty vehicles, coupled with improved fuel economy. This joint rule stemmed from a National Fuel Economy Policy announced by President Obama on May 19, 2009. The joint rule represents a harmonized approach, allowing automobile manufacturers to build a single light-duty national fleet.

On September 24, 2009, CARB adopted amendments to its passenger vehicles greenhouse gas standards (for model year 2009 through 2016 vehicles) to harmonize Federal and California greenhouse gas rules and to provide vehicle manufacturers with new compliance flexibility. CARB will now also allow California and other states that have adopted California's greenhouse gas standard to pool car sales for purposes of compliance, rather than on a state-by-state basis for compliance. This was the final step in an agreement between the EPA and NHTSA, California, and the automobile manufacturers, fulfilling President Obama's May 19, 2009 announcement.

Pennsylvania's Clean Vehicle Program rule adopts by reference CARB's greenhouse light-duty vehicle emissions standard provisions set forth in Title 13 California Code of Regulations (CCR), Division 3, Chapter 1. Under Pennsylvania's Clean Vehicle Rule, a manufacturer or dealer is deemed compliant if a vehicle offered for sale in Pennsylvania is CARB-certified and is properly labeled as such.

E. What is the history and current content of the Pennsylvania Clean Vehicle Program?

On December 5, 1998 (28 Pa.B. 5873), Pennsylvania adopted the Pennsylvania Clean Vehicles Program, which incorporated California's LEV program by reference. The December 1998 rule adopted NLEV as a compliance alternative to the Pennsylvania Clean Vehicles Program (for the duration of the NLEV program).

The NLEV program was a voluntary agreement between EPA, vehicle manufacturers, and the states to introduce vehicles that met emission standards that were more stringent than the Federal Tier 1 standards in effect at the time. The NLEV program only took effect after all auto manufacturers and a sufficient number of states voluntarily ''opted-in'' to the program. Once the opt-ins were complete, EPA made a NLEV in-effect finding on March 2, 1998 (63 FR 11374). Participating Northeast states then submitted SIP revisions to ensure continuation of the program. Pennsylvania submitted its NLEV SIP revision on January 8, 1999. EPA issued a direct final rule to approve Pennsylvania's NLEV program (with the Pennsylvania Clean Vehicles Program as a backstop to NLEV) on December 28, 1999 (64 FR 72564).

On December 9, 2006, Pennsylvania amended its Clean Vehicles Program to be identical to update its rule to reflect California's LEV II program; to postpone compliance with California LEV II provisions of the rule from model year 2006 to model year 2008; to make clarifications and updates to

Pennsylvania's Clean Vehicles Program; and to specify a transition mechanism to the California LEV provisions. Pennsylvania has adopted California's LEV II program by incorporating by reference portions of the California LEV II regulations (*i.e.,* Title 13 California Code of Regulations, Division 3, Chapters 1 and 2) into the Pennsylvania Code.

Pennsylvania submitted a SIP revision to EPA requesting that EPA approve Pennsylvania's Clean Vehicle Program regulations as part of the Pennsylvania SIP. EPA's approval would make the program Federally enforceable through the SIP.

II. Proposed EPA Action

EPA is proposing to approve the Pennsylvania Clean Vehicle Program SIP revision, which was submitted on May 31, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR section 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements 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 proposed rule to approve the Pennsylvania Clean Vehicle Program as part of the Pennsylvania SIP does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 25, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–28653 Filed 11–3–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0154; FRL–9487–1]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Fees for Permits and Administrative Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an approval of revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico Albuquerque/Bernalillo County, which relate to fee requirement regulations. The repeal and replace and SIP revisions proposed today would address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. EPA finds that these rules and revisions comply with applicable provisions of the CAA and is proposing to approve them into the SIP. This action is being proposed under section 110 of the Act.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2007–0154 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *Email:* Ms. Ashley Mohr at *mohr.ashley@epa.gov.*
- *Fax:* Ms. Ashley Mohr, Air Permits Section (6PD–R), at fax number (214) 665–6762.
- *Mail:* Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0154. 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 that 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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The New Mexico submittals are also available for public inspection at the County Air Agency listed below during official business hours by appointment: Air Quality Division, Environmental Health Department, 3rd Floor, Suite 3023, One Civic Plaza NW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7289; fax number (214) 665–6762; email address *mohr.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document the following terms have the meanings described below:

- ''We'', ''us'' and ''our'' refer to EPA.
- ''Act'' and ''CAA'' mean the Clean Air Act.
- ''40 CFR'' means Title 40 of the Code of Federal Regulations—Protection of the Environment.
- ''SIP'' means the State Implementation Plan established under section 110 of the Act.
- ''NSR'' means new source review.
- ''TSD'' means the Technical Support Document for this action.
- ''NAAQS'' means any national ambient air quality standard established under 40 CFR part 50.

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I. The State's Submittals

A. What action is EPA proposing?

This notice provides a summary of our evaluation of the Governor of New Mexico's submissions regarding Part 2 fees for the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP). The Albuquerque/Bernalillo County AQCB is the federally delegated air quality authority for Albuquerque and Bernalillo County. The Albuquerque/Bernalillo County AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards. The Albuquerque/Bernalillo County AQCB is responsible for the portion of the New Mexico SIP that applies in Bernalillo County, which encompasses the City of Albuquerque.

We provide the reasoning comprising our evaluation in general terms in this proposed rulemaking but provide a more detailed evaluation and analysis in the Technical Support Document (TSD) that has been prepared for this proposed rulemaking. We are proposing to approve the repeal and replace rule submitted on May 24, 2011, and SIP revisions submitted by the Governor of New Mexico to EPA on September 4, 2004, February 2, 2007, and December 10, 2010. We have evaluated these SIP submissions for consistency with applicable provisions of section 110(a)(2) of the CAA relating to fees. We have also reviewed the submitted rules and revisions for legal sufficiency pursuant to section 110(l) of the CAA.

In the course of this review, we identified that on April 10, 1980, EPA approved revisions to Section 21, Fees into the Albuquerque/Bernalillo County, New Mexico SIP (45 FR 24468). Since EPA's approval, the Governor of New Mexico had not previously submitted any revisions to this Section for EPA review and approval, although the Section was eventually repealed and replaced by the Albuquerque/Bernalillo County AQCB effective July 1, 2001. The repeal and replace rule was submitted to EPA on May 24, 2011 (hereafter referred to as ''2001 repeal and replace'') as a historical rule amendment and repeals and replaces the corresponding previously approved April 10, 1980 SIP for fees.

The 2001 repeal and replace was recodified and adopted into Albuquerque/Bernalillo County rules three times: first to Chapter 74, Article 2, Part 2, Fees under the Albuquerque/Bernalillo County AQCB regulations, and recodified again to 20 NMAC 11.02, Permit Fees of the New Mexico Administrative Code (hereinafter 20.11.2 NMAC) before being submitted for EPA review and approval as recodified 20.11.2 NMAC, Permit Fees on May 24, 2011. New Mexico submitted to EPA for review revisions to 20.11.2 NMAC on September 7, 2004 and February 2, 2007, and another submittal of revisions on December 15, 2010. The September 7, 2004, February 2, 2007, and December 15, 2010 rule revisions have been determined to be significantly different from the EPA approved April 10, 1980 SIP revisions, as these previously approved revisions reference only fees associated with specific construction activities under minor new source review (NSR) permitting. Therefore, a direct comparison to the approved

Albuquerque/Bernalillo County, New Mexico SIP is impractical, and the technical review of the May 24, 2011 submittal of the 2001 repeal and replace will be used as the baseline SIP for evaluation of the September 7, 2004, February 2, 2007, and December 15, 2010 revisions.

A technical analysis of the May 24, 2011 submittal of the 2001 repeal and replace, and the September 7, 2004, February 2, 2007, December 15, 2010 SIP rule revisions has found that the baseline repeal and replace rule, and the revisions to this rule are consistent with applicable provisions of section 110(a)(2) of the CAA. Therefore, EPA is proposing an approval of the fees SIP rules submitted on May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010.

B. Which rules did the state submit?

1. May 24, 2011 Submittal of the 2001 Repeal and Replace Revisions

The Governor of New Mexico submitted on May 24, 2011 a 2001 repeal and replace of all previous versions of Section 21 and part 2 fees, including the prior 1980 EPA approved SIP relating to fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Repeal and replace of the following sections:* 20.11.2.1 NMAC, Issuing Agency; 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.4 NMAC, Duration; 20.11.2.5 NMAC, Effective Date; 20.11.2.6 NMAC, Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.8 NMAC, Savings Clause; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule.

2. September 7, 2004 SIP Revision Submittal

The Governor of New Mexico submitted a revision on September 7, 2004 to 20.11.2 NMAC, Fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Revisions to the following sections:* 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.6 NMAC, Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule.

3. February 2, 2007 SIP Revision Submittal

The Governor of New Mexico submitted a revision to 20.11.2 NMAC, Fees on February 2, 2007 under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Revisions to the following sections:* 20.11.2.6 NMAC, Objective; 20.11.2.18 NMAC, Fee Schedule.

4. December 15, 2010 SIP Revision Submittal

The Governor of New Mexico submitted to EPA revisions on December 15, 2010 to sections of Part 2 Fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Additions of the following sections:* 20.11.2.19 NMAC, Application Review Fees for Modification of Existing Permits; 20.11.2.20 NMAC, Administrative and Technical Revision Application Fees, Portable Stationary Source Relocation Fees; 20.11.2.21 NMAC, Annual Emission Fees and Rates for Stationary Sources; 20.11.2.22 NMAC, Miscellaneous Fees, Administrative Fees, Variance Request Fees, Board Hearing Filing Fees.
- *Revisions to the following sections:* 20.11.2.1 NMAC, Issuing Agency; 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.6 NMAC, Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.8 NMAC, Savings Clause; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule;

Table 1 summarizes the changes that are in the 2001 repeal and replace submitted May 24, 2011, and the three SIP revisions submitted September 7, 2004, February 2, 2007, and December 15, 2010. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section II of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Section	Title	Submittal dates	Description of change	Proposed action
20.11.2 NMAC—Fees				
Issuing Agency				
20.11.2.1 NMAC	Issuing Agency	5/24/2011	Repeal and replace: Contact information for issuing agency.	Approval.
		12/15/2010	Revised section to update contact information for issuing agency.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
		Scope		
20.11.2.2 NMAC	Scope	5/24/2011	Repeal and replace: Scope of rule applicability, exemption, and variance.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (A). [1]
		9/7/2004 12/15/2010	Revised applicability to persons consistent with specific fee updates.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (A).
		Statutory Authority		
20.11.2.3 NMAC	Statutory Authority	5/14/2011	Repeal and replace: Fees provisions adopted pursuant to state statutory authority.	Approval.
		9/7/2004 12/15/2010	Revised section to include recodification and additional references to statutory authority.	Approval.
		Duration		
20.11.2.4 NMAC	Duration	5/24/2011	Repeal and replace: Rules to be of permanent duration.	Approval.
		Effective Date		
20.11.2.5 NMAC	Effective Date	5/24/2011	Repeal and replace: Rules to be effective July 1, 2001.	Approval.
		Objective		
20.11.2.6 NMAC	Objective	5/24/2011	Repeal and replace: Establishes objectives for fees rules.	Approval.
		9/7/2004 2/2/2007 12/15/2010	Revises section to remove and add objectives consistent with specific fee updates.	Approval.
		Definitions		
20.11.2.7 NMAC	Definitions	5/24/2011	Repeal and Replace: Provides definitions for the following as used in the fees rules: ''Allowable Emission Rate'', ''Emissions Unit''. ''Fee Pollutant'', ''Fugitive Emissions''. ''Major Source'', ''Potential to Emit'' or ''PTE'', ''Qualified Small Business'', ''Regulated Air Pollutant'', ''Stationary Source with De Minimis Emissions''.	Approval.
		9/7/2004	Section revised to include recodification and other non substantive changes. Definitions added:''High Impact Source'', ''Low impact Source'', ''Moderate impact Source'', ''No Impact Source'', ''Efficiency Control Factor''.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
		12/15/2010	Section revised to update definitions, correct references, and remove definitions no longer needed. Definitions added: ''Administrative Revision'', ''Consumer price index all urban consumers'' or ''CPI–U'', ''Proposed Allowable Emission Rate'', ''Technical Permit Revision'', ''Submittal''.	Approval.
Savings Clause				
20.11.2.8 NMAC	Savings Clause	5/24/2011	Repeal and replace: Any amendment to fees rules shall not affect actions pending for a violation.	Approval.
		12/15/2010	Section revised non-substantively.	Approval.
Severability				
20.11.2.9 NMAC	Severability	5/24/2011	Repeal and replace: Unconstitutional and invalidated portions of the fees rules will not invalidate remaining provisions.	Approval.
		9/7/2004 12/15/2010	Section revised non-substantively.	Approval.
Documents				
20.11.2.10 NMAC	Documents	5/24/2011	Repeal and replace: Documents cited and incorporated may be viewed at physical location.	Approval.
		9/7/2004 12/15/2010	Section revised non-substantively.	Approval.
General Provisions				
20.11.2.11 NMAC	General Provisions	5/24/2011	Repeal and replace: General provisions for payment of fees with certain permit or source document submittals.	Approval.
		9/7/2004	Section revised non-substantively.	Approval.
		12/15/2010	Section revised non-substantively.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B).
Authority-To-Construct Permit Fees; Fee Calculations and Procedures				
20.11.2.12 NMAC	Authority-to-Construct Permit Fees; Fee Calculations and Procedures.	5/24/2011	Repeal and replace: Fee provisions, calculations, and procedures for minor and area source permits, pre-construction permits, permit modifications.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B).

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
		9/7/2004	Section revised non-substantively.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B).
		12/15/2010	Section revised to add reference to source registration in addition to permits, and to base fee amounts on allowable emission rates instead of PTE. Other revisions to update section consistent with updates to other subsections of the rule.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B).
Annual Emission Fees; Fee Calculations and Procedures				
20.11.2.13 NMAC	Annual Emission Fees; Fee Calculations and Procedures.	5/24/2011	Repeal and replace: Annual emission fees, calculations, and procedures for sources, including permit modifications.	Approval.
		9/7/2004	Section revised non-substantively.	Approval.
		12/15/2010	Section revised regarding owner/operator challenge or correction request of annual fee amounts, addition of methodology for fugitive dust control permits, revised annual emission fees to be based on allowable emission rate rather than PTE, and revised to require annual emission rated be updated each year based on the consumer price index.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsections (A) and (B).
Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures				
20.11.2.15 NMAC	Filing and inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures.	5/24/2011	Repeal and replace: Filing and inspection fee requirements for fugitive dust control permits.	Approval.
		9/7/2004 12/15/2010	Section revised to add specific filing and review fee amounts, change flat fee to tiered fee schedule based on acreage, add and update calculation methodology used to calculate non-programmatic dust control permit inspection fees, require fugitive dust rates be updated yearly based on the consumer price index, and require fugitive dust control construction permit fees for certain demolition activities.	Approval.
Fee Errors, Corrections and Refunds				
20.11.2.16 NMAC	Fee Errors, Corrections and Refunds.	5/24/2011	Repeal and replace: Procedure and process for review of fees due at time of application; procedure for persons requesting correction or challenging invoiced fees.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
		9/7/2004	Revised section to exclude section's applicability to fugitive dust control permits.	Approval.
		12/15/2010	Revises section for review of correction request and various procedure aspects, makes fee for fugitive dust control construct permit application non-refundable.	Approval.
Failure To Pay				
20.11.2.17 NMAC	Failure to Pay	5/24/2011	Repeal and replace: Violation and penalty for failure to pay fees, and stating invoice incorrect not a defense.	Approval.
		9/7/2004	Section revised non-substantively.	Approval.
		12/15/2010	Section revised to include reference to appeal procedures for incorrect-fee challenges.	Approval.
Fee Schedule				
20.11.2.18 NMAC	Fee Schedule	5/24/2011	Repeal and replace: Fee schedule for annual emission fees, review fees, permit modification fees, and administrative fees.	Approval.
		9/7/2004 12/15/2010	Section revised to delete fees other than review fees consistent with updates in other sections of the rule, include a general review fee, require application review fee rates be updated each year based on the consumer price index, increase fees for each tier in fee schedule, and change emission rates basis from PTE to allowable emission rates.	Approval.
Application Review Fees for Modification of Existing Permits				
20.11.2.19 NMAC	Application Review Fees for Modification of Existing Permits.	12/15/2010	New section specifying application review fees for modifications to an existing stationary source.	Approval.
Administrative and Technical Revision Application Fees; Portable Stationary Source Relocation Fees				
20.11.2.20 NMAC	Administrative and Technical Revision Application Fees; Portable Stationary Source Relocation Fees.	12/15/2010	New section specifying administrative and technical revision fees for modifications to an existing permit, and specifies portables stationary source relocation fees for modifications to an existing permit.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
Annual Emissions Fees and Rates for Stationary Sources				
20.11.2.21 NMAC	Annual Emissions Fees and Rates for Stationary Sources.	12/15/2010	New section specifying fees for annual emission source registrations, annual emission fees for permitted sources, and annual emission fees for emergency generators and gasoline service and fleet stations.	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B).
Miscellaneous Fees—Administrative Fees; Variance Request Fees; Board Hearing Filing Fees				
20.11.2.22	Miscellaneous Fees—Administrative Fees; Variance Request Fees; Board Hearing Filing Fees.	12/15/2010	New section specifying administrative fees, variance request fees, and board hearing filing fees.	Approval.

[1] The 2001 repeal and replace submitted May 24, 2011, and the September 7, 2004, February 2, 2007, and December 15, 2010 Fees SIP submittals reference Operating Permits (20.11.42 NMAC) related to the Title V program. The Title V program is subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. CAA Section 110(a)(2) falls under Title I of the CAA. Any evaluation of the Title V program and related fees must be done pursuant to CAA section 502 through 507 and 40 CFR part 70 and we are not evaluating the fees provisions related to the Title V program as part of this action regarding the SIP. The scope of this action is limited to determining whether the City of Albuquerque/Bernalillo County AQCB fees SIP submittals meet the fees requirements of CAA 110(a)(2). Refer to the TSD for additional information regarding the specific portions of subsections relating to Title V we are not taking action on in this rulemaking.

II. EPA's Evaluation

A. What are the requirements for EPA's review of a fees SIP submittal?

The Albuquerque/Bernalillo County AQCB adopted and the Governor of New Mexico submitted the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010, SIP revisions pursuant to the applicable provisions of section 110(a)(2) of the CAA related to fees. These federal requirements include permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. In addition to the applicable fee related requirements of section 110(a)(2), EPA's evaluation must consider section 110(l) of the CAA. Section 110(l) of the CAA states that EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

B. Do the submitted repeal and replace revisions and subsequent SIP revisions meet the CAA requirements?

Based on EPA's evaluation of the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010 revisions, we propose to find these submitted rules and revisions meet the applicable fee related requirements of section 110(a)(2) of the CAA. These rules and revisions are summarized in Table 1 of this proposed rulemaking, and are analyzed with more detail in the TSD. The rules and revisions contained within the Governor of New Mexico's submittals demonstrate compliance with section 110(a)(2) of the Act. For example, the Albuquerque/Bernalillo County EHD assesses fees when an owner or operator applies for an air permit, air permit renewal, or air permit amendment. Additionally, annual fees are assessed for sources with existing source registrations or permits. These fees are used to cover the permit review and permit issuance costs. The Department also assesses fees to partially offset the administrative cost of variance procedures and permit-related administrative hearings before the board; assesses fees to implement the requirements of Section 507 of the Clean Air Act by establishing adequate funding for small business stationary source technical and environmental compliance assistance program; and assesses fees to cover administrative expenses incurred by the Department in implementing and enforcing the provisions of the NMAC, the joint air quality control board ordinances, and the Albuquerque/Bernalillo County AQCB regulations. The fees assessed by the Department under 20.11.2 NMAC are also necessary to adequately implement the Parts 20, 41, 60, and 61 permitting programs for fugitive dust control and new construction and modifications to NSR/PSD in attainment and non-attainment areas. Furthermore, the revision to subpart 20.11.2.18 NMAC, specifically paragraph K, establishes replacement of a $1,000 fee for filing fees for hearings with a lower flat fee of $125, including an option for the Department to lower that fee due to economic burden on the petitioner. Reduction of this kind of fee encourages more public involvement, meeting federal requirements for hearing processes. These examples, and the fee rules and revisions further described and evaluated in this proposal and TSD, evince a basis for EPA's proposed approval that the submittals meet the requirements of 110(a)(2).

The fee assessment provisions in 20.11.2 NMAC and submitted to EPA are a portion of the regulatory scheme regulating the Albuquerque/Bernalillo County New Source Review Permitting Program, and provide for permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit under the Permitting Program. EPA has previously reviewed the Albuquerque/Bernalillo County AQCB regulations for the Nonattainment New Source Review Program, Prevention of Significant Deterioration Permitting, and Minor NSR program, and has approved these programs as being consistent with the federal requirements. EPA approved revisions to the Nonattainment New Source Review Program and to the Prevention of Significant Deterioration Program on April 26, 2007 (72 FR 20728). EPA approved substantive revisions to the Minor NSR program on March 16, 1994 (59 FR 12172). Based on our evaluation of these fee assessment rules and revisions both described in this notice and TSD, EPA finds they meet the fee related requirements of section 110(a)(2) to in part cover costs for these

previously approved programs, and proposes to approve the rules and revisions as explained in Table 1.

Our evaluation of the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010 revisions also demonstrates compliance with section 110(l) of the CAA, and further provides basis for proposal of approval of these rules and revisions. Pursuant to section 110(l) of the CAA, the 2001 repeal and replace provides for a broader breadth, application, and stringency of requirements related to fees than the previously approved April 10, 1980 SIP. Based on EPA's evaluation of these fee assessment provisions submitted, EPA proposes to find the submitted repeal and replace of, and revisions to, 20.11.2 NMAC establishing fee requirements for permits is consistent with section 110(a)(2) of the CAA.

III. Proposed Action

EPA is proposing an approval of the 2001 repeal and replace SIP revisions submitted by New Mexico on May 24, 2011, and SIP revisions submitted on September 7, 2004, February 2, 2007, and December 15, 2010 pursuant to section 110(a)(2) requirements of the CAA relating to fees. EPA is proposing these actions in accordance with section 110 of the Act.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 27, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–28635 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–FHC–2011–0046; 94310–1337–0000–D2]

RIN 1018–AX51

Endangered and Threatened Wildlife and Plants; Termination of the Southern Sea Otter Translocation Program; Revised Draft Supplemental Environmental Impact Statement on the Translocation of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a proposed rule and notice of availability of a revised draft supplemental environmental impact statement on the translocation of southern sea otters (revised draft SEIS) in the **Federal Register** on August 26, 2011. The U.S. Environmental Protection Agency concurrently published a notice of availability of the revised draft SEIS. The 60-day comment period for our notice ended on October 24, 2011. This notice announces a 15-day reopening of the comment period.

DATES: We will consider comments on the proposed rule, associated revised draft SEIS (which includes a revised draft translocation program evaluation as Appendix C), and initial regulatory flexibility analysis (IRFA) that are received or postmarked on or before November 21, 2011.

ADDRESSES: *Submitting Comments:* You may submit written comments on the proposed rule, the revised draft SEIS, and the IRFA by one of the following methods:

- *Electronically:* Go to the *Federal eRulemaking Portal: http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R8–FHC–2011–0046, which is the docket number for this rulemaking. Then click on the Search button. On the resultant screen, you may submit a comment by clicking on ''Submit a Comment.''
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R8–FHC–2011–0046; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all information received on

http://www.regulations.gov. This generally means that we will post any personal information you provide us (see the Public Comments section in our original proposed rule of August 26, 2011, for more details).

Obtaining Copies of Documents: The proposed rule, revised draft SEIS, and IFRA are available at the following places:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R8–FHC–2011–0046, which is the docket number for this rulemaking. Then click on the Search button. On the resultant screen, you may view supporting documents by clicking on the ''Open Docket Folder'' icon.
- *Agency Web site:* You can view supporting documents on our Web site at *http://www.fws.gov/ventura/.*
- *Our office:* You can make an appointment, during normal business hours, to view the documents, comments, and materials in person at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003–7726; by telephone (805) 644–1766); by facsimile (805/644–3958); or by visiting our Web site at *http://www.fws.gov/ventura/.*

FOR FURTHER INFORMATION CONTACT: Lilian Carswell, at the above Ventura street address, by telephone (805) 644–1766), by facsimile (805) 644–3958), or by electronic mail (*Lilian_Carswell@fws.gov*). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We are responding to a request by the California Sea Urchin Commission, dated September 15, 2011, for a 45-day extension to the comment period on the proposed rule and revised draft SEIS. Court settlement deadlines prevent us from granting the full 45-day extension; however, we are reopening the comment period for 15 days. All comments must be received or postmarked on or before the date shown in **DATES**. Comments previously submitted on the proposed rule or revised draft SEIS need not be resubmitted and will be fully considered in preparation of the final rule. Your comments are part of the public record, and we will fully consider them in the preparation of our final determination.

Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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: October 21, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–28065 Filed 11–3–11; 8:45 am]

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Notices

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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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0017]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'') or the ''Bureau'', gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than December 5, 2011. The new system of records will be effective December 14, 2011 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0017, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G St. NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements federal consumer financial law, and, among other powers, has authority to protect consumers from unfair, deceptive, and abusive practices when obtaining consumer financial products or services. The CFPB will maintain the records covered by this notice.

The new systems of records described in this notice, CFPB.008—Transit Subsidy Program, will collect information from employees applying for or holding parking permits, or applying for or participating in transportation subsidies to be used for public transportation, and vanpools to and from the workplace. Information will be used to determine employee eligibility for transit subsidies and to disburse non-monetary subsidies to eligible employees. The new system implements measures that reduce traffic congestion and air pollution and expand commuting alternatives for employees. A description of the new system of records follows this Notice.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.008—Transit Subsidy Program is published in its entirety below.

Dated: October 31, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.008

SYSTEM NAME:

CFPB Transit Subsidy Program.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CFPB employees applying for or who participate in the public transportation transit subsidy program and vanpool transit subsidies to and from the workplace, and applicants for or holders of parking permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system will contain the Transit Subsidy Program application containing the participant or applicant's name, home address, office address, office telephone number, grade, duty hours, unique numeric identifier chosen by the individual, or the last four of the Social Security number, previous method of transportation to and from the workplace, costs of transportation, and the type of fare subsidy requested including records of parking permit holders. It will include subsidies authorized under the Federal Workforce Transportation Program. Reports will be submitted to the Department of Transportation and to the Bureau of Public Debt in accordance with the CFPB Transit Subsidy Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203; Title X, sections 1012 and 1013, codified at 12 U.S.C. 5492, 5493; [1] Public Law 103–172; Title V, section 1(a), codified at 5 U.S.C. 7902.

PURPOSE(S):

The purpose of the information collection is to establish and maintain systems for providing transportation subsidies to employees. This includes

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR Chapter X. This SORN is published pursuant to those rules and the Privacy Act.

mass transportation, vanpools, and parking permits. Information is used to determine the eligibility of applicants for transportation subsidies and to disburse subsidies to eligible employees through the Department of Transportation, and for parking management. The system also enables the CFPB to compare these records with other federal agencies to ensure that employee transportation programs subsidies are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, but not limited to, the individual's name, home address, work organization, location, unique numeric identifier chosen by the individual, or the last four of the Social Security number, mode of transportation, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records in accordance with published National Archives and Records Administration Disposition Schedule, General Records Schedule 9, Federal Employee Transportation Subsidy Program. Temporary. Destroy when 3 years old. (General Records Schedule (GRS) 9, item 7)

SYSTEM MANAGER(S) AND ADDRESS:

The Consumer Financial Protection Bureau, Chief Operating Officer, 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is maintained about employees who have applied for or hold parking permits, or applied for or participate in the transportation subsidy program, the subsidy program managers and other appropriate agency officials, or other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–28594 Filed 11–3–11; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0018]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'') gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than December 5, 2011. The system of records will be effective December 14, 2011 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0018, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB to administer and enforce federal consumer financial protection law. The CFPB will maintain the records covered by this notice.

The system of records described in this notice, CFPB.005—Consumer Response System, will be used to collect, respond to, and refer consumer inquiries and complaints concerning consumer financial products and services received after July 21, 2011. A description of the system of records follows this Notice.

The report of a modified system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.005—Consumer Response System'' is published in its entirety below.

The CFPB implementation team under Treasury previously published a system of records notice (''SORN'') with proposed routine uses for the Consumer Inquiry and Complaint System (''CIC'') in the **Federal Register**, 76 FR 1507, January 10, 2011. Comments were invited from the public on the SORN. This notice takes into account these comments and establishes the modified system of records.

The CFPB received several comments regarding the ''routine uses'' set forth in that SORN. The CFPB has carefully reviewed these comments and has revised the routine uses contained in this SORN, as appropriate. In some cases the routine uses have been eliminated or combined. In the previous SORN, there were 16 routine uses, while this SORN only has 12. In addition, the CFPB has clarified that the system may include complaints about individuals made directly to the CFPB and not merely complaints about individuals made to other federal or state agencies and then shared with the CFPB.

Some comments discussed the need for further agency rulemaking, and development of other procedures and practices. The CFPB has published interim final regulations on information disclosure processes and procedures. Disclosures of information contained in a system of records must be in compliance with these interim final regulations. As the CFPB continues to develop its policies, procedures, and regulations as required by the Act, it will address other issues raised in the comments, including the procedures surrounding the handling of consumer complaints as required by Section 1034 of the Act.

Several comments characterized the routine uses as too broad and inclusive. Each of the routine uses listed here reflect the Bureau's careful and considered determination that the sharing of consumer response information in these situations is necessary and proper to carry out the agency's mission. Many of the routine uses are common to other agencies. For example, the Federal Deposit Insurance Corporation's Consumer Complaint and Inquiry Records SORN, published at 72 FR 61136, Oct. 29, 2007, and the Office of the Comptroller of the Currency's Consumer Complaint and Inquiry Information System, published at 73 FR 41412, July 18, 2008, contain routine uses similar to the routine uses set forth in this SORN. Indeed several routine uses, such as disclosure of information when there has been a security breach that could present a risk of harm to the security or integrity of the system or individuals, are common to all government agency SORNs.

One comment objected to the disclosure of information to third parties to resolve complaints. This routine use remains as the CFPB believes it is necessary to resolve complaints and it is common to other financial regulators' consumer complaint SORNs.

One routine use established in the previous CFPB SORN addressing consumer complaint data has been removed based on comments received. Disclosure of consumer complaints to other consumers who filed similar complaints was formerly authorized for the purpose of updating complainants on the status of an investigation. Following the comments received, the CFPB determined it was not necessary to disclose this information to achieve the goals of updating all parties on the status ongoing investigations.

One comment also objected to the use of the word ''victim'' as overly broad. Any references to ''victim'' have been removed.

The previous consumer complaint SORN contained separate routine uses for disclosure of records in civil and criminal proceedings before a court, magistrate or administrative tribunal. These routine uses have been combined.

Dated: October 31, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.005

SYSTEM NAME:

CFPB Consumer Response System.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are individuals who submit complaints or inquiries to the CFPB (on their own or others' behalf); individuals on whose behalf complaints or inquiries are submitted by others (such as attorneys, members of Congress, third party advocates, and/or other governmental organizations); and individuals or employees of entities about whom

complaints or inquiries have been received by prudential regulators, the Federal Trade Commission, other federal agencies, state agencies or the CFPB. The term ''prudential regulators'' refers to any federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act, and the National Credit Union Administration. Information collected regarding consumer products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain: (1) Correspondence or other information received; (2) information from the entity or individual referring the inquiry or complaint; (3) records created of verbal communications by or with complainants or other individuals; (4) information regarding third party advocates or others who submit complaints or inquiries on another's behalf; (5) information identifying the entity that is subject to the complaint or inquiry or its employees; (6) communication with or by the entity that is subject to the complaint or inquiry or its employees; (7) unique identifiers, codes, and descriptors categorizing each complaint or inquiry file; (8) information about how complaints or inquiries were responded to or referred, including any resolution; (9) records used to respond to or refer complaints or inquiries, including information in the CFPB's other systems of records; and (10) identifiable information regarding both the individual who is making the inquiry or complaint, and the individual on whose behalf such inquiry or complaint is made, and employees of the entity about which the complaint or inquiry was made, including name, social security number, account numbers, address, phone number, email address, date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 111–203, Title X, Sections 1011, 1012, 1013(b)(3), 1021, 1034, codified at 12 U.S.C. 5491, 5492, 5493(b)(3), 5511, 5534.[1]

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published interim final rules on the Disclosure of Records and Information within 12 CFR chapter X. This SORN is published pursuant to those rules and the Privacy Act.

PURPOSE(S):

The information in the system is being collected to enable the CFPB to receive, respond to, and refer complaints or inquiries regarding consumer financial products or services. The system serves as a record of the complaint or inquiry, and is used for collecting complaint or inquiry data; responding to or referring the complaint or inquiry; aggregating data that will be used to inform other functions of the CFPB and, as appropriate, other agencies and/or the public; and preparing reports as required by law. This system consists of complaints or inquiries received by the CFPB or other entities and information concerning responses to or referrals of these complaints or inquiries, as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES TO:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules promulgated in the title of the CFR to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) Appropriate agencies, entities, and persons, to the extent necessary to obtain information needed to investigate, resolve, respond, or refer to a complaint or inquiry;

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

(10) An entity or person that is the subject of the complaint or inquiry and the counsel or non-attorney representative for that entity or person; and

(11) Federal and state agencies for the purpose of facilitating the data sharing requirements described in 12 U.S.C. 5493(b)(3)(D) concerning consumer financial products and services complaints.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including without limitation the individual's name, social security number, complaint/inquiry case number, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The Consumer Financial Protection Bureau, Assistant Director of Response Center, 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals and entities filing complaints and inquiries, other governmental authorities, and entities that are the subjects of complaints and inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–28596 Filed 11–3–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 29, 2011, the Department of Commerce (the Department) published the preliminary results of the 14th administrative review for the antidumping duty order on certain pasta from Turkey (pasta).[1] The review covers one exporter: Marsan Gida Sanayi ve Ticaret A.S. (Marsan). The period of review (POR) is July 1, 2009, through June 30, 2010.

As a result of our analysis of the comments received, the final results remain the same as the Preliminary Results. The Department continues to find that Marsan had no shipments to the United States during the POR for which it was the first party with knowledge of U.S. destination. Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 6, 2003, ''automatic assessment'' clarification was intended to address,[2] we continue to find it appropriate in this case to instruct Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Birlik and exported by Marsan at the rate applicable to Birlik, *i.e.,* the all-others rate from the investigation of 51.49 percent. See Preliminary Results, 76 FR at 23977–78.

DATES: *Effective Date:* November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2011, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Turkey, and we invited parties to comment on the Preliminary Results. On May 27, 2011, Marsan submitted a case brief, and on June 9, 2011, petitioners[3] submitted a rebuttal brief.[4] On June 27, 2011, the Department held a public hearing.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is also available in the Central Records Unit (CRU), 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/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and

[1] See Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 23974 (April 29, 2011) (Preliminary Results).

[2] See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954, 23954 (May 6, 2003) (Assessment of Antidumping Duties).

[3] New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (collectively, petitioners).

[4] On June 3, 2011, petitioners requested an extension until June 9, 2011, to file its rebuttal brief. On June 6, 2011, the Department granted the extension.

Decision Memorandum are identical in content.

Final Results of Review

We determine that an analysis of the comments received on the Preliminary Results do not warrant any changes in these final results. The Department clarified its ''automatic assessment'' regulation on May 6, 2003. As explained in the ''automatic assessment'' clarification, if, in the course of an administrative review, the Department determines that the producer knew, or should have known, that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will be liquidated at the producer's assessment rate which the Department calculates for the producer in the review.[5] However, because Birlik, the producer, does not have its own rate, we will instruct CBP to liquidate entries at the ''all-others'' rate from the investigation of 51.49 percent, in accordance with the reseller policy.

Duty Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of these final results of review.

We determine that Marsan was not the first party in the transaction chain to have knowledge that the merchandise was destined for the United States, and thus Marsan is not considered the exporter of subject merchandise during the POR for purposes of this review. In accordance with the 1997 regulations concerning no shipment respondents, the Department's practice had been to rescind the administrative review.[6] As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry. However, in our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.[7]

The Department finds that Marsan had no shipments to the United States during the POR for which it was the first party with knowledge of U.S. destination. Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Birlik and exported by Marsan at the rate applicable to Birlik.[8] However, because Birlik does not have its own rate, we shall instruct CBP to liquidate entries at the ''all-others'' rate from the investigation of 51.49 percent,[9] in accordance with the reseller policy.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For Marsan, and for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter (or its predecessor-in-interest) participated; (2) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 51.49 percent, the all-others rate established in the LTFV.[10] These cash deposit requirements 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 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 antidumping 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 orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 26, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Whether Marsan is affiliated with Birlik/Bellini.

Comment 2: Whether the review covered Marsan and its affiliates.

Comment 3: Whether the application of the reseller policy was unlawful.

[FR Doc. 2011–28563 Filed 11–3–11; 8:45 am]

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[5] See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment of Antidumping Duties). See also Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989, 56989–56990 (September 17, 2010).

[6] See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997).

[7] See Assessment of Antidumping Duties.

[8] See, *e.g.,* Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review, 73 FR 77610, 77612 (December 19, 2008).

[9] See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 38545 (July 24, 1996).

[10] See *id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 9, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* of the first administrative review of the antidumping duty order on certain steel threaded rod (''steel threaded rod'') from the People's Republic of China

(''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of this review. The final weighted-average margins are listed below in the ''Final Results of the Review'' section of this notice. The period of review (''POR'') is October 8, 2008, through March 31, 2010.

DATES: *Effective Date:* November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Case History

As noted above, on May 9, 2011, the Department published the *Preliminary Results* of this administrative review. On May 31, 2011, the Department received surrogate value information to value factors of production (''FOP'') for the final results from Jiaxing Brother Fastener Co., Ltd. and its affiliates [2] (collectively the ''RMB/IFI Group'').

The Department invited interested parties to comment on the *Preliminary Results.* Between June 22 and July 5, 2011, the Department received case and rebuttal briefs from Petitioner,[3] the RMB/IFI Group, Gem-Year Industrial Co. Ltd. (''Gem-Year''), and Hubbell Power Systems, Inc. (''Hubbell''). On July 22, 2011, the Department extended the time limit for completion of the final results of this administrative review until October 31, 2011.[4] On June 27, 2011, the Department invited comments from parties regarding the Department's wage rate methodology, in response to which the Department received no comments.[5] On July 7, 2011, the Department placed entry data on the record of this review regarding certain entries by Zhejiang New Oriental Fastener Co., Ltd. (''New Oriental'') and invited comments on this data. On July 14, 2011, the Department received comments on this entry data from Petitioner. Also, on July 14, 2011, the Department received comments from Gem-Year regarding the Department's collection of new factual information. On August 11, the Department held a public hearing, attended by representatives for Petitioner, the RMB/IFI Group, and Hubbell. As a result of our analysis, the Department has made changes to the *Preliminary Results.*

Scope of the Order

The merchandise covered by the order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to the order are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of the order are steel threaded rod, bar, or studs, in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 7318.15.5050, 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in ''First Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Issues and Decision Memorandum for the Final Results,'' (October 31, 2011) (''I&D Memo''). A list of the issues which parties raised, and to which the Department responded in the I&D Memo, is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit (''CRU''), main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* the Department has made certain revisions to the surrogate values used in the calculation of the margin for the RMB/IFI Group. For changes to the surrogate values (''SVs''), *see* the I&D Memo and ''Memorandum to the File, through Scot T. Fullerton, Program Manager, AC/CVD Operations, Office 9, from Toni Dach, International Trade Analyst, AD/CVD Operations, Office 9, First Antidumping Duty Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Surrogate Values for the Final Results,'' (October 31, 2011).

Since the *Preliminary Results,* the Department has determined that New Oriental's no-shipment certification was not supported by record evidence, that it, in fact, had entries subject to this review, and that New Oriental did not act to the best of its ability in providing information regarding its shipments. Therefore, we are applying adverse facts available (''AFA'') to New Oriental. Further, as New Oriental did not file a separate rate application, it has not demonstrated its eligibility for a separate rate. Accordingly, the

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the First Administrative Review and Preliminary Rescission, in Part* 76 FR 26696 (May 9, 2011) (''*Preliminary Results*'').

[2] RMB Fasteners Ltd. and IFI & Morgan Ltd.

[3] Vulcan Threaded Products Inc.

[4] *See Certain Steel Threaded Rod From the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review,* 76 FR 4398 (July 22, 2011).

[5] *See* Letter to All Interested Parties, From Toni Dach, Re: First Antidumping Duty Administrative Review of Certain Steel Threaded Rod from the People's Republic of China, dated June 27, 2011.

Department will consider New Oriental a part of the PRC-Wide Entity.

The Department also updated the language of the scope of this order to reflect the fact that HTSUS subheading 7318.15.5050 was replaced with two new subheadings: 7318.15.5051 for ''Continuously threaded rod: Of alloy steel'' and 7318.15.5056 for ''Continuously threaded rod: Other'' (*i.e.,* of carbon steel). *See* I&D Memo at Comment 9.

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded the review with respect to Gem-Year. Gem-Year submitted information to the Department indicating that it had no suspended entries of subject merchandise during the POR. As stated in the *Preliminary Results,* Gem-Year failed to meet the requirements to qualify for an administrative review.[6] Comments received by the Department regarding the preliminary rescission of Gem-Year are addressed in the I&D Memo. As a result of the Department's analysis of the comments received regarding our preliminary rescission of this review with respect to Gem-Year, the Department is rescinding the administrative review with respect to Gem-Year.

In the *Preliminary Results,* the Department preliminarily rescinded the review with respect to New Oriental, based on New Oriental's certification that it made no shipments of subject merchandise during the POR. Subsequent to the *Preliminary Results,* U.S. Customs and Border Protection (''CBP'') notified the Department that suspended entries existed for New Oriental during the POR. The Department obtained entry documentation for certain suspended entries of New Oriental's subject merchandise, placed these entry documents on the record on July 7, 2011, and invited comments on these entry documents by interested parties. On July 14, 2011, Petitioner submitted comments on New Oriental's entry packages. No other party submitted comments on this topic. Petitioner's comments are addressed in the I&D Memo. The Department's analysis of these entry documents and the comments received indicate that New Oriental did not ensure, to the best of its ability, that the information submitted to the Department was accurate. Accordingly, because we determine that New Oriental had shipments of subject merchandise during the POR, we are not rescinding the review for New Oriental. For further analysis of this issue, please see ''Adverse Facts Available'' section below and the I&D Memo at Comment 3.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[7]

In our *Preliminary Results,* we determined that, in addition to the mandatory respondents, the following 7 companies met the criteria for separate rate status: Certified Products International Inc.; Haiyan Dayu Fasteners Co., Ltd.; Jiashan Zhongsheng Metal Products Co., Ltd.; Jiaxing Xinyue Standard Part Co. Ltd.; Shanghai Prime Machinery Co. Ltd.; Suntec Industries Co. Ltd.; and Haiyan Julong Standard Part Co. Ltd. The Department has not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this treatment. Therefore, the Department continues to find that the above-named companies meet the criteria for a separate rate.

In our *Preliminary Results,* we indicated that we intended to rescind this review with respect to New Oriental on the basis of its no-shipment certification. Since that time, the Department has received information contradicting New Oriental's no shipment certification. New Oriental did not comment on this new information, despite the Department providing an opportunity to do so, and did not file a separate rate application or certification, as required of all companies wishing to demonstrate their independence from government control. Therefore, New Oriental has failed to demonstrate its independence from the PRC government and, consequently, its eligibility for a separate rate. Because we are not rescinding the review with respect to New Oriental, New Oriental will be considered a part of the PRC-wide entity for these final results.[8]

Separate Rate Calculation

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (''the Act''). The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look for guidance in section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on facts available (''FA''), and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents.[9]

However, the Department has, for these final results, calculated a *de minimis* dumping margin for the sole participating mandatory respondent, the RMB/IFI Group. The Department has additionally assigned an AFA dumping margin to the other mandatory respondent, Shanghai Recky International Trading Co. Ltd. (''Shanghai Recky''), as part of the PRC-wide entity.[10] *See* ''PRC-Wide Entity'' section below. In this circumstance, we again look to section 735(c)(5) of the Act for guidance. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on FA. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on FA, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. Therefore, because all rates in this proceeding are *de minimis* or based entirely on FA, we must look to other reasonable means to assign separate rate margins to non-reviewed companies eligible for a separate rate in this review. In the *Preliminary Results,* we found that a reasonable method was to assign to non-reviewed companies in

[6] *See Preliminary Results,* 76 FR at 26697.

[7] *See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[8] *See* I&D Memo at Comment 3.

[9] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)).

[10] No party commented on the Department's application of adverse facts available to Shanghai Recky in the *Preliminary Results.*

this review the rate calculated in the most recent segment for any company that was not zero, *de minimis,* or based entirely on FA.[11] No party has made an argument that the Department should use an alternative calculation to determine the separate rate. We, therefore, continue to find that a reasonable method is to assign to non-reviewed companies in this review the only rate that has been calculated in this proceeding that was not zero, *de minimis,* or based entirely on FA. Pursuant to this method, we are assigning to the separate rate respondents in the instant review the rate of 55.16 percent, from the less-than-fair-value (''LTFV'') investigation calculated for cooperative separate rate respondents.

PRC-Wide Entity

In the *Preliminary Results*, the Department treated certain PRC exporters/producers as part of the PRC-wide entity because they did not demonstrate that they operate free of government control.[12] In addition, the Department treated Shanghai Recky as part of the PRC-wide entity as it failed to respond to the Department's requests for information, including with respect to its eligibility for a separate rate.[13] Since the *Preliminary Results,* the Department has determined that New Oriental is subject to this review because it had shipments of subject merchandise during the POR. However, New Oriental failed to submit a separate rate application. Because New Oriental has not established its eligibility for a separate rate, it is considered to be a part of the PRC-wide entity. *See* I&D Memo at Comment 3. No additional information was placed on the record with respect to the remaining 115 companies after the *Preliminary Results.* Because the Department begins with the presumption that all companies within a NME country are subject to government control, and because only the companies listed under the ''Final Results of Review'' section below have overcome that presumption, the Department is applying a single antidumping rate, *i.e.,* the PRC-wide entity rate, to all other exporters of subject merchandise from the PRC. The PRC-wide rate applies to all entries of the merchandise under consideration, except for those from companies which have received a separate rate.

In accordance with section 776(a) and (b) of the Act and as explained in more detail in the *Preliminary Results,* we determined that the PRC-wide entity's rate should be based on total AFA.[14] No party has commented on the use of a total AFA rate for the PRC-wide entity. For these final results, the Department determined that New Oriental, which is part of the PRC-wide entity, failed to cooperate to the best of its ability. Accordingly, the Department continues to assign an AFA rate to the PRC-wide entity. As an AFA rate, the Department continues to use the highest percent margin alleged in the Petition, 206.00 percent.[15] As explained in the *Preliminary Results,* the Department considers that rate corroborated pursuant to section 776(c) of the Act based upon our comparison of this rate to transaction-specific margins for the RMB/IFI Group.[16] No party has commented on the Department's corroboration of the selected total AFA rate for the PRC-wide entity.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

Adverse Facts Available

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

On July 7, 2011, the Department placed information obtained from CBP on the record of this review contradicting New Oriental's no-shipment certification. Despite being given an opportunity to comment on this data, New Oriental provided no explanation for this discrepancy. As a result of the Department's analysis of this information, the Department has concluded that New Oriental had shipments of subject merchandise during the POR. Because New Oriental failed to provide accurate information regarding its shipments, the Department determines that New Oriental significantly impeded the proceeding pursuant to section 776(a)(2)(C) of the Act. Furthermore, in accordance with section 776(b) of the Act, the Department finds that New Oriental failed to cooperate to the best of its ability by reporting inaccurate information and not responding to the information placed on the record by the Department demonstrating shipments of subject merchandise from New Oriental. Further, as explained above, we find that New Oriental should be treated as

[11] *See Preliminary Results,* 76 FR at 26699.

[12] *Id.* at 26699–26700.

[13] *Id.* at 26703.

[14] *Id.* at 26703.

[15] *See Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 8907, 8910 (February 27, 2009).

[16] *See Preliminary Results,* 76 FR at 26703–26704.

part of the PRC-wide entity because although it had shipments during the POR, it failed to provide information regarding its eligibility for a separate rate.[17] Accordingly, we are continuing to apply AFA to the PRC-wide entity, which includes New Oriental and Shanghai Recky.

Final Results of the Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted-average margin (percent)
RMB Fasteners Ltd., and IFI & Morgan Ltd. (''RMB/IFI Group'')	[1] 0.37
Suntec Industries Co., Ltd	55.16
Shanghai Prime Machinery Co. Ltd	55.16
Jiaxing Xinyue Standard Part Co., Ltd	55.16
Certified Products International Inc	55.16
Jiashan Zhongsheng Metal Products Co., Ltd	55.16
Haiyan Dayu Fasteners Co., Ltd	55.16
Haiyan Julong Standard Part Co. Ltd	55.16
PRC-wide Entity (including Gem-Year Industrial Co. Ltd., Shanghai Recky International Trading Co. Ltd., and Zhejiang New Oriental Fastener Co., Ltd.)	206.00

[1] (*de minimis*).

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific (or customer) per unit duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above *de minimis.*

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese 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 206.00 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporters that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

[17] *See* I&D Memo at Comment 3.

Dated: October 31, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

Comment 1: Rescission of Review With Respect to Gem-Year
Comment 2: Application of AFA to Shanghai Recky
Comment 3: No Shipments Certification from New Oriental
Comment 4: Wage Rate
Comment 5: Excluding Sterling Tool's Financial Statement
Comment 6: Selection of Surrogate Financial Statements
Comment 7: Correction of Error in Financial Ratios for Nasco Steels Private Limited
Comment 8: Surrogate Value for Hydrochloric Acid
Comment 9: Adding HTSUS Numbers to the Scope
Comment 10: Separate Rate Determination
Comment 11: Zeroing

[FR Doc. 2011–28649 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Uranium From the Russian Federation; Final Results of Expedited Sunset Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the Expedited Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation.

SUMMARY: On July 1, 2011, the U.S. Department of Commerce (''the Department'') initiated a third sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (''Suspension Agreement'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011) (''Initiation Notice''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, as well as no response from respondent interested parties, the Department is conducting an expedited (120-day) review of the Suspension Agreement. As a result of this review, the Department finds that termination of the Suspension Agreement would be likely to lead to continuation or recurrence of dumping

at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Sally C. Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, *telephone:* (202) 482–4271 or (202) 482–0162.

SUPPLEMENTARY INFORMATION:

History of the Suspension Agreement

On December 5, 1991, the Department published in the **Federal Register** a notice of initiation of the antidumping duty investigation on uranium from the Union of Soviet Socialist Republics (''USSR''). *See Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics* 56 FR 63711 (December 5, 1991). On December 23, 1991, the U.S. International Trade Commission (''ITC'') issued an affirmative preliminary injury determination.

On December 25, 1991, the USSR dissolved and the United States subsequently recognized the twelve newly independent states which emerged: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation (''Russia''), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Department continued the investigations against each of these twelve countries. On June 3, 1992, the Department issued an affirmative preliminary determination that uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan was being sold at less-than-fair-value by a weighted-average dumping margin of 115.82 percent, and a negative determination regarding the sale of uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan* 57 FR 23380 (June 3, 1992) (*1992 Preliminary Determinations*).

On October 30, 1992, the Department suspended the antidumping duty investigations involving uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan on the bases of agreements by the countries' respective governments to restrict the volume of direct or indirect exports to the United States in order to prevent the suppression or undercutting of price levels of United States domestic uranium. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations,* 57 FR 49220, 49235 (October 30, 1992) (*1992 Suspension Agreements*). The Department also amended its preliminary determination to include highly-enriched uranium (''HEU'') in the scope of the investigations. *See Id.*

The first amendment to the Suspension Agreement, effective on March 11, 1994, authorized ''matched sales'' in the United States of Russian-origin and U.S.-origin natural uranium and separative work units (''SWU''). *See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation,* 59 FR 15373 (April 1, 1994). The amendment also extended the duration of the Suspension Agreement to March 31, 2004. *See Id.*

Effective on October 3, 1996, the Department and the Government of Russia agreed to two amendments to the Suspension Agreement. One amendment provided for the sale in the United States of feed associated with imports of Russian low-enriched uranium (''LEU'') derived from HEU, making the Suspension Agreement consistent with the United States Enrichment Corporation Privatization Act (42 U.S.C. 2297h, *et seq.*) (''USEC Privatization Act''). The second amendment restored previously-unused quota for SWU and included Russian uranium which had been enriched in a third country within the scope of the Suspension Agreement. According to this second amendment, these modifications would remain in effect until the date two years after the effective date of the amendment. *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation,* 61 FR 56665, 56667 (November 4, 1996).

The next amendment to the Suspension Agreement, effective on May 7, 1997, doubled the amount of Russian-origin uranium that may be imported into the United States for further processing prior to re-exportation, and lengthened the period of time uranium may remain in the United States for such processing to up to three years. *See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation,* 62 FR 37879 (July 15, 1997).

On July 31, 1998, the Department notified interested parties of a change in the administration of the matched sales quota in that the Department would, effective immediately, use a calendar year basis (*i.e.,* January 1–December 31) rather than the previously-used quota year basis (*i.e.,* April 1–March 31). *See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation,* 63 FR 40879 (July 31, 1998).

On August 2, 1999, the Department published a notice of initiation of the first five-year sunset review of the Suspension Agreement (''First Sunset Review''). *See Initiation of Five-Year (''Sunset'') Reviews,* 64 FR 41915 (August 2, 1999). On July 5, 2000, the Department published its notice of the final results of the full sunset review, finding that revocation of the Suspension Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters. *See Notice of Final Results of Full Sunset Review: Uranium from Russia,* 65 FR 41439 (July 5, 2000). On August 22, 2000, the Department published a notice of continuation of the Suspension Agreement pursuant to the Department's affirmative determination and the ITC's affirmative determination that termination of the Suspension Agreement would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Notice of Continuation of Suspended Antidumping Duty Investigation: Uranium from Russia,* 65 FR 50958 (August 22, 2000). *See also Uranium from Russia; Corrected Continuation of Suspended Antidumping Duty Investigation* 65 FR 52407 (August 29, 2000).

On July 1, 2005, the Department published a notice of initiation of the second five-year sunset review of the Suspension Agreement (''Second Sunset Review''). *See Initiation of Five-year (''Sunset'') Reviews,* 70 FR 38101 (July 1, 2005). On June 6, 2006, the Department published its notice of the final results of the full sunset review, finding that termination of the Suspension Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters. *See Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the*

Russian Federation 71 FR 32517 (June 6, 2006). On August 11, 2006, the Department published a notice of continuation of the Suspension Agreement pursuant to the Department's affirmative determination and the ITC's affirmative determination that termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian Federation,* 71 FR 46191 (August 11, 2006).

On February 1, 2008, the Department and the Government of Russia signed another amendment to the Suspension Agreement (''2008 Amendment'') instituting new quotas through 2020 for commercial Russian uranium exports sold directly or indirectly to U.S. utilities or otherwise. *See Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation,* 73 FR 7705 (February 11, 2008) (*2008 Amendment*). Of particular relevance to this sunset review, Section XII of the 2008 Amendment states in part that:

> In addition, the Department shall conduct sunset reviews under 19 U.S.C. 1675(c) in the years 2011 and 2016. All parties agree that the sunset reviews shall be expedited, pursuant to 19 U.S.C. 1675(C)(4) and (C)(3)(B), respectively, at both the Department of Commerce and the International Trade Commission.

See 2008 Amendment, at 7707. The Department issued its memorandum regarding the 2008 Amendment's prevention of price suppression or undercutting on May 14, 2008. *See* Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Ronald K. Lorentzen, Deputy Assistant Secretary for Policy and Negotiations, regarding ''Prevention of Price Suppression or Undercutting of Price Levels of Domestic Products by the Amended Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation'' (May 14, 2008).

In September 2008, Congress enacted legislation which codified many provisions in the amended Suspension Agreement and instituted import quotas through 2020 that in large part mirror the quotas in the 2008 Amendment. *See* Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, H.R. 2638, 110th Cong. Section 8118, p.110–123 (2008) (''Domenici Amendment'').[1] On February 2, 2010, the Department issued its Statement of Administrative Intent which contained guidelines clarifying the Department's intent with regard to the implementation of the amended Suspension Agreement and to take into consideration the requirements of the Domenici Amendment. *See* ''Statement of Administrative Intent,'' (February 2, 2010) (''SAI'').

There have been no completed administrative reviews of the Suspension Agreement. The Suspension Agreement remains in effect for all manufacturers, producers, and exporters of uranium from Russia.

Scope of Review

The merchandise covered by this Suspension Agreement (Section III, ''Product Coverage'') includes the following products from Russia:[2]

Natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}; and any other forms of uranium within the same class or kind.

Uranium ore from Russia that is milled into U_3O_8 and/or converted into UF_6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Suspension Agreement.

For purposes of this Suspension Agreement, uranium enriched in U^{235} or compounds of uranium enriched in U^{235} in Russia are covered by this Suspension Agreement, regardless of their subsequent modification or blending. Uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Suspension Agreement.[3]

HEU is within the scope of the underlying investigation, and HEU is covered by this Suspension Agreement. For the purpose of this Suspension Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.[4]

Imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings: 2844.10.10 and 2844.10.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

The Department has not received any scope requests or made any scope determinations in this proceeding since the Second Sunset Review.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in 19 CFR Part 351 (1999) in general.

Background

On July 1, 2011, the Department initiated the third sunset review of the suspended antidumping duty investigation on uranium from Russia, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011). The Department received a notice of intent to participate in this sunset review from USEC, on July 13, 2011, and from Power Resources, Inc. (''PRI''), and Crow Butte Resources, Inc. (''Crow Butte''), on July 18, 2011 (collectively, ''domestic interested parties''), within the

[1] Section 8118 of the Domenici Amendment amends the USEC Privatization Act.

[2] *See 1992 Suspension Agreements,* at 49235.

[3] As noted above, the second amendment of two amendments to the Suspension Agreement effective on November 4, 1996, in part included within the scope of the Suspension Agreement Russian uranium which had been enriched in a third country prior to importation into the United States. According to the amendment, this modification remained in effect until October 3, 1998. *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation,* 61 FR 56665, 56667 (November 4, 1996).

[4] Section IV.M of the Suspension Agreement in no way prevents Russia from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the Suspension Agreement and/or LEU produced in Russia from HEU to the U.S. Department of Energy (''DOE''), its governmental successor, its contractors, assigns, or U.S. private parties acting in association with DOE or the United States Enrichment Corporation and in a manner not inconsistent with the agreement between the United States and Russia concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia. *See 1992 Suspension Agreements,* at 49237.

applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as producers of the domestic like product.

The Department also received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). The Department did not receive a substantive response from the Russian government or any Russian producer/exporter of the subject merchandise. On August 16, 2011, the Department determined that the substantive responses from the domestic interested parties were adequate, consistent with the requirements of section 351.218(e)(1)(i)(A). *See* Memorandum to Sally C. Gannon, Director for Bilateral Agreements, Office of Policy, from Maureen Price, Senior Policy Analyst, Office of Policy, regarding ''Sunset Review of the Agreement Suspending the Antidumping Investigation of Uranium from the Russian Federation: Adequacy Determination'' (August 16, 2011). Based on the lack of any substantive response from respondent interested parties, the Department also determined to conduct an expedited (120-day) sunset review, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2). *See Id. See also* Letter from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, to Catherine DeFilippo, Director, Office of Investigations, International Trade Commission (August 22, 2011).

Analysis of Comments Received

All issues raised by interested parties in this sunset review are addressed in the ''Issues and Decision Memorandum for the Third Sunset Review of the Agreement Suspending the Antidumping Duty Investigation on Uranium from the Russian Federation; Final Results,'' to Paul Piquado, Assistant Secretary for Import Administration, from Carole Showers, Acting Deputy Assistant Secretary for Policy and Negotiations (October 28, 2011) (''Issues and Decision Memorandum''), which is adopted by this notice. The issues, and corresponding recommendations, discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the suspended antidumping duty investigation to be terminated. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), 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/ia/frn.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that termination of the Suspension Agreement and the underlying antidumping duty investigation on uranium from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted-average margin:

Exporter/manufacturer	Weighted-average margin (percent)
Russia-Wide	115.82

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Tariff Act.

Dated: October 28, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28652 Filed 11–3–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–975]

Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 4, 2011.

SUMMARY: We preliminarily determine that galvanized steel wire from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to a request from an interested party, we are postponing the final determination by 60 days and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Katie Marksberry or Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–6905, (202) 482–7906, or 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On March 31, 2011, the Department of Commerce (''Department'') received an antidumping duty petition concerning imports of galvanized steel wire from the PRC, filed in proper form by Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC and Oklahoma Steel & Wire Company, Inc. (collectively, ''Petitioners'').[1] On April 20, 2011, the Department initiated an antidumping duty investigation of

[1] *See* Petitions for the Imposition of Antidumping Duties on Galvanized Steel Wire from Mexico and Antidumping and Countervailing Duties on Galvanized Steel Wire from the People's Republic of China filed on March 31, 2011 (the ''Petition'').

galvanized steel wire from the PRC.[2] Additionally, in the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (''NME'') investigations.[3]

On May 16, 2011, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of galvanized steel wire. The ITC's preliminary determination was published in the **Federal Register** on May 20, 2011.[4]

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 31, 2011).[5]

Scope of the Investigation

The scope of this investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

—1.80 percent of manganese, or
—1.50 percent of silicon, or
—1.00 percent of copper, or
—0.50 percent of aluminum, or
—1.25 percent of chromium, or
—0.30 percent of cobalt, or
—0.40 percent of lead, or
—1.25 percent of nickel, or
—0.30 percent of tungsten, or
—0.02 percent of boron, or
—0.10 percent of molybdenum, or
—0.10 percent of niobium, or
—0.41 percent of titanium, or
—0.15 percent of vanadium, or
—0.15 percent of zirconium.

Specifically excluded from the scope of this investigation is galvanized steel wire in coils of 15 feet or less which is pre-packed in individual retail packages. The products subject to this investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.20.0090, 7229.90.5008, 7229.90.5016, 7229.90.5031, and 7229.90.5051. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, *see Preamble,* 62 FR at 27323, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.*

On May 10, 2011, we received comments from Qingdao Ant Hardware Manufacturing, Co., Ltd. (AHM) concerning the scope of this investigation.[6] In its submission, AHM requested that the Department exclude from the scope of the investigation certain steel wire pre-packed in retail packaging.[7] AHM stated that this type of wire is typically sold in pre-packed, retail packages having inner diameters of 2.25 to 8 inches and with lengths of 25 to 250 feet and, furthermore, is generally sold in retail stores that do not carry industrial or commercial building products. AHM further commented that pre-packed retail steel wire of the aforementioned lengths is not contemplated to be within the scope of this investigation, as the wire is non-industrial, retail-ready and for individual/home use. Specifically, AHM requested that the Department exclude from the scope of this investigation ''galvanized steel wire * * * sold in retail packaging where the pre-packaged length is no more than 300 feet, regardless of the diameter (gauge) of the wire.''[8] Also on May 10, 2011, we received scope comments from Shanghai Bao Zhang Industry Co., Ltd., Anhui Bao Zhang Metal Products Co., Ltd., and B&Z Galvanized Wire Industry (collectively, Baozhang), requesting that the Department exclude from the scope of the investigation galvanized steel wire with a diameter of less than one millimeter.[9] In its comments, Baozhang states that it has been a reliable source of this smaller-gauged wire to U.S. producers of stucco netting because the U.S. galvanized wire industry does not offer this gauge wire with a diameter of less than one milimeter. As such, Baozhang requests that the Department exclude from the scope of this investigation such material since any alleged injury experienced by the U.S. industry cannot be related to imports of this product.[10]

On May 10, 2011, the Department also received comments from two U.S. producers of stucco netting, Tree Island Wire (USA), Inc. (Tree Island) and Preferred Wire Products, Inc., (Preferred Wire) both supporting the position that galvanized steel wire less than 1 millimeter in diameter be excluded from the scope of the investigation.[11]

Petitioners filed rebuttal comments regarding the scope exclusion requests by AHM and Baozhang on June 22, 2011.[12] In its comments, Petitioners state that despite AHM's contention that retail-ready, shorter strands of galvanized wire are purely for non-industrial, personal use, this galvanized

[2] *See Galvanized Steel Wire from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23548 (April 27, 2011) (''*Initiation Notice*'').

[3] *See id.,* at 76 FR 23553.

[4] *See* Investigation Nos. 701–TA–479 and 731–TA–1183–1184 (Preliminary), *Galvanized Steel Wire From China and Mexico,* 76 FR 29266 (May 20, 2011).

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* Letter from Qingdao Ant Hardware Manufacturing Co., Ltd. to the Department, titled ''Scope Comments in the Antidumping and Countervailing Duty Investigations of Galvanized Steel Wire from China and Mexico,'' dated May 10, 2011 (''AHM Scope Comments'').

[7] *See id.,* at 2.

[8] *See id.,* at 4; In the AHM Scope Comments, AHM had originally and inadvertently specified a maximum pre-packed length of 30 feet. AHM subsequently filed an additional submission on June 17, 2011, correcting this language, and clarifying that the reference to ''30 feet'' was intended to reference ''300 feet.'' AHM requested that these products also be excluded from the scope of the antidumping investigation covering galvanized wire from the People's Republic of China.

[9] *See* Letter from Baozhang to the Department, titled ''Comments on Scope Issues: Investigation of the Galvanized Steel Wire from the People's Republic of China,'' dated May 10, 2011 (''Baozhang Scope Comments'').

[10] *See id.,* at 2.

[11] *See* Letter from Tree Island to the Department, titled ''Scope Comments in the Investigation of Galvanized Steel Wire from China,'' dated May 10, 2011; Letter from Preferred Wire to the Department, titled ''Scope Comments in the Investigation of Galvanized Steel Wire from China,'' dated May 10, 2011.

[12] *See* Letter from Petitioners to the Department, titled ''Galvanized Steel Wire from Mexico and China—Petitioners' Comments on Respondents' Scope Requests,'' dated June 22, 2011 (''Rebuttal Scope Comments'').

wire is covered by the scope of this investigation. We preliminarily determine that the material described by AHM is subject to the scope of this investigation and constitutes a product for which Petitioners are seeking relief. However, Petitioners state that galvanized wire in coils of 15 feet or less, which are pre-packed in individual retail packages, may be excluded from the scope of the investigation as they are not seeking relief for this specific product. Accordingly, and as noted above, we have excluded such merchandise from the scope of this investigation.

Finally, with regard to the remaining comments concerning the exclusion of galvanized wire of a diameter less than one millimeter, Petitioners state a diameter less than one millimeter is covered by the scope of this investigation. We preliminarily find that such merchandise is subject to the scope of this investigation and is a product for which Petitioners are seeking relief.

Quantity and Value and Respondent Selection

In the *Initiation Notice,* the Department stated that after considering the large number of producers and exporters of galvanized steel wire from the PRC identified by Petitioners, and considering the resources that must be utilized by the Department to mail quantity and value (''Q&V'') questionnaires to all 279 identified producers and exporters, the Department determined to limit the number of Q&V questionnaires sent out to exporters and producers [13] based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports under the HTSUS numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These are the same HTSUS numbers used by Petitioners to demonstrate that dumping occurred during the POI, are referenced in the scope of the investigation above, and closely match the merchandise under consideration.[14] Of the 28 companies to which we sent Q&V questionnaires, we received ten Q&V responses.[15] We also received 14 unsolicited Q&V responses.[16]

After considering comments submitted by certain interested parties, on June 9, 2011, the Department selected three mandatory respondents for individual examination: Tianjin Honbase Machinery Manufactory Co., Ltd. (''Tianjin Honbase''); Tianjin Huayuan Metal Wire Products Co., Ltd. (''Tianjin Huayuan''); and Tianjin Jinghai Yicheng Metal Products Co., Ltd. (''Tianjin Jinghai''). These companies account for the largest volume of exports of galvanized steel wire, based on the Q&V responses, to the United States that can be reasonably examined.[17]

On June 21, 2009, Tianjin Jinghai filed a letter stating that it would not participate as a mandatory respondent in this investigation.[18] On June 29, 2011, the Department selected Baozhang as a replacement mandatory respondent, as Baozhang was the next largest producer/exporter of galvanized steel wire by volume.[19] The Department issued the NME questionnaire to Baozhang on June 29, 2011.

Questionnaires

On June 9, 2011, the Department issued to the mandatory respondents the NME questionnaire with product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration. The Department issued supplemental questionnaires to Tianjin Huayuan, Tianjin Honbase, and Baozhang between July 2011 and October 2011.

Surrogate Country Comments

On June 20, 2011, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national income are comparable to the PRC in terms of economic development.[20] On June 21, 2011, the Department requested comments from the interested parties regarding the selection of a surrogate country. On August 2, 2011, the Department extended the deadline for the submission of surrogate country and factor valuation comments to August 15, 2011, and September 1, 2011, respectively. On August 15, 2011, Petitioners, Tianjin Honbase, Tianjin Huayuan, and Baozhang submitted surrogate country comments. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below.

Surrogate Value Comments

On September 1, 2011, Petitioners, Tianjin Huayuan, Tianjin Honbase, and Baozhang submitted surrogate factor valuation comments and data. On September 12, 2011, Petitioners and Baozhang submitted rebuttal surrogate factor valuation comments.

Separate-Rates Applications

Between June 13, 2011, and June 28, 2011, we received separate rate applications from 21 companies.[21] *See*

[13] The Department sent Q&V questionnaires to the following 28 companies: Anhui Baozhang Metal Products Limited; Anping Shuangmai Metal Products Co., Ltd.; Anping Xinhong Wire Mesh Co Ltd.; Beijing Catic Industry Limited.; Benxi Wasainuo Metal Packaging Production Co., Ltd.; China National Electronics Imp. & Exp. Ningbo Co., Ltd.; Dezhou Hualude Hardware Products Co. Ltd.; Easen Corp.; Ecms O/B Tianjin Huayuan Metal Wire; Fasten Group Imp. & Exp. Co. Ltd.; Hebei Cangzhou New Century Foreign Trade; Hebei Dongfang Hardware And Mesh Co., Ltd.; Hebei Longda Trade Co., Ltd.; Hebei Minmetals Co. Ltd.; Huanghua Yufutai Hardware Products Co., Ltd.; M & M Industries Co., Ltd.; Maccaferri (Changsha) Enviro-Tech Co.; Nantong Long Yang International Trade Co., Ltd.; Shaanxi New Mile International Trade Co. Ltd.; Shandong Hualing Hardware & Tools Co. Ltd.; Shanghai Baozhang Industry Co. Ltd.; Shanghai Multi-development Enterprises; Shanghai Seti Enterprise Int'l Co., Ltd.; Shanghai Suntec Industries Co., Ltd.; Tianjin Jing Weida International Trade Co., Ltd.; Tianjin Jinhai Yicheng Metal Products Co. Ltd.; Tianjin Pcss Trading Co., Ltd.; and Weifang Hecheng International Trade Co., Ltd.

[14] *See Initiation Notice,* 76 FR at 23553.

[15] We received Q&V responses from the following companies to which we issued a Q&V questionnaire: Anhui Baozhang Metal Products Limited (''Baozhang''); Dezhou Hualude Hardware Products Co. Ltd.; Fasten Group Imp. & Exp. Co. Ltd.; Hebei Cangzhou New Century Foreign Trade; Hebei Minmetals Co. Ltd.; M & M Industries Co., Ltd.; Shaanxi New Mile International Trade Co. Ltd.; Shanghai Baozhang Industry Co. Ltd.; Shanghai Seti Enterprise Int'l Co., Ltd.; and Tianjin Jinghai Yicheng Metal Products Co. Ltd.

[16] We received unsolicited Q&V responses from the following companies: Huanghua Jinhai Hardware Products Co., Ltd.; Huanghua Jinhai Import and Export Trading Co., Ltd.; Shandong Minmetals Co., Ltd.; Shanxi Yuci Broad Wire Products Co., Ltd.; Shijiazhuang Kingway Metal Products Co., Ltd.; Suntec Industries Co., Ltd.; Tianjin Honbase Machinery Manufactory Co., Ltd.; Tianjin Tianxin Metal Products Co., Ltd.; Tianjin Huayuan Metal Wire Products Co., Ltd.; Tianjin Huayuan Times Metal Products Co., Ltd.; Tianjin Mei Jia Hua Trade Co., Ltd.; Qingdao Ant Hardware Manufacturing Co., Ltd.; Xi'an Metals and Minerals Import and Export Co., Ltd.; and Guizhou Wire Rope Inc., Co.

[17] *See* ''Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Respondent Selection,'' dated June 9, 2011.

[18] *See* Letter from Tianjin Jianghai dated June 21, 2011.

[19] *See* ''Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China, re; Selection of an Additional Mandatory Respondent,'' dated June 29, 2011 (''Replacement Respondent Selection Memo'').

[20] *See* ''Memorandum from Carole Showers, Director, Office of Policy, to Catherine Bertrand, Program Manager, China/NME Group, Office 9: Antidumping Investigation of Galvanized Steel Wire from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated June 20, 2011 (''Surrogate Country List'').

[21] The following companies filed separate-rate applications: Dezhou Hualude Hardware Products Co. Ltd.; Xi'an Metals and Minerals Import and Export Co., Ltd; Hebei Cangzhou New Century Foreign Trade; Guizhou Wire Rope Incorporated Co.; M&M Industries Co. Ltd.; Huanghua Jinhai

Continued

the ''Separate Rates'' section below for the full discussion of the treatment of the separate rate applicants.

Postponement of Preliminary Determination

On July 13, 2011, Petitioners filed a timely request to postpone the issuance of the preliminary determination by 50 days. On August 4, 2011, the Department published in the **Federal Register** a notice postponing the preliminary antidumping duty determination on galvanized steel wire from the PRC.[22]

Further, on October 19, 2011, Tianjin Honbase requested that, in the event of an affirmative preliminary determination in this investigation, the Department: (1) Postpone its final determination by 60 days, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and (2) extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period. For further discussion, *see* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

Non-Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses of the PRC as an NME country.[23] The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[24] No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOP''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[25] As stated above, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national income are comparable to the PRC in terms of economic development. The sources of the surrogate values (''SVs'') we have used in this investigation are discussed under the ''Normal Value'' section below.

Petitioners submit that, for purposes of the Department's selection of an appropriate surrogate, Indonesia, South Africa, Thailand, and Ukraine are producers of identical merchandise and, further, that Indonesia, South Africa, and Thailand also are producers of comparable merchandise.[26] Therefore, Petitioners propose these four countries as appropriate candidates for the primary surrogate country in this investigation.

Baozhang, Tianjin Huayuan, and Tianjin Honbase propose that the Department should select the Philippines as the surrogate country in this investigation. All three respondents note that as the Department included the Philippines on the Surrogate Country List, the Department has already found the Philippines comparable in terms of economic development. Further, all three respondents contend that the Philippines is a significant producer of both identical and comparable merchandise.[27] As evidence that the Philippines has producers of identical merchandise, Tianjin Huayuan submitted the financial statements of two Philippine producers of merchandise it claims is identical to galvanized steel wire.[28]

Tianjin Honbase also suggests that, consistent with its established practice, the Department should define ''significant producer'' in this proceeding as a country that has produced comparable merchandise during the relevant period. Consequently, Tianjin Honbase states that the Department should find that the Philippines is a significant producer of comparable merchandise, based on the data submitted in its comments.

Baozhang and Tianjin Huayuan suggest that the Philippines is the best choice for the surrogate country because publicly available information from Philippine sources is readily available to value the FOPs used to produce galvanized steel wire.[29] Finally, Tianjin Huayuan provided publicly available and contemporaneous financial statements for Philippine producers of identical and comparable merchandise for which the Department is able to calculate overhead, selling, general, and administrative expenses (''SG&A''), and profit. Tianjin Huayuan posits that, for all the above reasons, the Department should select the Philippines as the surrogate country since it best satisfies the requirements pursuant to the statute, the regulations, and the *Policy Bulletin.*

Tianjin Honbase also contends that there is substantial Philippine data for valuing FOPs that are publicly available from the World Trade Atlas (''WTA'') or from the Philippine National Statistics Office (''NSO''), both of which, Tianjin Honbase notes, are readily available to the Department. Tianjin Honbase notes that both NSO data and WTA data are equally acceptable as sources to obtain public and contemporaneous surrogate values for FOPs that will allow the Department to exclude import data from

Import & Export Trading Co. Ltd.; Huanghua Jinhai Hardware Products Co. Ltd.; Fasten Group Imp. & Exp. Co. Ltd.; Shandong Minmetals Co., Ltd.; Shijiazhuang Kingway Metal Products Co., Ltd.; Hebei Minmetals Co. Ltd.; Tianjin Tiaxin Metal Products Co., Ltd. (''TTM''); Tianjin Mei Jia Hua Trade Co., Ltd. (''TMJH''); Tianjin Huayuan Times Metal Products Co., Ltd. (''THTM''); Shanxi Yuci Broad Wire Products Co., Ltd.; Shaanxi New Mile International Trade Co., Ltd.; Shanghai SETI Enterprise International Co., Ltd.; Suntec Industries Co., Ltd.; Shanghai Bao Zhang Industry Co., Ltd.; Anhui Bao Zhang Metal Products Co., Ltd.; and Qingdao Ant Hardware Manufacturing Co., Ltd. (collectively, ''separate rate applicants'').

[22] *See Galvanized Steel Wire From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 47150 (August 4, 2011).

[23] *See Initiation Notice,* 76 FR at 23550.

[24] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[25] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''*Policy Bulletin*'').

[26] *See* Petitioners' Surrogate Country comments dated August 15, 2011, at page 3.

[27] *See* Tianjin Huayuan's Surrogate Country Comments dated August 15, 2011, at Exhibit 1 (containing information regarding the existence of a Galvanized Iron Wire Manufacturers Association and other associations for nail manufactures in the Philippines); Baozhang's Surrogate Country Comments dated August 15, 2011, at Exhibit 1.

[28] *See id.,* at Exhibits 3 and 4. Tianjin Huayuan claims that the financial statements of these companies, Sterling Steel Inc. and Supersonic Manufacturing Inc., indicate that they are producers of galvanized wire.

[29] Both Tianjin Huayuan and Baozhang cite to the Department's recent selection of the Philippines as the surrogate country in the antidumping investigation of Multilayered Wood Flooring from the PRC and the continuing selection of the Philippines in the administrative reviews of the antidumping duty order on Wooden Bedroom Furniture from the PRC . *See, e.g.,* Baozhang's Surrogate Country Comments dated August 15, 2011, at page 3.

NME countries and countries that provide non-industry-specific export subsidies. Lastly, Tianjin Honbase notes that contemporaneous information is available from the International Labor Organization (''ILO''), the World Bank's Doing Business in the Philippines report, and The Cost of Doing Business in Camarines Sur that will allow the Department to use Philippine data to value labor costs, utility expenses, and transportation and handling.

On August 25, 2011, Tianjin Honbase also filed rebuttal comments to Petitioners' August 15, 2011, surrogate country comments. Tianjin Honbase argues that Petitioners failed to limit its comments to the selection of a single surrogate country by suggesting that Indonesia, South Africa, Thailand, and Ukraine all are producers of identical merchandise and that each of those countries is comparable with the PRC in terms of economic development, without order of preference. Second, Tianjin Honbase argues that Petitioners have not responded to the Department's request for information on whether the country is a significant producer of merchandise comparable to the merchandise subject to this investigation. Tianjin Honbase further argues that Petitioners suggest, by omission, that the Philippines is not a producer of merchandise that is either comparable or identical to the merchandise subject to this investigation. Third, Tianjin Honbase contends that Petitioners have not provided any information regarding data availability or the quality of the data available within any of the countries they identified as ''appropriate candidates'' for the major FOPs and financial statements. Fourth, Tianjin Honbase suggests that Petitioners had ample time to amass information regarding data availability and the quality available within any potential surrogate country, considering the lead time required to file an antidumping duty petition. Therefore, Tianjin Honbase argues, despite this lead time, Petitioners were not able to identify in its surrogate country comments a single producer of merchandise identical or comparable to the merchandise subject to this investigation in any of the six countries identified by the Department as potential surrogate countries. Finally, Tianjin Honbase provides that the four countries that Petitioners suggested as appropriate surrogate countries, namely Indonesia, South Africa, Thailand, and Ukraine, have been previously found by the Department to have benefitted from subsidies or distortive pricing, which, Tianjin Honbase notes, the Department typically avoids.[30]

Economic Comparability

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of economic development.[31] Therefore, we consider all six countries as having met this prong of the surrogate country selection criteria satisfied.

Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that ''the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute.'' [32] The *Policy Bulletin* further states that ''in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.'' [33] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[34] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[35] ''In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.'' [36] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.,* inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.,* processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[37]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[38] Moreover, while the legislative history provides that the term ''significant producer'' includes any country that is a significant ''net exporter,'' [39] it does not preclude reliance on additional or alternative metrics. In this case, because production data of identical or comparable merchandise was not available, we analyzed which of the six countries are exporters of identical or comparable merchandise, as a proxy for production data. We obtained export data using the Global Trade Atlas (''GTA'') for Harmonized Tariff Schedule (''HTS'') 7217.20: Wire, Iron or Non-Alloy Steel, Plated or Coated With Zinc, which is identical to the merchandise under consideration. The GTA data demonstrates that the Philippines was not an exporter of identical merchandise in 2010.[40] However, we also obtained GTA export data for HTS 7217: Wire of Iron or Non-alloy Steel, which can be considered comparable merchandise in this case

[30] *See* Tianjin Honbase's Rebuttal Comments dated August 25, 2011, at 4–5, citing to *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002); *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001); *Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164, 50168, 50170 (October 2, 2001) (acknowledging that the ITC ultimately determined that imports of wire rod into the United States from South Africa were negligible).

[31] *See* Surrogate Country List.

[32] *See Policy Bulletin.*

[33] *See id.*

[34] The *Policy Bulletin* also states that ''if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.'' *See id.,* at note 6.

[35] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

[36] *See Policy Bulletin,* at 2.

[37] *See id.,* at 3.

[38] *See* section 773(c) of the Act; *Nation Ford Chem. Co.* v. *United States,* 166 F.3d 1373, 1377 (Fed. Cir. 1990).

[39] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100–576, at 590 (1988).

[40] *See* ''Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9, re; Investigation of Galvanized Steel Wire from the People's Republic of China: Surrogate Values for the Preliminary Determination,'' dated concurrently with this notice at Exhibit 4 (''Prelim SV Memo'').

because this basket category represents steel wire products, whether or not galvanized. The GTA data for the comparable merchandise demonstrates that all the countries on the Surrogate Country List are exporters of comparable merchandise.

Significant Producers of Identical or Comparable Merchandise

As noted above, South Africa, Ukraine, Thailand, Indonesia, and Colombia were exporters of identical merchandise (galvanized steel wire) in 2010, and Philippines, South Africa, Ukraine, Thailand, Indonesia, and Colombia were also exporters of comparable merchandise (steel wire) in 2010. We find that the GTA data demonstrates that in each category, whether exporter of identical merchandise or comparable merchandise, these countries were also significant exporters.[41] Since none of the potential surrogate countries have been disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POI, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[42] In this case, because the record does not contain any data or surrogate financial statements for Colombia, Ukraine, or Indonesia, these countries will not be considered for primary surrogate country selection purposes at this time. With respect to South Africa, we find that the four financial statements[43] on the record are not useable because the companies: (1) Did not produce comparable merchandise; or (2) were not primarily dedicated to steel production.[44] As a result, we find that none of the South African financial statements on the record properly reflect the production experience of the mandatory respondents.

With Colombia, Indonesia, Ukraine and South Africa disqualified, the Department is left with the Philippines and Thailand as potential surrogate countries. Again, we looked to data considerations in selecting the appropriate surrogate country and found that the Global Trade Atlas (''GTA'') import statistics for Thai steel wire rod (the main input in producing galvanized steel wire), is more specific than that of the Philippines steel wire rod. In particular, unlike the Philippine steel wire rod import statistics, the Thai GTA data for steel wire rod are more specific to the respondents' steel wire rod inputs, as the Thai GTA steel wire rod HTS data are categorized by varying levels of carbon content (one of the important physical characteristics of galvanized steel wire under investigation). Because the specificity of the inputs is one of the Department's SV selection criteria, and the GTA has been consistently used as a reliable source of import statistics[45] that fulfill the other SV selection criteria, we have selected Thailand as the primary surrogate country over the Philippines. A detailed explanation of the SVs is provided below in the ''Normal Value'' section of this notice.

Affiliations and Single Entity Determinations

Section 771(33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person.''

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) The producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.[46]

Tianjin Honbase

The record of this investigation demonstrates that Tianjin Honbase, a producer and exporter of galvanized steel wire, and Midwest Air Technologies Inc. (''MAT''), an importer and further manufacturer of galvanized steel wire, are affiliated pursuant to section 771(33)(F) of the Act. Evidence of this affiliation was provided by both companies in their questionnaire responses, ownership/affiliation chart, organization chart, and business licenses/certificates of approval submitted by the companies, which are business proprietary data and discussed in greater detail in the company-specific analysis memo.[47] Additionally, Tianjin Honbase has claimed throughout its numerous questionnaire responses that it is affiliated with MAT, pursuant to the Department's regulations and the statute. Therefore, we preliminarily determine that Tianjin Honbase and MAT are affiliated within the meaning of section 771(33)(F) of the Act.[48]

[41] *See id.*

[42] *See Policy Bulletin.*

[43] *See* Petitioners' Surrogate Value Submission dated September 1, 2011, at Attachments 4A, 4B, 4C, and 4D.

[44] *See id.* Petitioners placed financial statements for four South African companies on the record: Alert Steel Holdings, Palabora Mining Co., Ltd., ArcelorMittal, and Murray and Roberts. Alert Steel Holdings is a reseller of building materials and does not produce any merchandise and Palabora Mining Co., Ltd. is a copper mining and smelting company; although ArcelorMittal is a steel product manufacturer, the financial statement on the record shows its aggregate global steel production and indicates that less than ten percent of its production takes place in South Africa. Furthermore, it is unclear from the information on the record what types of steel products are manufactured by ArcelorMittal in South Africa. Finally, although Murray and Roberts produces some steel in South Africa, through one of its subsidiaries, the financial statement on the record is reflective of its consolidated international business, which includes large construction and engineering subsidiaries and does not indicate the amount or type of steel produced in South Africa.

[45] *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 4.

[46] *See* 19 CFR 351.401(f)(1) and (2).

[47] *See, e.g.,* Tianjin Honbase's Section A Questionnaire Response dated July 15, 2011, at Exhibit 14–15; Tianjin Honbase's Supplemental Section A questionnaire response dated August 12, 2011, at 8 and Exhibit 5. *See also* ''Memorandum to the File, through Catherine Bertrand, Program Manager, from Kabir Archuletta, Analyst, re; Analyis Memorandum for Tianjin Honbase; Preliminary Determination of the Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China,'' dated concurrently with this notice (''Honbase Prelim Analysis Memo'').

[48] *See* Honbase Prelim Analysis Memo.

Baozhang

Based on the information presented in Baozhang's questionnaire responses, we preliminarily find that Anhui Bao Zhang Metal Products Co., Ltd. is affiliated with Shanghai Bao Zhang Industry Co., Ltd. (''Shanghai Baozhang''), B&Z Galvanized Industry, Inc., and Company A [49] pursuant to sections 771(33)(A) and (F) of the Act, based on ownership and common control. Furthermore, we find that Baozhang and Shanghai Baozhang should be considered as a single entity for purposes of this investigation.[50] In addition to being affiliated, they have production facilities for similar or identical products that would not require substantial retooling and there is a significant potential for manipulation of production based on the level of common ownership and control, shared management, and an intertwining of business operations.[51]

Because the Department finds that Baozhang and Shanghai Baozhang are a single entity, the Department is utilizing the aggregate FOP database Baozhang provided for purposes of the preliminary determination, which includes the FOPs used by Baozhang and Shanghai Baozhang.

Tianjin Huayuan

Based on the information presented in Tianjin Huayuan's questionnaire responses and various responses submitted by TTM, TMJH, and THTM, we preliminarily find that Tianjin Huayuan is affiliated with TTM, TMJH, and THTM, pursuant to section 771(33)(F) of the Act, based on ownership and common control.[52] In addition to being affiliated, they have production facilities for similar or identical products that would not require substantial retooling and there is a significant potential for manipulation of production based on the level of common ownership and control, shared management, and an intertwining of business operations. Accordingly, because Tianjin Huayuan reported that all four companies operations' are intertwined, as defined under 19 CFR 351.401(f) [53], we preliminarily determine that Tianjin Huayuan, TTM, THTM, and TMJH should be treated as a single entity (collectively, the ''Huayuan Group'').[54]

Separate Rates

Additionally, in the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.[55] The process requires exporters and producers to submit a separate rate status application.[56]

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities.

The Department analyzes each entity exporting galvanized steel wire under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''Sparklers''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''Silicon Carbide''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Recipients

Wholly Foreign-Owned

One of the mandatory respondents, Tianjin Honbase, reported that it is wholly owned by individuals or companies located in a ME in its questionnaire responses.[57] Therefore, because it is wholly foreign-owned, and we have no evidence indicating that its export activities are under the control of the PRC, a further separate rate analysis is not necessary to determine whether this company is independent from government control.[58] Accordingly, we have preliminarily granted a separate rate to this company.

Additionally, one of the separate rate applicants, Qingdao Ant Hardware Manufacturing Co., Ltd. has also reported that it is wholly foreign-owned,[59] thus, we have preliminarily granted separate rate status to Qingdao Ant Hardware Manufacturing Co., Ltd.

Wholly Chinese-Owned Companies

One of the mandatory respondents, Baozhang is a wholly Chinese-owned company. Because the Department has preliminarily determined that Baozhang and its affiliate Shanghai Baozhang are a single entity, their separate rate analysis was conducted in conjunction with one another.

Additionally, the remaining 16 separate rate applicants in this investigation stated that they are wholly

[49] The identity of this company is business proprietary information; for further discussion of this company, *see* ''Memorandum to Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, International Trade Analyst, Office 9: Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Preliminary Affiliation and Collapsing Determinations for Anhui Bao Zhang Metal Products Co., Ltd.,'' dated concurrently with this notice (''Baozhang Affiliation Memo'').

[50] *See* 19 CFR 351.401(f).

[51] *See* 19 CFR 351.401(f)(1) and (2). For a detailed discussion of this issue, *see* Baozhang Affiliation Memo.

[52] *See* ''Memorandum to Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior International Trade Analyst, Office 9: Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Preliminary Affiliation and Single Entity Determinations for Tianjin Huayuan Metal Wire Products Co., Ltd.,'' dated concurrently with this notice (''Huayuan Affiliation Memo'').

[53] Intertwined operations, as defined under CFR 351.401(f), can mean such things as: Through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* Tianjin Huayuan's questionnaire response dated August 9, 2011, at 11.

[54] For a detailed discussion of this issue, *see* Huayuan Affiliation Memo.

[55] *See Initiation Notice.*

[56] *See also Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), (''*Policy Bulletin 05.1''*) available at *http://ia.ita.doc.gov. Policy Bulletin 05.1* states: ''{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied galvanized steel wire to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[57] *See, e.g.,* Tianjin Honbase's Section A questionnaire response dated July 5, 2011, at Exhibit 14; *see also* Honbase Prelim Analysis Memo.

[58] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

[59] *See* Separate Rate Application submitted by Qindao Ant Hardware Manufacturing Co., Ltd. dated June 27, 2011.

Chinese-owned companies. Therefore, the Department analyzed whether these 16 companies and the mandatory respondents demonstrated the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[60]

The evidence provided by the separate rate applicants supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies. With respect to Baozhang,[61] we find that there is sufficient evidence on the record to preliminarily determine that it is free of *de jure* government control. We performed the same analysis for the separate rate applicants and found no instances of *de jure* government control.[62]

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices (''EP'') are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[63] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The evidence provided by the separate rate applicants supports a preliminary finding of *de facto* absence of governmental control based on the following: (1) The EP is not set by or subject to the approval of a governmental agency; (2) the respondent has authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With respect to Baozhang and Honbase,[64] we find that there is sufficient evidence on the record to preliminarily determine that both mandatory respondents are free of *de facto* government control. We performed the same analysis for the separate rate applicants and found no instances of *de facto* government control.[65]

c. Companies Receiving a Separate Rate

The Department has preliminarily determined that Tianjin Honbase and Baozhang are eligible for a separate rate. In addition, we have also granted separate rate status to the 16 separate rate applicants that were not selected for individual examination and have demonstrated an absence of government control both in law and in fact.[66]

The evidence placed on the record of this investigation by the separate rate applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of galvanized steel wire, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

B. Companies Not Receiving a Separate Rate

The Department is not granting a separate rate to Tianjin Jinghai because it withdrew its participation from this investigation as a selected mandatory respondent, having never provided any evidence demonstrating an absence of government control both in law and in fact. In addition, the 18 companies that were not responsive to the Department's Q&V questionnaire are also not eligible for a separate rate because they never provided any evidence demonstrating an absence of government control both in law and in fact.[67]

Additionally, as noted above, the Department found that Huayuan Group entities are affiliation based on familial relations, positions of directorship or management, and controlling ownership interest, pursuant to sections 771(33)(A), (B), (E), and (G) of the Act.[68] We also noted above that TTM, THTM, and TMJH have all filed separate rate applications on the record indicating their affiliation to one another, guided by the statutory definition of affiliation. Further, we also determined that Tianjin Huayuan and its affiliates comprise a single entity pursuant to 19 CFR 351.401(f). Therefore, the Department evaluated the separate rate eligibility of the entire collapsed Huayuan Group.

The record shows that the collapsed Huayuan Group cannot overcome the presumption of *de jure* and *de facto*

[60] *See Sparklers,* at 56 FR 20589.

[61] *See, e.g.,* Baozhang's Section A Questionnaire response dated July 20, 2011; Baozhang's separate rate application dated June 27, 2011; Shanghai Baozhang's separate rate application dated June 27, 2011.

[62] *See, e.g.,* Shanghai SETI Enterprise International Co., Ltd.'s separate rate application dated June 27, 2011.

[63] *See Silicon Carbide,* 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 & n.3 (May 8, 1995).

[64] *See, e.g.,* Baozhang's Section A Questionnaire response dated July 20, 2011; Baozhang's separate rate application dated June 27, 2011; Shanghai Baozhang's separate rate application dated June 27, 2011; Tianjin Honbase Section A questionnaire response dated July 5, 2011.

[65] *See, e.g.,* Shaanxi New Mile International Trade Co., Ltd.'s separate rate application dated June 28, 2011.

[66] These companies are: Shijiazhuang Kingway Metal Products Co., Ltd.; Shanxi Yuci Broad Wire Products Co., Ltd.; Huanghua Jinhai Hardware Products Co., Ltd.; Huanghua Jinhai Import & Export Trading Co., Ltd.; Guizhou Wire Rope Incorporated Company; Hebei Minmetals Co., Ltd.; Shandong Minmetals Co., Ltd.; Fasten Group Imp. & Exp. Co., Ltd.; Qingdao Ant Hardware Manufacturing Co., Ltd.; Suntec Industries Co., Ltd.; M & M Industries Co., Ltd.; Shaanxi New Mile International Trade Co., Ltd.; Hebei Cangzhou New Century Foreign Trade Co., Ltd.; Dezhou Hualude Hardware Products Co., Ltd.; Shanghai SETI Enterprise International Co., Ltd.; and Xi'an Metals and Minerals Import and Export Co., Ltd.

[67] These companies are: Anping Shuangmai Metal Products Co., Ltd.; Anping Xinhong Wire Mesh Co Ltd.; Beijing Catic Industry Limited; Benxi Wasainuo Metal Packaging Production Co., Ltd.; China National Electronics Imp. & Exp. Ningbo Co., Ltd.; Easen Corp.; Ecms O/B Tianjin Huayuan Metal Wire; Hebei Dongfang Hardware And Mesh Co., Ltd.; Hebei Longda Trade Co., Ltd.; Huanghua Yufutai Hardware Products Co., Ltd.; Maccaferri (Changsha) Enviro-Tech Co.; Nantong Long Yang International Trade Co., Ltd.; Shandong Hualing Hardware & Tools Co. Ltd.; Shanghai Multi-development Enterprises; Shanghai Suntec Industries Co., Ltd.; Tianjin Jing Weida International Trade Co., Ltd.; Tianjin Pcss Trading Co., Ltd.; and Weifang Hecheng International Trade Co., Ltd.

[68] *See* ''Memorandum to Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior International Trade Analyst, Office 9: Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Preliminary Affiliation and Single Entity Determinations for Tianjin Huayuan Metal Wire Products Co., Ltd.,'' dated concurrently with this notice (''Huayuan Affiliation Memo'').

government control,[69] based on the roles of an individual who is in a position to exercise restraint and direction over the Tianjin Huayuan group of companies.[70] For business proprietary reasons noted in the Huayuan Affiliation Memo and Huayuan Prelim Analysis Memo, we preliminarily find that the Huayuan Group has not demonstrated that there is an absence of *de jure* and *de facto* government control by the PRC government. A detailed discussion of this determination is provided in Huayuan Prelim Analysis Memo and Huayuan Affiliation Memo.

Calculation of Separate Rate

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review.[71] Section 735(c)(5)(A) of the Act provides that ''the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, * * *''

Huayuan has not qualified for a separate rate, as explained above, and accordingly it will not receive an individually calculated margin. Furthermore, because using the weighted-average margin based on the calculated net U.S. sales quantities for Honbase and Baozhang would allow these two respondents to deduce each other's business-proprietary information and thus cause an unwarranted release of such information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

For these preliminary results, we determine that using the ranged total sales quantities reported by Honbase and Baozhang from the public versions of their submissions, is more appropriate than applying a simple average.[72] These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Honbase and Baozhang. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

Because the calculated net U.S. sales values for Honbase and Baozhang are business-proprietary figures, we find that 127.09 percent, which we calculated using the publicly available figures of U.S. sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Honbase and Baozhang.[73]

Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

Information on the record of this investigation indicates that there were more exporters of galvanized steel wire from the PRC than those indicated in the response to our request for Q&V information during the POI.[74] As stated above, we issued our request for Q&V information to 28 potential PRC producers/exporters of galvanized steel wire. While information on the record of this investigation indicates that there are other producers/exporters of galvanized steel wire in the PRC, we received only ten timely-filed solicited Q&V responses. As noted above, we also received 14 timely-filed, unsolicited Q&V responses, which we considered for respondent selection purposes. Although all producers/exporters were given an opportunity to provide Q&V information, not all producers/exporters provided a response to the Department's Q&V letter.[75]

As discussed above, Tianjin Jinghai filed a letter stating that it would not participate as a mandatory respondent. Additionally, as discussed above, Tianjin Huayuan will not receive a separate rate. Therefore, the Department has preliminarily determined that there were PRC producers/exporters of galvanized steel wire during the POI that did not respond to the Department's request for information. We have treated these PRC producers/exporters, as part of the PRC-wide entity because they did not qualify for a separate rate.[76] For a detailed discussion, *see* the ''Separate Rate'' section above.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the

[69] *See, e.g.,* TMJH's Separate Rate Application dated June 27, 2011, at Exhibit 18; Tianjin Huayuan's Questionnaire Response dated October 17, 2011, at Exhibit SA3–1.

[70] For a complete discussion of these business proprietary details, *see* ''Memorandum to the File from Irene Gorelik, Senior Case Analyst: Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Tianjin Huayuan Metal Wire Products Co., Ltd.,'' dated concurrently with this notice (''Huayuan Prelim Analysis Memo'').

[71] *See Notice of Final Results and Partial Rescission Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 75 FR 49460 (August 13, 2010); *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review,* 75 FR 6352 (February 9, 2010), and the accompanying I&D Memo at Comment 2.

[72] *See* Honbase Supplemental Section CE questionnaire response (Public Version) dated October 12, 2011, at Exhibit 4; *see also* Bao Zhang Group Resubmission of the Public Version of Exhibit SA–1 for the First Supplemental Section A Response, dated October 3, 2011.

[73] *See* ''Memorandum to the File from Katie Marksberry, International Trade Specialist, Office 9 Re: Calculation of Separate Rate,'' dated concurrently with this notice.

[74] *See Respondent Selection Memorandum.*

[75] The following 18 companies were not responsive to the Department's request for Q&V information: Anping Shuangmai Metal Products Co., Ltd.; Anping Xinhong Wire Mesh Co Ltd.; Beijing Catic Industry Limited; Benxi Wasainuo Metal Packaging Production Co., Ltd.; China National Electronics Imp. & Exp. Ningbo Co., Ltd.; Easen Corp.; Ecms O/B Tianjin Huayuan Metal Wire; Hebei Dongfang Hardware And Mesh Co., Ltd.; Hebei Longda Trade Co., Ltd.; Huanghua Yufutai Hardware Products Co., Ltd.; Maccaferri (Changsha) Enviro-Tech Co.; Nantong Long Yang International Trade Co., Ltd.; Shandong Hualing Hardware & Tools Co. Ltd.; Shanghai Multi-development Enterprises; Shanghai Suntec Industries Co., Ltd.; Tianjin Jing Weida International Trade Co., Ltd.; Tianjin Pcss Trading Co., Ltd.; and Weifang Hecheng International Trade Co., Ltd.

[76] *See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 68232, 68236 (December 23, 2009) unchanged in *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 28560 (May 21, 2010) (''*PC Strand Prelim*''); *see also Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), and unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

Department's requests for information. Certain companies: (1) Did not respond to our questionnaires requesting either Q&V information; or (2) withdrew participation from the investigation. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of FA is appropriate to determine the PRC-wide rate.[77]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[78] We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the FA, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the: (a) Highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.[79] As AFA, we have preliminarily assigned a rate of 235.00 percent to the PRC-wide entity, which is the highest petition rate on the record of this proceeding that can be corroborated.[80] The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides guidance as to what constitutes secondary information. Suggested sources of secondary information include ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [81] The SAA further suggests that to ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[82] Independent sources used to corroborate may include, for example, published price lists, official import statistics, and CBP data, and information obtained from interested parties during the particular investigation.[83] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[84]

The AFA rate that the Department used is from the Petition. To corroborate the AFA margin that we have selected, we compared this margin to the model-specific margins we found for the cooperating mandatory respondents. We find that the margin of 235.00 percent has probative value because it is within the range of the non-aberrational, model-specific margins that we found for one of the mandatory respondents during the POI.[85] Accordingly, we find this rate is reliable and relevant, considering the record information, and thus, has probative value.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [86] As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully.[87] Given that 18 producers/exporters did not respond to the Department's requests for information and that Tianjin Jinghai, which is part of the PRC-wide entity, ceased participating in the investigation, the Department concludes that the petition rate of 235.00 percent, as total AFA for the PRC-wide entity, is sufficiently adverse to prevent these respondents from benefitting from their lack of cooperation.[88] Accordingly, we found that the rate of 235.00 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act. Accordingly, we determine that 235.00 percent is the most appropriate antidumping rate for the PRC-wide entity. The PRC-wide entity rate applies to all entries of galvanized steel wire except for entries from Tianjin Honbase, Baozhang and the 16 producers/exporters receiving a separate rate.

Date of Sale

19 CFR 351.401(i) states that, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[89] The date of sale is generally the date on

[77] *See PC Strand Prelim.*

[78] *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''*SAA*''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[79] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

[80] *See Initiation Notice,* at 76 FR 23552.

[81] *See SAA* at 870.

[82] *See id.*

[83] *See id.*

[84] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part:* 62 FR 11825 (March 13, 1997).

[85] *See* ''Memorandum to the File, from Irene Gorelik, Senior Analyst, re; Corroboration of the PRC-Wide Entity Rate for the Preliminary Determination in the Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China,'' dated concurrently with this notice.

[86] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55796 (Aug. 30, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (Feb. 23, 1998).

[87] *See* SAA at 870.

[88] *See* SAA at 870. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 75 FR 45467, August 2, 2010.

[89] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (''*Allied Tube*'').

which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[90] In order to simplify the determination of date of sale for both the respondents and the Department and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless the Department is satisfied that the exporter or producer establishes the material terms of sale on some other date.[91]

In *Allied Tube,* the Court of International Trade (''CIT'') found that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' [92] After examining the questionnaire responses and the sales documentation that the respondents placed on the record, we preliminarily determine that the invoice date is the most appropriate date of sale for Tianjin Honbase.[93] However, the appropriate date of sale for Baozhang is the date of shipment from the PRC, because the material terms of sale are set upon shipment from the PRC, not from the latter-issued invoice in the United States.[94]

Fair Value Comparisons

To determine whether sales of galvanized steel wire to the United States by Tianjin Honbase and Baozhang were made at less-than-fair-value, we compared the EP and/or constructed export price (''CEP'') to NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice. We compared NV to weighted-average EPs and/or CEPs in accordance with section 777A(d)(1) of the Act.

U.S. Price

A. EP

In accordance with section 772(a) of the Act, we based the U.S. price for certain Tianjin Honbase sales on EP because the first sale to an unaffiliated purchaser was made prior to importation, and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, foreign inland freight, foreign brokerage and handling, international freight, and rebates from the gross unit price. We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi.

B. CEP

In accordance with section 772(b) of the Act, we based the U.S. price for certain Tianjin Honbase's sales and all of Baozhang's sales on CEP because the first sale to an unaffiliated customer was made by these two respondents' respective U.S. affiliates.[95] In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: Marine insurance, discounts, rebates, billing adjustments, foreign movement expenses, and international freight, and United States movement expenses, including brokerage and handling. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: Credit expenses, warranty expenses, other direct selling expenses, and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values, actual expenses, or an average of the two.[96]

C. Further Manufacturing

Tianjin Honbase reported that its affiliate in the United States, MAT, further manufactures galvanized steel wire into downstream products. The Department required Tianjin Honbase to complete and file a Section E questionnaire response, which requests data related to cost of further manufacturing or assembly performed in the United States of galvanized steel wire. Based on Tianjin Honbase's responses and data, in accordance with section 772(d)(2) of the Act, the Department has deducted the cost of further manufacturing for sales of galvanized steel wire to which value was added in the United States by MAT prior to sale to unaffiliated customers.[97]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[98]

As the basis for NV, Tianjin Honbase and Baozhang provided FOPs used in each stage for the production of galvanized steel wire (*i.e.,* from drawing steel wire rod into steel wire to completion of the final product: Galvanized steel wire). Additionally, Tianjin Honbase and Baozhang reported that they are integrated producers because these respondents draw steel wire rod into steel wire, then galvanize the steel wire into finished product and provided the FOP information used in these processing stages.

Consistent with section 773(c)(1) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce galvanized steel wire.[99] If an

[90] *See PSF 2006* at 71 FR 77377.

[91] For instance, in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Taiwan,* 61 FR 14064, 14067–14068 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

[92] *See Allied Tube* 132 F. Supp. 2d at 1092.

[93] *See* Tianjin Honbase's Section A Questionnaire Response dated July 5, 2011, and Section C Questionnaire Response dated August 10, 2011.

[94] *See* Baozhang's Section A Questionnaire Response dated July 20, 2011, and Section C Questionnaire Response dated August 19, 2011.

[95] We consider these CEP sales because the respondents reported that their respective affiliates in the United States performed sales functions such as: Sales negotiation, issuance of invoices and receipt of payment from the ultimate U.S. customer during the POI. *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission,* in Part, 72 FR 18457 (April 12, 2007) unchanged in Final Results (where the Department stated that ''we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. {''Wavort''} to unaffiliated purchasers.''); *AK Steel Corp., et al.,* v. *United States,* 226 F.3d 1361 (Fed.Cir. 2000).

[96] For details regarding our CEP calculations, *see, e.g.,* Tianjin Honbase Prelim Analysis Memo; *see also* ''Memorandum to the File from Irene Gorelik, Senior Case Analyst: Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: *Anhui Baozhang Metal Products Limited,''* dated concurrently with this notice (''Baozhang Prelim Analysis Memo'').

[97] *See* Tianjin Honbase Prelim Analysis Memo.

[98] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695 (April 17, 2006) (''*CLPP''*) unchanged in *Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[99] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 15726,

Continued

NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in a previous case, one respondent was a fully integrated firm, and the Department valued both the steel wire rod drawing FOPs and steel wire garment hanger processing FOPs because this company bore all the costs related to these stages of production.[100] In this case, we are also valuing the respondents' steel wire rod drawing FOPs and the FOPs consumed in the galvanizing process because the respondents bore the costs related to these stages of production.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Tianjin Honbase and Baozhang for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the SVs, among other criteria, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Thai import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).[101]

For this preliminary determination, in accordance with the Department's practice, we used Thai GTA import statistics to calculate SVs for the mandatory respondents' FOPs (direct materials, including steel wire rod, certain energy FOPs, and packing materials). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[102] The record shows that data in the Thai Import Statistics, as well as that from the other Thai sources, represent data that are contemporaneous with the POI, product-specific, and tax-exclusive.[103]

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[104] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[105] Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[106] Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an ''unspecified'' country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[107] Therefore, we have not used prices from these countries either in calculating the Thai import-based surrogate values or in calculating market-economy input values.[108]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[109] Where we find ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[110] we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average the ME input's purchase price with the appropriate SV for the input according to their respective shares of the reported total volume of purchases.[111] Where appropriate, we add freight to the ME prices of inputs.

Tianjin Honbase claimed that it contracted for ocean freight services sourced from an ME country and paid for in an ME currency. Because information reported by Tianjin Honbase demonstrated that it purchased significant quantities (*i.e.,* 33 percent or more) of freight services from market economy suppliers, the Department used Honbase's weighted average market economy purchase price to value all of its ocean freight expenses.[112]

15732 (March 25, 2008) unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587 (August 14, 2008) (''Steel Wire Garment Hangers Final LTFV''); *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(E).

[100] *See Steel Wire Garment Hangers Final LTFV.*

[101] A detailed description of all surrogate values used for respondents can be found in the Prelim SV Memo and company-specific analysis memoranda.

[102] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[103] *See* Prelim SV Memo.

[104] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

[105] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

[106] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632, October 25, 2007.

[107] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005).

[108] *See id.*

[109] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[110] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs''*).

[111] *See id.,* at 71 FR 61718.

[112] *See id.,* at 71 FR 61717; *see also* Tianjin Honbase Prelim Analysis Memo.

The Department used Thai Import Statistics from the GTA to value the raw material, certain energy inputs and packing material inputs that Tianjin Honbase and Baozhang used to produce galvanized steel wire during the POI, except where listed below.

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income (''GNI'') and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (''CAFC''), in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest''*), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[113] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In the preliminary determination, the Department calculated the labor input using the wage method described in *Labor Methodologies.* To value the respondent's labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description under ISIC-Revision 3 (''Manufacture of Basic Metals'') to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act. For the preliminary determination, the calculated industry-specific wage rate is 135.72 Baht/hour or $4.43/hour. A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

As stated above, the Department used Thailand ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.[114]

Because water was used by the respondents in the production process of galvanized steel wire, the Department considers water to be a direct material input, and not as overhead, and valued water with a SV according to our practice.[115] The Department valued water using data from Thailand's Board of Investment.[116] This source provides water rates for industrial users that are VAT exclusive. Although Petitioners suggested that we value water using information from Thailand's Metropolitan Waterworks Authority, we find that the information provided is approximate and not explicitly tax-exclusive. Therefore, the data provided by the Board of Investment provides a more specific and accurate surrogate value.[117]

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2011: Thailand.* This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Thailand to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Thailand's largest city, Bangkok, to the nearest seaport. The inland freight costs in the World Bank report are for shipping a 20-foot container. We calculated a per-kilogram, per-kilometer surrogate inland freight rate of 0.0008 U.S. dollars per kilometer per kilogram based on using the full capacity of a 20-foot container.[118]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2011: Thailand,* published by the World Bank.

To value factory overhead, selling, general, and administrative expenses, and profit, we relied on one financial statement from a company located in Thailand. We calculated the surrogate financial ratio using data from the 2010 audited financial statement Capital Engineering Network (''Capital Engineering'').[119] Capital Engineering is a producer of comparable wire rod based products rather than identical merchandise. Petitioners provided additional Thai financial statements for Tycoons Worldwide, Thai Wire Products Co., Ltd (''Thai Wire'') and Thailand Iron Works (''Thai Iron''). We have determined not to rely on the 2010 financial statement for Tycoons Worldwide because it indicates that it received promotional privileges from the Board of Investment (''BOI''). Specifically, Tycoons International received two different tax exemptions that fall under the Investment Promotion Act (''IPA'') in Sections 28, 31, and 35.[120] The Department has found these two tax exemption programs from the BOI to be countervailable subsidies.[121] Consistent with the Department's practice, we prefer not to use financial statements of a company we have reason to believe or suspect may have received subsidies, because financial ratios derived from that company's financial statements may not constitute the best available information with which to value financial ratios.[122] Further, as Thai Iron

[113] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies''*).

[114] *See Labor Methodologies,* 76 FR at 36093.

[115] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

[116] *See* Prelim SV Memo at 10 and Exhibit 7.

[117] *See id.*

[118] *See id.,* at Exhibit 9.

[119] *See* Petitioners' September 1, 2011, Surrogate Value Submission at Exhibits 5B and 5D; *see also* Petitioners' Submission of Complete 2010 Financial Statement of Thai Wire Products Public Company Limited, dated September 12, 2011; *see also* Prelim SV Memo at Exhibits 11a–c.

[120] *See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand,* 70 FR 13462 (March 21, 2005); *see also Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review,* 61 FR 729 (January 6, 1997).

[121] *See id.*

[122] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative Review and New Shipper Reviews,* 72 FR 19174 (April 17, 2007) and

Continued

is a producer of galvanized iron sheets, we find that Thai Iron's financial statements do not reflect the production experience of the respondents to the degree of Capital Engineering's financial statements. Additionally, we were unable to calculate a financial ratio based on the statement of Thai Wire because the statement lacked sufficient detail in order to allow for the classification of expenses.

Furthermore, we were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratio using Capital Engineering's financial statement. Accordingly, we have disregarded the respondents' energy inputs (coal and electricity) in the calculation of normal value for purposes of the preliminary determination, in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.[123]

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[124]

Preliminary Determination

The weighted-average dumping margins are as follows:

GALVANIZED STEEL WIRE FROM THE PRC

Exporter	Producer	Weighted-average margin (percent)
Tianjin Honbase Machinery Manufactory Co., Ltd	Tianjin Honbase Machinery Manufactory Co., Ltd	131.84
Anhui Bao Zhang Metal Products Co., Ltd	Anhui Bao Zhang Metal Products Co., Ltd	76.34
Shanghai Bao Zhang Industry Co., Ltd	Shanghai Bao Zhang Industry Co., Ltd	76.34
Shanghai Bao Zhang Industry Co., Ltd	Anhui Bao Zhang Metal Products Co., Ltd	76.34
Anhui Bao Zhang Metal Products Co., Ltd	Shanghai Bao Zhang Industry Co., Ltd	76.34
Shijiazhuang Kingway Metal Products Co., Ltd	Shijiazhuang Kingway Metal Products Co., Ltd	127.09
Shanxi Yuci Broad Wire Products Co., Ltd	Shanxi Yuci Broad Wire Products Co., Ltd	127.09
Huanghua Jinhai Hardware Products Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Huanghua Jinhai Import & Export Trading Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Guizhou Wire Rope Incorporated Company	Guizhou Wire Rope Incorporated Company	127.09
Hebei Minmetals Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Hebei Minmetals Co., Ltd	Huanghua Huarong Hardware Co., Ltd	127.09
Hebei Minmetals Co., Ltd	Shandong Jining Lianzhong Hardware Products Co., Ltd	127.09
Shandong Minmetals Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Shandong Minmetals Co., Ltd	Huanghua Xincheng Metal Products Co., Ltd	127.09
Shandong Minmetals Co., Ltd	Tianjin Shi Dagangqu Yuliang XianCaichang	127.09
Shandong Minmetals Co., Ltd	Tianjin Hengfeng Metal Wire Co., Ltd	127.09
Shandong Minmetals Co., Ltd	Tianjin Shi Jinghai Yicheng Hardware Products Co., Ltd	127.09
Fasten Group Imp. & Exp. Co., Ltd	Jiangsu Fasten Stock Co., Ltd	127.09
Fasten Group Imp. & Exp. Co., Ltd	Zhangjiagang Guanghua Communication Cable Materials Co., Ltd.	127.09
Fasten Group Imp. & Exp. Co., Ltd	Zhangjiagang Kaihua Metal Products Co., Ltd	127.09
Qingdao Ant Hardware Manufacturing Co., Ltd	Qingdao Ant Hardware Manufacturing Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Jinnan 4th Wire Factory	127.09
Suntec Industries Co., Ltd	Tianjin Yinshan Manufacture & Trade Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Zhaohong Metal Products Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Wandai Metal Products Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Dagang Wire Factory	127.09
Suntec Industries Co., Ltd	Tianjin Jinghai Yicheng Metal Products Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Liquan Metal Products Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Huayuan Times Metal Products Co., Ltd	127.09
Suntec Industries Co., Ltd	Tianjin Fusheng Metal Products Co., Ltd	127.09
M & M Industries Co., Ltd	Tianjin Huayuan Times Metal Products Co., Ltd	127.09
M & M Industries Co., Ltd	Tianjin Huayuan Metal Wire Products Co., Ltd	127.09
M & M Industries Co., Ltd	Tianjin Tianxin Metal Products Co., Ltd	127.09
M & M Industries Co., Ltd	Tianjin Jinghai County Yongshun Metal Products Mill	127.09
M & M Industries Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Shaanxi New Mile International Trade Co., Ltd	Tianjin Huayuan Metal Wire Products Co., Ltd	127.09
Shaanxi New Mile International Trade Co., Ltd	Tianjin Jinghai Yicheng Metal Products Co., Ltd	127.09
Shaanxi New Mile International Trade Co., Ltd	Tianjin Zhaohong Metal Products Co., Ltd	127.09
Shaanxi New Mile International Trade Co., Ltd	Tianjin Lianxing Metal Products Co., Ltd	127.09
Shaanxi New Mile International Trade Co., Ltd	Tianjin Beichen Gangjiaoxian Metal Products Co., Ltd, Fuli Branch.	127.09
Shaanxi New Mile International Trade Co., Ltd	Shenzhou Hongli Metal Products Co., Ltd	127.09
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Tianjin Huayuan Metal Wire Products Co., Ltd	127.09
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Tianjin Randa Metal Products Factory	127.09

accompanying Issues and Decision Memorandum at Comment 1.

[123] *See* Tianjin Honbase Prelim Analysis Memo; *see also* Baozhang Prelim Analysis Memo; *see also Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838, 16839 (April 13, 2009).

[124] *See Initiation Notice,* 76 FR at 23553 and as described in *Policy Bulletin 05.1,* available at *http://ia.ita.doc.gov/rates.*

GALVANIZED STEEL WIRE FROM THE PRC—Continued

Exporter	Producer	Weighted-average margin (percent)
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Tianjin Jinghai Yicheng Metal Products Co., Ltd	127.09
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Tianjin Jinghai Hongjiufeng Wire Products Co., Ltd	127.09
Hebei Cangzhou New Century Foreign Trade Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Jinghai Yicheng Metal Products Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Yinshan Industry and Trade Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Zhenyuan Industry and Trade Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Dingzhou Xuri Metal Products Factory	127.09
Dezhou Hualude Hardware Products Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Dagang Wire Mill	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Huayuan Industrial Company	127.09
Dezhou Hualude Hardware Products Co., Ltd	Hebei Yongwei Metal Products Co., Ltd	127.09
Dezhou Hualude Hardware Products Co., Ltd	Tianjin Guanshun Metal Products Co., Ltd	127.09
Shanghai SETI Enterprise International Co., Ltd	Shanghai Xiaoyu Metal Products Co., Ltd	127.09
Xi'an Metals and Minerals Import and Export Co., Ltd	Tianjin Jinyongtai Hardware Products Co., Ltd	127.09
Xi'an Metals and Minerals Import and Export Co., Ltd	Tianjin Hengfeng Metal Wire Co., Ltd	127.09
Xi'an Metals and Minerals Import and Export Co., Ltd	Shenzhou City Hongli Hardware Manufacturing Co., Ltd	127.09
Xi'an Metals and Minerals Import and Export Co., Ltd	Tianjin Dagang Jinding Metal Products Factory	127.09
PRC-Wide Rate [125]		235.00

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).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of galvanized steel wire from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Tianjin Honbase and Baozhang, the non-selected companies receiving a separate rate, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**.

Additionally, the Department has determined in its *Galvanized Steel Wire From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 76 FR 55031 (September 6, 2011) that galvanized steel wire exported by Baozhang and M&M Industries Co., Ltd., benefitted from export subsidies. With respect to Baozhang, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the export subsidy determined for Baozhang in the companion CVD investigation.[126]

With respect to M&M Industries Co., Ltd., a separate rate recipient in this case, but a mandatory respondent in the companion CVD case that was found to have benefitted from export subsidies, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the lesser of its own CVD export subsidy rate or the average of the CVD export subsidy rates applicable to the mandatory respondents, on which M&M Industries Co., Ltd.'s dumping margin is based. For the other separate rate recipients [127] in this case, excluding M&M Industries Co., Ltd., who are receiving the All-Others rate in the CVD investigation, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the lesser of the average of the export subsidy rates determined in the CVD investigation or the average of the CVD export subsidy rates applicable to the mandatory respondents, on which the separate rate dumping margins are based.

Because Tianjin Honbase is a mandatory respondent in this case but received the All-Others rate in the companion CVD case, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the amount by which the NV exceeds the U.S. price, as indicated above, reduced by the average of the export subsidy rates determined in the CVD investigation.

For all other entries of galvanized steel wire from the PRC, the following cash deposit/bonding instructions apply: (1) The rate for the firms listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all non-PRC exporters of galvanized steel wire which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter in the combination listed above, that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

[125] The PRC–Wide entity includes: Tianjin Huayuan Metal Wire Products Co., Ltd.; Tianjin Meijiahua Trade Co., Ltd., Tianjin Huayuan Times Metal Products Co., Ltd.; Tianjin Tianxin Metal Products Co., Ltd.; Tianjin Jinghai Yicheng Metal Products Co., Ltd.; Anping Shuangmai Metal Products Co., Ltd.; Anping Xinhong Wire Mesh Co., Ltd.; Beijing Catic Industry Limited; Benxi Wasainuo Metal Packaging Production Co., Ltd.; China National Electronics Imp. & Exp. Ningbo Co., Ltd.; Easen Corp.; Ecms O/B Tianjin Huayuan Metal Wire; Hebei Dongfang Hardware And Mesh Co., Ltd.; Hebei Longda Trade Co., Ltd.; Huanghua Yufutai Hardware Products Co., Ltd.; Maccaferri (Changsha) Enviro-Tech Co.; Nantong Long Yang International Trade Co., Ltd.; Shandong Hualing Hardware & Tools Co., Ltd.; Shanghai Multi-development Enterprises; Shanghai Suntec Industries Co., Ltd.; Tianjin Jing Weida International Trade Co., Ltd.; Tianjin Pcss Trading Co., Ltd.; and Weifang Hecheng International Trade Co., Ltd.

[126] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2007).

[127] The Department notes that it is our practice to adjust the separate rate companies by the lesser of the export subsidy rate (or average thereof) applicable to the mandatory respondents from which the separate rate is calculated, or the All-Others export subsidy rate from the CVD case (with exception of M&M, which has its own calculated export subsidy rate). Because the weighted-average export subsidy rate is not currently on the record of the antidumping duty investigation, we are using a simple average of the export subsidy rates calculated in the CVD case. However, for the final determination, we intend to update this information based on the final determination in the CVD case.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of galvanized steel wire, or sales (or the likelihood of sales) for importation, of the galvanized steel wire within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs.[128] A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice.[129] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[130]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

As noted above, on October 21, 2011, Tianjin Honbase requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four month period to a six month period. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producers/exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly. We are also granting the request to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28655 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–DS–P

[128] *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1).

[129] *See* 19 CFR 351.310(c).

[130] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–840]

Galvanized Steel Wire From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: November 4, 2011.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that galvanized steel wire (galvanized wire) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated dumping margins are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Ericka Ukrow, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–8029 or (202) 482–0405, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2011, the Department initiated the antidumping duty investigation on galvanized wire from Mexico. *See Galvanized Steel Wire from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23548 (April 27, 2011) (*Initiation Notice*). The Petitioners in this investigation are Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc. (collectively, Petitioners). Since the *Initiation Notice,* the following events have occurred.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all

parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice,* 76 FR at 23548; *see also Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*). For further details, *see* the ''Scope Comments'' section of this notice, below. The Department also set aside a time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *See Initiation Notice,* 76 FR at 23548–49; *see also Preamble,* 62 FR at 27323.

On April 29, 2011, the Department notified all interested parties of its intent to select mandatory respondents for this investigation based on U.S. import data obtained from U.S. Customs and Border Protection (CBP). The Department set aside a period of time for parties to comment on the potential respondent selection and encouraged all parties to submit comments within five calendar days from the date of that memorandum. *See* Memorandum from Angelica Mendoza, Program Manager, to All Interested Parties, dated April 29, 2011. On May 4, 2011, we received comments regarding the Department's respondent selection, based on the U.S. import data obtained from CBP, from Petitioners and one Mexican manufacturer/exporter of the subject merchandise, Aceros Camesa (Camesa).

On May 6, 2011, based on requests received from Camesa and an additional Mexican manufacturer of the subject merchandise, Deacero S.A. de C.V. (Deacero), the Department granted a two-day extension of time for interested parties to submit comments regarding the appropriate product characteristics to be used in the Department's antidumping duty questionnaire. *See* Letter from Angelica Mendoza, Program Manager, to All Interested Parties, dated May 10, 2011.

On May 10, 2011, we received scope comments from certain respondents in the companion antidumping and countervailing duty investigations involving China, as well as from two U.S. purchasers of galvanized wire. Additionally, we received rebuttal comments regarding the scope of the investigation from Petitioners on June 22, 2011. For further information, *see* the ''Scope Comments'' section below.

On May 12, 2011, the Department received comments regarding physical product characteristics from Petitioners, Deacero, and Camesa, as well as comments filed on behalf of several Chinese respondents. On May 19, 2011, we received rebuttal comments concerning product characteristics from the same four parties. For an explanation of the product comparison criteria used in this investigation, *see* the ''Product Comparisons'' section of this notice, below.

On May 20, 2011, the United States International Trade Commission (USITC) published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of imports from the People's Republic of China and Mexico of galvanized wire, and the USITC notified the Department of its finding. *See Galvanized Steel Wire from China and Mexico,* 76 FR 29266 (May 20, 2011); *see also* USITC Publication 4234 (May 2011), titled ''Galvanized Steel Wire from China and Mexico: Investigation Nos. 701–TA–479 and 731–TA–1183–1184 (Preliminary).''

On June 1, 2011, we selected Deacero and Camesa as the mandatory respondents in this investigation and issued the Department's antidumping duty questionnaire to both respondents the following day. *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping Countervailing Duty Operations, from Richard O. Weible, Director, Office 7, titled ''Antidumping Duty Investigation of Galvanized Steel Wire from Mexico: Respondent Selection Memorandum,'' dated June 1, 2011.

Deacero and Camesa submitted responses to section A of the Department's antidumping duty questionnaire on July 11, 2011. *See* Deacero's Response to Section A of the Department's Antidumping Duty Questionnaire, dated July 11, 2011 (Deacero AQR); Camesa's Response to Section A of the Department's Antidumping Duty Questionnaire, dated July 11, 2011 (Camesa AQR).

On July 13, 2011, Petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until October 27, 2011. *See Galvanized Steel Wire from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 47150 (August 4, 2011).

On August 9, 2011, both Deacero and Camesa submitted their responses to sections B (covering comparison market sales) and C (covering U.S. sales) of the Department's questionnaire. *See* Deacero's Responses to Sections B and C of the Department's Antidumping Duty Questionnaire, dated August 9, 2011 (Deacero BQR and Deacero CQR); Camesa's Responses to Sections B and C of the Department's Antidumping Duty Questionnaire, dated August 9, 2011 (Camesa BQR and Camesa CQR).

The Department received Camesa's and Deacero's section D response to the questionnaire (*i.e.*, the section covering the cost of production (COP) and constructed value (CV)) on August 2, 2011, and August 4, 2011, respectively. *See* Camesa's Response to Section D of the Department's Antidumping Duty Questionnaire, dated August 2, 2011 (Camesa DQR); Deacero's Response to Section D of the Department's Antidumping Duty Questionnaire, dated August 4, 2011 (Deacero DQR). Also on August 4, 2011, Camesa filed its sales and cost reconciliation, pursuant to sections B through D of the Department's questionnaire. Deacero also filed its sales reconciliation on August 4, 2011, but submitted its cost reconciliation on August 9, 2011. We issued a supplemental questionnaire concerning the section D responses of Deacero and Camesa on August 31, 2011, and September 1, 2011, respectively.

In their respective section A sales responses, both Deacero and Camesa reported certain data and gave a narrative description of subject sales which were further manufactured, and subsequently resold, in the United States. *See* Deacero AQR at 26–28 and Exhibit A–15; Camesa AQR at 32–34 and Exhibits A–17, A–18, and A–19. Both parties requested exemption from reporting their respective company's further manufactured sales in a response to section E of the Department's antidumping duty questionnaire. After analyzing these data, the Department determined that Camesa, pursuant to 19 CFR 351.402(c), did not need to file a section E response. *See* Letter from Angelica Mendoza, Program Manager, to Camesa, dated July 22, 2011. However, pursuant to 19 CFR 351.402(c), the Department determined, based on its analysis of information provided in the section A response, that Deacero was required to respond to section E of the Department's questionnaire.[1] *See* Letter from Angelica Mendoza, Program Manager, to Deacero, titled ''Antidumping Duty Investigation of Galvanized Steel Wire from Mexico:

[1] The Department first determined that Deacero needed to alter its methodology used in calculating the value-added of its further manufacturing costs and resubmit the requisite exhibits from its section A response for further evaluation. *See* Memorandum to the File from Patrick Edwards, Analyst, titled ''Reporting of Further-Manufactured Sales,'' dated July 22, 2011. Deacero submitted its revised calculations and exhibits on July 26, 2011. *See* Letter from Deacero, titled ''Exhibit A–15 of Deacero's Section A Response,'' dated July 26, 2011.

Request to Submit Response to Section E Further-Manufacturing or Assembly of the Subject Merchandise in the United States Section of the Antidumping Duty Questionnaire,'' dated August 22, 2011.

On September 15, 2011, the Department issued a supplemental questionnaire concerning Camesa's sections A through C sales responses. On September 16, 2011, Deacero submitted its response to section E of the Department's questionnaire, per the Department's request. *See* Deacero's Response to Section E of the Department's Antidumping Duty Questionnaire, dated September 16, 2011 (Deacero EQR).

On September 19, 2011, and September 20, 2011, respectively, we issued two supplemental sales questionnaires to Deacero covering its sections A through C responses and Deacero's reporting of certain product characteristics, in-scope merchandise and further manufacturing information.

On September 26, 2011, and September 28, 2011, we received the supplemental cost (*i.e.,* section D) responses from Deacero and Camesa, respectively. *See* Supplemental Cost Responses from Deacero, dated September 26, 2011 (Deacero SDQR) and Supplemental Cost Response from Camesa, dated September 28, 2011 (Camesa SDQR). Deacero submitted its responses to the Department's first and second supplemental sales questionnaires on October 7, 2011. *See* First Supplemental Sales Responses from Deacero, dated October 7, 2011 (Deacero SQR); Second Supplemental Sales Responses from Deacero, dated October 7, 2011 (Deacero SSQR). We also received Camesa's supplemental sales response on October 7, 2011. *See* Supplemental Sales Responses from Camesa, dated October 7, 2011 (Camesa SQR).

On September 27, 2011, and October 18, 2011, Camesa and Deacero, respectively, requested that, in the event of an affirmative preliminary determination in this investigation, the Department: (1) Postpone its final determination by 60 days, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and (2) extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period. For further discussion, *see* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

On September 28, 2011, we issued a supplemental section E questionnaire to Deacero. On October 5, 2011, we issued a second section D supplemental questionnaire to Camesa. On October 12, 2011, Deacero submitted its response to the section E supplemental questionnaire (SEQR). Also on October 12, 2011, Camesa submitted a partial response to the Department's second section D supplemental questionnaire, and the remaining portion of the response on October 14, 2011 (collectively, Camesa SSDQR). Also on October 14, 2011, we issued a second section D supplemental questionnaire to Deacero, to which Deacero submitted its response on October 20, 2011 (Deacero SSDQR).[2]

Period of Investigation

The period of investigation (POI) is January 1, 2010, to December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of this investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

—1.80 percent of manganese, or
—1.50 percent of silicon, or
—1.00 percent of copper, or
—0.50 percent of aluminum, or
—1.25 percent of chromium, or
—0.30 percent of cobalt, or
—0.40 percent of lead, or
—1.25 percent of nickel, or
—0.30 percent of tungsten, or
—0.02 percent of boron, or
—0.10 percent of molybdenum, or
—0.10 percent of niobium, or
—0.41 percent of titanium, or
—0.15 percent of vanadium, or
—0.15 percent of zirconium.

Specifically excluded from the scope of this investigation is galvanized steel wire in coils of 15 feet or less which is pre-packed in individual retail packages. The products subject to this investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.20.0090, 7229.90.5008, 7229.90.5016, 7229.90.5031, and 7229.90.5051. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, *see Preamble*, 62 FR at 27323, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On May 10, 2011, we received comments from Qingdao Ant Hardware Manufacturing, Co., Ltd. (AHM) concerning the scope of this investigation. *See* Letter from Qingdao Ant Hardware Manufacturing Co., Ltd. to the Department, titled ''Scope Comments in the Antidumping and Countervailing Duty Investigations of Galvanized Steel Wire from China and Mexico,'' dated May 10, 2011 (AHM Scope Comments). In its submission, AHM requested that the Department exclude from the scope of the investigation certain steel wire pre-packed in retail packaging. *Id.* at 2. AHM stated that this type of wire is typically sold in pre-packed, retail packages having inner diameters of 2.25 to 8 inches and with lengths of 25 to 250 feet and, furthermore, is generally sold in retail stores that do not carry industrial or commercial building products. AHM further commented that pre-packed retail steel wire of the afore mentioned lengths is not contemplated to be within the scope of this investigation, as the wire is non-industrial, retail-ready and for individual/home use. Specifically, AHM requested that the Department exclude from the scope of this investigation ''galvanized steel wire * * * sold in

[2] In its SSDQR, Deacero submitted a SAS dataset supporting the previously submitted weight-average cost database (*i.e.,* database ''deacop03,'' submitted on October 7, 2011). However, we note that the database provided only underlying cost of production information to the data reported in ''deacop03.'' As such we did not incorporate Deacero's SSDQR database in our antidumping analysis. The previously submitted weight-average cost database, ''deacop03,'' is used for our margin calculation in this preliminary determination.

retail packaging where the pre-packaged length is no more than 300 feet, regardless of the diameter (gauge) of the wire.'' [3] *Id.* at 4.

Also on May 10, 2011, we received scope comments from Shanghai Bao Zhang Industry Co., Ltd., Anhui Bao Zhang Metal Products Co., Ltd., and B&Z Galvanized Wire Industry (collectively, Baozhang), requesting that the Department exclude from the scope of the investigation galvanized steel wire with a diameter of less than one millimeter. *See* Letter from Baozhang to the Department, titled ''Comments on Scope Issues: Investigation of the Galvanized Steel Wire from the People's Republic of China,'' dated May 10, 2011 (Baozhang Scope Comments). In its comments, Baozhang states that it has been a reliable source of this smaller-gauged wire to U.S. producers of stucco netting because the U.S. galvanized wire industry does not offer this gauge wire with a diameter of less than one milimeter. As such, Baozhang requests that the Department exclude from the scope of this investigation such material since any alleged injury experienced by the U.S. industry cannot be related to imports of this product. *Id.* at 2.

On May 10, 2011, the Department also received comments from two U.S. producers of stucco netting, Tree Island Wire (USA), Inc. (Tree Island) and Preferred Wire Products, Inc., (Preferred Wire) both supporting the position that galvanized steel wire less than 1 millimeter in diameter be excluded from the scope of the investigation. *See* Letter from Tree Island to the Department, titled ''Scope Comments in the Investigation of Galvanized Steel Wire from China,'' dated May 10, 2011; Letter from Preferred Wire to the Department, titled ''Scope Comments in the Investigation of Galvanized Steel Wire from China,'' dated May 10, 2011.

Petitioners filed rebuttal comments regarding the scope exclusion requests by AHM and Baozhang on June 22, 2011. *See* Letter from Petitioners to the Department, titled ''Galvanized Steel Wire from Mexico and China—Petitioners' Comments on Respondents' Scope Requests,'' dated June 22, 2011 (Rebuttal Scope Comments). In its comments, Petitioners state that despite AHM's contention that retail-ready, shorter strands of galvanized wire are purely for non-industrial, personal use, this galvanized wire is covered by the scope of this investigation. We preliminarily determine that the material described by AHM is subject to the scope of this investigation and constitutes a product for which Petitioners are seeking relief. However, Petitioners state that galvanized wire in coils of 15 feet or less, which are pre-packed in individual retail packages, may be excluded from the scope of the investigation as they are not seeking relief for this specific product. Accordingly, and as noted above, we have excluded such merchandise from the scope of this investigation.

Finally, with regard to the remaining comments concerning the exclusion of galvanized wire of a diameter less than one millimeter, Petitioners state a diameter less than one millimeter is covered by the scope of this investigation. We preliminarily find that such merchandise is subject to the scope of this investigation and is a product for which Petitioners are seeking relief.

Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Investigation'' section, above, and sold in Mexico during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Maximum specified carbon level, (2) wire diameter, (3) minimum specified coating weight, and (4) maximum tensile strength. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above, which were made in the ordinary course of trade.

Fair Value Comparisons

To determine whether respondents' sales of galvanized wire from Mexico to the United States were made at LTFV, we compared the constructed export price (CEP) [4] to normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Constructed Export Price

For the price to the United States, we used CEP, in accordance with section 772(b) of the Act. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by Deacero and Camesa were made in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

Deacero

In accordance with section 772(c)(2)(A) of the Act, and where appropriate, we made deductions from the starting price for certain billing adjustments, early payment discounts, quantity discounts, and certain other discounts, including rebates. *See* Deacero CQR at 21–26. We also made further deductions to price for certain movement expenses (offset for reported freight revenue), where appropriate, for foreign inland freight, foreign warehousing expenses, foreign brokerage, U.S. inland freight, U.S. warehouse expenses, certain other transportation expenses incurred on U.S. and further manufactured sales, and U.S. brokerage and handling expenses, pursuant to section 772(c)(2)(A) of the Act.

Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for commissions, credit expenses, inventory carrying costs incurred in Mexico and the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. We also made an adjustment to price for the cost of any further manufacturing or assembly, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. For a detailed discussion of these adjustments, *see* Memorandum to The File, through Angelica Mendoza, Program Manager, from Patrick Edwards and Ericka Ukrow, International Trade

[3] In the AHM Scope Comments, AHM had originally and inadvertently specified a maximum pre-packed length of 30 feet. AHM subsequently filed an additional submission on June 17, 2011, correcting this language, and clarifying that the reference to ''30 feet'' was intended to reference ''300 feet.'' AHM requested that these products also be excluded from the scope of the antidumping investigation covering galvanized wire from the People's Republic of China.

[4] Both respondents reported only CEP sales in their U.S. databases.

Analysts, titled ''Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Galvanized Steel Wire from Mexico: Deacero S.A. de C.V.,'' dated October 27, 2011 (Deacero Preliminary Analysis Memorandum).

Camesa

In accordance with section 772(c)(2)(A) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses including foreign inland freight, foreign brokerage, foreign inland insurance (covering shipments to all markets), U.S. inland freight, and U.S. brokerage and handling expenses. Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for commissions, credit expenses, warranty expenses, inventory carrying costs incurred in Mexico and the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. For a detailed discussion of these adjustments, *see* Memorandum to The File, through Angelica Mendoza, Program Manager, from Patrick Edwards and Ericka Ukrow, International Trade Analysts, titled ''Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Galvanized Steel Wire from Mexico: Aceros Camesa, S.A. de C.V.,'' dated October 27, 2011 (Camesa Preliminary Analysis Memorandum).

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondents' volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that respondents had a viable home market during the POI. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price or CEP. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses, and profit. For CEP sales (which constituted all sales by both Deacero and Camesa), the U.S. LOT is based on the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer. *See* 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997) (applying the CEP offset analysis under section 773(a)(7)(B).

In this investigation, we obtained information from Deacero and Camesa regarding the marketing stages involved in both parties making their reported home market and U.S. market sales, including a description of the selling activities performed by the respondents and/or their affiliates for each channel of distribution. *See* Deacero BQR at 26; Deacero CQR at 26; and Camesa AQR at 19–23. We did not make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412(e) because there was only one home market LOT for each respondent and we were unable to identify a pattern of consistent price differences attributable to differences in LOTs. *See* 19 CFR 351.412(d). Under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for both Deacero and Camesa because the NV sales for each company are at a more advanced LOT than the LOT for their U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of the company-specific LOT findings for this preliminary determination, *see* Deacero Preliminary Analysis Memorandum and Camesa Preliminary Analysis Memorandum.

C. Cost of Production Analysis

Based on our analysis of the Petitioners' sales-below-cost allegation in the petition, we found reasonable grounds to believe or suspect that galvanized wire sales were made in Mexico at prices below the COP, and initiated a country-wide cost investigation. *See* section 773(b)(2)(A)(i) of the Act and *Initiation Notice,* 76 FR at 23552. Accordingly, we conducted a sales-below-cost investigation to determine whether Deacero's and Camesa's sales were made at prices below their COP.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A) and financial expenses. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses and packing costs. We relied on the COP data submitted by Deacero and Camesa in their respective DQRs and cost supplemental responses, except where noted below.

Deacero:

1. We adjusted the G&A expense rate to include Employee Profit Sharing expenses and the losses from routine sales of property, plant and equipment.

2. We set Deacero's negative financial expense ratio to zero.

Because the data on which we base our analysis contains business proprietary information, a detailed analysis is included in the Memorandum to Neal M. Halper, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination: Deacero S.A. de C.V.,'' dated October 27, 2011 (Deacero Preliminary Cost Memorandum).

Camesa:

1. We increased fixed overhead to include depreciation on the fixed asset revaluation that is required by Mexican GAAP.

See Memorandum to Neal M. Halper, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination: Aceros Camesa,'' dated October 27, 2011 (Camesa Preliminary Cost Memorandum).

For the preliminary determination, we have relied upon the POI weighted-average COP reported by Deacero and Camesa, as adjusted above. Based on the review of record evidence, Deacero and Camesa did not appear to experience significant changes in cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether the sale prices were below the COP. The sales prices were exclusive of any applicable discounts, movement charges, direct and indirect selling expenses, and packing expenses. For purposes of this comparison, we used the COP exclusive of selling and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determine that such sales have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below-cost sales occurring during the entire POI. In accordance with section 773(b)(2)(D) of the Act, we compare prices to the POI-average costs to determine whether the prices permit recovery of costs within a reasonable period of time.

In this case, we found that, for certain products, more than 20 percent of Deacero's and Camesa's sales were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. *See* Deacero Preliminary Cost Memorandum and Camesa Preliminary Cost Memorandum. We, therefore, excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV for Deacero and Camesa on the reported packed, ex-factory or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, early payment and certain other discounts, other revenues received, inland freight, and warehousing expenses, pursuant to section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415(a) based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our preliminary determination for Deacero and Camesa.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of galvanized wire from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Deacero S.A. de C.V	61.54
Aceros Camesa S.A. de C.V	37.87
All-Others	59.37

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Deacero and Camesa are the only respondents in this investigation for which the Department has calculated a company-specific rate that is not zero or *de minimis.* Therefore, for purposes of determining the ''all-others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted average of the dumping margins calculated for Deacero and Camesa for the ''all-others'' rate, as referenced in the ''Suspension of Liquidation'' section, above.[5]

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary

[5] When there are only two relevant weighted-average dumping margins available to determine the ''all-others'' rate, the Department may use a simple average so as to avoid disclosure of business proprietary information. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value,* 75 FR 60723, 60724 (October 1, 2010). However, in this preliminary determination, the Department has determined an ''all-others'' rate using Deacero's and Camesa's ranged, public U.S. sales quantities, which also avoids disclosure of business proprietary information. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On September 27, 2011, and October 18, 2011, Camesa and Deacero, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four month period to a six month period. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting producers/exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly. We are also granting the request to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four month period to a six month period.

USITC Notification

In accordance with section 733(f) of the Act, we have notified the USITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the USITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of galvanized wire from Mexico are materially injuring, or threatening material injury to, the U.S. industry. *See* section 735(b)(2) of the Act. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the USITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774(1) of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See also* 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.* Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c).

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28656 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Gray's Reef National Marine Sanctuary Advisory Council: conservation, university education, charter/commercial fishing, and citizen-atlarge. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen for the conservation, university education and charter/commercial fishing seats should expect to serve 3-year terms, pursuant to the council's Charter. The applicant chosen for the citizen-at-large seat should expect to serve a 2-year term, pursuant to the council's Charter.

DATES: Applications are due by December 2, 2011.

ADDRESSES: Application kits may be obtained from Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; (912) 598–2381). Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; (912) 598–2381.

SUPPLEMENTARY INFORMATION: The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 27, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–28481 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Olympic Coast National Marine Sanctuary Advisory Council: Research; Chamber of Commerce/Tourism/Recreation; Marine Business/Ports/Industry; Conservation; Commercial Fishing (alternate position only). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's charter.

DATES: Applications are due by Friday, December 2, 2011.

ADDRESSES: Application kits may be obtained from Norma Klein, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362 (*norma.klein@noaa.gov*). Completed applications should be sent via mail or email to the same address.

FOR FURTHER INFORMATION CONTACT: Carol Bernthal, Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362, 360.457.6622 x11, *carol.bernthal@noaa.gov* or Liam Antrim, Resource Protection Specialist, 360.457.6622 x16, *liam.antrim@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Olympic Coast National Marine Sanctuary (OCNMS) Advisory Council seats are for a three-year term and have a designated primary member and an alternate. The OCNMS Advisory Council meets bi-monthly in public sessions in communities in and around Olympic Coast National Marine Sanctuary.

The OCNMS Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, six Federal government agencies serve as non-voting, ex officio members. Since its establishment, the advisory council has played a vital role in advising OCNMS and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, council members serve as a communication bridge between constituents and OCNMS staff.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 27, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–28480 Filed 11–3–11; 8:45 am]

BILLING CODE 3510–NK–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting—Emergency Meeting Notice

This notice that an emergency meeting was held is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: The Commission held an emergency closed meeting on November 2, 2011 at 10 a.m. The Commission, by a recorded unanimous vote, determined that the business of the agency required that the meeting be held at that time.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Registrant Financial Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–28773 Filed 11–2–11; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–31]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–31 with attached transmittal, policy justification, Sensitivity of Technology, and Sec. 620C(d) Certification.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 28 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-31, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Turkey for major defense equipment estimated to cost $111 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d)

UNCLASSIFIED

CERTIFICATION PURSUANT TO § 620C(d)
OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 293-1, I hereby certify that the furnishing to Turkey of three AH-1W Super Cobra attack helicopters, seven T700-GE-401 engines (six installed and one spare), inspections and modifications, spare and repair parts, personnel training and training equipment, publications and technical documentation, U.S. government and contractor engineering, technical, and logistics personnel support services, and other related elements of logistics support is consistent with the principles contained in Section 620C(b) of the Act.

This certification will be made part of the notification to Congress under Section 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying such notification, which constitutes a full explanation.

Ellen O. Tauscher
Under Secretary of State
for Arms Control and
International Security

UNCLASSIFIED

BILLING CODE 5001–06–C

Transmittal No. 11–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Turkey.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$65 million.
Other	46 million.
Total	111 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Three (3) AH–1W SUPER COBRA Attack Helicopters, seven (7) T700–GE–401 engines (6 installed and 1 spare), inspections and modifications, spare and repair parts, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics personnel support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (USMC) (SDH).

(v) *Prior Related Cases, if any:* FMS case SCD–$58.9M–13Jun90.

FMS case SCG–$55.2M–17Sep93.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 28 October 2011.

Policy Justification

Turkey—AH–1W SUPER COBRA Attack Helicopters

The Government of Turkey has requested a possible sale of three (3) AH–1W SUPER COBRA Attack Helicopters, seven (7) T700–GE–401 engines (6 installed and 1 spare), inspections and modifications, spare and repair parts, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics personnel

support services, and other related elements of logistics support. The estimated cost is $111 million.

Turkey is a partner of the United States in ensuring peace and stability in the region. It is vital to the U.S. national interest to assist our North Atlantic Treaty Organization (NATO) ally in developing and maintaining a strong and ready self-defense capability that will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The proposed sale will improve Turkey's capability for self defense, modernization, regional security, and interoperability with U.S. and other NATO members. AH–1W helicopters are already in the Turkish Land Forces Command inventory and will further enhance Turkey's ground defense capabilities. Turkey will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of these helicopters will not alter the basic military balance in the region or U.S. efforts to encourage a negotiated settlement in Cyprus.

There will be no prime contractor associated with this proposed sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately five contractor representatives to Turkey for a period of up to 90 days for differences training between U.S. and Turkish AH–1Ws helicopters.

These aircraft will be sold from the United States Marine Corps' (USMC) inventory. The effect on USMC readiness will be mitigated by the submission of a reprogramming action to return the sales proceeds from the U.S. Treasury's general receipts account to the USMC's H–1 upgrades program.

Transmittal No. 11–31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AH–1W SUPER COBRA attack helicopter and the basic associated systems operation manuals are Unclassified. The tactic operations manuals are Confidential.

2. If a technically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–28545 Filed 11–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–37]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–37 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12 th STREET SOUTH STE 203
ARLINGTON VA 22202-5408

OCT 28 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-37, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Finland for defense articles and services estimated to cost $255 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology



BILLING CODE 5001–06–C

Transmittal No. 11–37

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Finland

(ii) *Total Estimated Value:*

Major Defense Equipment *	$134 million.
Other	121 million.
Total	255 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 70 AGM–158 Joint Air-to-Surface Standoff Missiles (JASSM), 2 test vehicles, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (YAI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 28 October 2011

POLICY JUSTIFICATION

Finland—AGM–158 Joint Air-to-Surface Standoff Missiles (JASSM)

The Government of Finland has requested a sale of 70 AGM–158 Joint Air-to-Surface Standoff Missiles (JASSM), 2 test vehicles, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $255 million.

The proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a partner nation that remains an important force for political stability and economic progress in Europe. Finland is a member of the North Atlantic Treaty Organization's (NATO) Partnership for Peace as well as a member in the Euro-Atlantic Partnership Council. It additionally became a European Union member in 1995. Finnish troops have participated in UN peacekeeping activities since 1956, and the Finns continue to be one of the largest per capita contributors of peacekeepers in the world. Finland is an active participant in the Organization for Security and Cooperation in Europe (OSCE) and in early 1995 assumed the co-chairmanship of the OSCE's Minsk Group on the Nagorno-Karabakh conflict. Finland chaired the OSCE in 2008 and was part of the Chairmanship Troika in 2009.

Finland intends to integrate the JASSM on its F/A–18C/D aircraft. Finland's acquisition of JASSM is intended to modernize its current aircraft munitions suite and counter potential threats. This will contribute to the Finnish military's goal of updating its capability. Finland will have no difficulty absorbing these missiles into its inventory. The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Industries in Tampa, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Finland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–37

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM–158 Joint Air-to-Surface Standoff Missile is a 200+ NM range low-observable, highly survivable subsonic cruise missile designed to penetrate air defense systems en route to target. It is designed to kill hard, medium-hardened, soft and area type targets. The highest level of classified information required for training, operation and maintenance is Secret. Classification of the technical data and information on the AGM–158's performance, capabilities, systems, subsystems, operations and maintenance will range from Unclassified to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–28546 Filed 11–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–42]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–42 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 28 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-42, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Finland for defense articles and services estimated to cost $330 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 11–42

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Finland

(ii) *Total Estimated Value:*

Major Defense Equipment *	$260 million.
Other	70 million.
Total	330 million.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 600 STINGER–Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 10 STINGER Block 1 Production Verification Flight Test missiles, 110 Gripstock Block 1 Control Groups, 1827 Battery Coolant Units, 16 Tracking Head Trainers (THT), 50 Field Handling Trainers (FHT), 2 GCU–31A/E Gas Charging Units, 110 Night Sights, 1 STINGER Troop Proficiency Trainer, 1 Launch Simulator, 16 THT metal containers, 16 FHT metal containers, refurbishment, upgrades, spare and repair parts, tools and tool sets, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (VAG)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 28 October 2011

Policy Justification

Finland—Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft Missiles

The Government of Finland has requested a possible sale of 600 STINGER-Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 10 STINGER Block 1 Production Verification Flight Test missiles, 110 Gripstock Block 1 Control Groups, 1827 Battery Coolant Units, 16 Tracking Head Trainers (THT), 50 Field Handling Trainers (FHT), 2 GCU–31A/E Gas Charging Units, 110 Night Sights, 1 STINGER Troop Proficiency Trainer, 1 Launch Simulator, 16 THT metal containers, 16 FHT metal containers, refurbishment, upgrades, spare and repair parts, tools and tool sets, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $330 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for economic progress in Northern Europe.

This proposed sale will enable Finland to modernize its armed forces and enhance its existing air defense architecture to counter threats posed by air attack. The proposed sale will provide Finland a defensive capability while enhancing interoperability with the U.S. and other allied forces. Finland will have no difficulty absorbing this additional capability into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require 10 U.S. Government or contractor representatives to travel to Finland for a period of eight weeks for equipment checkout and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–42

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The STINGER–RMP Block I Anti-Aircraft missile is a fire-and-forget infrared missile system that can be fired from a number of ground-to-air and rotary wing platforms. The missile homes in on the heat emitted by either jet or propeller-driven, fixed wing aircraft or helicopters. The STINGER system employs a proportional navigation system that allows it to fly an intercept course to the target. The STINGER Block I International Missile System, hardware, software, and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential.

2. Missile system hardware and fire unit components contain sensitive critical technologies. The potential for reverse engineering is not significant for most technologies although the release of some end items could lead to development of countermeasures. STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; missile software; optical coatings; ultraviolet sensors; semi-conductor detectors infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; energetic materials formulation technology; energetic materials fabrication and loading technology; and warhead components seeker assembly. The hardware for all versions of STINGER International Platform Launched Missile is classified Confidential. Information on vulnerability to electronic countermeasures and countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–28547 Filed 11–3–11; 8:45 am]

BILLING CODE 5001–06–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: RP12–58–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—Virginia Power to be effective 11/1/2011.

Filed Date: 10/26/2011.

Accession Number: 20111026–5066.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: RP12–59–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—October 26, 2011 Negotiated Rate Agreement to be effective 11/1/2011.

Filed Date: 10/26/2011.

Accession Number: 20111026–5067.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

Docket Numbers: RP12–60–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 SoCal Nonconforming Agreement Vintage to be effective 11/1/2011.

Filed Date: 10/26/2011.

Accession Number: 20111026–5163.

Comment Date: 5 p.m. Eastern Time on Monday, November 07, 2011.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–28591 Filed 11–3–11; 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: RP12–61–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 2 to Tenaska 222 Capacity Release Negotiated Rate Agreement Filing to be effective 11/1/2011.

Filed Date: 10/27/2011.

Accession Number: 20111027–5073.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 08, 2011.

Docket Numbers: RP12–63–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37733 to Texla 39286 to be effective 11/1/2011.

Filed Date: 10/27/2011.

Accession Number: 20111027–5097.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 08, 2011.

Docket Numbers: RP12–64–000.

Applicants: Colorado Interstate Gas Company.

Description: Operational Purchases and Sales Report for the 12 month ending June 30, 2011 of Colorado Interstate Gas Company.

Filed Date: 10/27/2011.

Accession Number: 20111027–5108.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 08, 2011.

Docket Numbers: RP12–65–000.

Applicants: Central New York Oil And Gas, LLC.

Description: Central New York Oil And Gas, LLC submits tariff filing per 154.204: Amendments to FWSAs 10–27–11 to be effective 11/1/2011.

Filed Date: 10/27/2011.

Accession Number: 20111027–5145.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 08, 2011.

Docket Numbers: RP12–67–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: PSEG ERT 11–01–2011 Negotiated Rate to be effective 11/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5012.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–68–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits tariff filing per 154.204: IG Rate for November 2011 to be effective 11/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5039.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–69–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.204: ETNG Cleanup Filing to be effective 12/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5041.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–70–000.

Applicants: Saltville Gas Storage Company LLC.

Description: Saltville Gas Storage Company LLC. submits tariff filing per 154.204: Tariff Cleanup Filing to be effective 12/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5042.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–71–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Negotiated Rate Discount Adjustment to be effective 11/28/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–72–000.

Applicants: Kinder Morgan Interstate Gas Transmission LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: Negotiated Rate 2011–10–28 TMV to be effective 11/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5077.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–73–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 3 to Tenaska 224 to be effective 11/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5108.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–74–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Daily Allocations Filing to be effective 12/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5130.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–75–000.

Applicants: Southern LNG Company, LLC.

Description: Southern LNG Company, LLC. submits tariff filing per 154.204: SLNG Electric Power Cost Adjustment—2011 to be effective 12/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5141.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–76–000.

Applicants: East Cheyenne Gas Storage, LLC.

Description: East Cheyenne Gas Storage, LLC submits tariff filing per 154.204: East Cheyenne Non-conforming Agreements to be effective 11/1/2011.

Filed Date: 10/28/2011.

Accession Number: 20111028–5200.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–77–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: Annual Interruptible Storage Rev. Credit Surcharge Adjustment 10–31–11.

Filed Date: 10/31/2011.

Accession Number: 20111031–5120.

Comment Date: 5 p.m. Eastern Time on Monday, November 14, 2011.

Docket Numbers: RP12–78–000

Applicants: Algonquin Gas Transmission, LLC

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: ConEd 2011–11–01 Releases #1 to be effective 11/1/2011.

Filed Date: 10/31/2011.
Accession Number: 20111031–5125.
Comment Date: 5 p.m. Eastern Time on Monday, November 14, 2011.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1566–007.
Applicants: Tennessee Gas Pipeline Company, LLC.
Description: Tennessee Gas Pipeline Company, LLC. submits tariff filing per 154.203: Update Tariff Record No 19 to be effective 11/1/2011.
Filed Date: 10/28/2011.
Accession Number: 20111028–5185.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP11–2552–001.
Applicants: Central New York Oil And Gas, LLC.
Description: Central New York Oil And Gas, LLC submits tariff filing per 154.203: MFN Amendments Compliance Filing to be effective 12/31/9998.
Filed Date: 10/28/2011.
Accession Number: 20111028–5107.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Docket Numbers: RP12–48–001.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.205(b): Settlement—Fuel Amendment 2011–10–28 to be effective 1/1/2012.
Filed Date: 10/28/2011.
Accession Number: 20111028–5075.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 31, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–28592 Filed 11–3–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 10/24/2011 through 10/28/2011 pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110367, Final EIS, FERC, WA, Wells Hydroelectric Project, Application to Relicense, Public Utility District No. 1 Columbia River near Pateros and Brewster in Douglas, Okanogan, and Chelan Counties, WA, Review Period Ends: 12/05/2011, Contact: Leonard Tao 1 (866) 208–3372.

EIS No. 20110368, Draft EIS, FHWA, CO, I–25 Improvements Through the New Pueblo Freeway Project, To Improve Safety by Addressing Deteriorating Roadways and Bridges and Unsafe Road Characteristics, Pueblo County, CO, Comment Period Ends: 12/19/2011, Contact: Chris Horn (720) 963–3017

EIS No. 20110369, Draft EIS, USACE, 00, City of Denton Land Conveyance, Lake Texoma, To Develop Recreational and Economic Needs, Grayson and Cooke Counties, TX and Portion of Bryan, Marshall, Johnston and Love Counties, OK, Comment Period Ends: 12/21/2011, Contact: Stephen L. Nolen (918) 669–7660.

EIS No. 20110370, Final EIS, NOAA, 00, 2011 Caribbean Comprehensive Annual Catch Limit (ACL) Amendment for the US Caribbean: Amendment 6 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands; Amendment 5 to the Fishery Management Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, Review Period Ends: 12/05/2011, Contact: Roy E. Crabtree, Ph.D. (727) 824–5305.

EIS No. 20110371, Draft EIS, BLM, UT, Alton Coal Tract Lease by Application Project, The Exploration and Development of Mineral Resource, Kane County, UT, Comment Period Ends: 01/06/2012, Contact: Keith Rigtrup (435) 865–3063.

EIS No. 20110372, Draft EIS, FTA, CA, Van Ness Avenue Bus Rapid Transit Project, To Implement Bus Rapid Transit (BRT) Improvement Along a 2–Mile Stretch of Van Ness Avenue, City of County of San Francisco, CA, Comment Period Ends: 12/19/2011, Contact: Alexander Smith (415) 744–2599.

EIS No. 20110373, Final EIS, NPS, 00, Yellowstone National Park Draft Winter Use Plan, To Establish a Management Framework, Implementation, WY, MT and ID, Review Period Ends: 12/05/2011, Contact: David Jacob (303) 987–6970.

EIS No. 20110374, Final EIS, FHWA, CA, 6th Street Viaduct Seismic Improvement Project, Retrofitting or Demolition and Replacement of the Existing Viaduct over the Los Angeles River between Mateo and Mill Streets, Los Angeles County, CA, Review Period Ends: 12/05/2011, Contact: Carlos Montez (213) 897–9116.

Amended Notices

EIS No. 20110275, Second Draft Supplement, USFWS, CA, Southern Sea Otters (Enhydra lutris nereis) Translocation Program, Updated Information to the DSEIS 2005, San Nicolas Island, Southern California Bight, CA, Comment Period Ends: 11/18/2011, Contact: Lillian Carswell (805) 644–1766.

This document is available on the Internet at: *http://www.fws.gov/ventura/species_information/so_sea_otter/index.html.*

Revision of FR Notice Published 08/26/2011: Reopening Comment Period from 10/24/2011 to 11/18/2011.

EIS No. 20110345, Draft EIS, APHIS, 00, Glyphosate -Tolerant H7–1 Sugar Beets, Request for Nonregulated Status, United States, Comment Period Ends: 12/13/2011, Contact: Rebecca Stankiewicz Gabel, Ph.D. (301) 734–5603. Revision of FR Notice

Published 08/26/2011: Revision to FR Notice Published 10/14/2011: Extending the Comment Period from 11/28/2011 to 12/13/2011.

Dated: November 1, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–28634 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9486–8]

Meeting of the Small Communities Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee will meet on Thursday, December 1, 2011, at 3 p.m. to 4:30 p.m. (E.T.) at the U.S. EPA East Building, 1201 Constitution Avenue NW., Washington, DC. Topics to be discussed are issues and recommendations to the Administrator regarding environmental issues affecting small communities. This is an open meeting and all interested persons are invited to attend. The Subcommittee will hear comments from the public between 3:30 p.m. and 4 p.m. (E.T.) on Thursday, December 1, 2011. Each individual or organization wishing to address the Committee will be allowed a maximum of five minutes. Also, written comments may be submitted electronically to *eargle.frances@epa.gov* or contact Frances Eargle the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis, and may be extended, if the number of requests for appearances require it.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC), at (202) 564–3115 or email at *eargle.frances@epa.gov.*

Information on Services for those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodations of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 20, 2011.

M. Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–28627 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9486–7]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on Friday, December 2, 2011, 10 a.m.–5 p.m. (ET). The Committee will discuss the recommendations of the LGAC Workgroups and Small Community Subcommittee. The meeting will also feature the Gulf Coast Restoration Workgroup recommendations on ways EPA can engage local government officials in the Gulf Coast Ecosystem restoration efforts and other issues of environmental concern to locally elected officials. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 11:40 a.m.–12 p.m. on Friday, December 2, 2011. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Local Government Advisory Committee meeting will be held At the U.S. EPA Headquarters East Building, 1201 Constitution Avenue NW., Washington, DC on Friday, December 2, 2011. The Committee's meeting summary will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, the Designated Federal Officer for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or email at *eargle.frances@epa.gov.*

Information on Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 20, 2011.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–28625 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–R4–SFUND 2011–3767, FRL–9486–9]

BCX Tank Superfund Site; Jacksonville, Duval County, FL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the BCX Tank Superfund Site located in Jacksonville, Duval County, Florida for publication.

DATES: The Agency will consider public comments on the settlement until December 5, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name BCX Tank Superfund Site by one of the following methods:

- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 6, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–28637 Filed 11–3–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *James E. Gaarder,* Ossining, New York; to retain voting shares of Citizens State Bancshares, Inc., and thereby indirectly retain voting shares of Citizens State Bank of Lankin, both in Lankin, North Dakota.

Board of Governors of the Federal Reserve System, November 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–28602 Filed 11–3–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1436]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved the private sector adjustment factor (PSAF) for 2012 of $29.9 million and the 2012 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved maintaining the current earnings credit rate on clearing balances.

DATES: The new fee schedules and earnings credit rate become effective January 3, 2012.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Susan V. Foley, Associate Director, (202/452–3596); Samantha J. Pelosi, Manager, Retail Payments, (202/530–6292); Linda S. Healey, Senior Financial Services Analyst, (202/452–5274), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Deputy Associate Director, (202/452–3945); Brenda L. Richards, Manager, Financial Accounting, (202/452–2753); or John W. Curle, Senior Financial Analyst, (202/452–3916), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only*, please call 202/263–4869. Copies of the 2012 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor and Priced Services

A. Overview—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF. Similarly, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB). From 2001 through 2010, the Reserve Banks recovered 97.9 percent of their total expenses (including imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[1]

Table 1 summarizes 2010 actual, 2011 estimated, and 2012 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 102.3 percent in 2011 and budgeted to be 100.8 percent in 2012. The check service accounts for slightly over half of the total cost of priced services and thus significantly influences the aggregate cost-recovery rate.

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[$ millions]

Year	1 [b] Revenue	2 [c] Total expense	3 Net income (roe) [1–2]	4 [d] Targeted roe	5 [e] recovery rate after targeted roe [1/(2+4)]
2010 (actual)	574.7	532.8	41.8	13.1	105.3%
2011 (estimate)	471.4	444.1	27.3	16.8	102.3%
2012 (budget)	436.7	419.6	17.1	13.8	100.8%

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes net income on clearing balances. Clearing balances are assumed to be invested in a broad portfolio of investments, such as short-term Treasury securities, government agency securities, federal funds, commercial paper, long-term corporate bonds, and money market funds. To impute income, a constant spread is determined from the historical average return on this portfolio and applied to the rate used to determine the cost of clearing balances. For 2012, investments are limited to short-term Treasury securities and federal funds with no constant spread imputed. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate.

[1] The ten-year recovery rate is based on the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report.* Effective December 31, 2006, the Reserve Banks implemented Statement of Financial Accounting Standards (SFAS) No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* [Accounting Standards Codification (ASC) 715 *Compensation—Retirement Benefits*], which resulted in recognizing a reduction in equity related to the priced services' benefit plans. Including this reduction in equity results in cost recovery of 95.1 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pension plans under FAS 158 [ASC 715] are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF. For the 2011 estimate, the targeted ROE reflects average actual clearing balance levels through July 2011.

[e] The recovery rates in this and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effect on cost recovery, cannot be projected.

Table 2 portrays an overview of cost-recovery performance for the ten-year period from 2001 to 2010, 2010 actual, 2011 budget, 2011 estimate, and 2012 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2001–2010	2010 Actual	2011 Budget	2011 Estimate	2012 Budget [a]
All services	97.9	105.3	102.1	102.3	100.8
Check	96.9	107.1	102.9	103.6	101.0
FedACH	102.7	103.4	100.2	100.2	100.5
Fedwire Funds and NSS	101.4	100.6	100.5	101.5	100.0
Fedwire Securities	100.9	102.8	106.5	100.4	102.5

[a] 2012 budget figures reflect the latest data from the Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2011, for Board consideration in December 2011. 2011 budget figures reflect the final budget as approved by the Board.

1. 2011 Estimated Performance—The Reserve Banks estimate that they will recover 102.3 percent of the costs of providing priced services in 2011, including imputed costs and targeted ROE, compared with a budgeted recovery rate of 102.1 percent, as shown in table 2. The Reserve Banks estimate that all services will achieve full cost recovery. Overall, the Reserve Banks estimate that they will fully recover actual and imputed costs and earn net income of $27.3 million, compared with the target of $16.8 million. The greater-than-targeted net income is driven largely by the performance of the check service, which had greater-than-expected operational cost savings.

2. 2012 Private Sector Adjustment Factor—The 2012 PSAF for Reserve Bank priced services is $29.9 million. This amount represents a decrease of $7.6 million from the revised 2011 PSAF estimate of $37.5 million. This reduction is primarily the result of a change in the FDIC assessment as well as a decrease in the cost of equity, which is due to a lower amount of imputed equity.[2]

3. 2012 Projected Performance—The Reserve Banks project a priced services cost recovery rate of 100.8 percent in 2012. The 2012 fees for priced services are projected to result in a net income of $17.1 million compared with the target ROE of $13.8 million.

The primary risks to the Reserve Banks' ability to achieve their targeted cost recovery rates are unanticipated volume and revenue reductions and the potential for cost overruns or delays with technological upgrades. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to manage aggressively operating costs, take advantage of efficiencies gained from technological upgrades, and increase product revenue.

4. 2012 Pricing—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2012:

Check

- The Reserve Banks will reduce by half their forward and return deadlines from 8 to 4 and 4 to 2, respectively. FedForward cash letter fees will decrease by 8 percent on a per-item basis. In addition the Reserve Banks will increase FedForward fees for checks presented electronically by 4 percent and increase FedForward fees for checks presented as substitute checks by 2 percent.[3] The net result is only a modest increase in the per item weighted effective average fee.
- The Reserve Banks will retain at current levels FedReturn fees for checks returned electronically and for endpoints that receive substitute checks.[4] The effective average fee paid by FedReturn depositors will decrease approximately 16 percent as the number of institutions that accept their returns electronically increases.[5]
- The Reserve Banks will retain traditional paper forward collection and return fees at their current levels.
- The Reserve Banks will price separately for two categories of adjustment types that are identified commonly in Reserve Bank processing operations: Encoding errors and non-conforming items that fail Reserve Bank edit checks.
- With the 2012 fees, the price index for the total check service will have increased 63 percent since 2002. In comparison, since 2005, the first full year in which the Reserve Banks offered Check 21 services, the price index for Check 21 services will have decreased 50 percent.

FedACH

- The Reserve Banks will raise the fee charged to receivers of ACH returns from $0.0025 to $0.005. The Reserve Banks will also increase the information extract file monthly fee from $75 to $100 and increase the international

[2] In October 2010, the Board approved a budgeted 2011 PSAF of $39.5 million, which was based on the July 2010 clearing balance level of $2,600.3 million. Since that time, clearing balances have continued to decline, which affects the 2011 PSAF and NICB. The 2011 estimated PSAF of $37.5 million, which is based on actual average clearing balances of $2,595.8 million through July 2011, reflects a change in the FDIC assessment. Similar to 2010, the 2011 final PSAF will be adjusted to reflect average clearing balance levels through the end of 2011.

[3] FedForward is the electronic forward check collection product. A substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check.

[4] FedReturn is the electronic check return product.

[5] The Reserve Banks' Check 21 service fees include separate and substantially different fees for the delivery of checks to electronic endpoints and substitute check endpoints. Therefore, the effective average fee paid by depository institutions that use Check 21 services is dependent on the proportion of institutions that accept checks electronically.

ACH transaction (IAT) output file sort monthly fee from $35 to $50. Fees for FedLine Web origination returns and notification of change will also rise from $0.30 to $0.35.

• With the 2012 fees, the price index for the FedACH service will have decreased 16 percent since 2002.

Fedwire Funds and National Settlement

• The Reserve Banks will implement a new per item fee of $0.12 on all transfers sent and received that exceed $10 million (high-value transfer surcharge).

• The Reserve Banks will implement a new per item fee of $0.20 on all transfers sent that contain any data in the new tag field {3620} that supports payment notification and tracking (payment notification surcharge).

• The Reserve Banks will increase the Tier 1 per item pre-incentive fee from $0.52 to $0.58 per transaction; the Tier 2 per item pre-incentive fee from $0.23 to $0.24; and the Tier 3 per item pre-incentive fee from $0.13 to $0.135.[6]

• The Reserve Banks will increase the monthly fee for the usage of the import/export feature of the FedLine Advantage electronic access package from $10 to $20.

• The Reserve Banks will increase the end-of-day origination surcharge from $0.18 to $0.20.

• The Reserve Banks will increase the Fedwire monthly participation fee from $75 to $85.

[6] The per item pre-incentive fee is the fee that the Reserve Banks charge for transfers that do not qualify for incentive discounts. The Tier 1 per item pre-incentive fee applies to the first 14,000 transfers, the Tier 2 per item pre-incentive fee applies to the next 76,000 transfers, and the Tier 3 per item pre-incentive fee applies to any additional transfers. The Reserve Banks apply an 80 percent incentive discount to every transfer over 50 percent of a customer's historic benchmark volume.

• The Reserve Banks will increase the National Settlement Service's settlement file charge from $20 to $21, and the settlement charge per entry from $0.90 to $1.00.

• With the 2012 fees, the price index for the Fedwire Funds and National Settlement Services will have increased 44 percent since 2002.

Fedwire Securities

• The Reserve Banks will increase the online transfer fee from $0.35 to $0.45.

• The Reserve Banks will increase the monthly account maintenance fee from $36 to $40.

• The Reserve Banks will increase the monthly issue maintenance fee from $0.40 to $0.45 per issue.

• The Reserve Banks will increase the offline surcharge from $60 to $66.

• The Reserve Banks will increase the claim adjustment fee from $0.60 to $0.66.

• With the 2012 fees, the price index for the Fedwire Securities Service will have decreased 14 percent since 2002.

Electronic Access

• The Reserve Banks propose adding a new package, FedLine Advantage Premier to the FedLine packaged solutions that will be priced at $500 per month.

• The Reserve Banks will begin to charge $15 per month for FedPhone.

• The Reserve Banks will also charge an additional $20 per month for the FedLine Advantage Plus packages, $100 per month for the FedLine Command Plus packages, $250 per month for FedLine Direct packages, and $200 per month for the FedLine Direct Premier packages.

• The Reserve Banks will raise the monthly fees for additional dedicated electronic access connections, specifically, the 56K, T1, and VPN surcharge by $250, $150, and $25, respectively.

• The FedLine international one-time setup fee will increase from $1,000 to $5,000.

• The Reserve Banks will also increase the monthly fees for accounting information services basic reports to improve the alignment of value and revenue.

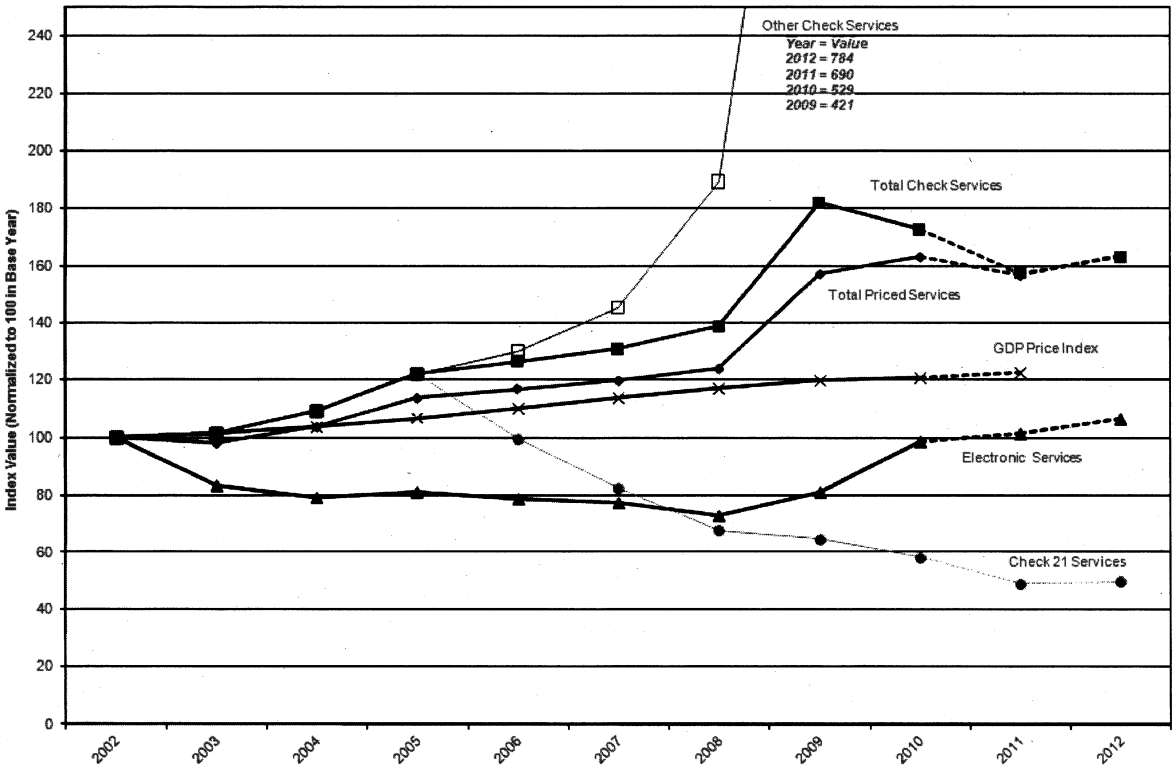
• Electronic access fees are allocated to each priced service and are not separately reflected in comparison with the GDP price index.

• *5. 2012 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks'' priced services with the GDP price index. Compared with the price index for 2011, the price index for all Reserve Bank priced services is projected to increase 4 percent in 2012. The price index for total check services is projected also to increase approximately 4 percent. The price index for Check 21 services is projected to increase just over 1 percent, reflecting a slight increase in the effective prices paid to collect and return checks using Check 21 services and stabilization in the adoption of electronic check services. The price index for all other check services is projected to increase approximately 14 percent. The price index for electronic payment services, which include the FedACH Service, Fedwire Funds and National Settlement Services, and Fedwire Securities Service, is projected to increase approximately 5 percent. For the period 2002 to 2012, the price index for all priced services is expected to increase 64 percent. In comparison, for the period 2002 to 2010, the GDP price index increased 21 percent.

FIGURE 1

2012 PRICE INDEX

PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES



B. *Private Sector Adjustment Factor*—In 2009, the Board requested comment on proposed changes to the methodology for calculating the PSAF.[7] The Board proposed replacing the current correspondent bank model with a ''publicly traded firm model'' in which the key components used to determine the priced-services balance sheet and the PSAF costs would be based on data for the market of U.S. publicly traded firms. The proposed changes were prompted by the implementation of the payment of interest on reserve balances held by depository institutions at the Reserve Banks and the anticipated consequent decline in balances held by depository institutions at Reserve Banks for clearing priced-services transactions (clearing balances).

Since the implementation of the payment of interest on reserve balances, clearing balances have not decreased as much as anticipated and remain significant. Between the October 2008 implementation of the payment of interest on reserve balances and January 2009, the total level of clearing balances held by depository institutions decreased approximately $2.0 billion, from $6.5 billion to $4.5 billion. During the first half of 2009, clearing balance levels were nearly flat at approximately $4.5 billion. Since mid-2009, clearing balances have declined further, and as of the end of July 2011, clearing balances were $2.7 billion. As a result of the relative significance of the remaining balances, the Board used the correspondent bank model for the 2011 PSAF, and will continue using the correspondent bank model for the 2012 PSAF.

The Board recently requested public comment on proposed amendments to Regulation D, which implements section 19 of the Federal Reserve Act and requires reserve requirements be held on certain deposits and other liabilities of depository institutions for the purpose of implementing monetary policy.[8] The proposed amendments eliminate the contractual clearing balance program and its administrative complexities as part of an effort to simplify reserve balance administration. Because contractual clearing balances are a significant element in determining imputed costs that must be recovered by Reserve Bank priced services fees, the Board requested comment on additional questions related to imputing costs to be recovered by Reserve Bank priced services fees after the proposed elimination of the contractual clearing balance program.

The method for calculating the financing and equity costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist if these priced services were provided by a private business firm are imputed. The same generally accepted accounting principles that apply to commercial-entity financial statements apply to the

[7] 74 FR 15481–15491 (Apr. 6, 2009).

[8] 76 FR 64250–64259 (Oct. 18, 2011).

relevant elements in the priced services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information on actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Federal Reserve liabilities consists of clearing balances and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances, other long-term liabilities, and equity are not sufficient to fund long-term assets.[9] Short-term debt is imputed only when other short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. A portion of clearing balances is used as a funding source for short-term priced-services assets. Long-term assets may be partially funded from core clearing balances.

Imputed equity is set to meet the FDIC requirements for a well-capitalized institution for insurance premium purposes and represents the market capitalization, or shareholder value, for Reserve Bank priced services.[10] The equity financing rate is the targeted ROE rate produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a risk premium. To implement the CAPM, the risk-free rate is based on the three-month Treasury bill; the beta is assumed to equal 1.0, which approximates the risk of the market as a whole; and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would require in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill the priced services' imputed income tax obligations. To the extent that actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate that is the median of the rates paid by the top 50 bank holding companies based on deposit balances over the past five years, adjusted to the extent that they invested in tax-free municipal bonds.

The PSAF also includes the estimated priced-services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance is imputed based on current FDIC rates during 2012 and projected clearing balances held with the Reserve Banks.

1. *Net Income on Clearing Balances*—The NICB calculation is performed each year along with the PSAF calculation and is based on the assumption that the Reserve Banks invest clearing balances net of an imputed reserve requirement and balances used to finance priced services assets.[11] The Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate and apply this investment rate to the net level of clearing balances.[12] A return on the imputed reserve requirement, which is based on the level of clearing balances on the pro forma balance sheet, is imputed to reflect the return that would be earned on a required reserve balance held at a Reserve Bank.

The calculation also involves determining the priced services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted three-month Treasury bill rate. Rates and clearing balance levels used in the 2012 projected NICB are based on July 2011 rates and clearing balance levels. Because clearing balances are held for clearing priced services transactions or offsetting priced-services fees, they are directly related to priced services. The net earnings or expense attributed to the investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services.

NICB is projected to be $1.0 million for 2012, including earnings on imputed reserve requirements.[13] The imputed rate is equal to the three-month Treasury bill rate with no constant spread due to the results of the interest rate sensitivity analysis. See the section of this memo ''Analysis of the 2012 PSAF'' for more information on the interest rate sensitivity analysis results and the effect on the 2012 NICB.

2. *Calculating Cost Recovery*—The PSAF and NICB are incorporated into the projected and actual annual cost-recovery calculations for Reserve Bank priced services. Each year, the Board projects the PSAF for the following year using July clearing balance and rate data during the process of establishing priced services fees. When calculating actual cost recovery for the priced services at the end of each year, the Board historically has used the PSAF derived during the price-setting process with only minimal adjustments for actual rates or balance levels.[14] Beginning in 2009, in light of the uncertainty about the long-term effect that the payment of interest on reserve balances would have on the level of clearing balances, the Board adjusts the PSAF used in the actual cost-recovery calculation to reflect the actual clearing balance levels maintained throughout the year. NICB is projected in the fall of each year using July data and is recalculated to reflect actual interest rates and clearing balance levels during the year when calculating actual priced services cost recovery.

3. *Analysis of the 2012 PSAF*—The decrease in the 2012 PSAF is due

[9] Core clearing balances, currently $1 billion, are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[10] As shown in table 7, the FDIC requirements for a well-capitalized depository institution are 1) a ratio of total capital to risk-weighted assets of 10 percent or greater, 2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater, and 3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. The priced services balance sheet has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

As used in this context, the term ''shareholder'' does not refer to the member banks of the Federal Reserve System, but rather to the implied shareholders that would have an ownership interest if the Reserve Banks' priced services were provided by a private firm.

[11] Reserve requirements are the amount of funds that a depository institution must hold, in the form of vault cash or deposits with Federal Reserve Banks, in reserve against specified deposit liabilities. The dollar amount of a depository institution's reserve requirement is determined by applying the reserve ratios specified in the Board's Regulation D to the institution's reservable liabilities. The Reserve Banks priced services impute a reserve requirement of 10 percent, which is applied to the amount of clearing balances held with the Reserve Banks and to credit float.

[12] The allowed portfolio of investments is comparable to a bank holding company's investment holdings, such as short-term Treasury securities, government agency securities, federal funds, commercial paper, long-term corporate bonds, and money market funds. As shown in table 7, the investments imputed for 2012 are three-month Treasury bills and federal funds.

[13] The 2011 NICB was initially budgeted to be $1.2 million and the estimate is consistent with the budget.

[14] The largest portion of the PSAF, the target ROE, historically has been fixed. Imputed sales tax, income tax, and the FDIC assessment are recalculated at the end of each year to adjust for actual expenditures, net income, and clearing balance levels.

primarily to a reduction in the level of imputed equity associated with a decrease in assets and credit float.

Projected 2012 Federal Reserve priced-services assets, reflected in table 3, have decreased $850.8 million, mainly due to a decline in imputed investments in marketable securities of $477.9 million as a result of lower expected credit float. The priced services balance sheet includes projected clearing balances of $2,661.1 million for 2012, which represents an increase of $60.8 million from the amount of clearing balances on the balance sheet for the budgeted 2011 PSAF. Because of the continued uncertainty regarding the level of clearing balances in an interest-on-reserves environment, the actual PSAF costs used in cost-recovery calculations will continue to be based on the actual levels of clearing balances held throughout 2012.

Credit float, which represents the difference between items in process of collection and deferred credit items, decreased from $1,800.0 million in 2011 to $1,100.0 million in 2012.[15] The decrease is primarily a result of credit float generated by a less use of Check 21 deferred-availability products.

As previously mentioned, clearing balances are available as a funding source for priced-services assets. As shown in table 4, in 2012, $19.2 million in clearing balances is used as a funding source for short-term assets. Long-term liabilities and equity exceed long-term assets by $124.9 million; therefore, no core clearing balances are used to fund long-term assets.

The Board uses an interest rate sensitivity analysis to ensure that the interest rate risk of the priced services balance sheet, and its effect on cost recovery, are appropriately managed and that the priced services long-term assets are appropriately funded with long-term liabilities and equity. The interest rate sensitivity analysis measures the relationship between rate sensitive assets and liabilities when they reprice as a result of a change in interest rates.[16] If a 200 basis point increase or decrease in interest rates changes priced services cost recovery by more than 2 percentage points, rather than using core clearing balances to fund long-term assets, long-term debt is imputed.

The interest rate sensitivity analysis shown in table 5 indicates that a 200 basis point decrease in rates decreases cost recovery 3.9 percentage points, while an increase of 200 basis points in rates increases cost recovery 3.8 percentage points. The greater-than-two-percentage-point effect on cost recovery is the result of a large gap between rate-sensitive assets and liabilities, and the relationship to priced services net income. The gap is caused by an increase in rate sensitive assets, specifically, the imputed federal funds investment needed to offset the projected level of credit float in 2011. The results of the analysis have the following effects on the 2012 PSAF and NICB:

Generally, the results of the interest rate sensitivity analysis indicate when long-term debt should be imputed rather than using core clearing balances to fund long-term assets. The requirement to impute debt remedies an asset mismatch when too many clearing balances (rate sensitive liabilities) are being used to fund long-term assets and there is a need for another funding source (*i.e.* long-term debt). For the 2011 and 2012 PSAF, however, the mismatch arises from the level of credit float rather than the use of clearing balances to fund long-term assets. If the Board were to impute debt for the 2012 PSAF, clearing balances now used to finance assets would be invested in rate-sensitive assets. Therefore, imputing debt would cause the gap between interest-rate-sensitive assets and liabilities to widen further, resulting in an even greater effect on cost recovery than shown in table 5. Accordingly, the Board will not impute debt for the 2012 PSAF. Imputed debt is limited to the amount of clearing balances used to finance long-term assets. (See table 4 for the portion of clearing balances used to fund priced-services assets.) Because of the heightened cost recovery sensitivity to interest rate fluctuations, the investment of clearing balances is limited to three-month Treasury bills (with no additional imputed constant spread). As shown in table 3, the amount of equity imputed for the 2012 PSAF is $234.7 million, a decrease of $42.5 million from the imputed equity for 2011. In accordance with FAS 158 [ASC 715], this amount includes an accumulated other comprehensive loss of $537.7 million. Both the capital-to-total-assets ratio and the capital-to-risk-weighted-assets ratio meet or exceed the regulatory requirements for a well-capitalized depository institution. Equity is calculated as 5 percent of total assets, and the ratio of capital to risk-weighted assets exceeds 10 percent.[17] The Reserve Banks imputed an FDIC assessment for the priced services based on the FDIC's assessment rates and the level of total priced services assets held at Reserve Banks.[18] For 2012, the FDIC assessment is imputed at $2.2 million, compared with an FDIC assessment of $5.3 million in 2011.

Table 6 shows the imputed PSAF elements for 2012 and 2011, including the pretax ROE and other required PSAF costs. The $4.9 million decrease in ROE is caused by a lower amount of imputed equity and a lower target ROE rate. Imputed sales taxes decreased from $4.2 million in 2011 to $3.7 million in 2012. The effective income tax rate used in 2012 decreased to 30.9 percent from 32.4 percent in 2011. The priced services portion of the Board's expenses decreased $1.1 million, from $5.2 million in 2011 to $4.1 million in 2012.

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR BUDGETED FEDERAL RESERVE PRICED SERVICES[19]

[Millions of dollars—projected average for year]

	2012	2011	Change
Short-term assets:			
Imputed reserves requirements on reserveable liabilities	$376.1	$440.0	$(63.9)
Receivables	36.3	41.4	(5.1)
Materials and supplies	0.9	1.5	(0.6)
Prepaid expenses	10.3	7.6	2.7

[15] Credit float occurs when the Reserve Banks present transactions to the paying bank prior to providing credit to the depositing bank.

[16] Interest rate sensitive assets and liabilities are defined as those balances that will reprice within a year.

[17] In December 2006, the Board, the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision announced an interim ruling that excludes FAS 158 [ASC 715]-related accumulated other comprehensive income or losses from the calculation of regulatory capital. The Reserve Banks, however, elected to impute total equity at 5 percent of assets, as indicated above, until the regulators announce a final ruling.

[18] The FDIC changed the base of its assessments from deposits to total assets. For information on the FDIC assessment rates, see the Final Rule at *http://www.fdic.gov/news/news/press/2011/pr11028.html*.

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR BUDGETED FEDERAL RESERVE PRICED SERVICES [19]—Continued

[Millions of dollars—projected average for year]

	2012	2011	Change
Items in process of collection [20]	250.0	300.0	(50.0)
Total short-term assets	673.6	790.5	(116.9)
Imputed investments	3,490.7	3,968.6	(477.9)
Long-term assets:			
Premises [21]	148.2	173.1	(24.9)
Furniture and equipment	36.3	43.2	(6.9)
Leasehold improvements and long-term prepayments	75.9	68.2	7.7
Prepaid pension costs	.....	299.8	(299.8)
Prepaid FDIC asset	19.4	10.9	8.5
Deferred tax asset	249.1	189.7	59.4
Total long-term assets	528.9	784.9	(256.0)
Total assets	4,693.2	5,544.0	(850.8)
Short-term liabilities: [22]			
Clearing balances	2,661.1	2,600.3	60.8
Deferred credit items [20]	1,350.0	2,100.0	(750.0)
Short-term payables	28.3	35.0	(6.7)
Total short-term liabilities	4,039.4	4,735.3	(695.9)
Long-term liabilities: [22]			
Postemployment/postretirement benefits liability and pension liabilities [23]	419.1	531.5	(112.4)
Total liabilities	4,458.5	5,266.8	(808.3)
Equity [24]	234.7	277.2	(42.5)
Total liabilities and equity	4,693.2	5,544.0	(850.8)

TABLE 4—PORTION OF CLEARING BALANCES USED TO FUND PRICED-SERVICES ASSETS

[Millions of dollars]

	2012	2011
A. Short-term asset financing		
Short-term assets to be financed:		
Receivables	$36.3	$41.4
Materials and supplies	0.9	1.5
Prepaid expenses	10.3	7.6
Total short-term assets to be financed	47.5	50.5
Short-term funding sources:		
Short-term payables	28.3	35.0
Portion of short-term assets funded with clearing balances [25]	19.2	15.5
B. Long-term asset financing		
Long-term assets to be financed:		
Premises	148.2	173.1
Furniture and equipment	36.3	43.2
Leasehold improvements and long-term prepayments	75.9	68.2
Prepaid pension costs	.....	299.8
Prepaid FDIC asset	19.4	10.9
Deferred tax asset	249.1	189.7
Total long-term assets to be financed	528.9	784.9
Long-term funding sources:		
Postemployment/postretirement benefits liability	419.1	531.5

[19] The 2011 PSAF values in tables 3, 4, and 6 reflect the budgeted 2011 PSAF of $39.5 million approved by the Board in October 2010.

[20] Represents float that is directly estimated at the service level.

[21] Includes the allocation of Board of Governors assets to priced services of $0.6 million and $0.7 million for 2012 and 2011, respectively.

[22] No debt is imputed because clearing balances are a funding source.

[23] Includes the allocation of Board of Governors liabilities to priced services of $0.5 million and $0.5 million for 2012 and 2011, respectively. Includes pension liabilities of $4.1 and $0.0 million for 2012 and 2011, respectively.

[24] Includes an accumulated other comprehensive loss of $537.7 million for 2012 and $343.2 million for 2011, which reflects the ongoing amortization of the accumulated loss in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected.

TABLE 4—PORTION OF CLEARING BALANCES USED TO FUND PRICED-SERVICES ASSETS—Continued

[Millions of dollars]

	2012	2011
Imputed equity [26]	234.7	277.2
Total long-term funding sources	653.8	808.7
Portion of long-term assets funded with core clearing balances [25]	0.0	0.0
C. Total clearing balances used for funding priced-services assets	19.2	15.5

TABLE 5—2012 INTEREST RATE SENSITIVITY ANALYSIS [27]

[Millions of dollars]

	Rate sensitive	Rate insensitive	Total
Assets:			
Imputed reserve requirement on clearing balances	$ 376.1		$376.1
Imputed investments	3,490.7		3,490.7
Receivables		$36.3	36.3
Materials and supplies		0.9	0.9
Prepaid expenses		10.3	10.3
Items in process of collection		250.0	250.0
Long-term assets		528.9	528.9
Total assets	3,866.8	826.4	4,693.2
Liabilities:			
Clearing balances	2,661.1		2,661.1
Deferred credit items		1,350.0	1,350.0
Short-term payables		28.3	28.3
Long-term liabilities		419.1	419.1
Total liabilities	2,661.1	1,797.4	4,458.5
Rate change results		200 basis point decrease in rates	200 basis point increase in rates
Asset yield ($4,408.4 × rate change)		$(77.3)	$77.3
Liability cost ($2,600.3 × rate change)		(53.2)	53.2
Effect of 200 basis point change		(24.1)	24.1
2012 budgeted revenue		436.7	436.7
Effect of change		(24.1)	24.1
Revenue adjusted for effect of interest rate change		412.6	460.8
2012 budgeted total expenses		401.9	401.9
2012 budgeted PSAF		31.4	31.4
Tax effect of interest rate change ($ change × 30.9%)		(7.5)	7.5
Total recovery amounts		425.8	440.8
Recovery rate before interest rate change		100.8%	100.8%
Recovery rate after interest rate change		96.9%	104.5%
Effect of interest rate change on cost recovery [28]		(3.9)%	3.8%

[25] Clearing balances shown in table 3 are available for financing priced-services assets. Using these balances reduces the amount available for investment in the NICB calculation. Long-term assets are financed with long-term liabilities, equity, and core clearing balances; a total of $1 billion in clearing balances is available for this purpose in 2011 and 2012, respectively. Short-term assets are financed with short-term payables and clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

[26] See table 6 for calculation of required imputed equity amount.

[27] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and rate-sensitive liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points. Calculations may be affected by rounding.

[28] The effect of a potential change in rates is greater than a two percentage point change in cost

Continued

TABLE 6—DERIVATION OF THE 2012 AND 2011 PSAF

[Millions of dollars]

	2012	2011
A. Imputed elements		
Short-term debt [29]	$0.0	$0.0
Long-term debt [30]	0.0	0.0
Equity.		
Total assets from table 3	4,693.2	5,544.0
Required capital ratio [31]	5%	5%
Total equity	234.7	277.2
B. Cost of capital		
1. Financing rates/costs		
Short-term debt	N/A	N/A
Long-term debt	N/A	N/A
Pretax return on equity [32]	8.5%	8.9%
2. Elements of capital costs		
Short-term debt	0.0	0.0
Long-term debt	0.0	0.0
Equity	234.7 × 8.5%	277.2 × 8.9%
	= 19.9	=24.8
	19.9	24.8
C. Other required PSAF costs		
Sales taxes	3.7	4.2
FDIC assessment	2.2	5.3
Board of Governors expenses	4.1	5.2
	10.0	14.7
D. Total PSAF	29.9	39.5
As a percent of assets	0.6%	0.7%
As a percent of expenses [33]	6.5%	8.9%
E. Tax rates	30.9%	32.4%

TABLE 7—COMPUTATION OF 2012 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$376.1	0.0	$0.0
Imputed investments:			
3-month Treasury bills [34]	2,390.7	0.0	0.0
Federal funds [35]	1,100.0	0.2	220.0
Total imputed investments	3,490.7	.....	220.0
Receivables	36.3	0.2	7.3
Materials and supplies	0.9	1.0	0.9
Repaid expenses	10.3	1.0	10.3
Items in process of collection	250.0	0.2	50.0
Premises	148.2	1.0	148.2
Furniture and equipment	36.3	1.0	36.3
Leasehold improvements and long-term prepayments	75.9	1.0	75.9
Prepaid pension costs	.....	1.0	.....
Prepaid FDIC asset	19.4	1.0	19.4
Deferred tax asset	249.1	1.0	249.1

recovery; however, no long-term debt is imputed for 2012 because the priced services have adequate funding sources. See the section of the memo ''Analysis of the 2012 PSAF'' for more information on the interest rate sensitivity analysis results and its effect on the 2012 PSAF and NICB.

[29] No short-term debt is imputed because clearing balances are a funding source for those assets that are not financed with short-term payables.

[30] No long-term debt is imputed because core clearing balances are a funding source.

[31] Based on the regulatory requirements for a well-capitalized institution for the purpose of assessing insurance premiums.

[32] The 2012 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2012 after-tax CAPM ROE is calculated as 0.04% + (1 * 5.83%) = 5.87%. Using a tax rate of 30.9%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (5.87% / (1–30.9%)) = 8.5%. Calculations may be affected by rounding.

[33] System 2012 and 2011 budgeted priced services expenses less shipping and float are $430.8 million and $441.7 million, respectively. A new methodology was adopted for the estimation of budgeted priced services in 2012.

TABLE 7—COMPUTATION OF 2012 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES—Continued

[millions of dollars]

	Assets	Risk weight	Weighted assets
Total	$4,693.2		$817.4
Imputed equity for 2012	$234.7		
Capital to risk-weighted assets	28.7%		
Capital to total assets	5.0%		

C. *Earnings Credits on Clearing Balances*—The Reserve Banks will maintain the current rate of 80 percent of the three-month Treasury bill rate to calculate earnings credits on clearing balances.[36]

Clearing balances were introduced in 1981, as part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. The earnings credit calculation uses a percentage discount on a rolling 13-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. Earnings credits, which are calculated monthly, can be used only to offset charges for priced services and expire if not used within one year.[37]

D. *Check Service*—Table 8 shows the 2010 actual, 2011 estimated, and 2012 budgeted cost recovery performance for the commercial check service.

TABLE 8—CHECK SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted roe	5 Recovery rate after targeted [1/(2+4)]
2010 (actual)	358.4	326.5	31.9	8.1	107.1%
2011 (estimate)	254.8	237.1	17.7	8.8	103.6%
2012 (budget)	209.1	200.4	8.6	6.5	101.0%

1. *2011 Estimate*—For 2011, the Reserve Banks estimate that the check service will recover 103.6 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 102.9 percent. The Reserve Banks expect to recover all actual and imputed costs of providing check services and earn a net income of $17.7 million (see table 8).

The general decline in the number of checks written continues to influence the decline in checks collected by the Reserve Banks. Through September, total forward check volume and return check volume is 14 percent and 17 percent lower, respectively, than the same period last year. For full-year 2011, the Reserve Banks estimate that their total forward check collection volume will decline nearly 16 percent and return check volume will decline 15 percent from 2010 levels.[38] The proportion of checks deposited and presented electronically has grown steadily in 2011 (see table 9). The Reserve Banks expect that year-end 2011 FedForward deposit and FedReceipt presentment penetration rates will reach 99.9 percent and 99.6 percent, respectively. The Reserve Banks also expect that year-end 2011 FedReturn and FedReceipt Return volume penetration rates will reach 98.8 percent and 99.1 percent, respectively.

TABLE 9—CHECK 21 PRODUCT PENETRATION RATES [a]

[Percent] [b]

	Forward deposit volume				Return volume [c]			
	FedForward		FedReceipt		FedReturn		FedReceipt return	
	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end
2005	1.9	5.0	< 0.1	0.1	4.0	6.9	N/A	N/A

[34] The imputed investments are similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at *http://www.federalreserve.gov/releases/h15/data.htm.*

[35] The investments are computed from the amounts arising from the collection of items prior to providing credit according to established availability schedules. These imputed amounts are invested in federal funds.

[36] The Board has requested public comment on proposed amendments to Regulation D to eliminate the clearing balance program. If the Board adopts these amendments, effective during 2012, the clearing balances would be redesignated as excess reserves, and would be subject to explicit interest, rather than earnings credits. See 76 FR 64250–64259 (Oct. 18, 2011).

[37] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

[38] Total Reserve Bank forward check volumes are expected to drop from roughly 7.7 billion in 2010 to 6.4 billion in 2011. Total Reserve Bank return check volumes are expected to drop from roughly 73.2 million in 2010 to 62.3 million in 2011.

TABLE 9—CHECK 21 PRODUCT PENETRATION RATES [a]—Continued

[Percent] [b]

	Forward deposit volume				Return volume [c]			
	FedForward		FedReceipt		FedReturn		FedReceipt return	
	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end
2006	14.4	26.0	1.0	3.5	19.7	30.5	< 0.1	< 0.1
2007	42.6	57.9	12.5	22.7	37.8	45.4	0.5	1.1
2008	76.8	91.8	41.5	60.7	58.4	72.0	6.4	13.2
2009	96.5	98.6	80.4	91.7	81.2	91.2	34.1	50.8
2010	99.4	99.7	95.8	98.9	94.3	96.2	65.4	80.0
2011 (estimate)	99.9	99.9	99.5	99.6	97.9	98.8	87.2	99.1
2012 (budget)	> 99.9	99.9	99.7	99.8	99.3	99.3	99.1	99.1

[a] FedForward is the electronic forward check collection product; FedReceipt is electronic presentment with accompanying images; FedReturn is the electronic check return product; and FedReceipt Return is the electronic delivery of returned checks with accompanying images.

[b] Deposit and presentment statistics are calculated as a percentage of total forward collection volume. Return statistics are calculated as a percentage of total return volume.

[c] The Reserve Banks began offering PDF delivery of returned checks in 2009. For 2011 estimate and 2012 budget, volume associated with the delivery of returned checks in PDF files is included in FedReceipt Return volume.

2. *2012 Pricing*—In 2012, the Reserve Banks project that the check service will recover 101.0 percent of total expenses and targeted ROE. Revenue is projected to be $209.1 million, a decline of $45.7 million from 2011. This decline is driven largely by projected reductions in both forward check collection and return check volume. Total expenses for the check service are projected to be $200.4 million, a decline of $36.7 million from 2011. The reduction in check costs is driven primarily by the cost savings associated with a mature electronic check environment and the implementation of a more efficient check processing platform.

The Reserve Banks estimate that total Reserve Bank forward check volumes and return check volumes will decline approximately 14 percent, to 5.5 billion and 53.5 million, respectively. The decline in Reserve Bank check volume can be attributed to increased competition, increased use of direct exchanges, and the continued decline in check use nationwide.

The Reserve Banks will reduce by half the number of forward and return deadlines from 8 to 4 and 4 to 2, respectively, to respond to customer requests for a simplified deadline structure. The Reserve Banks will also eliminate the presort deposit options, which result in higher per item fees for those depositors. Reserve Banks project far fewer cash letters will be submitted in 2012 and that cash letters that are submitted will have a larger number of items per cash letter thus decreasing the per item cash letter fee. Savings in cash letter fees are partially offset by a 4 percent increase in FedForward fees for checks presented electronically and a 2 percent increase in FedForward fees for checks presented as substitute checks, resulting in only a modest increase in the per item weighted effective average fee (see Table 10).[39]

The Reserve Banks will retain at current levels FedReturn fees for checks returned electronically and for endpoints that receive substitute checks.[40] The effective average fee paid by FedReturn depositors will decrease approximately 16 percent as the number of institutions that accept their returns electronically increases. The effective average fee for forward collection and returned checks that are deposited with Reserve Banks in electronic form and presented in electronic form is projected to be $0.02 and $0.57, respectively.

The Reserve Banks project that approximately 0.02 percent of check forward deposit volume and approximately 0.74 percent of return check volume will be in traditional paper-based products. The effective average fee for forward collection and returned checks that are deposited with Reserve Banks in paper form is projected to be $5.29 and $10.31, respectively, which reflects the high costs of handling the small remaining paper volume. The Reserve Banks will retain paper check collection fees at their current levels.

TABLE 10—2012 FEE CHANGES

	2011 Effective average fee	2012 Effective average fee	Fee change (percent)
FedForwarder:			
Per item cash letter fee	$0.0017	$0.0015	−8
Electronic endpoints	0.0188	0.0196	4
Substitute check endpoints	0.1304	0.1329	2
Weighted effective average fee [a b]	$0.0213	$0.0215	1
FedReturn:			
Per item cash letter fee	0.0902	0.0755	−16
Electronic endpoints.			
FedReceipt	0.4300	0.4285	0
PDF	0.8500	0.8500	0
Substitute check endpoints	1.3999	1.4000	<1
Weighted effective average fee [a b]	0.6826	0.5728	−16

[39] FedForward is the electronic forward check collection product. A substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check.

[40] FedReturn is the electronic check return product.

TABLE 10—2012 FEE CHANGES—Continued

	2011 Effective average fee	2012 Effective average fee	Fee change (percent)
Paper: [c]			
Forward collection	1.8020	5.2938	194
Returns	$6.9624	$10.3100	48

[a] The weighted average fees in this table represent combined cash letter and per-item fees for each product type, whereas the electronic and substitute check endpoints reflect only per item fees.
[b] The weighted average fees for FedForward and FedReturn products are dependent on electronic receipt penetration rates. In this table, the weighted average fees are based on electronic receipt penetration rates estimated for full-year 2011 and projected for full-year 2012.
[c] The effective average fee reflects the respective per item cash letter fee.

The Reserve Banks will charge for two categories of adjustments: Encoding errors and a subset of non-conforming items. The fees are $5.00 for each encoding error and for each non-conforming item up to 20 items. If a non-conforming item adjustment request includes more than 20 instances of the same edit failure, then a flat fee of $125 will be charged for the group of non-conforming items. The fees will be charged to the depositor. The pricing strategy is designed to increase the efficiency of Reserve Bank operations, improve the efficiency of the adjustment process, and reduce the risk associated with the check payments system. The implementation date has not been finalized.

Risks to the Reserve Banks' ability to achieve budgeted 2012 cost recovery for the check service include greater-than-expected check volume losses to correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue, and cost overruns associated with unanticipated problems with technology upgrades.

E. *FedACH Service*—The table below shows the 2010 actual, 2011 estimate, and 2012 budgeted cost-recovery performance for the commercial FedACH service.

TABLE 11—FEDACH SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2010 (actual)	111.5	105.2	6.3	2.6	103.4%
2011 (estimate)	110.3	106.0	4.3	4.1	100.2%
2012 (budget)	112.6	108.4	4.2	3.6	100.5%

1. *2011 Estimate*—The Reserve Banks estimate that the FedACH service will recover 100.2 percent of total expenses and targeted ROE. The Reserve Banks expect to recover all actual and imputed costs of providing FedACH services and earn net income of $4.3 million. Through September, FedACH commercial origination volume was nearly 1 percent higher than it was during the same period last year. For the full year, the Reserve Banks estimate that volume growth will continue at current trends.

2. *2012 Pricing*—The Reserve Banks project that the FedACH service will recover 100.5 percent of total expenses and targeted ROE in 2012. Total revenue and total expenses are budgeted to increase $2.3 million and $2.4 million, respectively. The Reserve Banks expect both FedACH commercial origination and receipt volume to grow approximately 2.5 percent in 2012.

The Reserve Banks will maintain core transaction fees at current levels with one exception. The Reserve Banks will increase the per item fee charged to receivers of ACH returns from $0.0025 to $0.005. Additionally, the Reserve Banks will increase fees for select value added services. Specifically, the Reserve Banks will increase per item fees for FedLine Web origination returns and notification of change, monthly fees for information extract file, and the IAT output file sort fee. The National Automated Clearing House Association (NACHA) will also increase the per entry network administration fee. The Reserve Banks estimate that the effective price will remain at the 2011 level.

Risks to the Reserve Banks' ability to achieve budgeted 2012 cost recovery for the FedACH service include greater-than-expected volume losses due to unanticipated mergers and acquisitions, direct exchanges, and the competitive environment, which could result in lower-than-anticipated revenue, and cost overruns associated with unanticipated problems with technology upgrades.

F. *Fedwire Funds and National Settlement Services*—Table 12 shows the 2010 actual, 2011 estimate, and 2012 budgeted cost-recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 12—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2010 (actual)	80.3	77.9	2.4	1.9	100.6%

TABLE 12—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE—Continued

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2011 (estimate)	83.4	79.1	4.3	3.0	101.5%
2012 (budget)	88.9	86.1	2.8	2.8	100.0%

1. *2011 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 101.5 percent of total expenses and targeted ROE, compared with a 2011 budgeted recovery rate of 100.5 percent. Through September, online Fedwire Funds volume was up 2.2 percent from the same period in 2010. For the full year, the Reserve Banks estimate that online Fedwire Funds volume will decline by 0.9 percent. With respect to the National Settlement Service, the volume of settlement files decreased 6.2 percent while the volume of settlement file entries increased 8.3 percent through September. For the full year, the Reserve Banks estimate that the volume of settlement files will decrease by 7.2 percent while the volume of settlement entries will increase by 4.7 percent.

2. *2012 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 100.0 percent of total expenses and targeted ROE in 2012. The Reserve Banks project total expenses to increase $7.0 million from the 2011 estimate. This increase is primarily due to technology upgrades and related infrastructure projects, and the establishment of a program management office to support these projects. The Reserve Banks project total revenue to increase $5.5 million from the 2011 estimate. This projected revenue increase is primarily due to the implementation of new fees for Fedwire Funds and price increases for both the Fedwire Funds and the National Settlement Services.

The Reserve Banks will implement two new fees for the Fedwire Funds Service. First, a high-value transfer per item fee of $0.12 will apply to both senders and receivers of transfers that exceed $10 million.[41] This high-value transfer surcharge is expected to increase revenue for the Fedwire Funds Service by $0.9 million.[42] Second, a payment notification per item fee of $0.20 will apply to transfers sent that contain any data in the new field tag {3620} that supports payment notification and tracking. The Reserve Banks assume no new revenue increases as a result of the payment notification surcharge.[43] In calculating projected Fedwire Funds revenue for 2012, the Reserve Banks project flat volume growth.

The implementation of the high-value transfer surcharge is consistent with the Reserve Banks' objective to maintain the safety and resilience of the Fedwire Funds Service, which is especially important for funds transfers that are of high value. Although only about 3 percent of Fedwire Funds transfers are valued at $10 million or more, these transfers collectively account for roughly 95 percent of the value settled by the Fedwire Funds Service. The Reserve Banks believe that the high-value transfer surcharge is an equitable way to shift more of the cost associated with Fedwire resiliency to those payments that drive the need for such resiliency. The implementation of the payment notification surcharge is consistent with the Reserve Banks' goals of improving their ability to retain existing business and attract new volume by aligning the services provided by the Reserve Banks with the evolving needs of their customers.

In addition to implementing the two new surcharges mentioned above, the Reserve Banks will adjust various fees for the Fedwire Funds Service. First, the Reserve Banks will increase the Tier 1 per item pre-incentive fee from $0.52 to $0.58, the Tier 2 per item pre-incentive fee from $0.23 to $0.24, and the Tier 3 per item pre-incentive fee from $0.13 to $0.135.[44] Second, the Reserve Banks will increase the end-of-day origination surcharge from $0.18 to $0.20. Third, the Reserve Banks will increase the Fedwire Funds monthly participation fee from $75 to $85. Lastly, the Reserve Banks will increase the FedLine Advantage import/export monthly fee from $10 to $20. The Reserve Banks estimate that the new surcharges and price increases will result in an effective price increase of approximately 9 percent.

With respect to the National Settlement Service, the Reserve Banks will increase the NSS file fee from $20 to $21 and the per entry fee from $0.90 to $1.00. In calculating projected NSS revenue for 2012, the Reserve Banks project flat volume growth.

G. *Fedwire Securities Service*—Table 13 shows the 2010 actual, 2011 estimate, and 2012 budgeted cost recovery performance for the Fedwire Securities Service.[45]

[41] The Reserve Banks estimate that 2.96 percent of Funds transfers are valued at $10 million or greater.

[42] Nearly 80 percent of the projected increase in revenue will come from the largest Fedwire participants that are included in the CRSO's National Account Program. About 160 out of more than 6,000 Funds participants will experience price increases more than 1 percent. About 100 participants will experience price increases greater than 2 percent while 20 participants will have price increases ranging between 7 and 30 percent.

[43] For cost recovery purposes, the Reserve Banks project no new revenue increases due to uncertainty regarding precisely how much payment notification volume will be generated once this service is introduced. The Reserve Banks, however, estimate that the surcharge could potentially raise roughly $250 thousand per year if notification features are used one percent of the time.

[44] The per item pre-incentive fee is the fee that the Reserve Banks charge for transfers that do not qualify for incentive discounts. The Tier 1 per item pre-incentive fee applies to the first 14,000 transfers, the Tier 2 per item pre-incentive fee applies to the next 76,000 transfers, and the Tier 3 per item pre-incentive fee applies to any additional transfers. The Reserve Banks apply an 80 percent incentive discount to every transfer over 50 percent of a customer's historic benchmark volume. A summary of the incentive fee structure is provided in a footnote in the Fedwire Funds and National Settlement Services fee schedule.

[45] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

TABLE 13—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Targeted ROE	5 Recovery rate after targeted ROE [1/(2+4)]
2010 (actual)	24.4	23.2	1.2	0.6	102.8%
2011 (estimate)	22.9	22.0	0.9	0.8	100.4%
2012 (budget)	26.1	24.6	1.4	0.8	102.5%

1. *2011 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 100.4 percent of total expenses and targeted ROE, compared with a 2011 budgeted recovery rate of 106.5 percent. The lower-than-budgeted recovery is primarily attributed to higher-than-expected costs associated with technology upgrades and infrastructure projects. Through September, online securities volume was down 5.3 percent from the same period in 2010. For the full year, the Reserve Banks estimate that online Fedwire Securities volume will decline by 8.9 percent.

2. *2012 Pricing*—The Reserve Banks project that the Fedwire Securities Service will recover 102.5 percent of total expenses and targeted ROE in 2012. The Reserve Banks project that 2011 revenue and expenses will increase by $3.2 million and $2.6 million, respectively, compared with the 2011 estimates.[46] In calculating projected Fedwire Securities revenue for 2012, the Reserve Banks project flat volume growth.

The Reserve Banks will adjust various fees for the Fedwire Securities Service. First, the Reserve Banks will increase the online transfer fee from $0.35 to $0.45. Second, the Reserve Banks will increase the monthly account maintenance fee from $36 to $40 and the monthly issue maintenance fee from $0.40 to $0.45 per issue. Third, the Reserve Banks will increase the offline surcharge from $60 to $66. Lastly, the Reserve Banks will increase the claim adjustment fee from $0.60 to $0.66.

The Reserve Banks' 2012 Fedwire Securities Service fees are consistent with their multi-year cost projections for a pricing strategy that takes into account technology upgrades and infrastructure projects. Under this approach, the Reserve Banks are targeting a 102.5 percent recovery rate for 2012, which would result in an effective price increase of approximately 11 percent.

H. *Electronic Access*—The Reserve Banks allocate the costs and revenues associated with electronic access to the Reserve Banks'' priced services. There are currently six electronic access channels through which customers can access the Reserve Banks'' priced services: FedPhone®, FedMail®, FedLine Web®, FedLine Advantage®, FedLine Command®, and FedLine Direct®.[47] The Reserve Banks package these channels into ten electronic access packages that are supplemented by a number of premium (or a la carte) access and accounting information options. In addition, the Reserve Banks offer three FedComplete packages, which are bundled offerings of a FedLine Advantage connection and a fixed number of FedACH, Fedwire Funds, and Check 21-enabled services.

The FedPhone access package provides a telephone link to the FedACH services'' automated voice response system, which is used to submit return items and notifications of change. The other access packages are broken into attended and unattended offerings.

Attended access packages offer access to critical payment and information services via a Web-based interface. The FedMail e-mail package provides access to basic information services via fax or e-mail, while two FedLine Web packages offer FedMail e-mail options plus online attended access to a broad range of informational services, including cash services, FedACH services, and check services. Three FedLine Advantage packages expand upon the FedLine Web informational service packages and offer attended access to transactional services: Check, FedACH, Fedwire Funds, and Fedwire Securities.

Unattended access packages are computer-to-computer, IP-based interfaces designed for medium-to high-volume customers. The FedLine Command package offers an unattended connection to FedACH, as well as most accounting information services. The final three packages are FedLine Direct packages, which allow for unattended connections at one of three connection speeds to Check, FedACH, Fedwire Funds, and Fedwire Securities transactional and information services and to most accounting information services.

For 2012, the Reserve Banks will introduce a new package to and increase the fees for select FedLine packaged solutions, to better meet their customers'' needs for access options, delivery solutions, and information services and to address increasing costs. The new package, FedLine Advantage Premier, priced at $500 per month, will accommodate the growth and expansion of value-add services as cross-business risk and information services expand. For example, the Transaction Analyzer service will be tiered based on a customers'' transaction volume with the top volume tiers covered by the new FedLine Advantage Premier package. In addition, the Reserve Banks will begin to charge $15 per month for FedPhone for current customers that use the FedPhone channel to access the Reserve Banks'' priced services; the introduction of this fee supports the Reserve Banks'' strategic direction of moving to Web-based electronic access. The Reserve Banks will also charge an additional $20 per month for the FedLine Advantage Plus packages, $100 per month for the FedLine Command Plus packages, $250 per month for FedLine Direct packages, and $200 per month for the FedLine Direct Premier packages.

In addition to raising the fees for select electronic access packages, the Reserve Banks will make other changes to electronic access pricing for 2012. In particular, the Reserve Banks will raise the monthly fees for additional dedicated electronic access connections, specifically, the 56K, T1, and VPN surcharge by $250, $150, and $25, respectively, to align with an increase in

[46] As with Fedwire Funds, estimated increases in expenses for the Fedwire Securities Service are primarily due to technology upgrades and infrastructure projects. The Reserve Banks expect peak costs associated with these efforts to occur in 2013–2014.

[47] FedLine Direct, FedLine Command, FedLine Advantage, FedLine Web, FedMail, and FedPhone are registered trademarks of the Federal Reserve Banks. These connections may also be used to access nonpriced services provided by the Reserve Banks.

costs. The FedLine international one-time setup fee will increase from $1,000 to $5,000.[48] The Reserve Banks will also increase the monthly fees for accounting information services basic reports to improve the alignment of value and revenue.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, ''The Federal Reserve in the Payments System.'' [49] Under this policy, the Board assesses whether proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If any proposed changes create such an effect, the Board must further evaluate the changes to assess whether the associated benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The Board projects that the 2012 fees, fee structures, and changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The fees should permit the Reserve Banks to earn a ROE that is comparable to overall market returns and provide for full cost recovery over the long run.

FEDACH SERVICE 2012 FEE SCHEDULE

[Effective January 3, 2012.]

[Bold indicates changes from 2011 prices.]

	Fee
FedACH minimum monthly fee: [50]	
ODFI	$35.00
RDFI	$25.00
Origination (per item or record): [51]	
Forward or return items in small files	$0.0030
Forward or return items in large files	$0.0025
Addenda record	$0.0015
Receipt (per item or record): [52]	
Forward item fees with volume-based discount (excluding FedACH SameDay service items)	
For the first 1,000,000 items per month	$0.0025
For 1,000,001 to 25,000,000 items per month	$0.0018
For more than 25,000,000 items per month	$0.0016 (all items).
Return items	**$0.005**
Addenda record	$0.0015
FedACH SameDay Service	
Origination: [53] [54]	
Forward item in a small file	$0.0030
Forward item in a large file	$0.0035
Addenda record	$0.0015
Return item in a small file	$0.0030
Return item in a large file	$0.0025
Return addenda record	$0.0015
Receipt: [55]	
Forward item	$0.0025
Addenda record/return addenda record	$0.0015
Return item	$0.0025
FedACH Risk Management Services: [56]	
Risk origination monitoring criteria:	
Tier 1 (2–20 sets)	$8.00/set of criteria/month.
Tier 2 (21–150 sets)	$4.00/set of criteria/month.
Tier 3 (more than 150 sets)	$1.00/set of criteria/month.
Risk origination monitoring batch	$0.0025/batch.
FedEDI Plus	
Basic receiver setup report (previously RDFI Quick Scan)	Included in access fee.
Standard reports:	
Scheduled report generated	$0.20/report.
On demand report generated	$0.75/report.
Premier reports:	
Monthly ACH routing number activity report:.	
Reports 1 through 5	$10.00/report.
Reports 6 through 10	$6.00/report.
Reports 11+	$1.00/report.
Daily return ratio report:	
Reports 1 through 200	$0.35/report.
Reports 201 through 1000	$0.20/report.
Reports 1001+	$0.10/report.
Monthly return ratio report:	
Reports 1 through 10	$6.00/report.

[48] The one-time set up fee is generally for customers who are moving a particular part of their operation overseas. The overseas users establish credentials that require significant administrative and legal resources to complete.

[49] Federal Reserve Regulatory Service (FRRS) 9–1558.

FEDACH SERVICE 2012 FEE SCHEDULE—Continued

[Effective January 3, 2012.]

[Bold indicates changes from 2011 prices.]

	Fee
Reports 11 through 50	$3.00/report.
Reports 51+	$1.00/report.
On-us inclusion:	
Participation fee	$10.00/month/RTN.
Per item fee	$0.0030.
Per addenda fee	$0.0015.
Report delivery options:	
Via encrypted e-mail	$0.20/e-mail.
Via FedLine file access solution	$0.30/report.
Monthly fee (per routing number):	
Account servicing fee [57]	$37.00
FedACH settlement [58]	$45.00
Information extract file	**$100.00**
IAT Output File Sort	**$50.00**
FedLine Web origination returns and notification of change (NOC) fee [59]	**$0.35**
Voice response returns/NOC fee [60]	$6.00
Automated NOC fee [61]	$0.15
Non-electronic input/output fee: [62]	
CD or DVD input/output	$50.00
Paper input/output	$50.00
Facsimile exception returns/NOC [63]	$30.00
NACHA network administration fees: [64]	
NACHA administration network fee/month	$12.00
NACHA administration network fee/entry	**$0.000145**
FedGlobal ACH Payments	
Canada service fee:	
Item originated to Canada [65]	$0.62
Return received from Canada [66]	$0.99
Trace of item at receiving gateway	$5.50
Trace of item not at receiving gateway	$7.00
Mexico service fee:	
Item originated to Mexico [55]	$0.67
Return received from Mexico [56]	$0.91
Item trace	$13.50
A2R item originated to Mexico [55]	$3.45
F3X item originated to Mexico [55]	$0.67
Panama service fee:	
Item originated to Panama [55]	$0.72
Return received from Panama [56]	$1.00
Item trace	$7.00
NOC	$0.72
Latin America (MFIC) service fee:	
Item originated to MFIC [55]	$4.40
Return received from MFIC [56]	$0.72
Item trace	$5.00
Europe service fee:	
Item originated to Europe [55]	$1.25
F3X item originated to Europe [55]	$1.25
Return received from Europe [56]	$1.35
Item trace	$7.00

[50] An ODFI is subject to a $35 minimum fee on its origination volume; an RDFI that does not originate forward items is subject to a $25 minimum fee on its receipt volume.

[51] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from EPN.

[52] Receipt fees do not apply to items that the Reserve Banks send to EPN.

[53] This per-item surcharge is in addition to the standard origination and input file processing fees for forward items.

[54] This per-item discount is a reduction to the standard origination and input file processing fees for return items.

[55] This per-item discount is a reduction to the standard receipt fees.

[56] Criteria may be set for both the origination monitoring service and the RDFI alert service. There is no fee for the first set of monitoring criteria or for RDFI alert file-level criteria. Batch monitoring fee is assessed for each batch monitored and scanned.

[57] The account-servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S. government transactions or that elect to use the other operator exclusively are not assessed the account servicing fee.

[58] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for U.S. government transactions only.

[59] The fee includes the item and addenda fees in addition to the conversion fee.

[60] The fee includes the item and addenda fees in addition to the voice response fee.

[61] The fee includes the notification of change processing fee.

[62] Limited services are offered in contingency situations.

[63] The fee includes the transaction fee in addition to the conversion fee. Reserve Banks also assess a $30 fee for every government paper return/NOC they process.

Continued

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2012 FEE SCHEDULE

[Effective January 3, 2012]

[Bold indicates changes from 2011 Fee Schedule]

	Fee
Fedwire Funds Service	
Monthly participation fee	**$85.00**
Basic volume-based pre-incentive transfer fee (originations and receipts):	
Per transfer for the first 14,000 transfers per month	**$0.58**
Per transfer for additional transfers up to 90,000 per month	**$0.24**
Per transfer for every transfer over 90,000 per month	**$0.135**
Volume-based transfer fee with the incentive discount (originations and receipts): [67]	
Per eligible transfer for the first 14,000 transfers per month	**$0.116**
Per eligible transfer for additional transfers up to 90,000 per month	**$0.048**
Per eligible transfer for every transfer over 90,000 per month	**$0.027**
Surcharge for offline transfers (originations and receipts)	$40.00
Surcharge for high value payments	**$0.12**
Surcharge for payment notification	**$0.20**
Surcharge for end-of-day transfer originations [68]	**$0.20**
Monthly import/export fee	**$20.00**
National Settlement Service	
Basic	
Settlement entry fee	**$1.00**
Settlement file fee	**$21.00**
Surcharge for offline file origination	$40.00
Minimum monthly charge (account maintenance) [69]	$60.00
Special settlement arrangements: [70]	
Fee per day	$150.00

FEDWIRE SECURITIES SERVICE 2012 FEE SCHEDULE, (NON-TREASURY SECURITIES)

[Effective January 3, 2012]

[Bold indicates changes from 2011 Fee Schedule]

	Fee
Basic transfer fee:	
Transfer or reversal originated or received	**$0.45**
Surcharge:	
Offline origination & receipt surcharge	**$66.00**
Monthly maintenance fees:	
Account maintenance (per account)	**$40.00**
Issues maintained (per issue/per account)	**$0.45**
Claim adjustment fee	**$0.66**
Joint custody fee	$40.00

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[64] NACHA network administration fees are established by NACHA in accordance with NACHA Operating Rules, Article One (General Rules), Section 1.11 (Network Administration Fees).

[65] This per-item surcharge is in addition to the standard domestic origination and input file processing fees.

[66] This per-item surcharge is in addition to the standard domestic receipt fees.

[67] The incentive discounts are applicable on the portion of a customer's volume that exceeds 50 percent of their historic benchmark volume. Historic benchmark volume will be based on a customer's average daily activity over the previous five full calendar years, adjusted for the number of business days in the current month. If a customer has less than five full calendar years of previous activity, then the historic benchmark volume will be based on the daily activity for as many full calendar years of available data. If a customer has less than one full year calendar year's worth of prior activity, historic benchmark volume will be set retroactively at actual volume for the current month. The applicable incentive discounts are as follows: − $0.464 for transfers up to 14,000; − $0.192 for transfers 14,001 to 90,000; and − $0.108 for transfers over 90,000.

[68] This surcharge applies to originators of transfers that are processed by the Reserve Banks after 5 p.m. ET.

[69] This minimum monthly charge is only assessed if total settlement charges during a calendar month are less than $60.

[70] Special settlement arrangements use Fedwire Funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire Funds transfer fee for each transfer into and out of the settlement account.

ELECTRONIC ACCESS 2012 FEE SCHEDULE

[Effective January 3, 2012

Bold prices indicate changes from 2011 Fee Schedule]

FedComplete Packages (monthly):[71]	
FedComplete	$750.00
FedComplete Plus	$775.00
FedComplete Plus 2.0	$1,400.00
Electronic Access Packages (monthly):	
FedPhone	**$15.00**
FedMail Email	$30.00
FedLine Web (W3)	$110.00
Includes:	
FedMail email	
FedLine Web with three individual subscriptions	
FedACH information services (includes RDFI file alert service)	
Check 21 services[72]	
Check 21 duplicate notification	
Cash management system basic—own report only	
Service charge information	
Account management information[73]	
End of day accounting file (PDF)	
FedLine Web Plus (W5)	$140.00
Includes:	
FedLine Web (W3) traditional package	
FedLine Web with five individual subscriptions	
FedACH risk management services	
FedACH EDI plus service via secure email	
Check payor bank services	
Account management information	
FedLine Advantage (A5)	$380.00
Includes:	
FedLine Web (W3) traditional package	
FedLine Web with five individual subscriptions	
FedACH transactions	
Fedwire funds transactions	
Fedwire securities transactions	
Fedwire cover payments	
Check payor bank services	
Account management information with intra-day search	
FedLine Advantage Plus (A5)	**$425.00**
Includes:	
FedLine Advantage A5 traditional package	
FedLine Advantage with five individual subscriptions	
FedACH risk management services	
FedACH EDI via secure email	
FedTransaction Analyzer	
FedLine Advantage Premier	**$500.00**
Includes:	
FedLine Advantage A5 traditional package	
FedLine Advantage with five individual subscriptions	
FedACH risk management services	
FedACH EDI via secure email	
FedTransaction Analyzer large volume	
FedLine Command Plus	**$800.00**
Includes:	
FedLine Advantage Plus package	
FedLine Advantage with five individual subscriptions	
FedLine Command with two certificates	
ACTS Report <20 subaccounts	
Statement of account spreadsheet file (SASF)	
FedTransaction Analyzer	
FedLine Direct (D56)	**$3,250.00**
Includes:	
FedLine Advantage A5 traditional package with 56K line speed	
FedLine Advantage with five individual subscriptions	
FedLine Command with two certificates	
FedLine Direct with two certificates	
Intra-day file	
Statement of account spreadsheet file	
End of day (machine readable) file	
Service charge information	
Billing data format file	
FedLine Direct Plus (D256)	$3,500.00
Includes:	

ELECTRONIC ACCESS 2012 FEE SCHEDULE—Continued

[Effective January 3, 2012

Bold prices indicate changes from 2011 Fee Schedule]

FedLine Direct traditional (D56) package with 256K line speed	
FedACH risk management services	
FedACH EDI via secure email	
FedTransaction Analyzer	
FedLine Direct Premier (DT1)	**$6,200.00**
Includes:	
FedLine Direct Plus package with T1 line speed	
One dedicated unattended wide area network connection for FedLine Direct	
FedTransaction Analyzer large volume	
Premium Options (monthly)[74]	
Electronic Access:	
Additional subscribers package (each package contains 5 additional subscribers)	$80.00
Additional FedLine Command certificate[75]	$80.00
Additional FedLine Direct certificate[76]	$80.00
Maintenance of additional virtual private network	$60.00
FedLine Advantage 800# Usage (per hour)	$2.00
Additional dedicated connections[77]	
56K	**$2,250.00**
256K	$2,450.00
T1	**$3,150.00**
Dial Only VPN surcharge	**$50.00**
Expedited VPN device order/change	$500.00
FedLine international setup (one-time fee)	**$5,000.00**
FedLine Direct contingency solution[78]	$1,000.00
Check 21 large file delivery	Various
FedMail fax (monthly per routing number)	$40.00
Accounting Information Services	
Cash Management System:[79]	
Basic—Individual respondent and/or sub-account reports (per report/month)	**$15.00**
Basic—Respondent/sub-account recap report (per month)	**$60.00**
Plus—Own report–up to six files with no respondent/sub-account activity (per month)	$60.00
Plus—Own report–up to six files with less than 10 respondent and/or sub-accounts (per month)	$125.00
Plus—Own report–up to six files with 10–50 respondent and/or sub-accounts (per month)	$225.00
Plus—Own report–up to six files with 51–100 respondents and/or sub-accounts (per month)	$400.00
Plus—Own report–up to six files with 101–500 respondents and/or sub-accounts (per month)	$750.00
Plus—Own report–up to six files with >500 respondents and/or sub-accounts	$1,000.00
Statement of account end of day reconcilement file (per month)[80]	$150.00
Statement of account spreadsheet file (per month)[81]	$150.00
Intra-day download search file (with AMI) (per month)[82]	$150.00
ACTS Report—<20 sub-accounts	$250.00
ACTS Report—21–40 sub-accounts	$500.00
ACTS Report—41–60 sub-accounts	$750.00
ACTS Report—>60 sub-accounts	$1,000.00

Dated: October 28, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[71] FedComplete packages are all-electronic service options that bundle payment services with as access solution for one monthly fee.

[72] Check 21 services can be accessed via three options: FedLine Web, an Internet connection with Axway Secure Transport Client, or a dedicated connection using Connect:Direct.

[73] Daylight Overdraft Report, Ex-Post Activity Snapshot, and Integrated Accounting Statement of Account are available via FedMail.

[74] Premium options for FedLine Web are limited to FedMail Fax.

[75] Additional FedLine Command Certificates available for FedLine Command and Direct packages only.

[76] Additional FedLine Direct Certificates available for FedLine Direct packages only.

[77] Network diversity supplemental charge of $2,000 a month may apply in addition to these fees.

[78] Transparent contingency is available only for FedLine Direct packages.

[79] Cash Management System options are limited to Plus and Premier packages.

[80] End of Day Reconcilement File option is available to FedLine Web Plus and FedLine Advantage Plus packages.

[81] Statement of Account Spreadsheet File option is available to FedLine Web Plus and FedLine Advantage Plus packages.

[82] ACTS Report options are limited to FedLine Command Plus and FedLine Direct Plus and Premier packages.

By order of the Board of Governors of the Federal Reserve System.

Dated: October 28, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–28588 Filed 11–3–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Susquehanna Bancshares, Inc.*, Lititz, Pennsylvania; to acquire Tower Bancorp, Inc., Harrisburg, Pennsylvania, and thereby simultaneously merge Graystone Tower Bank, Lancaster, Pennsylvania, with and into Susquehanna Bank, Lititz, Pennsylvania.

B. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Security Federal Corporation,* Aiken, South Carolina; to become a bank holding company upon the conversion of Security Federal Bank, Aiken, South Carolina, from a federal stock savings bank to a state chartered commercial bank.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Bitteroot Holding Company,* Lolo, Montana; to merge with Ravalli County Bankshares, Inc., and thereby indirectly acquire Ravalli County Bank, both in Hamilton, Montana, and, also as a result of the merger, to increase its ownership of West One Bank, Kalispell, Montana, from 34.92 percent to 63.73 percent.

Board of Governors of the Federal Reserve System, November 1, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–28603 Filed 11–3–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from W.R. Grace and Company in Curtis Bay, Maryland, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 18, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at any building or area at the facility owned by W.R. Grace and Company in Curtis Bay, Maryland, for the operational period from May 1, 1956 through January 31, 1958, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on November 17, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone (877) 222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–28569 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Y–12 facility in Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 18, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Y–12 facility in Oak Ridge, Tennessee, during the period from January 1, 1948 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on November 17, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone (877) 222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–28570 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from Vitro Manufacturing in Canonsburg, Pennsylvania, as an

addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 18, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at Vitro Manufacturing in Canonsburg, Pennsylvania, from January 1, 1960 through September 30, 1965, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on November 17, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone (877) 222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–28574 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Ames Laboratory at Iowa State University as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 18, 2011, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Department of Energy (DOE) employees, its predecessor agencies, and its contractors and subcontractors who worked in any area of the Ames Laboratory at Iowa State University during the period from August 13, 1942 through December 31, 1970, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more classes of employees included in the Special Exposure Cohort.

This designation will become effective on November 17, 2011, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone (877) 222–7570. Information requests can also be submitted by Email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–28575 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Jayant Jagannathan, M.D., University of Virginia Medical Center: Based on the report of an investigation conducted by the University of Virginia (UVA) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Jayant Jagannathan, former Resident Physician at UVA Medical Center, engaged in research misconduct by plagiarizing research supported by National Institutes of Health (NIH) research and training awards and by NIH intramural research funds from the National Institute of Neurological Disorders and Stroke (NINDS), Surgical Neurosurgery Branch (NSB), and from the National Institute of Dental and Craniofacial Research (NIDCR).

ORI found that the Respondent engaged in research misconduct by including, in five publications, large amounts of text and an illustration that he plagiarized from publications supported by the following NIH grant awards: T32 CA09677, P01 HL024136, R01 HL059157, P50 CA090270, M01 RR01346, R01 CA075979, R01 DK064169, R01 NS027544, R01 NS052406, and K08 NS002197,[1] and by intramural funds from the Surgical Neurosurgery Branch, NINDS, and from NIDCR.

Publications in which Respondent reported plagiarized material were:

1. Jagannathan, J., Li, J., Szerlip, N., Vortmeyer, A.O., Lonser, R.R., Oldfied, E.H., Zhuang, Z. ''Application and implementation of selective tissue microdissection and proteomic profiling in neurological disease.'' *Neurosurgery* 64:4–14, 2009 (to be retracted);

2. Jagannathan, J., Prevedello, D.M., Dumont, A.S., Laws, E.R. ''Cellular Signaling Molecules as Therapeutic Targets in the Treatment of Glioblastoma Multiforme.'' *Neurosurgical Focus* 20(4):E8, 2006 (retracted ''due to plagiarism,'' *Neurosurgical Focus* 30(2):E8r, 2011);

3. Kanter, A.S., Jagannathan, J., Shaffrey, C.I., Ouellet, J.A., Mummaneni, P.V. ''Inflammatory and dysplastic lesions involving the spine.'' *Neurosurgical Clinics of North America* 19(1):93–109, 2008;

4. Jagannathan, J., Dumont, A.S., Prevedello, D.M., Oskouian, R.J., Lopes, B., Jane, J.A. Jr, Laws, E.R. Jr. ''Genetics of pituitary adenomas: Current theories and future implications.'' *Neurosurgical Focus* 19(5):E4, 2005 (retracted ''due to plagiarism,'' *Neurosurgical Focus* 30(2):E4r, 2011);

5. Jagannathan, J. ''Role of calcium influx and modulation of local neurotransmitters as hallmarks of pediatric traumatic brain injury.'' *Biomarkers Med.* 3:95–97, 2009 (retracted online 9/11/2010).

Dr. Jagannathan has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of four (4) years, beginning on October 20, 2011:

(1) To have his research supervised; Respondent agreed to ensure that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which his participation is proposed and prior

[1] T32 CA09677, Radiation Biology Training Grant,'' A. Kennedy, P.I.

P01 HL024136, ''Mechanisms of Remodeling in Chronic Airway Inflammation,'' G. Caughey, P.I.

HL059157, ''Angioproteins in Airway Vascular Leak and Angiogenesis,'' D. McDonald, P.I.

P50 CA090270, ''UTMDACC Cancer Center SPORE in prostate cancer,'' C. Logothetis, P.I.

M01 RR01346, ''UTHSC GCRC,'' R. Clark, P.I.

R01 CA075979, ''Mechanisms for Pituitary Tumorigenesis,'' S. Melmed, P.I.

R01 DK064169, ''Metabolic Consequences of Sccurin Disruption,'' S. Melmed, P.I.

R01 NS027544, ''Loss of Developmental Plasticity after Head Injury,'' D.A. Hovda, P.I.

R01 NS052406, ''Age-dependent Ketone Metabolism after Brain Injury,'' M.L. Prims, P.I.

K08 NS002197, ''NMDA Receptor Dysfunction after Traumatic Brain Injury,'' C.C. Christopher, P.I.

to his participation in any capacity on PHS-supported research, the institution employing him must submit a plan for supervision of his duties to ORI for approval; the plan for supervision must be designed to ensure the scientific integrity of his research contribution; Respondent agreed that he will not participate in any PHS-supported research after sixty (60) days from the effective date of the Agreement until a plan for supervision is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing him must submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) To submit a letter to the journal editor for publication 3 (*Neurosurgical Clinics of North America*) listed above, requesting that the paper be retracted because Respondent had plagiarized portions of text reported in it; the letter must be sent to ORI for approval prior to being sent to the editor; and

(4) To exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–28619 Filed 11–3–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Toxicology Program (NTP) Board of Scientific Counselors

AGENCY: National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC). The BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The BSC meeting will be held on December 15, 2011. The deadline for submission of written comments is December 1, 2011, and for pre-registration to attend the meeting, including registering to present oral comments, is December 8, 2011. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Lori White at voice telephone: (919) 541–9834 or email: *whiteld@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least 5 business days in advance of the event.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Lori White, Designated Federal Officer for the BSC, Office of Liaison, Policy and Review, Division of the NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709; telephone: (919) 541–9834; fax: (919) 541–0295; *whiteld@niehs.nih.gov.* Courier address: NIEHS, 530 Davis Drive, Room K2136, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White (telephone: (919) 541–9834 or *whiteld@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Meeting Materials

The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC (see **ADDRESSES** above). Draft research concepts will be presented for the following three new nominations to the NTP testing program: sulfolane [CASRN 126–33–0], the phenolic benzotriazoles class, and trimethylsilyldiazomethane [CASRN 18107–18–1]. A draft concept for a workshop on permanent hair dyes will also be presented. There will be a presentation of the finalized Report on Carcinogens review process, details of which can be found at *http://ntp.niehs.nih.gov/go/rocprocess.* Also, there will be reports on the January 2011 workshop on the role of environmental factors in development of diabetes and obesity (*http://ntp.niehs.nih.gov/go/36433*) and on environmental enrichment in NTP studies. Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site.

Attendance and Registration

The meeting is scheduled for December 15, 2011, beginning at 8:30 a.m. EST and continuing until adjournment. This meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by December 8, 2011, to facilitate planning for the meeting. Registered attendees are encouraged to access this Web site to stay abreast of the most current information regarding the meeting. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments submitted in response to this notice should be received by December 1, 2011. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, email, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8:30 a.m. until adjournment, although public comments will be received only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site, indicate whether they

will present comments in-person or via the teleconference line, and list the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration for oral comments will also be available at the NIEHS on both meeting days, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement or PowerPoint slides to the Designated Federal Officer for the BSC (see **ADDRESSES** above) by December 8, 2011. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

Background Information on the NTP Board of Scientific Counselors

The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually.

Dated: October 27, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–28629 Filed 11–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be conducted as a telephone conference call. The meeting will be open to the public through a conference call phone number.

DATES: The meeting will be on November 22, 2011 from 3 p.m. to approximately 4 p.m. EST.

ADDRESSES: No in-person meeting; conference call only.

Conference Call: Domestic: (888) 455–2653. International: 1–(210) 839–8485. Access code: 8098465.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Washington, DC 20201; (202) 690–5560. More detailed information about PACHA can be obtained by accessing the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services.

The purpose of this conference call meeting is for PACHA members to discuss a World AIDS statement. The statement asks that the Obama administration make a bold announcement about the important scientific advances and the potential they bring toward achieving zero new infections, zero-AIDS-related deaths, and zero discrimination. A copy of the statement will be on the PACHA Web site by close of business Thursday, November 17, 2011. The meeting will be open to the public through a conference call phone number provided above. There will be a limited amount of open lines for the public; early registration is highly recommended. Individuals who participate using this service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least five days prior to the meeting. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard until the public comment period.

Members of the public will have the opportunity to provide comments. Pre-registration is required for public comment. Individuals who wish to participate in the public comment session must send a copy of their public comments to Melvin Joppy, Committee Manager, at *melvin.joppy@hhs.gov* by close of business Friday, November 18, 2011. Registration for public comment will not be accepted by telephone. Public comment will be limited to the first eight individuals who pre-register. Public comment will be limited to two minutes per speaker. Individuals not providing public comment during the conference call meeting may submit written comments to Melvin Joppy, Committee Manager, at *melvin.joppy@hhs.gov* by close of business Monday, November 28, 2011.

Dated: October 28, 2011.

Christopher H. Bates,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2011–28611 Filed 11–3–11; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-12–12AN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Biomonitoring of Great Lakes Populations Program—New—Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

Background and Brief Description

The Great Lakes Basin has suffered decades of pollution and ecosystem damage. In 1987, the Great Lakes Water Quality Agreement listed 40 Areas of Concern (AOCs) representing the most polluted areas in the Great Lakes Basin. Many chemicals persist in Great Lakes sediments, as well as in wildlife and humans. These chemicals can build up in the aquatic food chain. Eating contaminated fish is a known route of human exposure.

In 2009, the Great Lakes Restoration Initiative (GLRI) was enacted as Public Law 111–88. The GLRI makes Great Lakes restoration a national priority for 16 Federal agencies. The GLRI is led by the U.S. Environmental Protection Agency (US EPA). Under a 2010 interagency agreement with the US EPA, the Agency for Toxic Substances and Disease Registry (ATSDR) announced a funding opportunity called the ''Biomonitoring of Great Lakes Populations Program'' (CDC–RFA–TS10–1001).

This applied public health program aims to measure Great Lakes chemicals in human blood and urine. These measures will be a baseline for the GLRI and future restoration activities. The measures will be compared to available national estimates. This program also aims to take these measures from people who may be at higher risk of harm from chemical exposures.

Three states were funded for this program: Michigan, Minnesota, and New York. The health departments in these states will look at seven AOCs and four types of sensitive adults: Michigan—urban anglers in the Detroit River and the Saginaw River and Bay AOCs; Minnesota—American Indians from the Fond du Lac Community near the St. Louis River AOC; and New York—licensed anglers and immigrants from Burma and their family members living in four Lake Ontario and Lake Erie AOCs. These include the Rochester Embayment AOC, the Eighteenmile Creek AOC, and the AOCs along the Niagara and Buffalo Rivers.

Each state will use its own way to ask people to take part in the study. In Michigan, people fishing along the shores of the Detroit River and Saginaw River and Bay will be asked a few questions to see if they are willing to take part in the study. In Minnesota, American Indians will be randomly chosen from a list of people who get local health clinic and social services. They will be contacted by trained staff to take part in the study. In New York, names from the state licensed angler database will be chosen at random. These people will be contacted by mail and telephone to take part in the study. Another group, immigrants who moved from Burma to Buffalo, NY, will work with trained study staff to get their people to take part in the study.

All respondents who consent will give blood and urine specimens. Their blood and urine will be tested for polychlorinated biphenyls (PCBs), mercury, lead, and pesticides. Pesticides will include mirex, hexachlorobenzene, dichlorodiphenyltrichloroethane (DDT) and dichlorodiphenyldichloroethylene (DDE)]. Each state will test blood and urine for other chemicals of local concern. Respondents will also be interviewed. They will be asked about demographic and lifestyle factors, hobbies, and types of jobs, which can contribute to chemical exposure. Some diet questions will be asked, too, with a focus on eating Great Lakes fish. There is no cost to respondents other than their time spent in the study.

The ATSDR is authorized to conduct this program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Michigan Shoreline Anglers	Screening Questionnaire	700	1	5/60	58
	Telephone Questions for Scheduling Appointments.	500	1	7/60	58
	Informed Consent	400	1	1/60	7
	Biomonitoring Questionnaire	400	1	54/60	360
American Indians from Fond du Lac Community.	Calling Script	625	1	5/60	52
	Refusal Questions	125	1	2/60	4
	Informed Consent	500	1	3/60	25
	Contact Information	500	1	2/60	17
	Study Participant Questionnaire	500	1	30/60	250
	Clinic Visit Incentive Record	500	1	3/60	25
New York State Licensed Anglers	Eligibility Screening Survey	600	1	5/60	50
	Online Eligibility Screening Survey	900	1	5/60	75
	Telephone Script for Non-responders.	1000	1	5/60	83
	Telephone Script for Calling Eligible Respondents.	300	1	5/60	25
	Informed Consent	400	1	1/60	7
	Interview Questionnaire	400	1	30/60	200

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Immigrants from Burma and Descendents.	Eligibility Screening Survey	184	1	5/60	15
	Informed Consent	100	1	1/60	2
	Interview Questionnaire	100	1	1	100
	Network Size Questions for Respondent Driven Sampling.	100	1	5/60	8
Total					1,421

Dated: October 28, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–28564 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–12–0234]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920–0234 exp. 03/31/2013)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the utilization of health care provided by nonfederal office-based physicians in the United States.

This revision is to notify the public of significant changes proposed for NAMCS for the 2012–2014 survey period. On July 13, 2010, a notice was published in the **Federal Register** (pages 39947–39948) which notified the public that the President's fiscal year 2011 budget requested Congress to consider a budget increase. It also mentioned that budget increases might be forthcoming from other sources. Funds have now been received from the Patient Protection and Affordable Care Act to significantly increase the survey sample size to produce state estimates for 34 states. The 2012 NAMCS will include an additional sample of over 15,600 physicians/providers. A three-year clearance is requested.

NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS, a voluntary survey, is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. The NAMCS target universe consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. In 2006, physicians and mid-level providers (*i.e.,* nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected. NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, provider diagnoses, diagnostic services, medications, and visit disposition.

Additionally, NAMCS data collection will transition to computerized data collection, so that induction interviews and patient record information will be entered into laptops that meet the government's security requirements. This effort will greatly reduce paperwork and will increase efficiency in data processing. Data collection activities, including questions asked, will be similar to current procedures.

NAMCS will also add questions concerning the physician's use of complementary alternative medicine, conduct an asthma management supplement as well as a lookback module based on successful pretests in 2011.

Specifically, the information on the physician's utilization of complementary and alternative medicine (CAM) will be collected through additional questions added to the Physician Induction Interview. Adding these questions will allow the National Institutes of Health/National Center for Complementary and Alternative Medicine (NCCAM) to estimate the frequency of referrals and use of CAM by conventional providers, which has never been collected before on a large-scale national survey. Because the majority of providers who use CAM do so in conjunction with conventional medicine, it is important to find out the extent to which conventional providers are integrating CAM into their treatment plans.

The asthma supplement will collect information on the clinical decisions providers make when confronted with a patient suffering from asthma. The lookback module will collect additional information from the 12 month period prior to a sampled visit, which will identify risk factors and clinical management of patients with conditions that put them at high risk for heart disease and stroke.

A supplemental mail survey on the adoption and use of electronic health records (EHRs) in physician offices was added to NAMCS in 2008, and will continue. These data were requested by the Office of the National Coordinator for Health Information Technology

(ONC), Department of Health and Human Services, to measure progress toward goals for EHR adoption. The mail survey will collect information on characteristics of physician practices and the capabilities of EHRs used in those practices. Additional information on physician experiences with EHRs will continue to be collected through the Physician Workflow Supplement (PWS), which was added in 2011. The PWS collects information on experiences physicians are having with EHRs in terms of benefits and barriers, costs, attitudes, and impact of EHRs on their clinical workflow.

In 2012, NAMCS plans on conducting a pretest for assessing the feasibility of developing nationally-representative estimates of payments for care in physician offices through the collection of Current Procedural Terminology (CPT) codes.

Users of NAMCS data include, but are not limited to, Congressional offices, Federal agencies, State and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. NCHS is seeking OMB approval to extend this survey for an additional three years.

There is no cost to respondents other than their time to participate. The total estimated annualized burden hours are 59,998.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form	Type of respondent	Form name	Number of respondents	Number of responses per respondent	Hours per response
Core NAMCS Forms	Office-based physicians/CHC providers.	Physician Induction Interview (NAMCS–1).	16,237	1	35/60
	Community Health Center Directors.	Community Health Center Induction Interview (NAMCS–201).	2,008	1	20/60
	Office-based physicians/CHC providers.	Patient Record form (NAMCS–30).	3,248	30	14/60
	Office/CHC staff	Pulling, re-filing Patient Record form (NAMCS–30).	12,989	30	1/60
	Office-based physicians/CHC providers.	Lookback module	5,683	15	10/60
	Office-based physicians/CHC providers.	Asthma Supplement	10,554	1	20/60
National Electronic Health Records Survey (NEHRS).	Office-based physicians	NEHRS form	4,344	1	20/60
Physician Workflow Survey (PWS).	Office-based physicians	PWS form	2,645	1	30/60
Pretest NAMCS Forms	Office-based physicians	Physician Induction Interview (NAMCS–1).	17	1	35/60
	Office-based physicians	Patient Record form (NAMCS–30).	17	30	14/60

Dated: October 28, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–28580 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–11KA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Use of Evidence-Based Practices for Comprehensive Cancer Control—New—National Center on Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There have been increasing calls in the fields of public health generally and cancer control specifically for the dissemination, adoption, and implementation of evidence-based practices (EBPs). EBPs are public health practices (interventions, programs, strategies, policies, procedures, processes, and/or activities) that have been tested or evaluated and shown to be effective. However, while the development, review, and compilation of EBPs has steadily increased over time, there is concern that the adoption and implementation of those practices, including among cancer control planners and practitioners, has not kept pace. Given the gap between the development of EBPs and their use, public health and cancer control organizations need to place greater emphasis on the promotion and dissemination of these practices among those who can use them to improve population health. While efforts to promote cancer control EBPs have increased, questions remain whether these efforts will result in widespread adoption and implementation of EBPs in the context of comprehensive cancer control (CCC) in the states, Tribes, and U.S. Associated Pacific Island Jurisdictions and territories. National Comprehensive Cancer Control Program (NCCCP) grantees may face a number of challenges to incorporating EBPs into CCC efforts in their jurisdictions. In order to address these barriers effectively and better promote the use of EBPs for cancer control, CDC would like to understand (1) how evidence-based

approaches are currently being used to develop CCC plans; (2) how CCC programs identify EBPs; (3) what EBPs have been adopted by CCC programs; and (4) what challenges and unintended consequences have been encountered in their implementation.

The purpose of the proposed project is to examine CCC planners' use of scientific and practice-based information to inform development of CCC plans and to select evidence-based interventions. CDC will sponsor two surveys among 66 key CCC stakeholders in the NCCCP-funded states, Tribes, and U.S. Associated Pacific Island Jurisdictions and territories. The first will be a survey with the 66 Directors of the NCCCP-funded programs. The second will be a Web-based survey of key program partners/collaborators identified by the Program Directors (on average, two partners per Director, or 132 partners) as instrumental to the selection and implementation of cancer control EBPs. The surveys will identify technical assistance needs of the programs related to selection and implementation of EBPs and will contribute to CDC's efforts to build the capacities of states, Tribes, and Pacific Island Jurisdictions and territories toward more effective efforts in cancer prevention and control. In addition, the results may lead to new insights and questions that can be addressed in future studies.

There are no costs to respondents other than their time. OMB approval is requested for one year. The total estimated burden hours are 138.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
NCCCP Directors	Survey Scheduling Script	66	1	15/60
	Program Directors Web Survey Questionnaire.	66	1	30/60
	Program Directors Telephone Interview Guide and Script.	66	1	20/60
NCCCP Partners	Program Partners Web Survey Questionnaire.	132	1	30/60

Dated: October 28, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–28581 Filed 11–3–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10404 and CMS–10209]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* National Balancing Indicators Project (NBIP) Direct Service Workforce Data Collection Effort; *Use:* The overall purpose of this project is to assist CMS State Profiling Tool (SPT) grantees to collect core direct service workforce data elements by population and setting and build the infrastructure needed to track these workforce indicators over time; *Form Number:* CMS–10404 (OMB 0938–New); *Frequency:* Once; *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions) and Individuals; *Number of Respondents:* 68,160; *Total Annual Responses:* 68,160 (one-time); *Total Annual Hours:* 57,038. (For policy questions regarding this collection contact Jean Accius at (410) 786–3270. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Reinstatement with change of previously approved collection; *Title of Information Collection:* Medicare Advantage Chronic Care Improvement Program and Quality Improvement Project Reporting Tools; *Use:* Section 1852e(1), (2), (3)(a)(i) of the Social Security Act and 42 CFR 422.152 of the regulations describe CMS' regulatory authority to require each Medicare Advantage Organization (MAO) coordinated care plan that offers one or more MA plans to have an ongoing quality assessment and performance improvement program. This program must include assessing performance using standard measures required by the Center for Medicare and Medicaid Services (CMS), and reporting its performance to CMS.

MAOs will submit their Chronic Care Improvement Programs (CCIPs) and Quality Improvement Project (QIPs) using the revised CCIP and QIP Reporting Tools that are included in this collection. The tools have been redesigned: (1) To decrease the response burden through limiting the amount of narrative required and using an automated system; (2) to be more aligned with the standard QI reporting format; and (3) to improve the information provided by MAOs by using more structured reporting tools. CMS believes the new reporting tools will provide a simpler, easier way for MAOs to report the required data. The new tool will also generate consistency in reporting among plans so that collected data can be used more efficiently by CMS and the plans.

Based on feedback received during the 60-day comment period, CMS has increased the burden hours to complete each reporting tool from 5 hours to 15 hours *Form Number:* CMS–10209 (OMB # 0938–1023); *Frequency:* Yearly;

Affected Public: Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,904; *Total Annual Responses:* 1,904; *Total Annual Hours:* 28,560. (For policy questions regarding this collection contact Letticia Ramsey at (410) 786–5262. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *December 5, 2011.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: November 1, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–28618 Filed 11–3–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9067–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2011

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

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2011, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone number
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410)786–7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786–7491
V FDA–Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	Mitch Bryman	(410) 786–5258
VII Medicare–Approved Carotid Stent Facilities	Sarah J. McClain	(410) 786–2294
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	JoAnna Baldwin, MS	(410) 786–7205
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	Lori Ashby	(410) 786–6322
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786–8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	JoAnna Baldwin, MS	(410) 786–7205
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	JoAnna Baldwin, MS	(410) 786–7205
XIV Medicare-Approved Bariatric Surgery Facilities	Kate Tillman, RN, MAS	(410) 786–9252
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786–8564
All Other Information	Annette Brewer	(410) 786–6580

I. Background

Among other things, the Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Summary of the Solicitation for Comments and Response to Comments

As explained in the notice with comment period that published in the August 8, 2011 **Federal Register** (76 FR 48564), technology has advanced since we published our first notice on June 9, 1988, and the information provided in this notice is now available in more efficient, economical, and accessible ways to meet the requirement for publication set forth in the statute. Each quarter, we publish the most current and relevant information; however, many of the quarterly notices simply duplicate the information that was previously published, since there often are no new relevant updates in some categories for the quarter. In addition, there is a 3-month lapse between the information available on the Web site and information covered by this quarterly notice.

In the August 8, 2011 notice (76 FR 48564), we solicited comments on alternative formats to provide this

information to the public. For example, we explained that we could publish a notice that provided only Web links to the addenda, or provide this information on a newly-created CMS Quarterly Issuance Web page. We solicited comments and any additional information as to whether these alternative processes would improve accessibility to information. We also inquired whether a new format would pose a problem to those who access the information contained in this notice or pose an unintended burden to beneficiaries, providers, and suppliers. We did not receive any comments in response to our solicitation.

III. Revised Format for the Quarterly Issuance Notices

While we are publishing the quarterly notice required by section 1871(c) of the Act, we will no longer republish duplicative information that is available to the public elsewhere. We believe this approach is in alignment with CMS' commitment to the general principles of the President's Executive Order 13563 released January 2011entitled ''Improving Regulation and Regulatory Review,'' which promotes modifying and streamlining an agency's regulatory program to be more effective in achieving regulatory objectives. Section 6 of Executive Order 13563 requires agencies to identify regulations that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand or repeal them in accordance with what has been learned.'' This approach is also in alignment with the President's Open Government and Transparency Initiative that establishes a system of transparency, public participation, and collaboration.

Therefore, beginning with this quarterly notice, we will provide only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This information is the most current up-to-date information, and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time''accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

IV. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals*.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: October 27, 2011.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: September 24, 2010 (75 FR 58790), December 17, 2010 (75 FR 79174), March 31, 2011 (76 FR 17873) and August 8, 2011 (76 FR 48564). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the Web site to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (April through June 2011)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled Influenza Virus Vaccine Immunizations--use CMS-Pub. 100-02, Transmittal No. 145.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our Web site at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
68	Physician Certification and Recertification of Services Manual Changes Content of the Physician's Certification Certification and Recertification by Physicians for Hospice Care
69	July 2011 Update to the CMS Standard File for Reason Codes for the Fiscal Intermediary Shared System (FISS)
	Medicare Benefit Policy (CMS-Pub. 100-02)
143	Manual Restructuring of Chapter 6, Section 20, Subsections 20.4.4, and 20.5.2 Table of Contents Coverage of Outpatient Diagnostic Services Furnished on or After January 1, 2010 Outpatient Diagnostic Services Under Arrangements Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2010
144	Home Health Therapy Services Observation and Assessment of the Patient's Condition When Only the Specialized Skills of a Medical Professional Can Determine Patient's Status General Principles Governing Reasonable and Necessary Physical Therapy, Speech-Language Pathology Services, and Occupational Therapy Application of the Principles to Physical Therapy Services Application of the General Principles to Speech-Language Pathology Services Assessment
145	Influenza Virus Vaccine Immunizations
	Medicare National Coverage Determination (CMS-Pub. 100-03)
00	None
	Medicare Claims Processing (CMS-Pub. 100-04)
2189	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process Stemming Principally From the Affordable Care Act (ACA) Consolidated Claims Crossover Process Coordination of Benefits Agreement (COBA) Detailed Error Report Notification Process
2190	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2191	New Specialty Code for Advanced Diagnostic Imaging Accreditation Nonphysician Practitioner, Supplier and Provider Specialty Codes
2192	New Specialty Code for Advanced Diagnostic Imaging Accreditation Nonphysician Practitioner, Supplier and Provider Specialty Codes
2193	Updates to Pub 100-04, Medicare Claims Processing Manual, Chapter 3: Inpatient Hospital

Transmittal Number	Manual/Subject/Publication Number
	Billing Payment for Blood Clotting Factor Administered to Hemophilia Inpatients Billing Coverage and Utilization Rules for PPS and Non-PPS Hospitals Application of Code First
2194	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) Update Claim Adjustment Reason Codes Remittance Advice Remark Codes
2195	End Stage Renal Disease (ESRD) Low Volume Adjustment and Establishing Quarterly Updates to the ESRD Prospective Payment System (PPS) General Description of ESRD Payment and Consolidated Billing Requirements Calculation of the Basic Case-Mix Adjusted Composite Rate and the ESRD Prospective Payment System Rate Required Information for In-Facility Claims Paid Under the Composite Rate and the ESRD PPS
2196	New Waived Tests
2197	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2198	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2199	Screening for the Human Immunodeficiency Virus (HIV) Infection Human Immunodeficiency Virus (HIV) Screening Tests Healthcare Common Procedure Coding System (HCPCS) for HIV Screening Tests Billing Requirements Payment Method Types of Bill and Revenue Codes for Form CMS-1450 Diagnosis Code Reporting Medicare Summary Notice (MSN) and Claim Adjustment Reason Codes (CARC)
2200	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2201	Section 1833 (a)(1)(F) of the Social Security Act - Payment of Licensed Clinical Social Worker (LCSW) in a Method II Critical Access Hospital (CAH) Payment of Licensed Clinical Social Workers (LCSWs) in a Method II CAH
2202	Section 1833 (a)(1)(F) of the Social Security Act - Payment of Licensed Clinical Social Worker (LCSW) in a Method II Critical Access Hospital (CAH) Payment of Licensed Clinical Social Workers (LCSWs) in a Method II CAH
2203	Home Health Requests for Anticipated Payment and Timely Claims Filing Application to Special Claim Types
2204	Type of Service (TOS) Corrections
2205	IOM 100-04 Chapter 22 Update for Remittance Advice for version 5010 –ASC X12N 005010A1 and Related Standard Paper Remittance (SPR)
2206	New K codes for Suction Pumps and Wound Dressings
2207	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes – July 2011 Update
2208	Manual Update for Quarterly Reporting Requirements for Do Not Forward Reports Reporting Requirements–Carriers
2209	Corrections to Home Health Prospective Payment System (HH PPS) Outlier Limitation
2210	Enhance the Multi-Carrier System (MCS) and ViPS Medicare System (VMS) to maintain five full years of pricing data and to automatically price claims/adjustments at the rates in effect at the dates of service Update Factor for Fee Schedule Services Online Pricing Files for DMEPOS
2211	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2212	Payment Update for Influenza Virus Vaccine and Pneumococcal Vaccine Codes Healthcare Common Procedure Coding System(HCPCS) and Diagnosis Codes
2213	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) Update Claim Adjustment Reason Codes Remittance Advice Remark Codes
2214	Pharmacy Billing for Drugs Provided "Incident To" a Physician Service (This CR rescinds and fully replaces CR 7109.) Payment Rules for Drugs and Biologicals Exceptions to Average Sales Price (ASP) Payment Methodology
2215	Modifications to the COBA Process For Other Federal Payer Payment Order and Other Issues Consolidated Claims Crossover Process Consolidation of the Claims Crossover Process
2216	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2217	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 17.2, Effective July 1, 2011
2218	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2219	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2220	Update-Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Rate Year 2012 Annual Update
2221	Postcard Mailing for the Annual Participation Open Enrollment Period Annual Open Participation Enrollment Process Carrier/MACs Participation Agreement
2222	Pass-through Payment for Certified Registered Nurse Anesthetist Services Payment for CRNA or AA Services
2223	July Update to the CY 2011 Medicare Physician Fee Schedule Database (MPFSDB)
2224	July 2011 Integrated Outpatient Code Editor (I/OCE) Specifications Version 12.2
2225	October 2011 Quarterly Update for the DMEPOS Competitive Bidding Program
2226	Affordable Care Act – Section 3113–Laboratory Demonstration for Certain Complex Diagnostic Tests (This CR Fully Rescinds and Replaces CR 7278) Provider of Service or Supplier Information
2227	Quarterly HCPCS Drug/Biological Code Changes–July 2011 Update
2228	Manual Update for Quarterly Reporting Requirements for Do Not Forward Reports Reporting Requirements–Carriers
2229	Modifications to the Common Working File (CWF) Logic In Support of the National Coordination of Benefits Agreement (COBA) Crossover Process Consolidated Claims Crossover Process Claims Crossover Disposition and Coordination of Benefits Agreement By-Pass Indicators
2230	Revisions to Ch. 10, Home Health Agency Billing Table of Contents General Guidelines for Processing Home Health Agency (HHA) Claims Creation of HH PPS and Subsequent Refinements Configuration of the HH PPS Environment The HH PPS Episode - Unit of Payment More Than One Agency Furnished Home Health Services Effect of Election of Medicare Advantage (MA) Organization and Eligibility Changes on HH PPS Episodes Coding of HH PPS Episode Case-Mix Groups on HH PPS Claims: HHRGs and HIPPS Codes

Transmittal Number	Manual/Subject/Publication Number
	Composition of HIPPS Codes for HH PPS Submission of Request for Anticipated Payment (RAP) Claim Submission and Processing Transfer Situation - Payment Effects Discharge and Readmission Situation Under HH PPS - Payment Effects Adjustments of Episode Payment - Therapy Thresholds Adjustments of Episode Payment - Early or Later Episodes RESERVED Multiple Adjustments to Episode Payments RESERVED Exhibits Glossary and Acronym List Health Insurance Eligibility Query to Determine Episode Status National Home Health Prospective Payment Episode History File Opening and Length of HH PPS Episodes Closing, Adjusting and Prioritizing HH PPS Episodes Based on RAPs and HHA Claim Activity Claim Activity Coordination of HH PPS Claims Episodes With Inpatient Claim Types Exhibit: Chart Summarizing the Effects of RAP/Claim Actions on the HH PPS Episode File Completion of Form CMS 1450 for Home Health Agency Billing Request for Anticipated Payment (RAP) HH PPS Claims Collection of Deductible and Coinsurance from Patient Beneficiary-Driven Demand Billing Under HH PPS No Payment Billing General Decision Logic Used by the Pricer on Claims Annual Updates to the HH Pricer Special Billing Situations Involving OASIS Assessments Medical and Other Health Services Not Covered Under the Plan of Care (Bill Type 34X) Temporary Suspension of Home Health Services
2231	Phase 3 of Manual Revisions to Reflect Payment Changes for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Items as a Result of the DMEPOS Competitive Bidding Program and the Deficit Reduction Act of 2005 Table of Contents Billing for Items in Multiple Product Categories Claims Submitted for Hospitals Who Furnish Competitively Bid Items Claims Submitted for Medicare Beneficiaries Previously Enrolled in a Medicare Advantage Plan Claims for Repairs and Replacements Billing for Oxygen Contents to Suppliers After the 36th Month Rental Cap Purchased Accessories and Supplies for Use With Grandfathered Equipment Hospitals Providing Walkers and Related Accessories to Their Patients on the Date of Discharge
2232	Critical Access Hospital (CAH) Optional Method Election for Outpatient Services Subsection 250.2/Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115 Percent Fee Schedule Payment for Professional Services
2233	Medicare Preventive and Screening Services Table of Contents Medicare Preventive and Screening Services Definition of Preventive Services Table of Preventive and Screening Services

Transmittal Number	Manual/Subject/Publication Number
	Waiver of Cost Sharing Requirements of Coinsurance, Copayment and Deductible for Furnished Preventive Services Available in Medicare
2234	July 2011 Update of the Hospital Outpatient Prospective Payment System (OPPS) Table of Content Inpatient-only Services Billing for Linear Accelerator (Robotic Image-Guided and Non-Robotic Image-Guided) SRS Planning and Delivery Reporting Hours of Observation
2235	July 2011 Update of the Ambulatory Surgical Center (ASC) Payment System
2236	July Quarterly Update for 2011 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule Table of Contents Gap-filling DMEPOS Fees Payment Concerns While Updating Codes
2237	October Quarterly Update to 2011 Annual Update of HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
2238	Indian Health Services (IHS) Hospital Payment Rates for Calendar Year 2011
2239	Manual Clarifications for Skilled Nursing Facility (SNF) Part A Billing Billing SNF PPS Services Coding PPS Bills for Ancillary Services Reprocessing Inpatient Bills in Sequence Leave of Absence Billing Related to Physician's Services
2240	Instructions for Downloading the Medicare ZIP Code File for October 2011
2241	Guidelines to allow contractors to develop and utilize procedures for accepting and processing reopenings via a secure Internet portal/application Table of Contents Reopenings and Revisions of Claims Determinations and Decisions-General Authority to Conduct a Reopening Timeframes When a Party Requests an Adjudicator Reopen Their Decisions Timeframes to Complete a Reopening Requested by a Party Notice of a Revised Determination or Decision System and Processing Requirements for Use of Secure Internet Portal/Application to Support Reopening Activities
2242	Revision to Formula to Compute the Time Value of Money under the Inpatient Prospective Payment System (IPPS), Outpatient Prospective Payment System (OPPS), Inpatient Rehabilitation Facility (IRF PPS), Inpatient Psychiatric Facility (IPF PPS) and Long Term Care Hospital (LTCH PPS) Time Value of Money Time Value of Money Time Value of Money Outlier Reconciliation Time Value of Money Time Value of Money
2243	Claim Status Category and Claim Status Codes Update
2244	New Waived Tests
2245	Manual Clarifications for Skilled Nursing Facility (SNF) Part A Billing Billing SNF PPS Services Coding PPS Bills for Ancillary Services Reprocessing Inpatient Bills in Sequence Leave of Absence

Transmittal Number	Manual/Subject/Publication Number
	Billing Related to Physician's Services
2246	Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)
2247	Teaching Physician Services Evaluation and Management (E/M) Services Surgical Procedures Physician Billing in the Teaching Setting
2248	New Specialty Code for Advanced Diagnostic Imaging Accreditation Nonphysician Practitioner, Supplier and Provider Specialty Codes
Medicare Secondary Payer (CMS-Pub. 100-05)	
00	None
Medicare Financial Management (CMS-Pub. 100-06)	
187	Notice of New Interest Rate for Medicare Overpayments and Underpayments-3rd Notification for FY 2011.
188	Modify CROWD Form K to allow for the submission of additional Medicare Secondary Payer (MSP) savings information. General
189	Recovery Audit Program Tracking Overpayments Instruction Alteration Tracking Overpayments
Medicare State Operations Manual (CMS-Pub. 100-07)	
70	Clarifications to Appendix L, Ambulatory Surgical Center Interpretive Guidelines – Comprehensive Medical History and Physical (H&P) Assessment and Anesthetic Risk and Evaluation. Anesthetic Risk and Evaluation Admission and Pre-Surgical Assessment
Medicare Program Integrity (CMS-Pub. 100-08)	
373	Advanced Diagnostic Imaging Accreditation Enrollment Procedures
374	Update to Notifications Sent to State Medicaid Agencies and Child Health Plans of Medicare Terminations for Certified Providers and Suppliers and Medicare Revocations for Providers and Suppliers Reporting Revocations/Terminations to the State Medicaid Agencies and Child Health Plans
375	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
376	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
377	Program Integrity Manual Reorganization of Chapters 3 and 8
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
00	None
Medicare End-Stage Renal Disease Network Organizations (CMS Pub 100-14)	
00	None
Medicare Managed Care (CMS-Pub. 100-16)	
96	Chapter 3." Medicare Marketing Guidelines" Table of Contents Introduction Definitions Record Retention Requirements Limitations on Distribution of Marketing Materials Co-branding Requirements Co-branding with Network Providers Co-Branding with State Pharmaceutical Assistance Programs (SPAP)

Transmittal Number	Manual/Subject/Publication Number
	Provider Name in Plan's Name or Downstream Entity's Name Use of Data from Medigap Issuers Plan Sponsor Responsibility for Subcontractor Activities and Submission of Materials for CMS Review Anti-Discrimination Requirements for Plans with Non-English Speaking Populations Requirements for Plans with Special Needs Populations Compliance with Section 508 of the Rehabilitation Act Required Materials in Enrollment Kit Required Materials for New and Renewing Members at Time of Enrollment and Annually Thereafter Required Ongoing Materials for New and Renewing Members Hold Time Messages Use of the Medicare Name Referral Programs Privacy & Confidentiality Plan Ratings Information from www.medicare.gov Extended Marketing Period for Plans With Five Star Ratings Marketing Material Identification Number Marketing Material Identification Number for Non-English or Alternate Format Materials Reference to Studies or Statistical Data Marketing to Beneficiaries of Non-Renewing Medicare Plan Customer Service Call Center Hours of Operation Agent Broker Phone Number Use of TTY Numbers Additional Materials Enclosed with Required Post Enrollment Materials Non-Benefit/Service-Providing Third Party Marketing Materials Providing Materials in Different Media Types Standardization of Plan Name Type Guidance and Disclaimers Applicable to Advertising Materials Guidance and Disclaimers Applicable to Explanatory Materials Federal Contracting Statement Explanatory Materials that Mention Plan Benefit and Premium Information Information on Enrollment Limitations Availability of Non English Translations Disclaimer for Materials that are Co-branded with Providers Disclaimer When Using Third Party Marketing Materials Television Advertisements Enrollment and Marketing Materials after Non-Renewal or Service Area Reduction (SAR) Notice to CMS Plan Sponsor Mailing Statements Summary of Benefits (SB) Part D ID Card Requirements ID Card Information for PPOs and PFFS Plans Directories Provider Directories Combined Provider/Pharmacy Directory Mailing the Provider/Pharmacy Directory to Addresses with Multiple Members Formulary and Formulary Change Notice Requirements Abridged Formulary Changes to Printed Formularies Part D Explanation of Benefits

Transmittal Number	Manual/Subject/Publication Number
	Annual Notice Of Change (ANOC) and Evidence of Coverage (EOC) General Guidance about Promotional Activities General Guidance about Rewards and Incentives Nominal Gifts Exclusion of Meals as a Nominal Gift Unsolicited E-mail Policy Marketing through Unsolicited Contacts Specific Guidance on Telephonic Contact Specific Guidance on Third-party Contact Outbound Enrollment and Verification Calls to all New Enrollees Educational Events Marketing/Sales Events Notifying CMS of Scheduled Marketing Events Personal/Individual Marketing Appointments Scope of Appointment Guidance for Dual Eligible Outreach Program Outreach Submission Requirements for Dual Eligibility CMS Review/Approval of Outreach Process for Dual Eligibility Reviewing New Outreach Programs for Dual Eligibility Reviewing Previously Approved Outreach Programs for Dual Eligibility Marketing Guidance for the Provider Setting Plan Activities and Materials in the Health Care Setting Provider-Based Activities Provider Affiliation Information SNP Provider Affiliation Information Comparative and Descriptive Plan Information Comparative and Descriptive Plan Information Provided by a Non-Benefit/Service Providing Third-Party Providers/Provider Group Websites Customer Service Call Center Requirements Pharmacy Technical Help Call Center Requirements Required Scripts for Inbound Informational Calls Requirements for Inbound Informational Scripts Requirements for Enrollment Scripts/Calls Prohibited Activities for Enrollments Scripts/Calls Requirements for Telephone Sales Scripts (Inbound or Outbound) Requirements for All Other Inbound/Outbound Scripts Guidance on Marketing Review Process Plan Sponsor Responsibilities Ad-Hoc Enrollee Communications Submission Time Frames for Marketing Review 45-Day Standard Review Period Materials Qualified for the File & Use Submission Materials Not Qualified for the File & Use Submission Loss of File & Use Certification Privileges Standardized Language Required Use of Standardized Model Materials Model Materials Template Materials Standard Templates Static Templates Submission for Summary of Benefits Submitted as a Template Prior to Bid Approval

Transmittal Number	Manual/Subject/Publication Number
	Submission of All Templates Submission of Non-English (*Alternate Formats) Materials Submission Outside of HPMS Multi-Contract Entities (MCEs) File & Use Retrospective Monitoring Reviews Specific Guidance on the Submission of Websites for Review Service Area/Low Income Subsidy Materials/ Functionality (SA/LIS)-Special Guidance on Multiple Submissions of Materials Materials Not Subject to Review Submission of Multi Plan Materials Plan Sponsor Website Requirements Required Website Content Enrollment via the Internet Required Materials When Online Enrollment is Utilized Definition of Value-Added Items and Services (VAIS) Compliance with State Appointment Laws Plan Reporting of Terminated Agents Agent/Broker Training and Testing Agent/Broker Use of Marketing Materials Specific Guidance for Developing and Implementing Compensation Strategy Compensation Calculation Third Party Marketing Entities Activities That Do Not Require the Use of State-Licensed Marketing Representatives MSA Explanatory Marketing Materials Requirements Use Of Medicare Mark For Part D Plan Authorized Users for Medicare Mark Approval to Use the Medicare Prescription Drug Benefit Program Mark Use of Federal Funds Sending Non-plan and Non-health Information Once Prior Authorization is Received Summary of Benefits Plan Sponsor Website Chart Model File & Use Certification Form
97	Table of Contents Basic Rule Part D Rules for MA Plans Anti-Discrimination Requirements Confidentiality and Accuracy of Enrollee Records Benefit Requirements Uniformity Caps on Enrollee Financial Responsibility Clinical Trials Provider Qualifications Drugs that are Covered Under Part B Original Medicare Access to Screening Mammography and Influenza Vaccine Return to Home Skilled Nursing Facility (SNF) Therapy Caps and Exceptions Balance Billing In-network Preventive Services Ambulance Services Definitions of Emergency and Urgently Needed Services
98	Chapter 16B. Medicare Managed Care Special Needs Plans chapter. Entire Chapter

Transmittal Number	Manual/Subject/Publication Number
99	Medicare Managed Care Manual Chapter 16a Private Fee-for-Service Entire Chapter
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
00	None
Demonstrations (CMS-Pub. 100-19)	
00	None
One Time Notification (CMS-Pub. 100-20)	
871	Implementation of New Reasonable Useful Lifetime (RUL) Policy for Stationary and Portable Oxygen Equipment
872	ESRD Transition Budget Neutrality Adjustment – Correction
873	Flat File Update for Institutional Claim Transaction 837I, Professional Claim Transaction 837P, and Claim Payment/Advice Transaction 835
874	Implementation of the PWK (paperwork) segment for X12N Version 5010
875	ViPS Medicare System (VMS) ICD-10 Remove any Obsolete Quarterly Medical Review (QMR) Processes and Reports that Include ICD-9 codes
876	Upgrade of Optical Character Recognition (OCR) and Intelligent Character Recognition (ICR) Systems in Preparation for HIPAA Version 5010 (Analysis Only)
877	Modify the Common Working File (CWF) Application to Allow the Medicare Secondary Payer (MSP) Effective and Termination dates for all MSP Occurrences to be Equal.
878	System Changes to VMS to Allow DME MACs to Adjust Claims Denied as a Result of ZPIC Auto-Denial Edits to Pay After an Appeals Decision
879	Health Insurance Portability and Accountability (HIPAA) 5010/D.0 Fixes
880	October Common Edits and Enhancements Module (CEM) and Receipt, Control, and Balancing Updates
881	Update ViPS Medicare System (VMS) Automated Development System (ADS) to Recognize and Print the ICD-10 Indicator
882	Adjudication of Laboratory Tests that are Excluded from Clinical Laboratory Improvement Amendment (CLIA) Edits
883	HITECH Overpayment Data Collection Coordination between FISS, MCS and the NLR
884	New HCPCS Q-codes for 2010-2011 Seasonal Influenza Vaccines
885	Update the existing ViPS Medicare System (VMS) Utilization Parameter files for ICD-10.
886	Expand Related Diagnosis File to Accommodate ICD-10 Diagnosis Codes
887	ESRD Transition Budget Neutrality Adjustment – Correction
888	VMS Utility Run for DME MACs Identification of Edits for ICD-10
889	Instructions for Multi Carrier System (MCS) to review submitted claims history and identify Primary Care Incentive Payment Program (PCIP) eligible services furnished by newly enrolled Medicare primary care practitioners.
890	Switching Off Versions 4010A1 and 5.1
891	Update to the Medicare Fee-For-Service (FFS) Companion Guide
892	935 Limitation on Recoupment – Duplicate Payment after Favorable Appeal Decision for HIGLAS Users
893	Health Insurance Portability and Accountability Act (HIPAA) 005010 837 Institutional (837I) Edits and 005010 837 Professional (837P) Edits – October 2011 Version
894	Update Common Working File (CWF) to modify the Indicators for Trailer Mask on Unsolicited Response (UR) or Informational Unsolicited Response (IUR)
895	Revisions to Change Request (CR) 7054: "Integrated Data Repository (IDR) Claims Sourcing from Shared Systems – Implementation" Based on Conference Calls and Further Research
896	Durable Medical Equipment National Competitive Bidding: Correction to Permit Payment for Certain Grandfathered Accessories and Supplies
897	Implementation of Client Letter to ViPS Medicare System (VMS)
898	Processing Claims Spanning More than Ten Years with Unlimited Occurrence Span Codes (OSCs): Final Completion
899	Addendum to CR 7362 to Require Hours for Research and Conference Calls With Maintainers, MACs, and EDCs
900	HIPAA 5010 National Testing Days
901	Edit to Deny Claims for Repairs to Capped Rental Durable Medical Equipment (DME)
902	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
903	Medicare Remit Easy Print (MREP) Update to Accommodate Extended Fractional Units for ASC X12 Transaction 835 (Health Care Claim Payment/Advice)
904	Enhancements to the Recovery Audit Contractor (RAC) Mass Adjustment/Reporting Process in FISS
905	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
906	Reporting of Recoupment for Overpayment on the Remittance Advice (RA)
907	Flat File Update for Institutional Claim Transaction 837I, Professional Claim Transaction 837P, and Claim Payment/Advice Transaction 835
908	Modifications to the Implementation of the PWK (paperwork) segment for X12N Version 5010
909	CMS Standard Edit/Audit Setting Update

Addendum II: Regulation Documents Published in the Federal Register (April through June 2011)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following Web site http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our Web site at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-2Q11QPU.pdf For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer

Review, private health insurance, and related matters. The rulings can be accessed at http://www.cms.gov/Rulings/CMSR/list.asp#TopOfPage. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (April through June 2011)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available on our Web site at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer	110.22	TR2254CP	07/08/2011	06/30/2011

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2011)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
BB14612	Arteriocyte Magellan Autologous Platelet Separator System	04/19/11
BB14620	Magnetic-Activated Cell Sorter (CLiniMACS, Milteny)	04/28/11
BB14691	Recell Autologous Cell Harvesting Device	05/06/11
G080182	Nanoknife System; Ablation of low risk, localized prostate cancer	05/18/11
G100095	Omnispec Model ED1000	06/15/11
G100114	Volcano VIBE RX Vascular Imaging Balloon Catheter	05/05/11
G100240	Light Adjustable Lens (LAL) and Light Delivery Device (LDD)	06/08/11
G100255	Moxy Drug Coated Balloon	04/29/11
G100262	AcrySof IQ ReSTOR Multifocal Toric Intraocular Lens (IOL)	06/22/11
G100308	Neuronetics 2100 Transcranial Magnetic Stimulator and Sham Coll	04/06/11
G110010	Acute Carotid Sinus Endovascular Stimulation II (ACES II) Study	04/08/11
G110015	Adherus Spinal Sealant	06/17/11
G110016	Brainsway HAC-Coil Deep Repetitive Transcranial Magnetic Stimulation (rTMS)	04/08/11
G110026	Pivotal Clinical Investigation EnSite Velocity Contact Technology	06/03/11
G110030	ThermoCool SmartTouch Catheter	05/06/11
G110033	Medtronic Activa deep Brain Stimulator	04/29/11
G110036	Nexstim eXima Navigated Brain Stimulation System	06/21/11
G110046	Advisa DR MRI SureScan Pacing System	05/20/11
G110047	Radio Frequency Microstimulator (RFM) System	06/16/11
G110059	Analyze ST IDE Study	04/08/11
G110060	Medtronic kinetra Neurostimulation System	04/08/11
G110063	Diode Laser	04/07/11
G110065	Mysorba Immunoadsorption System	04/20/11
G110068	AXIOS Stent and Delivery System	06/23/11
G110069	The Hypoglycemia Minimizer System	06/16/11
G110070	LAP-BAND Adjustable Gastric Banding System	04/27/11
G110081	Zenith t-Branch Endovascular Graft with H&LB One-Shot Introduction System	05/04/11
G110087	Tria Beauty Fan	05/23/11
G110089	Nucleus Hybrid L24 and Hybrid S12 Cochlear implant system	06/03/11
G110093	Artificial Pancreas Device	06/10/11
G110099	Penumbra System	06/30/11
G110101	Zenith p-Branch Endovascular Graft	06/29/11
G110105	Intrauterine Seprafilm Slurry	06/30/11

Addendum VI: Approval Numbers for Collections of Information (April through June 2011)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (April through June 2011)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk

patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available on our Web site at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage. For questions or additional information, contact Sarah J. McClain (410-786-2294).

Facility	Provider Number	Effective Date	State	Other Information
The following facilities are new listings for this quarter.				
Cabell Huntington Hospital 1340 Hal Greer Boulevard Huntington, WV 25701	510055	03/17/2011	WV	
Heart of Florida Regional Medical Center P.O. Box 67 Haines City, FL 33845	100137	03/17/2011	FL	
Saint Alphonsus Regional Medical Center 1055 N. Curtis Road Boise, ID 83706	1992736649	04/05/2011	ID	
Lubbock Heart Hospital 4810 North Loop 289 Lubbock, TX 79416	450876	04/14/2011	TX	
Huguley Memorial Medical Center 11801 South Freeway Burleson, TX 76028	1033120423	04/21/2011	TX	
Portneuf Medical Center 777 Hospital Way Pocatello, ID 83201	1790751055	05/06/2011	ID	
Orange Regional Medical Center 75 Crystal Run Road Middletown, NY 10941	330126	05/06/2011	NY	
San Angelo Community Medical Center 3501 Knickerbocker Road San Angelo, TX 76904-7698	119477610	05/06/2011	TX	
Midwest Heart Care 2316 East Meyer Boulevard Kansas City, MO 64132	1134187842	05/12/2011	MO	
Rio Grande Regional Hospital 101 East Ridge Road McAllen TX 78503	621656022	05/17/2011	TX	
Carolinaeast Health System P.O. Box 12157 2000 Neuse Boulevard New Bern, NC 28561	1801852835	06/02/2011	NC	
Easton Hospital 250 S. 21st Street Easton PA 18042-3892	1740252964	06/08/2011	PA	
Aurora Medical Center, Summit 36500 Aurora Drive Summit, WI 53066	520206	06/08/2011	WI	
Editorial changes (shown in bold) were made to the facilities listed below.				
Carson Tahoe Regional Medical Center 1600 Medical Parkway Carson City, NV 89703	290019	08/04/2005	NV	
Bon Secours Maryview Medical Center 3636 High Street Portsmouth, VA 23707	**490017**	12/21/2006	VA	
Lake Hospital System, Inc. **7590 Auburn Road Concord Township, OH 44077-9176**	360098	03/23/2006	OH	
Winthrop University Hospital **259 First Street Mineola, NY 11501**	330167	09/10/2008	NY	
Saint Joseph Medical Center **2500 Bernville Road P.O. Box 316 Reading, PA 19605**	390096	04/01/2005	PA	
Franciscan St. James Health 20201 S. Crawford Avenue Olympia Fields, IL 60461-1010	140172	06/27/2007	IL	
Lake Hospital System, Inc. 7590 Auburn Road Concord Township, OH 44077-9176	360098	03/23/2006	OH	**36000 Euclid Avenue, Willoughby, OH 44094**
SSM Health Care of WI, Inc. 700 S. Park Street Madison, WI 53715	520083	06/30/2010	WI	**St. Mary's Hospital**
Carondelet Heart & Vascular Institute 4888 North Stone Avenue Tucson, AZ 85704	030100	11/29/2005	AZ	

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2011)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS Web site at

http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961 .

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved ICD facilities in the 3-month period. This information is available by accessing our Web site and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Joanna Baldwin, MS (410-786-7205).

Facility Name	Address 1	City	State	Zip Code
The following facilities are new listings for this quarter.				
Aria Health Bucks County Campus	380 North Oxford Valley Road	Langhorne	PA	19047-8304
Corona Regional Medical Center	800 South Main Street	Corona	CA	92882
Cypress Pointe Surgical Hospital	42570 South Airport Road	Hammond	LA	70403
Henry Ford Wyandotte Hospital	2333 Biddie Avenue Cardiovascular Services	Wyandotte	MI	48192
Holy Cross Hospital	1397 Weimer Road	Taos	NM	87571
Johnston Memorial Hospital Authority	509 North Brightleaf Boulevard	Smithfield	NC	27577
Medina Hospital	1000 East Washington Street	Medina	OH	44256
Memorial Medical Center of East Texas	1201 West Frank Street P.O. Box 1447	Lufkin	TX	75902
Oakwood Hospital Annapolis Center	33155 Annapolis Street	Wayne	MI	48184
Richards Memorial Hospital	1700 Brazos	Rockdale	TX	76567
South Florida Baptist Hospital (Baycare)	301 North Alexander Street	Plant City	FL	33563
St. Margaret Mercy Dyer	24 Joliet Street	Dyer	IN	46311
University Hospitals Ahuja Medical Center	3999 Richmond Road	Beachwood	OH	44122
University Surgery Center	1390 East Yosemite Avenue Suite 8	Merced	CA	95301
The following facilities are no longer participants in the ACC-NCDR-ICD Registry as of this notice.				
Amarillo Endoscopy Center	6833 Plum Creek	Amarillo	TX	79124
Bartow Regional Medical Center	2200 Osprey Boulevard	Bartow	FL	33830
Beth Israel Deaconess Medical Center	330 Brookline Ave Baker 4	Boston	MA	02215-5491
Brownsville Doctors Hospital	4750 North Expressway	Brownsville	TX	78526
Casa Grande Regional Medical Center	1800 East Florence Boulevard	Casa Grande	AZ	85222
Columbia Regional Hospital	404 Keene Street	Columbia	MO	65201
Crossgates River Oaks Hospital	350 Crossgates Boulevard	Brandon	MS	39042
Deaconess Hospital	311 Straight Street	Cincinnati	OH	45219
Good Samaritan	407 14th Ave SE	Puyallup	WA	98371
Good Samaritan Heart Center	520 South 7th Street	Vincennes	IN	47591
King's Daughters Hospital	1901 SW H.K.Dodgen Loop Heart and Vascular Center	Temple	TX	76502
Knox Community Hospital	1330 Coshocton Road	Mount Vernon	OH	43050
LSU Bogalusa Medical Center	433 Plaza	Bogalusa	LA	70427
McAlester Regional Health Center	One Clark Bass Boulevard	McAlester	OK	74501
Memorial Hermann Southeast Hospital	11800 Astoria Boulevard	Houston	TX	77089
Niagara Falls Memorial Medical Center	621 10th Street	Niagara Falls	NY	14302
North Broward Hospital District	303 SE 17th Street	Fort Lauderdale	FL	33316
Ochsner Medical Center - West Bank	2500 Belle Chasse Highway	Gretna	LA	70056
Reedsburg Area Medical Center	2000 North Dewey Avenue	Reedsburg	WI	53959
Rome Memorial Hospital	1500 North James Street	Rome	NY	13440
Rush Oak Park Hospital	520 S. Maple Avenue	Oak Park	IL	60304-1097
Russellville Hospital	15155 Hwy 43 PO Box 1089	Russellville	AL	35653
Saint Mary's Regional Medical Center	235 West Sixth Street	Reno	NV	89503
San Francisco Heart and Vascular Institute	1900 Sullivan Avenue San Francisco Heart & Vascular Institute	Daly City	CA	94015
Sentara Obici Hospital	2800 Godwin Drive	Suffolk	VA	23434
Sierra Vista Regional Medical Center	1010 Murray Avenue	San Luis Obispo	CA	93405
Somerset Hospital	225 South Center Avenue	Somerset	PA	15501
Southern Hills Medical Center	391 Wallace Road	Nashville	TN	37211
St. Mary's of Michigan	800 S Washington	Saginaw	MI	48601
Sutter Medical Center of Santa Rosa	3325 Chanete Road	Santa Rosa	CA	95404
The Hospital of Central Connecticut	100 Grand Street	New Britain	CT	60520

Facility Name	Address 1	City	State	Zip Code
The Surgery Center on Soncy	3501 Soncy Road Suite 118 Ste 118	Amarillo	TX	79119
University General Hospital	7501 Fannin Street	Houston	TX	77054

Facility Name	Address 1	City	State	Zip Code
University Hospitals Bedford Medical Center	44 Blaine Avenue	Bedford	OH	44146
University Medical Center	602 Indiana Avenue	Lubbock	TX	79416
Verdugo Hills Hospital	1812 Verdugo Boulevard	Glendale	CA	91208

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2011)

There were no CMS coverage-related guidance documents published in the April through June 2011 quarter. To obtain full-text copies of these documents, visit the CMS Coverage Web site at http://www.cms.gov/mcd/index_list.asp?list_type=mcd_1 and click on the archives link. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2011)

There were no special one-time notices regarding national coverage provisions published in the April through June 2011 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum XI: National Oncologic PET Registry (NOPR) (April through June 2011)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of facilities that meet CMS's requirements for performing PET scans under National Coverage Determination CAG-00181N in the three-month period along with a hyperlink to the Web site to access this information and a contact person for questions or additional information.

This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

Facility Name	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Advocate Good Shepherd Hospital 450 Wes Highway 22 Barrington IL 60010	140291	05/31/2011	IL
Beth Israel Cancer Center-West 325 West 15th Street New York NY 10011	330169	05/31/2011	NY
Cameron Memorial Community Hospital 416 East Maumee Street Angola IN 46703	1386683316	05/31/2011	IN
Centerpoint Medical Center 19600 E. 39th Street Independence MO 64057	260095	05/31/2011	MO
Columbus Regional Medical Center PET/CT Imaging 710 Center Street Columbus GA 31901	581685139	05/31/2011	GA
Craven Regional Medical Center 2000 Neuse Boulevard New Bern NC 28560	340131	05/31/2011	NC
Decatur Memorial Hospital 2300 North Edward Street Decatur IL 62526	140135	05/31/2011	IL
Dedicated Imaging 10840 Little Patuxent Parkway Suite 202 Columbia MD 21044	1487654398	05/31/2011	MD
Delta Regional Medical Center 1400 East Union Greenville MS 38704	250082	05/31/2011	MS
Desert, Rancho Mirage Interventional Radiology 34800 Bob Hope Drive #150 Rancho Mirage CA 92270	Pending	05/31/2011	CA
Fairview Lakes Medical Center 5200 Fairview Boulevard Wyoming MN 55092-801	410991680	05/31/2011	MN
Fairview Northland Medical Center 911 Northland Drive Princeton MN 55371	240141	05/31/2011	MN
Faxton- St. Luke's Healthcare 1676 Sunset Avenue Utica NY 13413	330044	05/31/2011	NY
Florida Cancer Specialists- HLD 4371 Veronica S. Shoemaker Boulevard Fort Myers FL 33916	1760590962	05/31/2011	FL
Florida Hospital Fish Memorial 1055 Saxon Boulevard Orange City FL 32763	100072	05/31/2011	FL
Florida Hospital Heartland Medical Center 4200 Sun 'n Lake Boulevard Sebring FL 33872	100109	05/31/2011	FL
Georgetown Memorial Hospital PO Box 421718 Georgetown SC 29442	1982604021	05/31/2011	SC
Gettysburg Hospital-WellSpan Adams Health Center 147 Gettys Street P.O. Box 3786 Gettysburg PA 17325	1265466957	05/31/2011	PA

Facility Name	Provider Number	Date Approved	State
Hanover Hospital 300 Highland Avenue Hanover PA 17331	1730158981	05/31/2011	PA
Hazleton Imaging Center 101 South Church Street Hazleton PA 18201	1487609715	05/31/2011	PA
Hematology Oncology Associates of Baton Rouge 4950 Essen Lane Baton Rouge LA 70809	1861590234	05/31/2011	LA
Holy Redeemer Hospital 1648 Huntingdon Pike Meadowbrook PA 19046	231534300	05/31/2011	PA
Holy Spirit Hospital 503 N 21st Street Camp Hill PA 17011	390004	05/31/2011	PA
Hunt Regional 4215 Joe Ramsey Boulevard Greenville TX 75401	1023028529	05/31/2011	TX
Imaging for Life 2301 60th Street Court West Suite A Bradenton FL 34209	CA714A	05/31/2011	FL
Indiana University Simon Cancer Center 1030 West Michigan Street Indianapolis IN 46202	1144266024	06/01/2011	IN
Island Hospital 1211 24th Street Anacortes WA 98221	1245559103	06/01/2011	WA
Jennersville Regional Hospital 1015 West Baltimore Pike West Grove PA 19390	390220	06/01/2011	PA
KSK Imaging Center of Irvine 16100 Sand Canyon Avenue Suite 100 Irvine CA 92656	G18258A	06/01/2011	CA
Lakeland Health Care 3900 Hollywood Road St Joseph MI 49085	2300	06/01/2011	MI
Las Vegas Radiology 7241 West Sahara Avenue, Suite120 Las Vegas NV 89117	Z105241	06/01/2011	NV
Maricopa Medical Center 2601 East Roosevelt Phoenix AZ 85008	154859812	06/01/2011	AZ
Marquette General Health System 420 W. Magnetic Street Marquette MI 49855	1417959750	06/01/2011	MI
Mary Bird Perkins at St. Elizabeth 1104 Wesy Highway 30 Gonzales LA 70737	57290	06/01/2011	LA
Mckee Medical Center 2000 Boise Avenue Loveland CO 80538	60030	06/01/2011	CO
Meadowview Regional Medical Center 989 Medical Park Drive Maysville KY 41056	1881785863	06/01/2011	KY
Memorial Hospital and Health Care Center 800 W. 9th Street Jasper IN 47546	1003895947	06/01/2011	IN
Millennium Physician Group 3430 Tamiami Trail Suite B Port Charlotte FL 33952	1811122880	06/01/2011	FL
NHRMC Health & Diagnostics-Medical Mall 2243 South 17th Street Wilmington NC 28401	340141	06/01/2011	NC
North Country Regional Hospital 1300 Anne Street NW Bemidji MN 56601	1801870191	06/01/2011	MN
NYU Hospitals Center Columbus Imaging and and Infusion 97-77 Queens Boulevard Rego Park NY 11374	330214	06/01/2011	NY
Olympic Radiology LLC 2700 Clare Avenue Bremerton WA 98310	1649575986	06/01/2011	WA
Pinnacle Health Medical Sciences Pavilion 111 South Front Street Harrisburg PA 17105	390067	06/01/2011	PA
Portneuf Medical Center 651 Memorial Drive Pocatello ID 83201	1790751055	06/01/2011	ID
ProHealthcare Associates 2800 Marcus Avenue Lake Success NY 11042	113355604	06/01/2011	NY
Roswell Park Cancer Institute Elm & Carlton Streets Buffalo NY 14263	330354	06/01/2011	NY
Roxborough Memorial Hospital 5800 Ridge Avenue Philadelphia PA 19128	390304	06/01/2011	PA
Saint Anthony's Health Center One Saint Anthony's Way Alton IL 62002	1528079027	06/01/2011	IL
Saint John Anderson 2015 Jackson Street Anderson IN 46016	150088	06/01/2011	IN
Saint Joseph Hospital Joliet 333 N. Madison Street Joliet IL 60435-820	140007	06/01/2011	IL
Saint Joseph Regional Medical Center 5215 Holy Cross Parkway Mishawaka IN 46545-146	150029	06/01/2011	IN
Sand Lake Cancer Center 7301 Stonerock Circle Suite 2 Orlando FL 32835	K9074	06/01/2011	FL
Schneck Medical Center 511 Tipton Street Seymour IN 47274	1619126661	06/01/2011	IN
Sharp Memorial Hospital 7901 Frost Street San Diego CA 92123	50100	06/01/2011	CA
Shields Imaging of Eastern Mass 55 Fogg Road Weymouth MA 02190	327088	06/01/2011	MA
Signet Diagnostic Imaging Services 2021 Kingsley Avenue Suite 108 Orange Park FL 32068	1750405114	06/01/2011	FL
Siouxland Regional Cancer Center 230 Nebraska Street Sioux City IA 51101	1114904604	06/01/2011	IA
SJRA – WT 239 Hurfville-Crosskeys Rd., Suite 14 Sewell NJ 8080	1477551653	06/01/2011	NJ
Southcoast Hospitals Group 206 Mill Road Fairhaven MA 02719	98706	06/01/2011	MA
St. Francis Regional Medical Center 1455 St. Francis Avenue Shakopee MN 55379	240104	06/01/2011	MN
Suburban Imaging Southdale 6545 France Ave. South Suite 125 Edina MN 55352	1629027594	06/01/2011	MN
The Ellwood City Hospital 724 Pershing Street Ellwood City PA 16117	1710087069	06/01/2011	PA
Universal Imaging of Florida, LLC 14462 Commerce Way Miami Lakes FL 33016	1821204942	06/01/2011	FL

Facility Name	Provider Number	Date Approved	State
University of Louisville Hospital 530 South Jackson Street Louisville KY 40202	611297386	06/01/2011	KY
UPMC Hillman Cancer Center 5115 Centro Avenue Pittsburgh PA 15232	Z2100	06/01/2011	PA
Valley Radiology Imaging at Ciro 125 Ciro Ave, Suite 230 San Jose CA 95128	zzz13848z	06/01/2011	CA
Valley Regional Cancer Center 4391 Venture Drive Peru IL 61354	1053619742	06/01/2011	IL
Waccamaw Memorial 4181 Highway 17 Murrells Inlet SC 29576	1972503910	06/01/2011	SC
Washington Adventist Hospital 7600 Carroll Avenue Takoma Park MD 20912	1487650024	06/01/2011	MD
Weill Cornell Imaging at NewYork-Presbyterian 1305 York Avenue 3rd Floor New York NY 10021	1447430152	06/01/2011	NY
West Boynton Beach Open Imaging Center 10151 Enterprise Center Boulevard Boynton Beach FL 33437	AL723	06/01/2011	FL
West Branch Regional Medical Center 2463 South M – 30 West Branch MI 48661	230095	06/01/2011	MI
West Chester Hospital 700 University Drive West Chester OH 45069	1851549273	06/01/2011	OH
Westcoast Radiology 10125 West Colonial Drive Suite 11 Ocoee FL 34761	1205829934	06/01/2011	FL
Westfields Hospital 535 Hospital Road New Richmond WI 54017	520026	06/01/2011	WI
Westside Medical Imaging 99 N. La Cienega Boulevard Suite 103 Beverly Hills CA 90211	1497742688	06/01/2011	CA
Wheaton Franciscan Healthcare Franklin 10101 S 27th Street Franklin WI 53132	520204	06/01/2011	WI
Winchester Hospital 41 Highland Avenue Winchester MA 01890	1790740777	06/01/2011	MA
Windsong Radiology Group, PC 55 Spindrift Drive Williamsville NY 14221	1821048562	06/01/2011	NY
Wood County Hospital 950 West Wooster Street Bowling Green OH 43402	1790751253	06/01/2011	OH
Yale-New Haven Hospital DR Nuclear Medicine North Pavilion 20 York Street New Haven CT 06504	1336139500	06/01/2011	CT
Editorial changes (shown in bold) were made to the facilities listed below.			
Advanced Radiology-Fisher 193 Stoner A Westminster, MD 21157	527L	05/03/2006	MD
Alpha Med Physicians Group **17333 S LaG Road** Suite 200 **Tinley Park IL 60477**	610860	01/29/2010	IL
Next Generation NYU Radiology 560 Nort Boulevard, Suite 111 Great Neck, NY 1102	**W1L351**	03/08/2006	NY
IU Health Arnett 2403 Loy Drive Lafayette 47909	224390	08/08/2006	IN

Facility Name	Provider Number	Date Approved	State
CarolinaEast Medical Center 2000 Neuse Boulevard New Bern NC 28560	340131	06/13/2006	NC
Schuylkill Medical Center East Norwegia 700 E Norwegian Street Pottsville PA 17901	1427050376	01/29/2009	PA
North Texas Clinical PET Institute **3410 Wc Street Suite 150 Dallas, TX 75246**	99R339	05/03/2006	TX
The following facilities are new listings for this quarter.			
Advocate Good Shepherd Hospital 450 Wes Highway 22 Barrington IL 60010	140291	05/31/2011	IL
Beth Israel Cancer Center-West 325 West 15th Street New York NY 10011	330169	05/31/2011	NY
Cameron Memorial Community Hospital 416 East Maumee Street Angola IN 46703	1386683316	05/31/2011	IN
Centerpoint Medical Center 19600 E. 39th Street Independence MO 64057	260095	05/31/2011	MO
Columbus Regional Medical Center PET/CT Imaging 710 Center Street Columbus GA 31901	581685139	05/31/2011	GA
Craven Regional Medical Center 2000 Neuse Boulevard New Bern NC 28560	340131	05/31/2011	NC
Decatur Memorial Hospital 2300 North Edward Street Decatur IL 62526	140135	05/31/2011	IL
Dedicated Imaging 10840 Little Patuxent Parkway Suite 202 Columbia MD 21044	1487654398	05/31/2011	MD
Delta Regional Medical Center 1400 East Union Greenville MS 38704	250082	05/31/2011	MS
Desert, Rancho Mirage Interventional Radiology 34800 Bob Hope Drive #150 Rancho Mirage CA 92270	Pending	05/31/2011	CA
Fairview Lakes Medical Center 5200 Fairview Boulevard Wyoming MN 55092-801	410991680	05/31/2011	MN
Fairview Northland Medical Center 911 Northland Drive Princeton MN 55371	240141	05/31/2011	MN
Faxton- St. Luke's Healthcare 1676 Sunset Avenue Utica NY 13413	330044	05/31/2011	NY
Florida Cancer Specialists- HLD 4371 Veronica S. Shoemaker Boulevard Fort Myers FL 33916	1760590962	05/31/2011	FL
Florida Hospital Fish Memorial 1055 Saxon Boulevard Orange City FL 32763	100072	05/31/2011	FL
Florida Hospital Heartland Medical Center 4200 Sun 'n Lake Boulevard Sebring FL 33872	100109	05/31/2011	FL
Georgetown Memorial Hospital PO Box 421718 Georgetown SC 29442	1982604021	05/31/2011	SC
Gettysburg Hospital-WellSpan Adams Health Center 147 Gettys Street P.O. Box 3786 Gettysburg PA 17325	1265466957	05/31/2011	PA
Hanover Hospital 300 Highland Avenue Hanover PA 17331	1730158981	05/31/2011	PA

Facility Name	Provider Number	Date Approved	State
Hazleton Imaging Center 101 South Church Street Hazleton PA 18201	1487609715	05/31/2011	PA
Hematology Oncology Associates of Baton Rouge 4950 Essen Lane Baton Rouge LA 70809	1861590234	05/31/2011	LA
Holy Redeemer Hospital 1648 Huntingdon Pike Meadowbrook PA 19046	231534300	05/31/2011	PA
Holy Spirit Hospital 503 N 21st Street Camp Hill PA 17011	390004	05/31/2011	PA
Hunt Regional 4215 Joe Ramsey Boulevard Greenville TX 75401	1023028529	05/31/2011	TX
Imaging for Life 2301 60th Street Court West Suite A Bradenton FL 34209	CA714A	05/31/2011	FL
Indiana University Simon Cancer Center 1030 West Michigan Street Indianapolis IN 46202	1144266024	06/01/2011	IN
Island Hospital 1211 24th Street Anacortes WA 98221	1245559103	06/01/2011	WA
Jennersville Regional Hospital 1015 West Baltimore Pike West Grove PA 19390	390220	06/01/2011	PA
KSK Imaging Center of Irvine 16100 Sand Canyon Avenue Suite 100 Irvine CA 92656	G18258A	06/01/2011	CA
Lakeland Health Care 3900 Hollywood Road St Joseph MI 49085	2300	06/01/2011	MI
Las Vegas Radiology 7241 West Sahara Avenue, Suite120 Las Vegas NV 89117	Z105241	06/01/2011	NV
Maricopa Medical Center 2601 East Roosevelt Phoenix AZ 85008	154859812	06/01/2011	AZ
Marquette General Health System 420 W. Magnetic Street Marquette MI 49855	1417959750	06/01/2011	MI
Mary Bird Perkins at St. Elizabeth 1104 Wesy Highway 30 Gonzales LA 70737	57290	06/01/2011	LA
Mckee Medical Center 2000 Boise Avenue Loveland CO 80538	60030	06/01/2011	CO
Meadowview Regional Medical Center 989 Medical Park Drive Maysville KY 41056	1881785863	06/01/2011	KY
Memorial Hospital and Health Care Center 800 W. 9th Street Jasper IN 47546	1003895947	06/01/2011	IN
Millennium Physician Group 3430 Tamiami Trail Suite B Port Charlotte FL 33952	1811122880	06/01/2011	FL
NHRMC Health & Diagnostics-Medical Mall 2243 South 17th Street Wilmington NC 28401	340141	06/01/2011	NC
North Country Regional Hospital 1300 Anne Street NW Bemidji MN 56601	1801870191	06/01/2011	MN
NYU Hospitals Center Columbus Imaging and and Infusion 97-77 Queens Boulevard Rego Park NY 11374	330214	06/01/2011	NY
Olympic Radiology LLC 2700 Clare Avenue Bremerton WA 98310	1649575986	06/01/2011	WA
Pinnacle Health Medical Sciences Pavilion 111 South Front Street Harrisburg PA 17105	390067	06/01/2011	PA
Portneuf Medical Center 651 Memorial Drive Pocatello ID 83201	1790751055	06/01/2011	ID
ProHealthcare Associates 2800 Marcus Avenue Lake Success NY 11042	113355604	06/01/2011	NY
Roswell Park Cancer Institute Elm & Carlton Streets Buffalo NY 14263	330354	06/01/2011	NY
Roxborough Memorial Hospital 5800 Ridge Avenue Philadelphia PA 19128	390304	06/01/2011	PA
Saint Anthony's Health Center One Saint Anthony's Way Alton IL 62002	1528079027	06/01/2011	IL
Saint John Anderson 2015 Jackson Street Anderson IN 46016	150088	06/01/2011	IN
Saint Joseph Hospital Joliet 333 N. Madison Street Joliet IL 60435-820	140007	06/01/2011	IL
Saint Joseph Regional Medical Center 5215 Holy Cross Parkway Mishawaka IN 46545-146	150029	06/01/2011	IN
Sand Lake Cancer Center 7301 Stonerock Circle Suite 2 Orlando FL 32835	K9074	06/01/2011	FL
Schneck Medical Center 511 Tipton Street Seymour IN 47274	1619126661	06/01/2011	IN
Sharp Memorial Hospital 7901 Frost Street San Diego CA 92123	50100	06/01/2011	CA
Shields Imaging of Eastern Mass 55 Fogg Road Weymouth MA 02190	327088	06/01/2011	MA
Signet Diagnostic Imaging Services 2021 Kingsley Avenue Suite 108 Orange Park FL 32068	1750405114	06/01/2011	FL
Siouxland Regional Cancer Center 230 Nebraska Street Sioux City IA 51101	1114904604	06/01/2011	IA
SJRA – WT 239 Hurfville-Crosskeys Rd., Suite 14 Sewell NJ 8080	1477551653	06/01/2011	NJ
Southcoast Hospitals Group 206 Mill Road Fairhaven MA 02719	98706	06/01/2011	MA
St. Francis Regional Medical Center 1455 St. Francis Avenue Shakopee MN 55379	240104	06/01/2011	MN
Suburban Imaging Southdale 6545 France Ave. South Suite 125 Edina MN 55352	1629027594	06/01/2011	MN
The Ellwood City Hospital 724 Pershing Street Ellwood City PA 16117	1710087069	06/01/2011	PA
Universal Imaging of Florida, LLC 14462 Commerce Way Miami Lakes FL 33016	1821204942	06/01/2011	FL

Facility Name	Provider Number	Date Approved	State
University of Louisville Hospital 530 South Jackson Street Louisville KY 40202	611297386	06/01/2011	KY
UPMC Hillman Cancer Center 5115 Centro Avenue Pittsburgh PA 15232	Z2100	06/01/2011	PA
Valley Radiology Imaging at Ciro 125 Ciro Ave, Suite 230 San Jose CA 95128	zzz13848z	06/01/2011	CA
Valley Regional Cancer Center 4391 Venture Drive Peru IL 61354	1053619742	06/01/2011	IL
Waccamaw Memorial 4181 Highway 17 Murrells Inlet SC 29576	1972503910	06/01/2011	SC
Washington Adventist Hospital 7600 Carroll Avenue Takoma Park MD 20912	1487650024	06/01/2011	MD
Weill Cornell Imaging at NewYork-Presbyterian 1305 York Avenue 3rd Floor New York NY 10021	1447430152	06/01/2011	NY
West Boynton Beach Open Imaging Center 10151 Enterprise Center Boulevard Boynton Beach FL 33437	AL723	06/01/2011	FL
West Branch Regional Medical Center 2463 South M – 30 West Branch MI 48661	230095	06/01/2011	MI
West Chester Hospital 700 University Drive West Chester OH 45069	1851549273	06/01/2011	OH
Westcoast Radiology 10125 West Colonial Drive Suite 11 Ocoee FL 34761	1205829934	06/01/2011	FL
Westfields Hospital 535 Hospital Road New Richmond WI 54017	520026	06/01/2011	WI
Westside Medical Imaging 99 N. La Cienega Boulevard Suite 103 Beverly Hills CA 90211	1497742688	06/01/2011	CA
Wheaton Franciscan Healthcare Franklin 10101 S 27th Street Franklin WI 53132	520204	06/01/2011	WI
Winchester Hospital 41 Highland Avenue Winchester MA 01890	1790740777	06/01/2011	MA
Windsong Radiology Group, PC 55 Spindrift Drive Williamsville NY 14221	1821048562	06/01/2011	NY
Wood County Hospital 950 West Wooster Street Bowling Green OH 43402	1790751253	06/01/2011	OH
Yale-New Haven Hospital DR Nuclear Medicine North Pavilion 20 York Street New Haven CT 06504	1336139500	06/01/2011	CT
Editorial changes (shown in bold) were made to the facilities listed below.			
Advanced Radiology-Fisher 193 Stoner A Westminster, MD 21157	527L	05/03/2006	MD
Alpha Med Physicians Group **17333 S LaG Road** Suite 200 **Tinley Park IL 60477**	610860	01/29/2010	IL
Next Generation NYU Radiology 560 Nort Boulevard, Suite 111 Great Neck, NY 1102	**W1L351**	03/08/2006	NY
IU Health Arnett 2403 Loy Drive Lafayette 47909	224390	08/08/2006	IN
CarolinaEast Medical Center 2000 Neuse Boulevard New Bern NC 28560	340131	06/13/2006	NC
Schuylkill Medical Center East Norwegia 700 E Norwegian Street Pottsville PA 1790	1427050376	01/29/2009	PA
North Texas Clinical PET Institute **3410 W Street Suite 150 Dallas, TX 75246**	99R339	05/03/2006	TX

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (April through June 2011)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available on our Web site at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Facility	Provider Number	Date Approved	State	Other Information
The following six facilities are new listings for this quarter.				
Saint Thomas Hospital Saint Thomas Health Services 4220 Harding Road Nashville, TN 37205	440082	8/5/10	TN	Joint Commission Certified on 8/5/2010
Stony Brook University Hospital Medical Center 101 Nicolls Road Stony Brook, NY 11794-8503	330393	3/2/11	NY	Joint Commission certified on 3/2/2011
North Carolina Baptist Hospital Medical Center Boulevard Winston Salem, NC 27157	340047	7/28/11	NC	
Spectrum Health – Butterworth Campus 100 Michigan Northeast Grand Rapids, MI 49503	277668	6/17/11	MI	
Texas Heart Hospital of the Southwest 1100 Allied Drive Plano, TX 75093	670025	6/16/11	TX	
Banner Good Samaritan Medical Center 1111 East McDowell Road Phoenix, AZ 85006	030002	6/9/11	AZ	
Editorial changes (shown in bold) were made to the facility listed below.				
Loyola University Medical Center 2160 S 1st Avenue Maywood, IL 60153	140276	**05/11/2011**	IL	**This facility was initially certified on 1/30/04 and became de-certified on 3/28/09. Joint Commission certification was obtained on 5/11/11.**

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (April through June 2011)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no additions to the listing of facilities for lung volume reduction surgery published in the April through June 2011 quarter. This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (April through June 2011)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

For the purposes of this quarterly notice, we list only the specific updates to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery and have been certified by ACS and/or ASMBS in the 3-month period. This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Kate Tillman, RN, MAS (410-786-9252).

Facility Name	Provider Number	Date Approved	State	Other Information
The following facilities are new listings for this quarter.				
INTEGRIS Baptist Medical Center 3433 N.W. 56 Street Building B, Suite 970 Oklahoma City, OK 73112	1831103654	02/07/2011	OK	ACS
Presbyterian Hospital Matthews 1500 Matthews Township Parkway Matthews, NC 28105	340171	03/25/2011	NC	ASMBS
Orange Regional Medical Center 4 Harriman Drive Goshen, NY 10924	33-0126	03/25/2011	NY	ASMBS
St. Joseph's Hospital Health Center 301 Prospect Avenue Syracuse, NY 13203	330140	03/25/2011	NY	ASMBS
Pasco Regional Medical Center 13100 Fort King Road Dade City. FL 33525	1356336069	03/04/2011	FL	ACS
Mercy Fitzgerald Hospital 1501 Lansdowne Avenue, Suite 307 Darby, PA 19023	MCMC39-0156	01/07/2011	PA	ASMBS
St. Luke's Hospital 4201 Belfort Road Jacksonville, FL 32216	100151	04/14/2011	FL	ASMBS
Intermountain LDS Hospital 8th Avenue & C Street Salt Lake City, UT 84143	46-0006	04/14/2011	UT	ASMBS
St. Elizabeth's Medical Center a Caritas Family Hospital 736 Cambridge Street Brighton, MA 02135	1174513204	03/29/2011	MA	ACS
Forest Park Medical Center 11990 North Central Expressway Dallas, TX 75243	(none listed on application)	05/06/2011	TX	ASMBS
Olympian Surgical Suites 1002 West Interstate Drive Champaign, IL 61822	(Freestanding center)	05/06/2011	IL	ASMBS
Jacobi Medical Center 1400 Pelham ParkwaySouth Bronx, NY 10461	330127	05/06/2011	NY	ASMBS
High Point Regional Health System 601 N. Elm Street High Point, NC 27261	1396746228	05/02/2011	NC	ACS
Westlake Hospital 1225 West Lake Street Melrose Park, IL 60160	361649520001	05/20/2011	IL	ASMBS
Palmetto General Hospital 2001 West 68 Street Hialeah, FL 33016	1568493641	05/30/2011	FL	ACS
Westchester Medical Center 100 Woods Road Valhalla, NY 10595	1932280666	04/07/2011	NY	ACS
St. John Providence Weight Loss 27483 Dequindre Road, Suite 204 Madison Heights, MI 48071	23-0165	05/19/2011	MI	ACS
The Physicians Centre Hospital 3131 University Drive East Bryan, TX 77802	450834	06/03/2011	TX	ASMBS
Aurora BayCare Medical Center 2845 Greenbrier Road Green Bay, WI 54311	11023500	06/03/2011	WI	ASMBS
Rochester General Hospital 1425 Portland Avenue Rochester, NY 14621	70005A	06/03/2011	NY	ASMBS
St. Alexius Medical Center 900 East Broadway Avenue Bismarck, ND 58501	350002	06/03/2011	ND	ASMBS
Tucson Medical Center 6226 East Pima Street Tucson, AZ 85712	03006	06/03/2011	AZ	ASMBS
Kaiser Permanente South Bay 25825 S. Vermont Avenue Harbor City, CA 90710	1336294040	08/06/2009	CA	ACS
The Toledo Hospital 2142 North Cove Boulevard Toledo, OH43606	360068	06/03/2011	OH	ASMBS
South Hampton Community Hospital 2929 South Hampton Road Dallas, TX 75224	670002	08/09/2010	TX	ASMBS
St. Francis Medical Center 601 Hamilton Avenue Trenton, NJ 08629	310021	03/25/2011	NJ	ASMBS
Southampton Hospital 240 Meetinghouse Lane Southampton, NY 11968	330340	06/24/2011	NY	ASMBS
University of Illinois Medical Center at Chicago 1740 W. Taylor Street Chicago, IL 60612-7236	1861431751	06/30/2011	IL	ACS
The following facilities are deleted from the listings for this quarter.				
St. Mary's Medical Center 450 Stanyan Street San Francisco, CA 94117	050457	10/02/2006	CA	ASMBS
Sacred Heart Medical Center 101 West 8th Avenue Spokane, WA 99220	500054	02/05/2007	WA	ASMBS
Muhlenberg Regional Medical Center Park Avenue and Randolph Road Plainfield, NJ 07061	310063	06/02/2008	NJ	ASMBS
Editorial changes (shown in bold) were made to the facilities listed below.				
Windber Medical Center 600 Somerset Avenue Windber, PA 15963	**390112**	04/30/2010	PA	ASMBS
Surgery Specialty Hospital of America - SE Campus 4301 Vista Road Pasadena, TX 77504	450831	06/22/2007	TX	ASMBS
Northside Hospital 1000 Johnson Ferry Road, NE Atlanta, GA 30342	**1457396079**	07/01/2010	GA	ACS
Lowell General Hospital 295 Varnum Avenue Lowell, MA 01854	**1407804669**	02/22/2008	MA	ACS
Northwest Hospital LLC dba Northwest Medical Center 6200 North La Cholla Boulevard Tucson, AZ 85741	03-0085	04/06/2009	AZ	ASMBS
St. Francis Hospital & Health Centers 1600 Albany Street Beech Grove, IN 46107	150033	**05/30/2007**	IN	ASMBS
Kaleida Health, Buffalo General **Hospital** 100 High Street Buffalo, NY 14203	300005	**06/01/2007**	NY	ASMBS
Kettering Medical Center 3535 Southern Boulevard Kettering, OH 45429	360079	**02/12/2007**	OH	ASMBS

Facility Name	Provider Number	Date Approved	State	Other Information
Christiana Care Health Services 4755 Ogletown - Stanton Road Newark, DE 19718	080001; **1134194038**	**08/26/2007**	DE	ASMBS
Southern Surgical Hospital 1700 West Lindberg Drive Slidell, LA 70458	190270	**06/01/2007**	LA	ASMBS
Parkview Community Hospital 3865 Jackson Street Riverside, CA 92503	050102	**10/31/2007**	CA	ASMBS
St. **Bernardine** Medical Center 2101 North Waterman Avenue San Bernadino, CA 92404	05-0129	01/04/2008	CA	ASMBS
Gundersen Lutheran Medical Center **1910 South Avenue** La Crosse, WI 54601	520087	02/01/2007	WI	ASMBS
California Pacific Medical Center 2300 California Street # 305 San Francisco, CA 94115	**050047**	12/09/2005	CA	ASMBS
Adirondack Medical Center 2233 State Route 86 Saranack Lake, NY 12983	330079	**06/13/2007**	NY	ASMBS
From: California Pacific Medical Center **TO: Sutter West Bay Hospitals (CPMC)** 2300 California St. # 305 San Francisco, CA 94115	050047	12/09/2005	CA	ASMBS
FROM: St. Elizabeth Weight Management Center **TO: St. Elizabeth Florence** 4900 Houston Road Florence, KY 41042	**180045**	10/11/2006	KY	ASMBS
Nix Hospital 414 Navarro Street San Antonio, TX 78205	450130	**05/31/2007**	TX	ASMBS
From: Mary Imogene Bassett Hospital **To: Bassett Medical Center** One Atwell Road Cooperstown, NY 13326	330136	02/12/2008	NY	ASMBS
Texas Health Presbyterian Hospital Plano 6200 West Parker Road Plano, TX 75093	45-0771	**09/24/2007**	TX	ASMBS
Chilton Memorial Hospital 97 West Parkway Pompton Plains, NJ 07444	310017	**02/12/2008**	NJ	ASMBS
Methodist Hospital of Southern California 300 West Huntington Drive Arcadia, CA 91007	14-0290	**08/30/2005**	CA	ASMBS
Northeast Baptist Hospital 8811 Village Drive San Antonio, TX 78217	450058	**11/27/2007**	TX	ASMBS
Saint Elizabeth Regional Medical Center 555 South 70th Street **Lincoln, NE 68510**	280020	07/21/2008	NE	ASMBS
St. Mark's Hospital 1200 East 3900 South Salt Lake City, UT 84124	460047	**04/04/2007**	UT	ASMBS
St. Francis Hospital 7th and Clayton Streets Wilmington, DE 19805	080003	**01/12/2007**	DE	ASMBS
Barnes Jewish Hospital One Barnes-Jewish Hospital Plaza St. Louis MO 63110	260032	**08/29/2006**	MO	ASMBS
From: Wheaton Fransiscan Healthcare-Elmbrook Memorial **To: Wheaton Franciscan Inc-Elmbrook Memorial** 19333 W. North Avenue Brookfield, WI 53045	**52-0136**	08/10/2005	WI	ASMBS
Singing River Hospital 2809 Denny Avenue Pascagoula, MS 39581	250040	**03/06/2008**	MS	ASMBS
Saint Joseph East Center for Weight Loss 160 N Eagle Creek Drive Suite 201 Lexington, KY 40509	180143	**09/30/2005**	KY	ASMBS
St. John's Regional Health Center 1235 East Cherokee Street Springfield, MO 65804	260065	**03/05/2008**	MO	ASMBS
Hospital of the University of Pennsylvania 3400 Spruce Street, 4 Silverstein Philadelphia PA 19104	**231352685**	06/19/2006	PA	ASMBS
FROM: Clarian North Medical Center **TO: Indiana University Health North** 11700 North Meridian Street Carmel, IN 46032	15-0161	08/20/2007	IN	ASMBS
St. Mary Mercy Hospital **36475 Five Mile Road** Livonia, MI 48154	12200126	09/25/2008	MI	ASMBS

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2011)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the April through June 2011 quarter.

This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

[FR Doc. 2011–28636 Filed 11–3–11; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities: Committee Meeting via Conference Call

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID).

ACTION: Notice of committee meeting via conference call.

DATES: Monday, November 14, 2011, from 1 p.m. to 2:30 p.m. E.S.T. This meeting, to be held via audio conference call, is open to the public.

Details for accessing the full Committee Conference Call, for the public, are cited below:

Toll Free Dial-In Number: (800) 779–1627.

Pass Code: 7340316.

Individuals who will need accommodations in order to participate in the PCPID Meeting via audio conferencing (assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, at *Edith.Swift@acf.hhs.gov,* or by telephone at (202) 619–0634, no later than Wednesday, November 9, 2011. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline.

Agenda: Committee Members will review and approve the 2011 PCPID Report (Letter) to the President.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Laverdia Taylor Roach, Senior Advisor, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone: (202) 619–0634. Fax: (202) 205–9519.

Email: LRoach@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: October 27, 2011.

Jamie Kendall,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 2011–28699 Filed 11–2–11; 11:15 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99 Grant Applications.

Date: November 30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, (301) 594–2773, *laffanjo@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 31, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–28630 Filed 11–3–11; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0077]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, External S&T Collaboration Site (E–STCS)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the External S&T Collaboration Site (E–STCS) program. E–STCS is responsible for providing a collaborative environment for practitioners from first responders, academia, organizations, law enforcement, and the private sector. This clearinghouse will enable its users to share information, best practices and lessons learned within a secure collaborative environment. Registration information will be collected only when needed for users who require further access beyond the E–STCS landing page. In order for a user to access this clearinghouse, he/she must complete a Registration Form to establish a user account. Initially, this will be accomplished by the sponsor contacting the user for their information. As the site matures, the information will be collected via an online Web form. The information collected is used by the DHS S&T E–STCS program to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to exchange information, network with other users, as well as post blogs and comments.

The DHS invites interested persons to comment on the following form and instructions (hereinafter ''Forms Package'') for the S&T E–STCS: Request an E–STCS Account (DHS Form 10074). Interested persons may receive a copy of

the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until December 5, 2011.

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: Desk Officer for the Department of Homeland Security, Science and Technology Directorate, and sent via electronic email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number DHS–2011–0077 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Millie Ives (202) 254–6828 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information will be collected via the DHS S&T E–STCS secure Web site at *https://eshare.st.dhs.gov.* The E–STCS Web site will only employ secure Web-based technology (*i.e.,* electronic registration form) to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Information Collection.

(2) *Title of the Form/Collection:* Science and Technology, External S&T Collaboration Site (E–STCS) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—Request an E–STCS Account (DHS Form 10074).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals, consisting of Federal, State and local law enforcement, private sector and academia practitioners. The information collected will be leveraged to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to exchange information, network with other users, as well as post blogs and comments.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 1000.

b. *An estimate of the time for an average respondent to respond:* .083 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 83 burden hours.

Dated: October 25, 2011.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2011–28583 Filed 11–3–11; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Morris and Panola Counties for Public Assistance, including direct federal assistance.

Cass and Navarro Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–28598 Filed 11–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* October 21, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Herkimer County for Individual Assistance and Public Assistance.

Schoharie County for Individual Assistance (already designated for Public Assistance).

Schenectady County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–28599 Filed 11–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4030–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4030–DR), dated September 12, 2011, and related determinations.

DATES: *Effective Date:* October 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 12, 2011.

Monroe County for Individual Assistance.

Huntingdon County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–28605 Filed 11–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* October 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Oneida County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–28600 Filed 11–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2508–11; DHS Docket No. USCIS 2007–0026]

RIN 1615–ZB04

Extension of the Designation of Honduras for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) has extended the designation of Honduras for temporary protected status (TPS) for 18 months from its current expiration date of January 5, 2012 through July 5, 2013. The Secretary has determined that an extension is warranted because the conditions in Honduras that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch, and Honduras remains unable, temporarily, to handle adequately the return of its nationals.

This Notice also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) (Forms I–766) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who previously registered for TPS under the designation of Honduras and whose applications have been granted or remain pending. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

USCIS will issue new EADs with a July 5, 2013 expiration date to eligible Honduran TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs until after their current EADs expire on January 5, 2012. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Honduras for 6 months, through July 5, 2012, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Form I–9 and E-Verify processes.

DATES: The 18-month extension of the TPS designation of Honduras is effective January 6, 2012 and will remain in effect through July 5, 2013. The 60-day re-registration period begins November 4, 2011 and will remain in effect until January 5, 2012.

Further Information:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about this extension and about TPS for Honduras by selecting ''TPS Designated Country—Honduras'' from the menu on the left of the TPS Web page. From the Honduras page, you can select the Honduras TPS Questions & Answers Section from the menu on the right for further information.
- You can also contact the TPS Operations Program Manager at Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–(800) 375–5283 (TTY 1–(800) 767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Government—U.S. Government
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons having no nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS status.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary of Homeland Security (Secretary) terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other lawfully obtained immigration status they received while registered for TPS.

When was Honduras designated for TPS?

On January 5, 1999, the Attorney General designated Honduras for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See* 64 FR 524 and section 244(a)(b)(1)(B) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1)(B). The last extension of TPS for Honduras was announced on May 5, 2010, based on the Secretary's determination that the conditions warranting the designation continued to be met. This announcement is the tenth extension of TPS for Honduras.

What authority does the Secretary of Homeland Security have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* Section 244(a)(1)(A) of the Act, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* Section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* Section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Honduras through July 5, 2013?

Over the past year, the Department of Homeland Security (DHS) and the Department of State (DOS) have continued to review conditions in Honduras. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions transferred from the Department of Justice to the Department of Homeland Security ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

conditions in Honduras resulting from Hurricane Mitch and Honduras remains unable, temporarily, to handle adequately the return of its nationals.

In October 1998, Hurricane Mitch resulted in the loss of thousands of lives, displacement of thousands more, collapse of physical infrastructure, and severe damage to the country's economic system. *See* 64 FR 524 (Jan. 5, 1999) (discussing the devastation caused by Hurricane Mitch). Despite some recovery, the government and people of Honduras continue to rely heavily on international assistance, and recovery from Hurricane Mitch is still incomplete.

Hurricane Mitch brought heavy rainfall that caused severe flooding and mudslides in Honduras, affecting all eighteen of its departments. Honduras is ranked by the United Nations Development Programme as one of the poorest, most vulnerable countries in the world. In 2008, the national commissioner of the Honduran emergency response center observed that Hurricane Mitch weakened the country to such an extent that subsequent smaller scale disasters have had a much greater impact. In 2009, Oxfam International ranked Honduras number one world-wide amongst countries most affected by extreme weather events from 1998 to 2007.

Beginning with Hurricane Mitch in 1998, there have been a series of natural disasters in Honduras, the most recent being flooding from Tropical Storm Agatha in May 2010, a strong earthquake in May 2009, and severe flooding in October 2008. As a result of these natural disasters, Honduras has suffered severe, continuing, and sustained damage to its infrastructure. Although the global aid that poured into the reconstruction effort for Honduras set records in terms of funding and speed of reaction, Honduras still faces long-term development challenges as a result of Hurricane Mitch and subsequent natural disasters.

Estimates of severely damaged or destroyed dwellings as a result of Hurricane Mitch ranged from 80,000 to over 200,000. As of September 2005, available information indicates that a majority of Hondurans who lost their homes to the hurricane had moved to new communities and were benefiting from the investment in infrastructure and social programs. Schools and health facilities were among the buildings damaged or destroyed by Hurricane Mitch. All health centers were fully operational and almost all schools had reopened by the end of 1999. Fuel supplies, electricity, and communications were disrupted by Hurricane Mitch. Currently, only half of the rural population has access to electricity, with better access in urban areas.

Hurricane Mitch destroyed an estimated 70 percent of what transportation infrastructure existed. The road network had returned to its pre-hurricane state by early 2004. According to a January 2008 Economist Intelligence Unit report, transportation infrastructure was ''patchy but improving,'' and, while the road network had been restored, transport infrastructure remained basic and vulnerable to further damage from adverse climactic conditions. Those vulnerabilities were exposed in October 2008 when half the country's roads were damaged or destroyed in flooding caused by heavy continuous rains brought by Tropical Depression Sixteen. In May 2009, the World Bank approved $25 million for a program designed to improve the quality of the road network and road management. As of April 1, 2011, the World Bank's official Web site indicated there was no projected completion date for this project.

Following Hurricane Mitch, critical shortages of food and water were reported. Hunger and near-starvation were widespread in many villages and 4.2 million people lost access to running water. Honduras is currently almost self-sufficient in food production but still imports certain foodstuffs in large quantities. The World Bank approved a $35 million project in June 2007 to improve the sustainability, efficiency and reliability of Honduras's water supply and sanitation services. As of April 20, 2011, the World Bank's official Web site indicated that the project is ongoing and scheduled to be completed in December 2013. Honduras's largest source of fresh water, the Lago de Yojoa, remains heavily polluted.

DOS has also informed DHS that Honduras was hit hard by the recent global economic downturn. Although the economy has begun a moderate recovery, the pace of growth has not been rapid enough to absorb large numbers of young people entering the labor force. The addition of tens of thousands of unemployed persons returning from the United States could fuel social tensions and cause an escalation in violence. The country's security situation is critical, and its infrastructure remains fragile, which negatively affects Honduras' ability to re-assimilate Hondurans currently in the United States with TPS.

Based on this review and after consultation with the appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Honduras for TPS continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A).
- There continues to be a substantial, but temporary, disruption in living conditions in Honduras as a result of an environmental disaster. *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- Honduras continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Honduras). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Honduras for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 64,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who may be eligible to re-register for TPS under this extended designation.

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Honduras for temporary protected status (TPS) on January 5, 1999 continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the TPS designation of Honduras for 18 months from its current expiration of January 5, 2012 through July 5, 2013.

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS for Honduras, an applicant must submit:

1. Application for Temporary Protected Status, Form I–821.

- You only need to pay the Form I–821 application fee if you are filing an application for late initial registration. *See* 8 CFR 244.2(f)(2) and information on late initial filing on the USCIS TPS Web page at *www.uscis.gov/tps.*
- You do not need to pay the Form I–821 fee for a re-registration.

and

2. Application for Employment Authorization, Form I–765.

• If you are applying for re-registration, you must pay the Form I–765 application fee only if you want an Employment Authorization Document (EAD) (Form I–766).

• If you are applying for late initial registration and want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and applying for late initial registration.

• You do not pay the Form I–765 fee if you are not requesting an EAD.

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps* and click on Temporary Protected Status for Honduras. Fees for Form I–821, Form I–765, and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics fee waiver by completing Form I–912, or a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can promptly process the applications and issue EADs. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to refile their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile by the re-registration deadline, the applicant may still refile his or her application. We will consider this situation as showing good cause for late re-registration. Applicants are, however, urged to refile within 45 days of the date on the USCIS fee waiver denial notice, if at all possible. *See* section 244(c)(3)(A)(iii) of the Act, 8 U.S.C. 1254a(c)(3)(A)(iii); 8 CFR 244.17(c). For more information on good cause for late re-registration, please look at the Questions & Answers for Honduras TPS found on the USCIS TPS Web page for Honduras.

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying for re-registration through U.S. Postal Service, *or*	USCIS, Attn: TPS Honduras, P.O. Box 6943, Chicago, IL 60680–6943.
You were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time following a grant by the IJ or BIA.	
You are applying for the first time as a late initial registrant through US Postal Service	USCIS, Attn: TPS Honduras, P.O. Box 8631, Chicago, IL 60680–8631.
You are using a Non-US Postal Service delivery service when applying for any of the above.	USCIS, Attn: TPS Honduras, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit the USCIS E-Filing Reference Guide at the USCIS Web site at *http://www.uscis.gov.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD from January 5, 2012 through July 5, 2012?

You will receive an automatic 6-month extension of your EAD if you:

• Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);

• Received an EAD under the last extension of TPS for Honduras; and

• Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs with an expiration date of January 5, 2012. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.''

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, you may choose to present your automatically extended EAD, as described above, to your employer as proof of identity and employment authorization for Form I–9 through July 5, 2012 (see the subsection below titled ''*How do I and my employer complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?*'' for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register**

notice confirming the automatic extension of employment authorization through July 5, 2012. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

You must present any document from List A or any document from List C on Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a TPS-related EAD.

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, your employer does not need to reverify until after July 5, 2012. You and your employer, however, *must* make corrections to the employment authorization expiration dates in section 1 and section 2 of the Form I–9 (see the subsection below titled ''*What corrections should I and my employer at my current job make to Form I–9 if my EAD has been automatically extended?*'' for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about whether or not your expired TPS-related document is acceptable. After July 5, 2012, when the automatic extension expires, your employer must reverify your employment authorization. You may show any document from List A or List C on Form I–9 to satisfy this reverification requirement.

What happens after July 5, 2012 for purposes of employment authorization?

After July 5, 2012, employers may not accept the EADs that were automatically extended by this **Federal Register** notice. USCIS will issue new EADs to TPS re-registrants. These EADs will have an expiration date of July 5, 2013, and can be presented to your employer as proof of employment authorization and identity. The EAD will bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Form I–9 to prove identity and employment authorization.

How do I and my employer complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Form I–9 for a new job prior to July 5, 2012, you and your employer should do the following:

(1) For Section 1, you should:

a. Check ''An alien authorized to work'';

b. Write your alien number (A-number) in the first space (your EAD or other document from DHS will have your A-number printed on it); and

c. Write the automatic extension date in the second space.

(2) For Section 2, employers should:

a. Record the document title;

b. Record the document number; and

c. Record the automatically extended EAD expiration date.

After July 5, 2012, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should I and my employer at my current job make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a TPS EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Form I–9 as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''July 5, 2012'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''July 5, 2012'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

After July 5, 2012, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a ''Work Authorization Documents Expiring'' case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of Form I–9 to reverify an employee's employment authorization. For existing employees with TPS EADs that have been automatically extended, employers should disregard the E-Verify case alert and follow the instructions above explaining how to correct Form I–9. After July 5, 2012, employment authorization needs to be reverified in Section 3. You should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Honduran citizenship?

No. When completing the Form I–9, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on Form I–9. Therefore, employers may not request proof of Honduran citizenship when completing Form I–9. If presented with EADs that have been automatically extended pursuant to this **Federal Register** notice or EADs that are unexpired on their face, employers should accept such EADs as valid ''List A'' documents so long as the EADs reasonably appear to be genuine and to relate to the employee. *See* below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you because of your citizenship or immigration status, or national origin.

Note to All Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede, or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–(800) 357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. Employers may also call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–(800) 255–8155.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–(800) 255–7688 for information regarding employment discrimination based upon citizenship or immigration status and national origin, unfair documentary practices related to the Form I–9, and discriminatory practices related E-Verify. Employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch via E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final non-confirmation. The Hotline accepts calls in multiple languages. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note Regarding Federal, State and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your Application for Temporary Protected Status, Form I–821 Receipt Notice (Form I–797), for this re-registration;

(4) A copy of your past or current Form I–821 Approval Notice (Form I–797), if you receive one from USCIS; and

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the state or local agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2509–11; DHS Docket No. USCIS 2007–0027]

RIN 1615–ZB05

Extension of the Designation of Nicaragua for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) has extended the designation of Nicaragua for temporary protected status (TPS) for 18 months from its current expiration date of January 5, 2012 through July 5, 2013. The Secretary has determined that an extension is warranted because the conditions in Nicaragua that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch, and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.

This Notice also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) (Forms I–766) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who previously registered for TPS under the designation of Nicaragua and whose applications have been granted or remain pending. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

USCIS will issue new EADs with a July 5, 2013 expiration date to eligible Nicaraguan TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs until after their current EADs expire on January 5, 2012. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 6 months, through July 5, 2012, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Form I–9 and E–Verify processes.

DATES: The 18-month extension of the TPS designation of Nicaragua is effective January 6, 2012 and will remain in effect through July 5, 2013. The 60-day re-registration period begins November 4, 2011 and will remain in effect until January 5, 2012.

Further Information

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about this extension and about TPS for Nicaragua by selecting ''TPS Designated Country—Nicaragua'' from the menu on the left of the TPS Web page. From the Nicaragua page, you can select the Nicaragua TPS Questions & Answers Section from the menu on the right for further information.
- You can also contact the TPS Operations Program Manager at Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–

2060; or by phone at (202) 272–1533 (this is not a toll-free number). *Note:* The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–(800) 375–5283 (TTY 1–(800) 767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act.
DHS—Department of Homeland Security.
DOS—Department of State.
EAD—Employment Authorization Document.
Government—U.S. Government.
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices.
PRRAC—European Union's Regional Program for the Reconstruction of Central America.
Secretary—Secretary of Homeland Security.
TPS—Temporary Protected Status.
USAID—U.S. Agency for International Development.
USCIS—U.S. Citizenship and Immigration Services.

What is Temporary Protected Status (TPS)?

- TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons having no nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS status.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary of Homeland Security (Secretary) terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other lawfully obtained immigration status they received while registered for TPS.

When was Nicaragua designated for TPS?

On January 5, 1999, the Attorney General designated Nicaragua for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See* 64 FR 526 and section 244(a)(b)(1)(B) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1)(B). The last extension of TPS for Nicaragua was announced on May 5, 2010, based on the Secretary's determination that the conditions warranting the designation continued to be met. This announcement is the tenth extension of TPS for Nicaragua.

What authority does the Secretary of Homeland Security have to extend the designation of Nicaragua for TPS?

Section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* section 244(a)(1)(A) of the Act, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Nicaragua through July 5, 2013?

Over the past year, the Department of Homeland Security (DHS) and the Department of State (DOS) have continued to review conditions in Nicaragua. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.

In October 1998, Hurricane Mitch resulted in the loss of thousands of lives, displacement of thousands more, collapse of physical infrastructure, and severe damage to the country's economic system. *See* 64 FR 526 (Jan. 5, 1999) (discussing the devastation caused by Hurricane Mitch). The government and people of Nicaragua continue to rely heavily on international assistance, and recovery from Hurricane Mitch is still incomplete.

Hurricane Mitch brought extremely heavy rainfall causing severe flooding in Nicaragua. Damage from flooding was extensive throughout the north and northwest. Two million people were directly affected by the storm and total material damage was estimated at $1.5 billion USD. Nicaragua has not fully recovered from the devastation caused by Hurricane Mitch. The hardest hit areas, Nicaragua's mountainous north and isolated Atlantic coast, continue to be the poorest and least developed in the country. Nicaragua is the second poorest country in the Western Hemisphere after Haiti.

Other climatic events have further devastated the northern mountainous region, Atlantic coast, and western part of the country since 1998. A significant challenge to long-term recovery has been the recurrence of these environmental disasters and ensuing damage in the years following Hurricane Mitch. Natural disasters that further impacted Nicaragua's economy since the devastating effects of Mitch include Hurricane Felix in 2007, Tropical Storm Alma and Tropical Depression 16 in 2008, Hurricane Ida in 2009, and Tropical Storm Matthew in 2010. For example, Alma alone left more than 25,000 people homeless. Each of these environmental events has hampered the recovery efforts from Hurricane Mitch.

By some estimates, 145,000 homes, 90 health clinics, and 343 schools were among the infrastructure destroyed by Hurricane Mitch. In addition to the 90 clinics, 40 health posts and six hospitals were damaged. As of 2009, reports showed that only about 55 health facilities, 159 schools, and over 1,600 homes were repaired or constructed through assistance by such organizations as USAID, the European Union's PRRAC, and Habitat for Humanity.

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Pub. L. 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions transferred from the Department of Justice to the Department of Homeland Security ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

Critical food and potable water shortages were widespread as a result of Hurricane Mitch. Over 100,000 acres of crops were destroyed as a result of the hurricane, half of them life-sustaining food crops such as beans and corn. The coffee crop was also hard hit as officials estimated that 20–30% of coffee production had been lost. Crop recovery was hampered (and continues to be hampered) by later natural disasters, such as Hurricane Ida in 2009 and Tropical Storm Matthew in 2010. Food insufficiency remains a threat for a large portion of the Nicaraguan population. In an effort to combat the high levels of malnutrition prevalent in Nicaragua's countryside, the United Nations and the European Union have joined forces with the Nicaraguan government to support a boost in productivity of staple crops (such as beans, corn, and rice) by small-scale farmers. In its undated ''Closeout Report'' issued upon completion of its ''Hurricane Mitch Reconstruction Program,'' USAID included among the Program's achievements that the ''need for water and sanitation [was] met for approximately 200,000 persons in 250 rural communities.''

Hurricane Mitch-related damage to transportation infrastructure included the destruction of 71 bridges and damage to 8,000 km of roads. The World Bank-funded ''Third Roads Rehabilitation and Maintenance Project'' began in 2001 to stabilize rural roads within the region affected by Mitch and was completed in 2007. The World Bank-funded ''Fourth Roads Rehabilitation and Maintenance Project'' to relieve transportation bottlenecks and improve secondary and rural roads got underway in 2006. It is currently scheduled to be completed by the end of December 2012.

DOS has also informed DHS that political tension is increasing in Nicaragua, including violent demonstrations and seizures of government offices in certain northern areas along the Atlantic Coast. This area was heavily affected by Hurricane Mitch, and the increased tension could hinder the efforts of already-weak local institutions to provide services and help reintegrate returned Nicaraguans.

Given the ongoing challenges faced by Nicaragua, Nicaragua remains temporarily unable to handle adequately the return of its nationals from the United States. Based on this review and after consultation with the appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Nicaragua for TPS continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A).
- There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as a result of an environmental disaster. *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Nicaragua). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Nicaragua for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 3,000 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who may be eligible to re-register for TPS under this extended designation.

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Nicaragua for temporary protected status (TPS) on January 5, 1999 continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the TPS designation of Nicaragua for 18 months from its current expiration on January 5, 2012 through July 5, 2013.

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS for Nicaragua, an applicant must submit:

1. Application for Temporary Protected Status, Form I–821.

- You only need to pay the Form I–821 application fee if you are filing an application for late initial registration. *See* 8 CFR 244.2(f)(2) and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- You do not need to pay the Form I–821 fee for a re-registration.

and

2. Application for Employment Authorization, Form I–765.

- If you are applying for re-registration, you must pay the Form I–765 application fee only if you want an Employment Authorization Document (EAD) (Form I–766).
- If you are applying for late initial registration and want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and applying for late initial registration.
- You do not pay the Form I–765 fee if you are not requesting an EAD.

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps* and click on Temporary Protected Status for Nicaragua. Fees for Form I–821, Form I–765, and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics fee waiver by completing Form I–912, or a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can promptly process the applications and issue EADs. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to refile their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile by the re-registration deadline, the applicant may still refile his or her application. We will consider this situation as showing good cause for late re-registration. Applicants are, however, urged to refile within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* section 244(c)(3)(A)(iii) of the Act, 8 U.S.C.

1254a(c)(3)(A)(iii); 8 CFR 244.17(c). For more information on good cause for late re-registration, please look at the Questions & Answers for Nicaragua TPS found on the USCIS TPS Web page for Nicaragua.

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying for re-registration through U.S. Postal Service ..... *or* You were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time following a grant by the IJ or BIA.	USCIS, Attn: TPS Nicaragua, P.O. Box 6943, Chicago, IL 60680–6943.
You are applying for the first time as a late initial registrant through US Postal Service.	USCIS, Attn: TPS Nicaragua, P.O. Box 8631, Chicago, IL 60680–8631.
You are using a Non-US Postal Service delivery service when applying for any of the above.	USCIS, Attn: TPS Nicaragua, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit the USCIS E-Filing Reference Guide at the USCIS Web site at *http://www.uscis.gov.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD from January 5, 2012 through July 5, 2012?

You will receive an automatic 6-month extension of your EAD if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Received an EAD under the last extension of TPS for Nicaragua; and
- Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs with an expiration date of January 5, 2012. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.''

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, you may choose to present your automatically extended EAD, as described above, to your employer as proof of identity and employment authorization for Form I–9 through July 5, 2012 (see the subsection below titled ''*How do I and my employer complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** notice confirming the automatic extension of employment authorization through July 5, 2012. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

You must present any document from List A or any document from List C on Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a TPS-related EAD.

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, your employer does not need to reverify until after July 5, 2012. You and your employer, however, *must* make corrections to the employment authorization expiration dates in section 1 and section 2 of the Form I–9 (see the subsection below titled ''*What corrections should I and my employer at my current job make to Form I–9 if my EAD has been automatically extended?''* for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about whether or not your expired TPS-related document is acceptable. After July 5, 2012, when the automatic extension expires, your employer must reverify your employment authorization. You may show any document from List A or List C on Form I–9 to satisfy this reverification requirement.

What happens after July 5, 2012 for purposes of employment authorization?

After July 5, 2012, employers may not accept the EADs that were automatically extended by this **Federal Register** notice. USCIS will issue new EADs to TPS re-registrants. These EADs will have an expiration date of July 5, 2013, and can be presented to your employer as proof of employment authorization and identity. The EAD will bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Form I–9 to prove identity and employment authorization.

How do I and my employer complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Form I–9 for a new job prior to July 5, 2012, you and your employer should do the following:

(1) For Section 1, you should:

a. Check ''An alien authorized to work'';

b. Write your alien number (A-number) in the first space (your EAD or other document from DHS will have your A-number printed on it); and

c. Write the automatic extension date in the second space.

(2) For Section 2, employers should:

a. Record the document title;

b. Record the document number; and

c. Record the automatically extended EAD expiration date.

After July 5, 2012, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should I and my employer at my current job make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a TPS EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Form I–9 as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''July 5, 2012'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''July 5, 2012'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

After July 5, 2012, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a ''Work Authorization Documents Expiring'' case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of Form I–9 to reverify an employee's employment authorization. For existing employees with TPS EADs that have been automatically extended, employers should disregard the E-Verify case alert and follow the instructions above explaining how to correct Form I–9. After July 5, 2012, employment authorization needs to be reverified in Section 3. You should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Nicaraguan citizenship?

No. When completing the Form I–9, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on Form I–9. Therefore, employers may not request proof of Nicaraguan citizenship when completing Form I–9. If presented with EADs that have been automatically extended pursuant to this **Federal Register** notice or EADs that are unexpired on their face, employers should accept such EADs as valid ''List A'' documents so long as the EADs reasonably appear to be genuine and to relate to the employee. *See* below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you because of your citizenship or immigration status, or national origin.

Note to All Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede, or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. Employers may also call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–800–255–7688 for information regarding employment discrimination based upon citizenship or immigration status and national origin, unfair documentary practices related to the Form I–9, and discriminatory practices related E-Verify. Employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch via E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final non-confirmation. The Hotline accepts calls in multiple languages. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note Regarding Federal, State and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your Application for Temporary Protected Status, Form I–821 Receipt Notice (Form I–797), for this re-registration;

(4) A copy of your past or current Form I–821 Approval Notice (Form I–797), if you receive one from USCIS; and

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the state or local agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity

to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

[FR Doc. 2011–28316 Filed 11–3–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at (800) 927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–(800) 927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Energy: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave. SW., Washington, DC 20585: (202) 586–5422; Navy: Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: October 27, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 11/04/2011

Suitable/Available Properties

Building

Illinois

Trailer 035
Fermi Nat'l Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201140002
Status: Excess
Comments: Off-site removal only; 480 sq. ft.; current use: storage; needs major repairs

Unsuitable Properties

Building

Hawaii

Building 1337
JBPHH
JBPHH HI 96860
Landholding Agency: Navy
Property Number: 77201140002
Status: Underutilized
Reasons: Secured Area

3 Buildings
JBPHH
Honolulu HI 96818
Landholding Agency: Navy
Property Number: 77201140003
Status: Excess
Directions: 2265, 2289, 2489
Reasons: Secured Area, Extensive deterioration

New Mexico

8 Buildings
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201140001
Status: Excess

Directions: Nos. 03–0545, 03–546, 57–0049, 57–0056, 53–1138, 54–0033, 54–0049, 57–0017
Reasons: Secured Area, Extensive deterioration

[FR Doc. 2011–28298 Filed 11–3–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Draft WaterSMART Cooperative Watershed Management Program Funding Opportunity Announcement

AGENCY: Office of the Assistant Secretary for Water and Science, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: We are seeking comments on a draft announcement of funding that will be available for establishing or expanding an existing watershed group. The funding is part of the Cooperative Watershed Management Program whose goals are to improve water quality and ecological resilience and to reduce conflicts over water by managing local watersheds through collaborative conservation. We plan to publish a final announcement as soon as possible after the close of the comment period.

DATES: Submit written comments on or before December 5, 2011.

ADDRESSES: Send written comments to Ms. Avra Morgan, Bureau of Reclamation, Office of Policy and Administration 84–51000, P.O. Box 25007, Denver, Colorado 80225; or email *aomorgan@usbr.gov.* The draft funding announcement is available at: *http://www.usbr.gov/WaterSMART/cwmp/.*

FOR FURTHER INFORMATION CONTACT: Avra Morgan, Bureau of Reclamation, (303) 445–2906, *aomorgan@usbr.gov.*

SUPPLEMENTARY INFORMATION: The draft funding announcement on which we are requesting comments is part of the Department's WaterSMART Cooperative Watershed Management Program. When published in final after we evaluate comments received, the announcement will inform eligible applicants that funding is available to establish a watershed group or expand an existing watershed group. This notice summarizes the main elements of the draft announcement. You can view the complete announcement at *http://www.usbr.gov/WaterSMART/cwmp/.*

Secretary of the Interior Ken Salazar established the WaterSMART Program in February 2010. The WaterSMART program provides funding to watershed groups to encourage diverse stakeholders to work together to address their local watershed needs. Through this program, we provide Federal leadership and assistance on;

- Efficient use of water;
- Integrating water and energy policies to support sustainable use of natural resources;
- Forming strong, diverse partnerships with States, tribes, and local entities; and
- Coordinating water conservation activities among all Department bureaus and offices.

The Nation faces an increasing set of water resource challenges. Aging infrastructure, rapid population growth, depletion of groundwater resources, impaired water quality associated with particular land uses and land covers, water needed for human and environmental uses, and climate variability and change all play a role in determining the amount of fresh water available at any given place and time. Water shortage and water-use conflicts have become more commonplace in many areas of the United States, even in normal water years. As competition for water resources grows—for irrigation of crops, growing cities and communities, energy production, and the environment—the need for information and tools to aid water resource managers also grows.

Included below is a summary of the main provisions of this draft funding announcement.

Applicant Eligibility

Applicants eligible for funding to establish a watershed group include States, tribes, local and special districts (*e.g.,* irrigation and water districts, county soil conservation districts, *etc.*), local governmental entities, and non-profit organizations. To be eligible, applicants must:

- Significantly affect or be affected by the quality or quantity of water in a watershed;
- Be capable of promoting the sustainable use of water resources; and
- Be located in the western United States or Territories as identified in the Reclamation Act of June 17, 1902, as amended and supplemented.

Individuals, universities, for-profit organizations or companies, and Federal agencies are not eligible for Cooperative Watershed Management Program funding.

To be eligible for funding to expand a watershed group, the applicant must:

- Be a grassroots, non-regulatory entity that is legally incorporated within the state in which it operates;
- Address water availability and quality issues within the relevant watershed; and
- Otherwise meet the definition of a ''watershed group'' as described in the draft funding announcement.

Funding

Applicants must use funds awarded under the announcement to establish or expand a watershed group; develop a mission statement; develop project concepts; and develop a restoration plan. Applicants may request up to $50,000 in Federal funds each year, for a period of up to 2 years. A non-Federal cost-share is not required. Second-year funding will be awarded to applicants that demonstrate sufficient progress throughout the year, contingent on availability of appropriations. An equal number of awards will be made available to applicants under each task area, contingent on demand.

Criteria

The funding criteria under the announcement will prioritize proposals that represent a maximum diversity of interests; serve a broad geographic scope; are expected to address critical watershed needs; include activities aligned with a state water plan; demonstrate active participation in a Landscape Conservation Cooperative or integration of the mission and goals of a particular Landscape Conservation Cooperative into the proposed activities; and include a proposed schedule and milestones that are reasonable and appropriate.

The criteria identified within the draft funding announcement will assist us in fulfilling the goals of the program by collaboratively improving water quality and ecological resilience, and reducing conflicts over water at the watershed level.

Public Disclosure

We seek comments and suggestions for improvement to any of the provisions summarized above or on any other elements of the draft announcement.

Before including your name, 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: October 21, 2011.

Anne J. Castle,

Assistant Secretary for Water and Science.

[FR Doc. 2011–28576 Filed 11–3–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: Appointments are effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Mulhern, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

The members of the Department of the Interior Performance Review Board are as follows:

Name:
Adams, Gail
Archuleta, Deanna
Arroyo, Bryan
Baker, Karen
Barchenger, Ervin
Bathrick, Mark
Bayani, Theresa
Bean, Michael
Berrigan, Michael
Black, Michael
Black, Steven
Blanchard, Mary Josie
Bolton, Hannibal
Brown, Laura
Brown, Robert
Burden, John
Burke, Marcilynn
Burzyk, Carla
Carter-Pfisterer, Carole
Clark, Horace
Connell, Jamie
Cribley, Bud
Cruickshank, Walter
Davis, Mark
Dohner, Cynthia
Eller, Sharon
Ellis, Steven
Faeth, Lorraine
Ferriter, Olivia
Finkler, Kira
Flanagan, Denise
Ford, Jerome
Frazer, Gary
Frost, Herbert
Gary, Arthur
Gillette, Jodi
Glenn, Douglas
Glomb, Stephen
Gonzales-Schreiner, Roseann
Gould, Rowan
Guertin, Stephen
Gundersen, Linda
Haskett, Geoffrey
Haugrud, Kevin
Hawbecker, Karen
Herbst, Lars
Hildebrandt, Betsy
Holland-Bartels, Leslie
Ishee, Mary Katherine
Iudicello, Fay
Jackson, Andrew
Jacobson, Rachel
Keable, Edward
Kimball, Suzette
Kinsinger, Anne
Klein, Allen
Koenigsberg, Melissa
Kornze, Neil
Labelle, Robert
Lane, Kenneth
Lauro, Salvatore
Lillie, Thomas
Lueders, Amy
Malam, Pamela
Mansour, Christopher
Masica, Sue
Mazer, Bernard
More, Robert
Mulhern, Thomas
Nedd, Michael
O'Dell, Margaret
Owens, Glenda
Palma, Juan
Payne, Grayford
Pool, Michael
Pula, Nikolao
Reynolds, Michael
Rountree, Carl
Saito, Irene Teiko
Salotti, Christopher
Scott, Mary Gibson
Shackelton, Stephen
Sheehan, Denise
Shillito, Daniel
Shope, Thomas
Siekaniec, Gregory
Simpson, Jerry
Slack, James
Sobeck, Eileen
Sonderman, Debra
Stevens, Bartholomew
Stevens, Elizabeth
Stith, Melodee
Taylor, Ione
Taylor, Willie
Thorsen, Kimberley
Thorson, Robyn
Triebsch, George
Tschudy, Deborah Gibbs
Tuggle, Benjamin
Vela, Raymond David
Velasco, Janine
Ward, Joseph
Washburn, Julia
Wells, Sandra
Wenk, Daniel
Whitesell, Stephen
Woody, William

Thomas Mulhern,

Director, Office of Human Resources.

[FR Doc. 2011–28468 Filed 11–3–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N129; 40120–1112–0000–F5]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by December 5, 2011.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904/731–3191; facsimile 904/731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the

following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application Number: TE–47898A

Applicant: National Park Service, Appalachian Highlands Inventory and Monitoring Network, Asheville, North Carolina.

Applicant requests authorization to take by capture for identification purposes, the tuxedo (duskytail) darter (*Etheostoma lemniscatum*) and the spotfin chub (*Erimonax monachus*). This activity will provide data on populations of these species in Tennessee and Kentucky.

Permit Application Number: TE–89074

Applicant: Wetland and Ecological Consultants, LLC., Atlanta, Georgia.

Applicant requests renewal of authorization to take during presence/absence surveys the following endangered species; Etowah darter (*Etheostoma etowahae*), amber darter (*Percina antesella*), conasauga logperch (*Percina jenkinsi*), coosa moccasinshell (*Medionidus parvulus*), southern pigtoe (*Pleurobema georgianum*), fat threeridge (*Amblema neisleri*), shiny-rayed pocketbock (*Hamiota subangulata*), gulf moccasinshell (*Medionidus penicillatus*), oval pigtoe (*Pleurobema pyriforme*) and cylindrical lioplax (*Lioplax cyclostomaformis*). This survey work will be conducted in Georgia.

Permit Application Number: TE–111326

Applicant: Chris Fleming, Nashville, Tennessee.

Applicant is requesting renewal of authorization to conduct presence/absence surveys, sweeps and relocation of Nashville crayfish in Davidson and Williamson Counties, Tennessee.

Permit Application Number: TE–54848A

Applicant: Advanced Ecological Management, LLC, Reed City, Michigan.

Applicant requests authorization to take (collect, identify and release) the following mussel species; Ovate clubshell (*Pleurobema perovatum*), Inflated heelsplitter (*Potamilus inflatus*), stirrup shell mussel (*Quadrula stapes*) and heavy pigtoe (*Pleurobema taitianum*) for the purpose of conducting a presence/absence survey on the Tombigbee River in Alabama.

Dated: October 6, 2011.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. 2011–28577 Filed 11–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–110–1320–EL, UTU 081895]

Notice of Availability and Notice of Hearing for the Alton Coal Tract Coal Lease by Application Draft Environmental Impact Statement, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Alton Coal Tract Lease by Application (LBA) and by this Notice is announcing a public hearing requesting comments on the Draft EIS, the Maximum Economic Recovery (MER), and the Fair Market Value (FMV) of the Federal coal resources.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Alton Coal Tract LBA Draft EIS, MER, and FMV within 60 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. A public hearing will be held at Festival Hall Convention Center, 96 North Main, Cedar City, UT on December 6, 2011 at 6 p.m., to receive comments on the MER and FMV of the Federal coal resources as well as to provide information on the Draft EIS. The BLM will also host public informational meetings on the Draft EIS in the following locations: Alton, Kanab, Panguitch, and Salt Lake City, Utah. Times and dates of these meetings will be announced through the Utah BLM Web site at *http://www.ut.blm.gov,* press releases, local newspapers, and other media. At these meetings the public is invited to submit comments and meet with BLM specialists. The BLM will announce public meetings at least 15 days prior to the event.

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

- *Email: UT_Kanab_Altoncoal@blm.gov.* Please include ''Alton Coal Tract LBA Draft EIS—Keith Rigtrup'' in the subject line.
- *Fax:* (435) 644–4620, Attn: Keith Rigtrup.
- *Mail:* Kanab Field Office, Bureau of Land Management, Attn: Keith Rigtrup, 318 North 100 East, Kanab, Utah 84741
- Written comments may also be hand-delivered to the BLM Utah Kanab Field Office in Kanab.

Copies of the Draft EIS are available at the following BLM office locations: BLM Utah State Office Public Room, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; BLM Kanab Field Office, 318 North 100 East, Kanab, Utah 84741 during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. The Draft EIS is available electronically at the following Web site: *http://www.blm.gov/ut/st/en/prog/energy/coal/alton_coal_project.html.*

FOR FURTHER INFORMATION CONTACT: Keith Rigtrup, BLM Color Country District Office, 176 East DL Sargent Drive, Cedar City, Utah 84721 or by telephone at (435) 865–3000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hour a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes the potential impacts of issuing a lease for the Alton Coal Tract, serial number UTU 081895. An application to lease Federal coal near the Town of Alton, Utah, was filed with the BLM on November 12, 2004, by Alton Coal Development, LLC., in accordance with 43 CFR 3425.

The Alton Coal Tract includes 59.6 million tons of in-place bituminous coal. The coal quality in the Smirl coal zone on an ''as received basis'' is as follows: 10,019 Btu/lb (British Thermal Units per pound), 13 percent moisture, 10 percent ash, 39 percent volatile matter, 50 percent fixed carbon and 1.13 percent sulfur underlying the following lands in Kane County, Utah:

Salt Lake Meridian

T. 39 S., R. 5 W.,
Sec. 7, SE¼SW¼ and S½SE¼;
Sec. 18, lots 3 and 4 and E½, E½W½;

Sec. 19, lots 1 through 4 inclusive, NE¼, E½W½, N½SE¼, and SE¼SE¼;
Sec. 20, lots 4 and 5, and N½SW¼;
Sec. 30, lots 2 through 4 inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 31, lots 1 through 3 inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
T. 39 S., R. 6 W.,
Sec. 12, SW¼ and W½SE¼;
Sec. 13, NW¼NE¼, N½NW¼, SE¼NW¼, and SE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, E½SW¼, N½SE¼, and SE¼SE¼;
Sec. 25, E½NE¼, SW¼NE¼, and SE¼.
Containing 3,581.27 acres more or less.

Consistent with Federal regulations under NEPA and the Mineral Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale. The Draft EIS analyzes and discloses to the public the direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease on the Alton Coal Tract, including mining and transportation of coal to a railhead near Cedar City, Utah. A copy of the Draft EIS has been sent to affected Federal, State, tribal, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in this tract; and persons who indicated to the BLM that they wished to receive a copy of the Draft EIS. The purpose of the public hearing is to solicit comments on the Draft EIS, for the proposed competitive lease sale of the Alton Coal Tract, and on the FMV and MER of the Federal coal.

The Draft EIS analyzes leasing the Alton Coal Tract as the Proposed Action. Under the Proposed Action, a competitive sale would be held and a lease issued for Federal coal in the tract. As part of the coal leasing process, the BLM is evaluating an additional alternative that would remove 394 acres and 6.8 million tons of Federal coal in the tract to minimize impacts in close proximity to the Town of Alton and preserve seasonal Greater sage-grouse habitat. The alternate tract configuration that the BLM is evaluating is described and analyzed as Alternative C in the Draft EIS. Under this alternative, a competitive sale would be held and a lease issued for Federal coal lands included in a tract modified by the BLM. The Draft EIS also analyzes the alternative of rejecting the application to lease Federal coal as the No Action Alternative. The Proposed Action and alternatives being considered in the Draft EIS are in conformance with the Kanab Field Office Record of Decision and Approved Resource Management Plan (2008).

Requests to be included on the mailing list for this project, for copies of the Draft EIS, or to be notified of the dates of the comment period and public hearing may be sent by mail, facsimile, or electronically to the addresses listed in the **ADDRESSES** section above. For those submitting comments on the Draft EIS, please make the comments as specific as possible with reference to page numbers and sections of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they may be considered and included as part of the BLM decision-making process.

The public hearing is being held on the proposed lease sale to allow public comment on, and discussion of, the potential effects of the proposed lease sale and mining and transportation of the coal. The BLM must make determinations of the FMV of the coal in the tract(s) and whether MER of the coal in the tract can be accomplished. Proprietary data marked as confidential may be submitted to the BLM in response to FMV and MER in this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, excluding Federal holidays. Comments on the FMV and MER should be sent to the BLM and should address, but not necessarily be limited to, the following information:

1. The quality of the coal resource;
2. The mining methods or methods which would achieve MER of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;
3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;
4. Whether the tract should be evaluated as part of a potential larger mining unit and revaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit);
5. Restrictions to mining that may affect coal recovery;
6. The price that the mined coal would bring when sold;
7. Costs, including mining and reclamation, of producing the coal and the time of production;
8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;
9. Depreciation, depletion, amortization, and other tax accounting factors;
10. The value of any surface estate where held privately;
11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
12. Any comparable sales data of similar coal lands; and coal quantities and the FMV of the coal developed by the BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

Please note that comments and information submitted, including names, street addresses, and email addresses of respondents, will be available for public review and disclosure at the Kanab Field Office (address listed above) during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Juan Palma,

State Director.

[FR Doc. 2011–28506 Filed 11–3–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.EI0000.241A]

National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2011 and Notice of Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2011 in the National Petroleum Reserve-Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) Alaska State Office hereby notifies the public it will hold an oil and gas lease sale bid opening for select tracts in the National Petroleum Reserve-Alaska. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

DATES: The oil and gas lease sale bid opening will be held at 1 p.m. on Wednesday, Dec. 7, 2011. Sealed bids must be received by 4 p.m., Monday, Dec. 5, 2011.

ADDRESSES: The oil and gas lease sale bids will be opened at the Anchorage Federal Building, Denali Room (fourth floor), 222 W 7th Ave., Anchorage, Alaska. Sealed bids must be sent to Carol Taylor (AK932), BLM–Alaska State Office; 222 West 7th Ave. #13; Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Ted A. Murphy, (907) 271–4413. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: All bids must be submitted by sealed bid in accordance with the provisions identified in the Detailed Statement of Sale. They must be received at the BLM–Alaska State Office, *Attn:* Carol Taylor (AK932); 222 West 7th Avenue #13; Anchorage, Alaska 99513–7504; no later than 4 p.m., Monday, December 5, 2011.

The Detailed Statement of Sale for the National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2011 will be available to the public immediately after publication of this Notice in the **Federal Register**. The Detailed Statement may be obtained from the BLM–Alaska Web site at *http://www.blm.gov/ak,* or by request from the Public Information Center, BLM–Alaska State Office; 222 West 7th Avenue #13; Anchorage, Alaska 99513–7504; telephone (907) 271–5960. The Detailed Statement of Sale will include, among other things, a description of the areas to be offered for lease, the lease terms, conditions, special stipulations, required operating procedures, and how and where to submit bids.

Dated: October 5, 2011.

Ted Murphy,

Acting State Director.

Authority: 43 CFR 3131.4–1 and 43 U.S.C. 1733 and 1740.

[FR Doc. 2011–28561 Filed 11–3–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2310–0067–422]

Ungulate Management Plan/ Environmental Impact Statement, Great Sand Dunes National Park and Preserve, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Ungulate Management Plan, Great Sand Dunes National Park and Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for the Ungulate Management Plan, Great Sand Dunes National Park and Preserve, Colorado. The purpose of this plan/EIS is to establish a framework for the management of elk, bison, and other ungulates that supports attainment of desired habitat conditions at Great Sand Dunes National Park and Preserve and is compatible with conditions and management activities across the broader eastern San Luis Valley landscape. This planning effort is needed to identify desired future habitat conditions on newly acquired park land and future land transfers, using the best available science to guide management decisions and responses to changing conditions. A scoping brochure has been prepared that details the issues identified to date and includes the purpose, need, and objectives of the EIS. Copies of that information may be obtained online at *http://parkplanning.nps.gov/grsa-ungulates* or Great Sand Dunes National Park, 11500 Highway 150, Mosca, CO 81146–9798, (719) 378–6300.

DATES: The National Park Service will accept comments from the public through January 6, 2012. The National Park Service intends to hold public scoping meetings in locations surrounding the park during the scoping period. Details regarding the exact times and locations of these meetings will be announced online at *http://parkplanning.nps.gov/grsa-ungulates* and through local media at least 15 days in advance of the meetings.

ADDRESSES: Information will be available for public review online at *http://parkplanning.nps.gov/grsa-ungulates* and in the office of the Superintendent, 11500 Highway 150, Mosca, CO 81146–9798, (719) 378–6300.

FOR FURTHER INFORMATION CONTACT: Karl Cordova, Acting Superintendent, 11500 Highway 150, Mosca, CO 81146–9798, (719) 378–6300.

SUPPLEMENTARY INFORMATION: If you wish to comment on the purpose, need, objectives, alternatives, or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to GRSA Ungulate Management Plan/EIS, NPS–EQD Academy Place, P.O. Box 25287, Denver, CO 80225. You may also comment via the Internet at *http://parkplanning.nps.gov/grsa-ungulates.* Finally, you may hand-deliver comments to the Superintendent, 11500 Highway 150, Mosca, CO 81146–9798. 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: October 13, 2011.

John Wessels,

Director, Intermountain Region, National Park Service.

[FR Doc. 2011–28579 Filed 11–3–11; 8:45 am]

BILLING CODE 4312–CL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Final Environmental Impact Statement, Yellowstone National Park, Idaho, Montana, and Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the Winter Use Plan, Yellowstone National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (EIS) for a Winter Use Plan for Yellowstone National Park, located in Idaho, Montana, and

Wyoming. The EIS evaluates eight alternatives, and identifies the Preferred Alternative as Alternative 8, a one-year plan to allow oversnow vehicle use in the park for the winter of 2011/2012, at the same levels (up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches per day) that were allowed under the interim regulation in place for the winters of 2009/2010 and 2010/2011. NPS intends to supplement this EIS next year, in order to make a long-term decision prior to the 2012/2013 winter season.

DATES: The National Park Service will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov/YELL* (click on the link to the Winter Use Plan), and in the office of Superintendent Dan Wenk, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

FOR FURTHER INFORMATION CONTACT: Wade Vagias, P.O. Box 168, Yellowstone National Park, WY 82190,(307) 344–2035, *yell_winter_use@nps.gov.*

SUPPLEMENTARY INFORMATION: Eight alternatives were considered in the EIS. For alternatives 1–7 the analysis is for a presumed implementation period of 20 years. For Alternative 8 the analysis is for an implementation period of one year.

Alternative 1 is the no-action alternative. Alternative 1 would not permit public motorized vehicle use, including oversnow vehicle (OSV) use, in Yellowstone but would allow for approved non-motorized use to continue. Alternative 1 has been identified as the Environmentally Preferable Alternative. Alternative 2 would continue OSV use at the same levels as the 2009 interim rule (318 snowmobiles and 78 snowcoaches per day) for the long term. Alternative 3 would allow for snowmobile and snowcoach use levels to increase to the levels set forth in the 2004 plan (720 snowmobiles and 78 snowcoaches per day). Alternative 4 would allow for commercially guided wheeled vehicles, in addition to OSVs (100 commercially guided wheeled vehicles, 110 snowmobiles, and 30 snowcoaches per day). Alternative 5 would initially allow for the same level of use as Alternative 2 (318 snowmobiles and 78 snowcoaches per day), but would provide for a transition to snowcoaches only, if user demand is present to support such a transition, or at the discretion of the Superintendent. Upon complete transition, there could be zero snowmobiles and up to 120 snowcoaches per day. Alternative 6 would provide for use levels that vary each day, with a seasonal limit of up to 32,000 snowmobiles and 4,600 snowcoaches, and a daily limit of up to 540 snowmobiles and 78 snowcoaches. Up to 25 percent of snowmobile permits under Alternative 6 would be for unguided or non-commercially guided use. Alternative 7 would provide a variety of use levels and experiences for visitors. Four different use levels for snowmobiles and snowcoaches would be implemented, the combination of which could vary by day. Snowmobile use would range from 110 to 330 vehicles per day and snowcoach use would range from 30 to 80 vehicles per day.

The Preferred Alternative is Alternative 8. A portion of the prior preferred alternative in the Draft EIS (DEIS) consisted of a ''transition year''; that portion has now been converted into a new separate Alternative 8. Under this alternative up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches would be allowed in the park per day, and a variety of non-motorized uses would also be allowed. These conditions would be in effect only for the 2011/2012 winter season. NPS will then supplement the EIS next year and issue a new decision and long-term rule for winter use in time for the 2012/2013 season.

NPS had intended to issue a final EIS and final long-term regulation for Yellowstone winter use by December 2011. However, some of the more than 59,000 public comments received on the Draft EIS (DEIS) have raised additional questions as to long-term effects and options. In order to make a reasoned, sustainable long-term decision, NPS requires additional time to update its analyses and make that long-term decision. NPS has previously stated its intent to implement a ''transition year'' under the same requirements and restrictions as the 2009 interim regulation. Current information and analyses in this EIS are sufficient to support such use for another year. Selecting Alternative 8, the new Preferred Alternative, would provide the additional time needed to complete the analyses of long-term alternatives. NPS would issue a Record of Decision selecting Alternative 8, and following that, would issue a final rule, effective for one year, to implement the decision. A separate Notice of Intent to Prepare a Supplemental EIS would be published in the **Federal Register**.

More information regarding Yellowstone in the winter, including educational materials and a detailed history of winter use in Yellowstone, is available at *http://www.nps.gov/yell/planvisit/winteruse/index.htm.*

Dated: October 14, 2011.

Colin Campbell,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2011–28582 Filed 11–3–11; 8:45 am]

BILLING CODE 4312–FY–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–650]

Advisory Opinion Proceeding; Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same; Determination To Institute an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 30, 2008, based on a complaint filed by John Mezzalingua Associates, Inc., d/b/a PPC, Inc. of East Syracuse, New York (''PPC''). 73 FR 31145 (May 30, 2008). The complaint alleged

violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coaxial cable connectors and components thereof and products containing the same by reason of infringement of various patents, including U.S. Patent No. 6,558,194 (''the '194 patent''). The complaint named eight respondents. After institution, two respondents were terminated based on consent orders and four respondents were found to be in default (''defaulting respondents''). Two respondents, Fu-Ching Technical Industry, Co., Ltd., and Gem Electronics, Inc., remained active.

On October 13, 2009, the Administrative Law Judge (''ALJ'') issued his final initial determination (''ID'') and recommended determination on remedy and bonding. The ALJ found a violation of section 337 by the defaulting respondents in connection with the '194 patent. On December 14, 2009, the Commission determined to review the final ID in part, but the Commission did not review the ALJ's determination with respect to the '194 patent. On March 31, 2010, the Commision issued a General Exclusion Order with respect to the '194 patent. The Commission issued a general exclusion order with respect to U.S. Patent No. 5,470,257 on September 13, 2011 following remand from the U.S. Court of Appeals for the Federal Circuit. *John Mezzalingua Assoc.* v. *Int'l Trade Comm.,* 2011 U.S. App. Lexis 8806 (Fed. Cir. April 28, 2011).

On September 12, 2011, non-respondent, Holland Electronics, LLC (''Holland'') of Ventura, California filed a request for an advisory opinion under Commission Rule 210.79 (19 CFR 210.79) that would declare that its coaxial cable connectors, utilizing an axial but not radial compression for deformation (''axial connectors''), are outside of the scope of the Commission's March 31, 2010 General Exclusion Order. Holland further requested that the Commission conduct all proceedings related to the advisory opinion in an expedited manner and indicated that referral to the ALJ is unnecessary.

The Commission has examined Holland's request for an advisory opinion and has determined that it complies with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79(a). Accordingly, the Commission has determined to institute an advisory opinion proceeding. The Commission directs complainant PPC and the Commission investigative attorney to state their views regarding whether they oppose Holland's request for an advisory opinion that its axial connectors are not covered by the March 31, 2010 General Exclusion Order, and if so, whether they believe the matter should be referred to the ALJ.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.79(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.79(a)).

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–28586 Filed 11–3–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice; correction.

SUMMARY: The Department of Justice published a document in the **Federal Register** of September 13, 2011, concerning the Department of Justice's standing members of the Senior Executive Service Performance Review Boards. The names and position titles of two executives were inadvertently omitted from the document.

FOR FURTHER INFORMATION CONTACT: Lisa Schwartz, Assistant Director, Executive and Political Personnel, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–0677.

Correction

In the **Federal Register** of September 13, 2011, in FR Document 2011–23394, on page 56477, under the heading Executive Office for U.S. Attorneys—EOUSA, and under the name JARRETT, HOWARD MARSHALL DIRECTOR, add the name WILKINSON, ROBERT PRINCIPAL DEPUTY AND CHIEF OF STAFF. Also, on page 56480, under the heading U.S. Marshals Service—USMS, and under the name JONES, SYLVESTER E ASSISTANT DIRECTOR, WITNESS SECURITY, add the name HEMPHILL, ALBERT ASSISTANT DIRECTOR, FINANCIAL SERVICES.

These new names are ''as of September 13, 2011.''

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. 2011–28651 Filed 11–3–11; 8:45 am]

BILLING CODE 4410–NW–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Five Live Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to twelve months to begin January 2012. Through this cooperative agreement, funds will be made available for the production of a minimum of five live satellite/Internet broadcasts. All of the proposed satellite/Internet programs are three-hour nationwide broadcasts. This agreement also includes the production of pre-recorded video clips and screen captures that will serve to enhance the instructional value of the broadcast or otherwise enhance the ''look and feel'' of visual materials, the set, or other items to be used during the broadcast.

DATES: Applications must be received by 4 p.m. (EDT) on Monday, November 21, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand-delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0, for pickup. Faxed applications will not be accepted. Only electronic applications submitted via *http://www.grants.gov* will be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *http://www.nicic.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Steven Swisher, Correctional Program Specialist, Academy Division, National Institute of Corrections. He may be

reached by calling (800) 995–6429, ext 6623, or by email at *sswisher@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet broadcasting is defined as training/education transpiring between trainers and facilitators at one location as participants/students receive instruction at other locations via technology. NIC uses satellite broadcasting and the Internet economically to reach a larger and broader audience from federal, state, tribal, and local criminal justice agencies, as well as new partners and vested stakeholders who have a common interest in and/or contact with offender populations. Many of these audiences were previously hard to reach using traditional modes of training.

Additionally, NIC, as a leader in correctional learning, continually seeks to use and integrate various forms of visual technology to support and enhance learning within its full continuum of training delivery strategies.

Purpose: The purpose of funding this initiative is to produce a minimum of five live satellite/Internet broadcasts, disseminating current and emergent information to the criminal justice community. Each of these broadcasts will be 3 hours long. Additionally, as part of this award, the agreement includes the production of pre-recorded video clips and screen captures that will serve to enhance the instructional value of each broadcast or otherwise enhance the ''look and feel'' of visual materials, the set, or other items to be used during the broadcast. Examples of these items may include but are not limited to: The production of 12 to 15 short video vignettes (less than 3 minutes each) to support the content of the satellite/Internet broadcasts or to be used by NIC to enhance other training projects; up to 20 short 10- to 15-second video bumps designed around the theme of the broadcast to assist in transitions between content elements of the broadcast; or custom designed visuals and props used during a specific broadcast to enhance the set design or otherwise support the content of the broadcast.

Scope of Work: To address the scope of work for this project, the following will be needed:

Producer Consultation and Creative Services: The producer for this project plays a key role in managing the project, but he/she must also possess a wide range of technical experience, including script writing, in the development and delivery of video broadcasts. The producer will (1) consult and collaborate with NIC's distance learning administrator (DLA) on program design, program coordination, design and field segments, and content development and (2) participate in/coordinate all planning meetings and planning activities that support each broadcast. A minimum of one face-to-face planning session will be held for each broadcast. Planning sessions typically last 2.5 days and are convened in the NIC Aurora office or at the Washington, DC headquarters.

The producer must plan all other activities through telephone and various virtual online platforms (*e.g.,* WebEx, which NIC provides) and consult and collaborate with NIC's DLA in the selection of talent for each broadcast. This will entail review of print and audiovisual materials, as well as phone conversations with potential talent. Face-to-face interviews typically will not be required.

The producer must work with each consultant/trainer to develop his/her content for delivery using the satellite/Internet format. This will entail regular email and telephone communication as well as regularly scheduled updates with key stakeholders on the broadcast team.

The producer will serve as the coordinator of script development, graphic design, production elements, and rehearsals for each broadcast and use his/her professional expertise in designing creative ways to deliver satellite/Internet broadcasts.

The producer will develop detailed storyboards for each broadcast. Significant contribution to the development of the storyboard will come from designated content experts, the talent selected to appear in the broadcast, and NIC's DLA. NIC's DLA maintains final approval of all storyboards, video, and other materials produced or used in any broadcast. Please refer to ''Content Development Countdown'' attached to this announcement and also found on NIC's Web site at *http://www.nicic.gov.*

The producer will supervise camera and audio crews assigned to capture testimonial footage from leaders in the criminal justice field, who answer questions and provide general comment on an array of correctional topics. There will be two of these sessions during this agreement. Each shoot will entail 1- to 2-day video shoots at national correctional conferences where appropriate talent/audiences will be convening.

Content Development Process: Having both quality content development and innovative as well as engaging content delivery, are critical components of successful live broadcasts. Therefore, the content development process, as part of the storyboard/rundown development for each broadcast, must be carefully developed. The following process outlines the necessary steps the producer must take to ensure that the content of each broadcast is informative, innovative, and engaging. While each broadcast must be treated as a unique product, it is expected that the following processes will be followed. If adjustments or modifications need to be made to the process to meet the unique needs or circumstances of any of the broadcasts, approval of the DLA is required. Please refer to ''Content Development Countdown'' attached to this announcement and found on NIC's Web site at *http://www.nicic.gov.*

STEP ONE: Convene a 2.5-day planning meeting with the NIC DLA, an NIC representative/program manager with content knowledge of the broadcast, and 4 to 5 other stakeholders vested in the topic being developed. (Attendees fees, travel, and per diem for the planning meeting and the rehearsal/broadcast days are paid for by NIC and are not part of this award.) Attendees are told they are helping develop ideas for a broadcast on a specific topic. Participation in the planning meeting does not necessarily mean that participants will be used as talent during the live broadcast. *Note:* The exception may be if some of the attendees have been specifically determined by NIC to be critical to the broadcast because of their specific expertise or background.

NIC's DLA will lead meetings with the broadcast host(s) and video producer in attendance. (Costs associated with the producer's participation in the planning meetings and the rehearsal/broadcast days for each broadcast are to be included within this award.) The meeting will (1) set learning objectives, (2) develop a theme, metaphor, or other creative hook that will set a context for the broadcast (The hook will support the content of the broadcast and will assist in determining the creative approaches through which that content can be delivered in a live broadcast.), (3) develop a rough outline of key content for each broadcast segment, using content learning objectives as a guideline, (4) generate a list of resources (videos, photos, *etc.*) that could support the segment, and (5) discretely determine which experts might be good on camera and involved in the future development process.

STEP TWO: Cast the program after the meeting is complete. The producer, host(s), and DLA will meet with appropriate NIC staff soon after the planning meeting—the next day is

preferred. Together, the meeting participants will (1) determine a list of presenters for the program, (2) determine the fields that the presenters should come from and what casting types are needed to cover each segment or content type, (3) create a cast list, (4) set deadlines for pre-interviewing and recruiting those available on the scheduled dates for the rehearsal and broadcast (*Note:* Selected talent must be available for both the rehearsal day and the broadcast day in order to participate.), (5) conduct pre-interviews to gather content and make suggestions for on-camera appearances, and (6) work with the DLA and appropriate NIC staff named as on-camera presenters and assign them to specific program segments.

STEP THREE: Develop content for the broadcast. The producer will schedule a call/video conference with the producer, host(s), DLA, and each segment's small group of presenters; review, revise, and annotate the broadcast outline; generate a further list of resources during the call (The producer may need two calls per segment, but the goal would be one.); and have the DLA sign off on the broadcast's content outline.

STEP FOUR: Develop the broadcast programming. The producer, host(s), and/or DLA will (1) outline the program and its elements, including content questions (most segments of each program will be designed so that a host(s) will facilitate each segment, rather than allowing small groups of practitioners to facilitate on their own.); (2) revise outlines and make initial testimonial selections, working from transcripts, acquired clips, and other source materials; (3) work with DLA to identify graphic/visual needs and content; (4) work with production staff to compile support materials (making direct contact with prisons, jails, *etc.*); (5) work with production staff to develop all graphics and visuals for approval; (6) work with the DLA to review and approve all materials and program development, including standardized intro and outro segments highlighting NIC and its graphic image.

STEP FIVE: Prepare the broadcast. The awardee will book one preparation call with presenters the week before the cast and crew travel to the shoot location. The call will cover logistics and an overview of the agenda for the 2 days. On rehearsal day (typically, Tuesday morning), the producer will show all broadcast staff and talent the final video clips, graphics, and visuals, *etc.,* and complete a technical run through of the program. The host(s) and producer will lead staff through the program outline. *Note:* If the schedule allows, it would be best to have 12 to 14 weeks between each planning meeting and the broadcast. Please refer to ''Content Development Countdown'' attached to this announcement and found on NIC's Web site at *http://www.nicic.gov.*

This allows enough time to do a round of pre-interviews and make on-camera selections. Production schedules will overlap to fit all broadcasts within the award period. Planning sessions for back-to-back live events (a maximum of two at a time) may be desirous for a number of reasons. This planning model will be used as a pilot for two of the events set for this award.

It is necessary, due to the 12- to 14-week planning development process and minimum of 5 broadcasts to be delivered as part of this award, that the awardee must prepare to provide ample time for one producer to be able to handle multiple projects at one time and/or be staffed to provide multiple producers to achieve the scope of work for this agreement. A definitive plan to accomplish this role and function must be included in the proposal.

Pre-Production Video: The producer will supervise the production of vignettes to be used in each of the broadcasts, as well as the vignettes to be produced as stand-alone pieces to support other NIC curriculum projects. There will be twelve to fifteen of these vignettes in all. Content experts (typically, correctional professionals) will draft conceptual outlines of the scripts for each vignette. From these outlines, the producer (or a script writing expert) will develop scripts and have them approved by NIC's DLA. These scripts will be developed and approved in advance of the shoot and will generally use 2 to 4 speaking parts per scene (and additional extras). As topics are determined, the producer will work with the DLA to apportion the shooting days and/or to use those days to produce other equivalent creative elements for each broadcast.

The producer will budget for at least four 10-hour days of vignette shooting, which will include: (1) Professional actors playing the parts designated by the script, (2) a professional video crew, (3) professional quality scenery, props, and wardrobe elements, and (4) broadcast quality lighting and high definition camera gear. It is expected that each shooting day will include 3 to 6 scenes, each resulting in 1–4 minutes of screen time.

Additionally, testimonial video footage must be captured well in advance of broadcast delivery dates to ensure ample time for considering the clips for inclusion in the storyboard of a broadcast and to allow sufficient time for editing. These video clips are used in the broadcasts to support the content delivery and to provide transitions/bumps between segments/modules within the broadcast. NIC will provide the raw footage of up to 10 testimonial interviews (approximately 15 minutes each) to the producer for each of the five broadcasts. Testimonial footage will also be captured by the producer from video shoots that NIC will arrange to occur at 2 to 3 relevant correctional and/or criminal justice conferences where targeted audiences will generally convene. The producer will provide the interviewer, camera staff, and any required lighting and audio equipment for each conference testimonial shoot. The format for all field shooting will be either Betacam, DVD Pro Digital, and/or Mini DVD.

Video Production: Video production for each of the broadcasts and each video vignette for stand-alone projects will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voiceover, audio, and music, if necessary, for each broadcast or vignette. The awardee will develop a detailed storyboard/rundown for each broadcast. Significant contribution to the development of the storyboard/rundown will come from designated content experts, the talent selected to appear in the broadcasts, and the DLA. The DLA maintains final approval of all storyboards/rundowns, video, and other materials used in any broadcast. Innovative and thought-provoking opening sequences must be produced for each broadcast show open with graphics, video, and music. Show opens will be approximately 45 seconds in length. In addition, the broadcasts will use graphics to enhance viewer learning. Graphic design will be used as packaging for all video roll-ins and carried out through all PowerPoint slides and onscreen graphics.

The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. The producer will budget for a creative treatment that is unique to each broadcast, which will include simple on-set design elements (*e.g.,* a freestanding door that opens, large scale graphics printed on foam core, lighting effects with customized gobos, thematic prop elements, *etc.* Each set will include signage, posters, props, and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise

the complete production crew on rehearsal and production days.

Production: The awardee's production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set by the DLA for each rehearsal and broadcast. The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. Each set should include signs, posters, props and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise the complete production crew on rehearsal and production days. A production crew shall include the following: Director, audio operator, video operator, character generator operator, floor director, four camera operators, teleprompter operator, online Internet coordinator, makeup artist (at production time only), and interactive assistance personnel (for fax, email, and telephone communications).

Post-Production: The producer oversees the production and editing of a DVD of each broadcast for a final and approved cut by the DLA. Within one week after each broadcast, the awardee will provide the DLA a live and active link to the archived version of the broadcast. Within sixty (60) days after each broadcast, the awardee will provide the DLA five master copies of the edited and approved broadcast. These copies must be provided on a single-sided DVD. The broadcast footage will need to be edited to include a splash page that provides an outline/menu of the content of the broadcast by modules, and/or other appropriate categories to assist users in finding specific content in which they may have an interest. Additionally, any original vignettes produced for the broadcast must be included on the DVD. All edits must be approved by the DLA.

Transmission: The producer will (1) purchase satellite uplink time that will include the footprints of Alaska, Hawaii, the Virgin Islands, and the continental United States; (2) acquire downlink transponder time from Ku band; (3) purchase Internet streaming of 200 simultaneous feeds for each program, and (4) be able to provide closed captioning on the final edited DVD of each production. For each broadcast, the awardee will test the Internet link and streaming. The test should verify connectivity to the site, as well as audio and video quality. The test must occur at least 72 hours prior to the start of the live broadcast. The awardee will provide real-time, live, toll-free telephone support to participant sites or individual participants to address access, connectivity, and quality issues on the day of the live broadcast beginning at least 1 hour in advance of the broadcast and continuing through the broadcast.

Equipment: Applicants must have a minimum of the following equipment: Broadcast studio of approximately 2,000 square feet, with an area for a studio audience of 10 to 20 people; four digital studio cameras (one of which must be an overhead camera with robotic control); chroma key: At least one wall with chroma key capability, along with a digital ultimate keying system, a tape operation facility providing playback/record in various formats, including DVD, Betacam, Betacam SP, SVHS, VHS, U-Matic ¾; and SP, and Advit, or comparable editing bay; three-dimensional animation with computer graphics; Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player-Capture Closed Captioning; archive ability for all satellite/Internet broadcasts from this agreement; computer teleprompter for at least three studio cameras; interruptible fold back (IFB) or in-ear monitor (IEM) for all key presenters and the moderator/hosts during each live broadcast with individual control from the control room and the DLA; wireless microphones for each presenter/all talent during the live broadcasts; and microphones for the studio audience at each roundtable (they should be able to pick up audio) during the training program (It is expected that studio audiences will be used in at least four of the live broadcasts.); satellite uplink and transponder: Ku band digital with the footprints of Alaska, Hawaii, Virgin Islands, and the continental United States; Web/Internet equipment for Internet link during live broadcasts; and portable field equipment (digital video cameras with recording decks, portable lighting kits, microphones [both hand-held and lapel], field monitors, audio mixers, and camera tripods).

Personnel: Applicants must have a minimum of the following qualified personnel: Producer/director; script writer; set designer; lighting designer; audio operator; graphics operator; tape operator; location camera operator; teleprompter operator; clerical/administrative support; makeup artist (as needed during live production); closed caption operator (as needed during production).

Application Requirements: Applications should be concisely written, typed double spaced, and reference the project by the ''NIC Opportunity Number'' and Title in this announcement. The package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts, as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work; a budget narrative in response to the statement of work; and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Assurances—Non-Construction Programs (These forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*).

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there must be an original and three copies of the full proposal (program and budget narratives, application forms, and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3- to 5-member review panel. The criteria for the evaluation of each application will be as follows:

Technical and Programmatic (30%)

Are all elements outlined within the scope of work effectively understood and a description provided of how each element will be addressed? Is there a complete and precise, technically sufficient description of the design and methodology for the required services? Is there a clear statement of how each project deliverable will be accomplished, including major tasks that will lead to achieving the goal, the strategies to be employed, required

staffing and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational (40%)

Does the proposed project staff possess the skills, knowledge, and expertise necessary to complete the tasks, including all of the elements listed within the project scope of work? Does the applicant agency, institution, organization, individual, or team have the organizational capacity to complete all deliverables? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Does the applicant demonstrate the ability to purchase satellite uplink and Internet streaming with closed captioning? Does the applicant demonstrate the ability to produce vignettes and capture testimonials for each broadcast? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the award period? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results? Is the applicant able to work within the time constraints outlined in the solicitation?

Past Performance (30%)

Is the applicant experienced in producing live broadcasts, in producing training video to support program and training content, or in capturing video from field locations? Does the applicant have experience writing original, scripted content for broadcast? Has the applicant worked with non-professional actors/talent in the past? Can the applicant provide adequate studio space and all equipment necessary to produce the required deliverables? Can the applicant provide audiovisual examples of past work?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–(800) 333–0505 (if you are a sole proprietor, you would dial 1–(866) 705–5711 and select option 1).

Registration in the CRR can be done online at the CRR Web site: http://www.crr.gov. A CRR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 12AC02. This number should appear as a reference line in your cover letter, where indicated on Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog Federal Domestic Assistance Number: 16.601

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2011–28633 Filed 11–3–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for Reintegration of Ex-Offenders-Adult Reporting System, Extension With Program Name Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the extension of the currently approved reporting and recordkeeping system to support the Reintegration of Ex-Offenders-Adult (RExO–Adult) grants, which expires on March 31, 2012.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 3, 2012.

ADDRESSES: Submit written comments to Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* Jenn Smith, *Telephone number:* (202) 693–3597 (this is not a toll-free number). *Fax:* (202) 693–3113. *Email: smith.jenn@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the Reintegration of Ex-Offender-Adult (formerly Prisoner Reentry Initiative) grants, faith-based and community organization grantees agree to submit participant data and quarterly aggregate reports for individuals who receive services through RExO–Adult programs and their partnerships with One-Stop Centers, local Workforce Investment Boards, employment providers, the criminal justice system, and local housing authorities. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and placement services, housing assistance, mentoring, and other services essential to reintegrating ex-offenders through RExO–Adult programs.

This requests an extension of the currently approved information collection to meet the reporting and recordkeeping requirements of the Reintegration of Ex-Offenders-Adult grants through an ETA-provided, Web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, RExO–Adult grantees demonstrate their ability to establish effective partnerships with the criminal justice system, local Workforce Investment Boards, local housing authorities, and other partner agencies. They also document the cost effectiveness of their projects.

The MIS reporting and recordkeeping system incorporates each of these aspects necessary for program evaluation.

Five outcome measures are used to measure success in the RExO–Adult grants: entered employment rate, employment retention rate, attainment of a degree or certificate, average six-month post-program earnings, and recidivism rate.

Several of these conform to the common performance measures implemented across federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stayed employed; and how

many successfully completed an educational program. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA also collects data from RExO–Adult grantees on program activities, participants, and outcomes that are necessary for program management and for conveying full and accurate information on the performance of RExO–Adult programs to policymakers and stakeholders.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold RExO-Adult grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with program name change.

Title: Reintegration of Ex-offenders-Adult (formerly PRI) Reporting System.

OMB Number: 1205–0455.

Affected Public: Faith-Based and Community Organization grantees.

Form(s):

Total Annual Respondents: 38 Grantees.

Annual Frequency: Quarterly.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours
Participant Data Collection	38	Continual	5,700	1.8	10,260
Quarterly narrative progress report	38	Quarterly	152	16	2,432
Quarterly performance report	38	Quarterly	152	16	2,432
Totals	38		7,202		15,124

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed this 1st day of November 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–28646 Filed 11–3–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,224]

Grays Harbor Paper, LLC, Including on-site Workers From Barrier West, Inc., Hoquiam, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 26, 2011, applicable to workers of Grays Harbor Paper, LLC, Hoquiam, Washington. The workers are engaged in activities related to the production of uncoated free sheet paper. The notice was published in the **Federal Register** on September 14, 2011 (76 FR 56816).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers from Barrier West, Inc. were employed on-site at the Hoquiam, Washington location of Grays Harbor Paper, LLC. The Department has determined that these workers were sufficiently under the control of Grays Harbor Paper, LLC to be included in this certification.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased imports of uncoated free sheet paper.

Based on these findings, the Department is amending this certification to include workers from Barrier West, Inc. working on-site at the Hoquiam, Washington location of Grays Harbor Paper, LLC.

The amended notice applicable to TA–W–80,224 is hereby issued as follows:

All workers of Grays Harbor Paper, LLC, including on-site workers from Barrier West, Inc., Hoquiam, Washington, who became totally or partially separated from employment on or after June 7, 2010, through August 26, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–28595 Filed 11–3–11; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on November 17–18, 2011.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 17–18, 2011, will not be open to the public pursuant to subsections (c)(4),(c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 17, 2011 will be as follows:

Committee Meetings

(Open to the Public)
Policy Discussion 9–10:30 a.m.
Challenge Grants Federal/State Partnership—Room 507
Digital Humanities—Room 402
Education Programs—Room M–07
Preservation and Access—Room 415
Public Programs—Room 421
Research Programs—Room 315
(Closed to the Public)
Discussion of specific grant applications and programs before the Council
10:30 a.m. until Adjourned
Challenge Grants Federal/State Partnership—Room 507
Digital Humanities—Room 402
Education Programs—Room M–07
Preservation and Access—Room 415
Public Programs—Room 421
Research Programs—Room 315

The morning session of the meeting on November 18, 2011 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Presentation by filmmaker Hugo Perez on his film *Neither Memory nor Magic: Poetry of Witness*
3. Staff Report
4. Congressional Report
5. Budget Report
6. Reports on Policy and General Matters
   a. Challenge Grants
   b. Federal/State Partnership
   c. Digital Humanities
   d. Education Programs
   e. Preservation and Access
   f. Public Programs
   g. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2011–28615 Filed 11–3–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2011–0238]

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company (STPNOC, the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, which authorizes operation of the South Texas Project (STP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Matagorda County in Texas.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Part 12, ''Specific exemptions,'' the licensee has, by letter dated December 21, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103630408), requested an exemption from 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [(ECCS)] for light-water nuclear power reactors,'' and Appendix K to 10 CFR part 50, ''ECCS Evaluation Models.'' The regulations in 10 CFR 50.46 contain acceptance criteria for the ECCS for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of zircaloy or ZIRLO™, which is a material different from Optimized ZIRLO™. The licensee's requested exemption relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and Appendix K is needed to support the use of a different fuel rod cladding material. Accordingly, the licensee requested an exemption that would allow the use of Optimized ZIRLO™ fuel rod cladding at STP, Units 1 and 2.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 (1) When the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the use of Optimized ZIRLO ™ fuel rod cladding material at STP, Units 1 and 2. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Westinghouse topical reports WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' dated July 2006, contain the justification to use Optimized ZIRLO™ fuel rod cladding material in addition to Zircaloy-4 and ZIRLO™ (these topical reports are non-publicly available because they contain proprietary information). The NRC staff approved the use of these topical reports, subject to the conditions stated in the NRC staff's safety evaluation for each topical report. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ were reviewed and approved by the NRC staff (ADAMS Accession No. ML062080569), and demonstrate an acceptable retention of post-quench ductility up to the 10 CFR 50.46 limits of 2200 degrees Fahrenheit and 17 percent equivalent clad reacted. Furthermore, the NRC staff has concluded that oxidation measurements provided by the licensee illustrate that oxide thickness (and associated hydrogen pickup) for Optimized ZIRLO™ at any given burnup would be less than that for both zircaloy and ZIRLO™ (ADAMS Accession No. ML073130555). Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain improved post-quench ductility over ZIRLO™. Finally, the licensee stated that Westinghouse will perform an evaluation to ensure that the Optimized ZIRLO™ fuel rods continue to satisfy 10 CFR 50.46 acceptance criteria utilizing currently NRC-approved loss-of-coolant accident (LOCA) models and methods.

The underlying purpose of 10 CFR part 50, appendix K, Section I.A.5, ''Metal-Water Reaction Rate,'' is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K of 10 CFR part 50 requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. Since the use of the Baker-Just equation presumes the use of zircaloy-clad fuel, strict application of the rule would not permit use of the equation for Optimized ZIRLO™ cladding for determining acceptable fuel performance. Westinghouse has demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the Optimized ZIRLO™ advanced alloy as a fuel cladding material.

The NRC-approved topical reports have demonstrated that predicted chemical, thermal, and mechanical characteristics of the Optimized ZIRLO™ alloy cladding are bounded by those approved for ZIRLO™ under anticipated operational occurrences and postulated accidents. Reload cores are required to be operated in accordance with the operating limits specified in the technical specifications and the core operating limits report.

Based on the above, no new accident precursors are created by using Optimized ZIRLO™, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety due to using Optimized ZIRLO™.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at STP, Units 1 and 2. This change to the plant configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Optimized ZIRLO™, even though the evaluations above show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material at STP, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment and published an environmental assessment for this exemption on October 11, 2011 (76 FR 62861).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of October 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–28608 Filed 11–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0062; Docket No. 50–261]

Carolina Power & Light Company; H. B. Robinson Steam Electric Plant, Unit 2; Exemption

1.0 Background

Carolina Power & Light Company (the licensee) is the holder of Renewed Facility Operating License No. DPR–23, which authorizes operation of the H. B. Robinson Steam Electric Plant (HBRSEP), Unit 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of one pressurized-water reactor located in New Hill, North Carolina.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), 50.46,

''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' paragraph (a)(1)(i) provides requirements for reactors containing uranium oxide fuel pellets clad in either zircaloy or ZIRLO. Additionally, Appendix K to 10 CFR part 50, ''ECCS [Emergency Core Cooling System] Evaluation Models,'' specifies the use of zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated loss-of-coolant accident. Therefore, both of these regulations either state or assume that either zircaloy or ZIRLO is used as the fuel rod cladding material.

By letter dated October 19, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102980142), the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 to allow the use of fuel rods clad with AREVA's M5 alloy. The advanced zirconium-based M5 alloy is a proprietary alloy and chemically different from zircaloy or ZIRLO fuel cladding materials, which are approved for use. The exemption request related solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is needed to support transition to the AREVA fuel design with advanced zirconium-based M5 alloy at HBRSEP Unit 2.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The requested exemption to allow the use of M5 advanced zirconium alloy rather than zircaloy or ZIRLO for fuel cladding material for reloads at HBRSEP, Unit 2, satisfies these requirements as described below.

Authorized by Law

This exemption would allow the use of M5 advanced alloy, in lieu of zircaloy or ZIRLO, for fuel rod cladding in fuel assemblies at HBRSEP, Unit 2. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. In the approved topical report BAW–10227(P)(A), Revision 1, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' dated June 18, 2003, Framatome ANP demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy fuel rod cladding to M5 fuel rod cladding. The analysis described in the topical report also demonstrated that the ECCS acceptance criteria applied to reactors fueled with zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding.

The NRC staff's review and approval of topical report BAW–10227(P)(A), Revision1 addressed all of the important aspects of M5 with respect to ECCS performance requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria; (2) M5 material properties including fuel rod ballooning and rupture strains; and (3) steam oxidation kinetics and applicability of Baker-Just weight gain correlation. A subsequent NRC-approved topical report, BAW–10240P–A, ''Incorporation of M5 Properties in Framatome ANP Approved Methods,'' further addressed M5 material properties with respect to the loss-of-coolant accident (LOCA) applications.

Appendix K, paragraph I.A.5, of 10 CFR part 50 ensures that cladding oxidation and hydrogen generation are appropriately limited during a LOCA, and conservatively accounted for in the ECCS evaluation model. Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In topical report BAW–10227(P)(A), Revision 1, Framatome ANP demonstrated that the Baker-Just model is conservative in the evaluated post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material, and that the amount of hydrogen generated in an M5-clad core during a LOCA will remain within the HBRSEP, Unit No. 2, design basis.

The M5 alloy is proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard zircaloy (1.7 percent tin) and low-tin zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures.

The NRC staff has reviewed the advanced cladding and structural material, M5, for pressurized-water reactor fuel mechanical designs as described in BAW–10227(P)(A), Revision 1. In the safety evaluation for this topical report, the NRC staff concluded that, to the extent and limitations specified in the staff's evaluation, the properties of M5 and mechanical design methodology are acceptable for referencing in fuel reload licensing applications.

Based on the above, no new accident precursors are created by the use of M5 fuel cladding at HBRSEP, Unit 2; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of M5 advanced alloy, in lieu of zircaloy or ZIRLO, for fuel rod cladding in fuel assemblies at HBRSEP, Unit 2. The M5 fuel rod cladding is similar in design to the current cladding material used at HBRSEP, Unit 2. This change in cladding material will not result in any changes to the security aspects associated with the control of special nuclear material. The change in cladding material is unrelated to other security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 is to ensure that nuclear power facilities have adequately demonstrated the cooling performance of their ECCS. As discussed above, topical report BAW–10227(P)(A), Revision 1 concluded that the effectiveness of the ECCS will not be affected by a change from zircaloy fuel rod cladding to M5 fuel rod cladding and also demonstrated that the ECCS acceptance criteria

applied to reactors fueled with zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding.

The underlying purpose of 10 CFR part 50, appendix K, paragraph I.A.5 is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. Topical Report BAW–10227(P)(A), Revision 1, demonstrated that the Baker-Just model is conservative in the evaluated post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material.

Based on the above, the underlying purpose of 10 CFR 50.46 and 10 CFR part 50, Appendix K is still met and literal compliance is not necessary for use of M5 fuel rod cladding. Therefore, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50.46 and Appendix K of 10 CFR part 50 exist.

4.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12 the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and Appendix K of 10 CFR part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (October 26, 2011; 76 FR 6633). This exemption is effective upon issuance.

Dated at Rockville, Maryland this 31st day of October 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–28610 Filed 11–3–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Reactor Components

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg. 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this application for an export license follows.

NRC Export License Application

DESCRIPTION OF EQUIPMENT

Name of applicant/date of application/date received/ application Number/docket Number	Material type	Total quantity	End use	Destination
Westinghouse Electric Company LLC, August 18, 2011, October 6, 2011, XR174, 11005963.	Complete reactor control rod system and associated equipment.	12	Perform seismic testing necessary for qualification of AP1000 (design) nuclear reactors.	China.

For the Nuclear Regulatory Commission.

Dated this 27th day of October 2011 at Rockville, Maryland.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2011–28617 Filed 11–3–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–32; Order No. 938]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Barronett, Wisconsin post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 9, 2011: Administrative record due (from Postal Service); November 25, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system

at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 25, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Barronett post office in Barronett, Wisconsin. The first petition for review was filed by Donald and July Haseleu. The second petition for review was filed by Illa Theese. The earliest postmark date is October 4, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–32 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 29, 2011.

Categories of issues apparently raised. Petitioners contend that the Postal Service (1) failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 9, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 9, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 9, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 9, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Getachew Mekonnen is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 25, 2011	Filing of Appeal.
November 9, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 9, 2011	Deadline for the Postal Service to file any responsive pleading.
November 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 29, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 19, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 3, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 10, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 1, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28604 Filed 11–3–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–33; Order No. 939]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Woodstock, Minnesota post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 9, 2011: Administrative record due (from Postal Service); November 25, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 25, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Woodstock post office in Woodstock, Minnesota. The first petition for review was filed by Carl E. Gearhart. The second petition for review was filed by Gary Ambrose. The earliest postmark date is October 3, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–33 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 29, 2011.

Categories of issues apparently raised. Petitioners contend that the Postal Service (1) Failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 9, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 9, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov*. Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 25, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov*, unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 9, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 9, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Brent W. Peckham is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

October 25, 2011	Filing of Appeal.

PROCEDURAL SCHEDULE—Continued

November 9, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 9, 2011	Deadline for the Postal Service to file any responsive pleading.
November 25, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 29, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 19, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 3, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 10, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 31, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–28628 Filed 11–3–11; 8:45 am]
BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Public Access to Digital Data Resulting From Federally Funded Scientific Research

ACTION: Notice of Request for Information (RFI).

SUMMARY: In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and encouraging broad public access to unclassified digital data that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Interagency Working Group on Digital Data.

Release Date: November 3, 2011.

Response Date: January 12, 2012.

ADDRESSES: *digitaldata@ostp.gov.*

Issued By: Office of Science and Technology Policy (OSTP) on behalf of the National Science and Technology Council (NSTC).

SUPPLEMENTARY INFORMATION:

Purpose

In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and encouraging broad public access to unclassified digital data that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Interagency Working Group on Digital Data.

Background

The multi-agency Interagency Working Group on Digital Data (Working Group), established under the National Science and Technology Council (NSTC) Committee on Science (CoS), has been tasked with developing options for implementing the digital data policy and standards requirements of Section 103 of ACRA. OSTP will issue a report to Congress, in accordance with Section 103(e) of ACRA, describing priorities for the development of agency policies for ensuring broad public access to the results of federally funded unclassified research, the status of agency policies for public access to digital data resulting from federally funded research, and a summary of public input collected from this RFI and other mechanisms. The Working Group is considering steps that can be taken by Federal agencies to encourage and coordinate the development of agency policies and standards to promote long-term preservation of and access to digital data resulting from federally funded scientific research. Ideally, such policies would harmonize, to the extent practicable and feasible, data management plans for digital data that are collected or otherwise produced either by the agency itself or extramurally with Federal funds. The 2009 report of the Interagency Working Group on Digital Data of the National Science and Technology Council, ''Harnessing the Power of Digital Data,'' recommended that agencies lay the foundations for digital scientific data policy and make their policies publicly available. It also recommended that agencies consider requiring data management plans for projects that will generate ''preservation data''—those data for which the benefits of preservation exceed the costs. Federal science agencies already have some experience with policies to promote long-term preservation and access to scientific data. Indeed current Federal policies promote and in many cases require Federal agencies to make the digital data generated by Federal agencies more publically accessible. However, such policies do not routinely cover data generated through Federal grants, cooperative agreements, and some other types of funding mechanism. Exceptions include, the National Institutes of Health's (NIH) Data Sharing Policy, which requires all investigator-initiated applications with direct costs greater than $500,000 in any single year provide a data management plan. In addition, NIH has more specific data management and data sharing requirements for specific types of projects, such as genome-wide association studies.

In January 2011, the National Science Foundation (NSF) reaffirmed its data management policy requirement, indicating that proposals must include a Data Management Plan that describes how funded researchers will conform to NSF policy on the dissemination and sharing of research results. The NSF policy is clear that ''Investigators are expected to share with other researchers, at no more than incremental cost and within a reasonable time, the primary data, samples, physical collections and other supporting materials created or gathered in the course of work under NSF grants.'' Such models may not necessarily be appropriate for all types of federally sponsored research.

As agencies consider how to further develop digital data policies, it is important to note that all policies for increasing accountability and access to digital data must follow statutory

requirements and follow best practices for protecting confidentiality, personal privacy, proprietary interests, intellectual property rights, author attribution, and for ensuring that homeland and national security interests are not compromised.

The Working Group is now seeking additional insight from ''non-Federal stakeholders, including the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non-federally funded research scientists, and other organizations and institutions with an interest in long-term stewardship and improved public access to the results of federally funded research,'' as described in Section 103(b)(6) of ACRA. Specifically the Working Group seeks further public comment on the questions listed below:

Preservation, Discoverability, and Access

(1) What specific Federal policies would encourage public access to and the preservation of broadly valuable digital data resulting from federally funded scientific research, to grow the U.S. economy and improve the productivity of the American scientific enterprise?

(2) What specific steps can be taken to protect the intellectual property interests of publishers, scientists, Federal agencies, and other stakeholders, with respect to any existing or proposed policies for encouraging public access to and preservation of digital data resulting from federally funded scientific research?

(3) How could Federal agencies take into account inherent differences between scientific disciplines and different types of digital data when developing policies on the management of data?

(4) How could agency policies consider differences in the relative costs and benefits of long-term stewardship and dissemination of different types of data resulting from federally funded research?

(5) How can stakeholders (e.g., research communities, universities, research institutions, libraries, scientific publishers) best contribute to the implementation of data management plans?

(6) How could funding mechanisms be improved to better address the real costs of preserving and making digital data accessible?

(7) What approaches could agencies take to measure, verify, and improve compliance with Federal data stewardship and access policies for scientific research? How can the burden of compliance and verification be minimized?

(8) What additional steps could agencies take to stimulate innovative use of publicly accessible research data in new and existing markets and industries to create jobs and grow the economy?

(9) What mechanisms could be developed to assure that those who produced the data are given appropriate attribution and credit when secondary results are reported?

Standards for Interoperability, Re-Use and Re-Purposing

(10) What digital data standards would enable interoperability, reuse, and repurposing of digital scientific data? For example, MIAME (minimum information about a microarray experiment; see Brazma et al., 2001, Nature Genetics 29, 371) is an example of a community-driven data standards effort.

(11) What are other examples of standards development processes that were successful in producing effective standards and what characteristics of the process made these efforts successful?

(12) How could Federal agencies promote effective coordination on digital data standards with other nations and international communities?

(13) What policies, practices, and standards are needed to support linking between publications and associated data?

Response to this RFI is voluntary. Responders are free to address any or all the above items, as well as provide additional information that they think is relevant to developing policies consistent with increased preservation and dissemination of broadly useful digital data resulting from federally funded research. Please note that the Government will not pay for response preparation or for the use of any information contained in the response.

How To Submit a Response

All comments must be submitted electronically to: *digitaldata@ostp.gov.*

Responses to this RFI will be accepted through January 12, 2012. You will receive an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Inquiries

Specific questions about this RFI should be directed to the following email address: *digitaldata@ostp.gov.*

Form should include:

[Assigned ID #]
[Assigned Entry date]
Name/Email
Affiliation/Organization
City, State
Comment 1
Comment 2
Comment 3
Comment 4,
Comment 5
Comment 6
Comment 7
Comment 8
Comment 9
Comment 10
Comment 11

In addition, please identify any other items the Working Group might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

Please attach any documents that support your comments to the questions.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–28621 Filed 11–3–11; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Public Access to Peer-Reviewed Scholarly Publications Resulting From Federally Funded Research

ACTION: Notice of Request for Information (RFI).

SUMMARY: In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and broad public access to the peer-reviewed scholarly publications that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Task Force on Public Access to Scholarly Publications.

Release Date: November 3, 2011.

Response Date: January 2, 2012.

ADDRESSES: *publicaccess@ostp.gov.*

Issued By

Office of Science and Technology Policy (OSTP) on behalf of the National Science and Technology Council (NSTC).

SUPPLEMENTARY INFORMATION:

Purpose

In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and broad public access to the peer-reviewed scholarly publications that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Task Force on Public Access to Scholarly Publications.

Background

The multi-agency Task Force on Public Access to Scholarly Publications (Task Force), established under the National Science and Technology Council (NSTC) Committee on Science (CoS), has been tasked with developing options for implementing the scholarly publications requirements of Section 103 of ACRA. OSTP will issue a report to Congress, in accordance with Section 103(e) of ACRA, describing priorities for the development of agency policies for ensuring broad public access to the results of federally funded unclassified research, the status of agency policies for public access to publications resulting from federally funded research, and a summary of public input collected from this RFI and other mechanisms.

In 2009 and 2010, OSTP conducted a public consultation about policy options for expanding public access to federally funded peer-reviewed scholarly articles. The Task Force has reviewed the information submitted through OSTP's public consultation (the full set of comments can be viewed on the OSTP Web site [*http://www.whitehouse.gov/blog/2010/03/08/public-access-policy-update*]), experience with the various policies currently in use at a variety of Federal agencies, and a report from the congressionally convened Scholarly Publishing Roundtable (*http://www.aau.edu/WorkArea/showcontent.aspx?id=10044*). The Task Force is now seeking additional insight from ''non-Federal stakeholders, including the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non-federally funded research scientists, and other organizations and institutions with a stake in long-term preservation and access to the results of federally funded research,'' as described in Section 103(b)(6) of the ACRA. Specifically, OSTP seeks further public comment on the questions listed below, on behalf of the Task Force:

(1) Are there steps that agencies could take to grow existing and new markets related to the access and analysis of peer-reviewed publications that result from federally funded scientific research? How can policies for archiving publications and making them publically accessible be used to grow the economy and improve the productivity of the scientific enterprise? What are the relative costs and benefits of such policies? What type of access to these publications is required to maximize U.S. economic growth and improve the productivity of the American scientific enterprise?

(2) What specific steps can be taken to protect the intellectual property interests of publishers, scientists, Federal agencies, and other stakeholders involved with the publication and dissemination of peer-reviewed scholarly publications resulting from federally funded scientific research? Conversely, are there policies that should not be adopted with respect to public access to peer-reviewed scholarly publications so as not to undermine any intellectual property rights of publishers, scientists, Federal agencies, and other stakeholders?

(3) What are the pros and cons of centralized and decentralized approaches to managing public access to peer-reviewed scholarly publications that result from federally funded research in terms of interoperability, search, development of analytic tools, and other scientific and commercial opportunities? Are there reasons why a Federal agency (or agencies) should maintain custody of all published content, and are there ways that the government can ensure long-term stewardship if content is distributed across multiple private sources?

(4) Are there models or new ideas for public-private partnerships that take advantage of existing publisher archives and encourage innovation in accessibility and interoperability, while ensuring long-term stewardship of the results of federally funded research?

(5) What steps can be taken by Federal agencies, publishers, and/or scholarly and professional societies to encourage interoperable search, discovery, and analysis capacity across disciplines and archives? What are the minimum core metadata for scholarly publications that must be made available to the public to allow such capabilities? How should Federal agencies make certain that such minimum core metadata associated with peer-reviewed publications resulting from federally funded scientific research are publicly available to ensure that these publications can be easily found and linked to Federal science funding?

(6) How can Federal agencies that fund science maximize the benefit of public access policies to U.S. taxpayers, and their investment in the peer-reviewed literature, while minimizing burden and costs for stakeholders, including awardee institutions, scientists, publishers, Federal agencies, and libraries?

(7) Besides scholarly journal articles, should other types of peer-reviewed publications resulting from federally funded research, such as book chapters and conference proceedings, be covered by these public access policies?

(8) What is the appropriate embargo period after publication before the public is granted free access to the full content of peer-reviewed scholarly publications resulting from federally funded research? Please describe the empirical basis for the recommended embargo period. Analyses that weigh public and private benefits and account for external market factors, such as competition, price changes, library budgets, and other factors, will be particularly useful. Are there evidence-based arguments that can be made that the delay period should be different for specific disciplines or types of publications?

Please identify any other items the Task Force might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

Response to this RFI is voluntary. Responders are free to address any or all the above items, as well as provide additional information that they think is relevant to developing policies consistent with increased public access to peer-reviewed scholarly publications resulting from federally funded research. Please note that the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

How To Submit a Response

All comments must be submitted electronically to: *publicaccess@ostp.gov*.

Responses to this RFI will be accepted through January 2, 2012. You will receive an electronic confirmation acknowledging receipt of your response,

but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Inquiries

Specific questions about this RFI should be directed to the following email address: *publicaccess@ostp.gov.*

Form should include:

[Assigned ID #]
[Assigned Entry date]
Name/Email
Affiliation/Organization
City, State
Comment 1
Comment 2
Comment 3
Comment 4
Comment 5
Comment 6
Comment 7
Comment 8

Please identify any other items the Task Force might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

{Attachment is: Please attach any documents that support your comments to the questions.}

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–28623 Filed 11–3–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29853]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 28, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

Keystone America Capital Preservation and Income Fund [File No. 811–6237]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 30, 1994, applicant transferred its assets to Keystone Capital Preservation and Income Fund, based on net asset value. Records listing the expenses incurred in connection with the reorganization are no longer available.

Filing Date: The application was filed on October 5, 2011.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Keystone Australia Funds Inc. [File No. 811–5832]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 30, 1994, applicant transferred its assets to Keystone World Bond Fund, then known as Keystone America World Bond Fund, based on net asset value. Records listing the expenses incurred in connection with the reorganization are no longer available.

Filing Date: The application was filed on September 27, 2011.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Global Real Estate Investments Fund [File No. 811–22322]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 29, 2011, applicant transferred its assets to James Alpha Global Real Estate Investments Portfolios, a series of Saratoga Advantage Trust, based on net asset value. Expenses of $80,330 incurred in connection with the reorganization were paid by Ascent Investment Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 27, 2011.

Applicant's Address: Ascent Investment Advisors, LLC, 5251 DTC Parkway #935, Greenwood Village, CO 80111.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28585 Filed 11–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65660; File Nos. SR–EDGA–2011–29; SR–EDGX–2011–28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes Relating to Amendments to EDGA and EDGX Rules Regarding the Registration and Obligations of Market Makers

October 31, 2011.

On August 30, 2011, EDGA Exchange, Inc. and EDGX Exchange, Inc. (''EDGA'' and ''EDGX,'' or ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes relating to amendments to EDGA and EDGX rules regarding the registration and obligations of market makers. The proposed rule changes were published for comment in the **Federal Register** on September 16, 2011.[3]

Section 19(b)(2) of the Act[4] provides that, within forty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve or disapprove the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for these filings is October 31, 2011.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65315 (September 12, 2011), 76 FR 57772 (September 16, 2011) (SR–EDGX–2011–28); Securities Exchange Act Release No. 65316 (September 12, 2011), 76 FR 57787 (SR–EDGA–2011–29).

[4] 15 U.S.C. 78s(b)(2).

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider these proposed rule changes and the issues raised by these proposals.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 15, 2011, as the date by which the Commission should either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–28529 Filed 11–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65468A; File No. SR–NYSEArca–2011–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Managed Fund Shares of TrimTabs Float Shrink ETF under NYSE Arca Equities Rule 8.600; Correction

November 1, 2011.

AGENCY: Securities and Exchange Commission.

ACTION: Order; correction.

SUMMARY: On October 11, 2011, the Securities and Exchange Commission published an Order Granting Approval of Proposed Rule Change to List and Trade Managed Fund Shares of TrimTabs Float Shrink ETF under NYSE Arca Equities Rule 8.600 (''Notice'') in the **Federal Register**. The Order, in the second-to-last sentence of the introductory paragraph, contained the phrase ''[CONFIRM]'' which should have been deleted.

FOR FURTHER INFORMATION CONTACT: Kristie Diemer, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5613.

Correction

In the **Federal Register** dated October 11, 2011, in FR Doc. 2011–26135, on page 62874, the second-to-last sentence of the introductory paragraph is corrected to read as follows:

''The Commission received no comments on the proposal.''

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2011–28609 Filed 11–3–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number DOT–OST–2011–0189]

Agency Information Collection Activities: Request for Comments; Clearance of a New Information Collection; U.S. DOT Mentor Protégé Pilot Program

AGENCY: Office of the Secretary (OST), (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public law 104–13 (44 U.S.C. 3501 *et seq*) this notice announces the information collection request on Mentor Protégé Pilot Program annual report form, and the Mentor Protégé Pilot Program evaluation form.

DOT's Mentor-Protégé Pilot Program enhances the capability of disadvantaged and small business owners to compete more successfully for federal procurement opportunities. The program encourages private-sector relationships and expands DOT's efforts to identify and respond to the developmental needs of small and disadvantaged businesses. The program is administered by the DOT OST Office of Small and Disadvantaged Business Utilization (OSDBU).

Purpose

In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of the U.S. Department of Transportation (DOT) activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC), which includes the design and carry-out programs to encourage, promote, and assist minority entrepreneurs and businesses in getting contracts, subcontracts, and projects related to those business opportunities

The U.S. Department of Transportation (DOT) is implementing a Mentor-Protégé Pilot Program that encourages agreements between large and small business prime contractors and eligible small business protégés.

Small business concerns include small disadvantaged businesses, 8(a) firms, women owned businesses, HUBZone small businesses, veteran-owned-businesses and service disabled veteran-owned small businesses. The program is also designed to improve the performance of DOT contractors and subcontractors, foster the establishment of long-term business relationships between small businesses and prime contractors, and increase the overall number of small businesses that receive DOT contract and subcontract awards.

General Policy

1. Eligible business prime contractors (not under a suspension or debarment action and not in the Excluded Parties List System (ELPS) database) approved as mentor firms may enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors.

2. Eligible small business prime contractors (not under a suspension or debarment action and not in the ELPS database) capable of providing developmental assistance may act as mentors.

3. Protégés may participate in the program in pursuit of a prime contract or as subcontractors under the mentor's prime contract with the Department of Transportation.

4. Mentors and Protégés are solely responsible for finding their counterpart. Therefore, we strongly encourage firms to explore existing business relationships in an effort to establish a Mentor-Protégé relationship.

5. Mentor-Protégé agreements should be for up to 24 months.

6. The duration of this pilot program will be for two years.

Measurement of Program Success

The overall success of the Mentor-Protégé Program will be measured by the extent to which it results in:

a. An increase in the quality of the technical capabilities of the protégé firms.

b. An increase in the number, dollar value and percentage of contracts or subcontracts awarded to protégés since the date of entry into the program.

c. An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program.

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

Annual reports should be submitted by the mentor and protégé firms to the OSDBU on program progress. Only one report per agreement will be submitted for review. The OSDBU will evaluate these reports by considering the following:

1. Detailed actions taken by the mentor, to increase the participation of protégé as seller to the Federal Government.

2. Detailed actions taken by the mentor, to develop the technical capabilities of a protégé as defined in the agreement.

3. The degree to which the protégé has met the developmental objectives in the agreement.

4. The degree to which the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms, DOT or any other Federal agency.

5. In addition to the annual report, mentor and protégé firms should submit an evaluation to the OSDBU at the conclusion of the mutually agreed upon program period, or the voluntary withdrawal by either party from the program, whichever comes first.

Mentor Firms

Eligibility. The mentor can be a business that has graduated from the 8(a) Business Development program, a firm in the transitional stage of the program, or a small or large business. In addition, the mentor must be able to show that it is currently eligible for Federal contracting opportunities, is not under a suspension or debarment action, and is not in the ELPS database. Mentors may have multiple protégés.

Protégé Firms

(1) Eligibility. A protégé should be:

(a) A Small Business (SB), HUBZone, Small Disadvantaged Business (SDB), Women Owned Small Business, Veteran Owned Small Business, or Service Disabled Veteran Owned Small Business

(b) Able to show that it is currently eligible for Federal contracting opportunities, is not under a suspension or debarment action, and is not in the Excluded Parties List System (ELPS) database.

(2) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to the DOT program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

Selection of Mentor or Protégé Firms

Mentor and protégé firms are responsible for selecting their counterpart. The mentor is encouraged to select from a broad base of Small Businesses including SB, SDB, WOSB, VOSB, SDVOSB, and HUBZone firms whose core competencies support the Department of Transportation's mission.

Mentor-Protege Agreement Process

Firms interested in becoming a mentor firm should submit copy of a signed mentor-protégé agreement for each mentor-protégé relationship to DOT OSDBU for review. This will provide OSDBU the opportunity to evaluate the nature and extent of technical and managerial support, and traditional subcontracting support involved in the mentor-protégé relationship, enabling OSDBU to provide advice and assistance to the parties.

The Mentor Protégé agreement should contain:

(1) Name, address, phone, and email of mentor and protégé firm(s) and a point of contact within both firms who will oversee the agreement.

(2) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, including a schedule for providing assistance, and criteria for evaluation of the protégé's developmental success.

(3) Program participation term .

(4) Other terms and conditions, as appropriate

(5) Procedures for the mentor's voluntary withdrawal from the program including notification of the protégé firm and the OSDBU. The Mentor should provide at least 30 days' written notice to OSDBU before withdrawing from the program.

(6) OSDBU will review a Mentor Protégé agreement no later than 30 days after receipt.

(7) Following OSDBU review, the mentor may implement the developmental assistance program.

OSDBU Review of Mentor-Protégé agreement

(1) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and DOT.

(2) OSDBU will review the information to ensure the mentor and protégé are both eligible for the program and provide appropriate advice and assistance to the firms concerning the agreement and its implementation.

(3) OSDBU will notify the parties if changes in the agreement are advisable in order to make the agreement meet the objectives of the mentor-protégé program. The mentor and protégé should incorporate OSDBU recommendations before implementing the agreement.

(4) Upon completion of the review, the mentor may implement the developmental assistance program.

Developmental Assistance

The forms of developmental assistance a mentor can provide to a protégé include:

- Management, financial and/or technical assistance.
- Overall business management/ planning.
- Cooperation on joint venture projects.
- Rent-free use of facilities and/or equipment.
- Temporary assignment of personnel to protégé for the purpose of training.
- Any other types of mutually beneficial assistance.

Internal Controls

1. The OSDBU will oversee the program to achieve program objectives.

2. OSDBU will review and evaluate mentor-protégé agreements for practicality, and accuracy of provided information.

3. OSDBU can perform site visits where Mentor-Protégé activity is performed.

4. OSDBU will review annual reports to measure protégé progress against the established developmental assistance included in the approved agreement.

5. If OSDBU determines that the objectives of the agreement are not met, OSDBU may conclude the existing Mentor-Protégé agreements if it determines that such actions are in the best interest of the agency. The OSDBU will communicate this decision in writing, and will be sent to the mentor and protégé after approval by the Director, OSDBU or representative.

DATES: Written comments should be submitted by January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Leonardo San Roman, Small Business Specialist, Procurement Assistance Division, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 1200 New Jersey Ave SE., Room W56–497, Washington, DC 20590. *Telephone:* 1-(800) 532–1169 or (202) 366–1930, *by email: mentorprotege@dot.gov.* or visit our Web site at *http://www.osdbu.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. DOT Mentor Protégé Pilot program.

OMB Control Number: This is a proposed new information collection.

Forms: Mentor Protégé pilot program annual report; and Mentor Protégé pilot program evaluation form.

Type of Review: New Information Collection.

Affected Public: Prime contractors and small businesses participating in DOT's Mentor Protégé Pilot Program.

Respondents: Approximately 20.

Frequency: One-time.

Estimated Average Burden Per Response: 1 hour.

Estimated Total Annual Burden Hours: 20 hours.

Abstract

In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of the U. S. Department of Transportation (DOT) activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC) which includes the design and carry out programs to encourage, promote, and assist minority entrepreneurs and businesses in getting contracts, subcontracts, and projects related to those business opportunities.

The information collected will be from prime contractors and small business owners. The information collected will be used by DOT OSDBU to determine whether or not the type of technical assistance provided to the protégé was in accordance with Mentor-Protégé agreement.

Abstract

In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of the U. S. Department of Transportation (DOT) activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC) which includes the design and carry out programs to encourage, promote, and assist minority entrepreneurs and businesses in getting contracts, subcontracts, and projects related to those business opportunities.

The information collected will be from prime contractors and small business owners, and it will be used by DOT OSDBU to determine Mentor-Protégé program success and recommendations to the pilot program.

Authority: 49 U.S.C. Section 332(4).

Issued in Washington, DC on October 11, 2011.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2011–27916 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35558]

Utah Southern Railroad Company, LLC—Change in Operators Exemption—Iron Bull Railroad Company, LLC

Utah Southern Railroad Company, LLC (USRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators from Iron Bull Railroad Company (IBRC) to USRC on a rail line known as the Comstock Subdivision (the line) that extends between milepost 0.1 at or near Iron Springs, Utah, and milepost 14.7 at or near Iron Mountain, Utah, a distance of 14.6 miles in Iron County, Utah. The line is leased from Union Pacific Railroad Company by PIC Railroad, LLC (PIC) and is operated by USRC pursuant to an operating agreement with PIC. This change in operators is exempt under 49 CFR 1150.31(a)(3).[1]

In 2006, IBRC filed a verified notice of exemption under 49 CFR 1150.31 for operation of the line pursuant to an operating agreement with PIC.[2] In a letter dated September 30, 2008, USRC notified the Board that, effective October 1, 2008, the name of IBRC was being changed to USRC. USRC now states, however, that, as of the date of that letter, USRC ''had been incorporated, and acquired IBRC's operating authority, and operated [the line] as a corporation separate and distinct from IBRC.'' Counsel for USRC recently became aware that USRC has a corporate existence separate from IBRC and that IBRC's corporate existence has been dissolved, and USRC therefore now files this notice to obtain the required exemption to change operators of the line.

USRC certifies that as a result of this transaction its projected revenues will not exceed those that would qualify it as a Class III rail carrier and that such revenues would not exceed $5 million annually. As discussed above, the proposed transaction has been consummated.

If the verified 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 exemption will be effective November 20, 2011 (30 days after the notice of exemption was filed). The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 10, 2011.

An original and 10 copies of all pleadings, referring to Docket No. FD 35558, 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 Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–28642 Filed 11–3–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is announcing a new fee schedule applicable to transfers of U.S. Treasury book-entry securities maintained on the National Book-Entry System (NBES) that occur on or after January 3, 2012.

[1] To qualify for a change of operators exemption, an applicant must give notice to shippers on the line. *See* 49 CFR 1150.32(b). On October 26, 2011, USRC filed certification that notice had been given to the sole shipper on the line, CML Metals Corporation.

[2] *Iron Bull R.R.—Operation Exemption—PIC R.R.,* FD 34897 (STB served Sept. 14, 2006).

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: James Sharer or Kristina Yeh, Bureau of the Public Debt, Department of the Treasury at (202) 504–3550.

SUPPLEMENTARY INFORMATION: Treasury has established a fee structure for the transfer of Treasury book-entry securities maintained on NBES. Treasury reassesses this fee structure periodically, based on our review of the latest book-entry costs and volumes.

For each Treasury securities transfer or reversal sent or received on or after January 3, 2012, the basic fee will increase from $0.38 to $0.48. The Federal Reserve will also increase its fee for Federal Reserve funds movement from $0.07 to $0.09. This will result in a combined fee of $0.57 for each transfer of Treasury book-entry securities. The surcharge for an off-line Treasury book-entry securities transfer will increase from $33.00 to $40.00. Off-line refers to the sending and receiving of transfer messages to or from a Reserve Bank by means other than on-line access such as by written, facsimile, or telephone voice instruction. The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of securities transfers. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning fees for book-entry transfers of Government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will take effect on January 3, 2012, for book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]—EFFECTIVE JANUARY 3, 2012

[In dollars]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	0.48	N/A	0.09	0.57
On-line transfer received	0.48	N/A	0.09	0.57
On-line reversal transfer originated	0.48	N/A	0.09	0.57
On-line reversal transfer received	0.48	N/A	0.09	0.57
Off-line transfer originated	0.48	40.00	0.09	40.57
Off-line transfer received	0.48	40.00	0.09	40.57
Off-line account switch received	0.48	0.00	0.09	0.57
Off-line reversal transfer originated	0.48	40.00	0.09	40.57
Off-line reversal transfer received	0.48	40.00	0.09	40.57

[1] Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2011–28589 Filed 11–3–11; 8:45 am]

BILLING CODE 4810–39–P

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 has scheduled a meeting on November 14–16, 2011, at the Veterans Affairs Regional Office and Insurance Center (VAROIC), 5000 Wissahickon Avenue, Philadelphia, PA. The meeting will be held each day from 9 a.m. until 4 p.m.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

On November 14, the Committee will hear from its Chairman and the VAROIC Director. They Committee will also receive briefings on the Employee Education System, Veterans Health Initiative, and Robert A. Mitchell Center. The Committee will convene a closed session in order to protect Veteran privacy as the Committee tours VA's Regional Office, Pension Maintenance Center, and Insurance Center. On the morning of November 15, the Committee will reconvene in a closed session to tour the VA Medical Center. Closing portions of these sessions is in accordance with 5 U.S.C. 552b (c) 6). In the afternoon of November 15, the Committee will meet in open session for a Former Prisoners of War (FPOW) panel to gain information on FPOW issues and recommendations for health benefits and claims processing. Public comments will be received at 2 p.m. On November 16, the Committee will discuss their 2011 recommendations and draft of their final Committee report.

Individuals who speak are invited to submit a 1–2 page summaries of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Jim Adams, Executive Assistant, Pension and Fiduciary Service, Department of Veterans Affairs (21PF), 810 Vermont Avenue NW., Washington, DC 20420, or email at *jim.adams1@va.gov*. Any member of the public seeking additional information should contact Mr. Adams at (571) 272–0749.

Dated: November 1, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–28624 Filed 11–3–11; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484
Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2012; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484

[CMS–1353–F]

RIN 0938–AQ30

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2012

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

ACTION: Final rule.

SUMMARY: This final rule sets forth updates to the home health prospective payment system (HH PPS) rates, including: the national standardized 60-day episode rates; the national per-visit rates; and the low utilization payment amount (LUPA) under the Medicare PPS for home health agencies effective January 1, 2012. This rule applies a 1.4 percent update factor to the episode rates, which reflects a 1 percent reduction applied to the 2.4 percent market basket update factor, as mandated by the Affordable Care Act. This rule also updates the wage index used under the HH PPS, and further reduces home health payments to account for continued nominal growth in case-mix which is unrelated to changes in patient health status. This rule removes two hypertension codes from the HH PPS case-mix system, thereby requiring recalibration of the case-mix weights. In addition, the rule implements two structural changes designed to decrease incentives to upcode and provide unneeded therapy services. Finally, this rule incorporates additional flexibility regarding face-to-face encounters with providers related to home health care.

DATES: *Effective Date:* These regulations are effective on January 1, 2012.

FOR FURTHER INFORMATION CONTACT:
Elizabeth Goldstein, (410) 786–6665, for CAHPS issues.
Mary Pratt, (410) 786–6867, for quality issues.
Randy Throndset, (410) 786–0131 (overall HH PPS).

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Acronyms

In addition, because of the many terms to which we refer by abbreviation in this final rule, the following is an alphabetical listing of these abbreviations and their corresponding terms:

ADL Activities of daily living
APA Administrative Procedures Act
APU Annual payment update
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113
CR Cost report
CBSA Core-based statistical area
CBO Congressional Budget Office
CMI Case-mix index
CMS Centers for Medicare and Medicaid Services
CoPs Conditions of participation
DRA Deficit Reduction Act of 2005, Public Law 109–171, enacted February 8, 2006
FDL Fixed dollar loss
FI Fiscal intermediaries
FR Federal Register
FY Fiscal year
HCC Hierarchical condition categories
HCIS Health Care Information System
HHCAHPS Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey
HH PPS Home Health Prospective Payment System
HHAs Home health agencies
HHRG Home health resource group
HIPPS Health Insurance Prospective Payment System
IRF Inpatient Rehabilitation Facility
LTCH Long-Term Care Hospital
LUPA Low Utilization Payment Amount
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, enacted December 8, 2003
MSA Metropolitan statistical area
MSS Medical social services
NAHC National Association for Home Care and Hospice
NHLBI National Heart Lung and Blood Institute
NPP Nonphysician practitioner
NRS Non-routine supplies
OBRA Omnibus Reconciliation Act of 1981, Public Law 97–35, enacted August 13, 1981
OCESAA Omnibus Consolidated and Emergency Supplemental Appropriations Act, Public Law 105–277, enacted October 21, 1998
OES Occupational employment statistics
OIG Office of Inspector General
OT Occupational therapy
OMB Office of Management and Budget
PEP Partial episode payment
POC Plan of care
PT Physical therapy
QAP Quality assurance plan
PRRB Provider Reimbursement Review Board
RAP Request for anticipated payment
RFA Regulatory Flexibility Act, Public Law 96–354
RHHIs Regional Home Health Intermediaries
RIA Regulatory Impact Analysis
SLP Speech Language Pathology Therapy
SNF Skilled Nursing Facility
UMRA Unfunded Mandates Reform Act of 1995

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare home health (HH) services. Section 4603 of the BBA mandated the development of the home health prospective payment system (HH PPS). Until the implementation of a HH PPS on October 1, 2000, home health agencies (HHAs) received payment under a retrospective reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Social

Security Act (the Act), entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires the following: (1) The computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report (CR) data available to the Secretary; and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level. Under section 1895(b)(4)(c) of the Act, the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 3131(b) of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) revised section 1895(b)(5) of the Act so that estimated total outlier payments in a given fiscal year (FY) or year may not exceed 2.5 percent of total payments projected or estimated. The provision also makes permanent a 10 percent agency level outlier payment cap.

In accordance with section 4603(a) of the BBA, we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for HH services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for HH services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of HH services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the HH market basket percentage increase is reduced 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65884, 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute.

Section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted December 8, 2003) provides an increase of 3 percent of the payment amount otherwise made under section 1886(d)(2)(D) of the Act for HH services furnished in a rural area for episodes and visits ending on or after April 1, 2010, and before January 1, 2016.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode rate includes the six HH disciplines (skilled nursing, HH aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine medical supplies (NRS), is no longer part of the national standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section II.D.4.e). Payment for durable medical equipment covered under the HH benefit is made outside the HH PPS payment system. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification to assign patients to a home health resource group (HHRG). The clinical severity level, functional severity level, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument and are used to place the patient in a particular HHRG. Each HHRG has an associated case-mix weight which is used in calculating the payment for an episode.

For episodes with four or fewer visits, Medicare pays based on a national per-visit rate, adjusted by the discipline(s) providing the services; an episode consisting of four or fewer visits within a 60-day period receives what is referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

C. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register**. The August 29, 2007 final rule with comment period set forth an update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HHAs for CY 2008. The CY 2008 rule included an analysis performed on CY 2005 HH claims data, which indicated a 12.78 percent increase in the observed case-mix since 2000. The case-mix represented the variations in conditions of the patient population served by the HHAs. Subsequently, a more detailed analysis was performed on the 12.78 percent increase in case-mix to evaluate if any portion of the increase was associated with a change in the actual clinical condition of HH patients. We examined data on demographics, family severity, and non-HH Part A Medicare expenditures to predict the average case-mix weight for 2005. We identified

8.03 percent of the total case-mix change as real and decreased the 12.78 percent of total case-mix change by 8.03 percent to get a final nominal case-mix increase measure of 11.75 percent (0.1278 * (1 − 0.0803) = 0.1175).

To account for the changes in case-mix that were not related to an underlying change in patient health status, we implemented a reduction over 4 years in the national standardized 60-day episode payment rates and the NRS conversion factor. That reduction was to be 2.75 percent per year for 3 years beginning in CY 2008 and 2.71 percent for the fourth year in CY 2011.

For CY 2011, we published the November 17, 2010 final rule (75 FR 70372) (hereinafter referred to as the CY 2011 HH PPS final rule) that set forth the update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HH services.

As discussed in the CY 2011 HH PPS final rule, our analysis indicated that there was a 19.40 percent increase in overall case-mix from 2000 to 2008 and that only 10.07 percent of that overall observed case-mix percentage increase was due to real case-mix change. As a result of our analysis, we identified a 17.45 percent nominal increase in case-mix. To fully account for the 17.45 percent nominal case-mix growth which was identified from 2000 to 2008, we proposed 3.79 percent payment reductions in both CY 2011 and CY 2012. However, we deferred finalizing a payment reduction for CY 2012 until a further study of the case-mix data was completed. Independent review of the case-mix model has been conducted and the results were discussed in section II.A. of the proposed rule, which was issued on July 12, 2011 (76 FR 40988).

II. Provisions of the Proposed Rule and Response to Comments

A. Case-Mix Measurement

As stated in the proposed rule issued in the July 12, 2011 **Federal Register**, every year, since the HH PPS CY 2008 proposed rule, we have stated in HH PPS rulemaking that we would continue to monitor case-mix changes in the HH PPS and to update our analysis to measure change in case-mix, both real changes in case-mix and changes which are unrelated to changes in patient acuity (nominal). We have continued to monitor case-mix changes and our latest analysis continues to support the need to make payment adjustments to account for nominal case-mix growth.

In the CY 2012 HH PPS proposed rule (76 FR 40991), we also stated that in response to comments we received on our case-mix measurement methodology during CY 2011 rulemaking, we procured an independent review of our methodology by a team at Harvard University led by Dr. David Grabowski. The review included an examination of the predictive regression models and data used in CY 2011 rulemaking, and further analysis consisting of extensions of the model to allow a closer look at nominal case-mix growth by categorizing the growth according to provider types and subgroups of patients. The extensions showed a similar rate of nominal case-mix growth from 2000 to 2008 for the various categories and subgroups. In addition, when reviewing the model, the Harvard team found that overall, our models are robust. However, one area of potential refinement to our models that the Harvard team suggested was to incorporate variables derived from Hierarchical Condition Categories (HCC) data, which is used by CMS to risk-adjust payments to managed care organizations in the Medicare program.

Based on Dr. Grabowski and his team's recommendation and our previous consideration to incorporate HCC data in our models to assess real case-mix change, we decided to explore the effects of adding HCC patient classification data into our models. For our analysis of real and nominal case-mix growth from 2000 to 2009, we incorporated the HCC community scores, HCC demographic variables, and disease indicator variables into our models.

In addition, for our analysis, we used a similar approach to our previous methods. The basic method is to estimate a prediction model and use coefficients from that model along with predictor variables from a different year to predict the average case-mix for that year. It should be noted that we chose to enhance our models with HCC data starting in 2005 due to the availability of HCC data in our analytic files. Therefore, we analyzed real case-mix change for 3 different periods, from 2000 to 2005, from 2005 to 2007, and from 2007 to 2009. The real case-mix change from 2000 to 2005 was assessed using the same variables used in the model described in last year's regulation (75 FR 43238). The real case-mix change from 2005 to 2007 and from 2007 to 2009 was assessed using additional information from the HCC variables. To determine the amount of real and nominal case-mix change from 2000 to 2009, we added the change in case-mix units for each of the 3 periods and compared it to the total change in case-mix from 2000 to 2009. Based on the results from our models, we estimated 15.76 percent of the total case-mix change as real. When taking into account the total case-mix change from 2000 to 2009 (22.59 percent) and the 15.76 percent of total case-mix change estimated as real from 2000 to 2009, we obtained a final nominal case-mix change measure of 19.03 percent from 2000 to 2009 (0.2259 * (1 − 0.1576) = 0.1903).

In each of the years 2008, 2009, and 2010, we reduced payment rates by 2.75 percent and in 2011 we reduced payment rates by 3.79 percent to account for nominal case-mix change from 2000. In the proposed rule, we stated that a payment reduction of 5.06 percent would be needed to account for the outstanding amount of nominal case-mix change we estimated based on the real case-mix change analysis updated through 2009 and we proposed to implement a 5.06 percent reduction to the national standardized 60-day episode rates to account for the entire residual amount of nominal case-mix change through 2009 in one year.

The following is a summary of the comments we received regarding the case-mix measurement proposal.

Comment: Some commenters stated that CMS should not implement an across-the-board punishment but rather target the agencies that have high nominal case-mix growth. Other commenters stated that all home health providers should not be punished for the actions of the few. Many commenters indicated that their agency had case-mix weights below the national average and some commenters stated that there has been a decline in their case-mix over the years. Commenters suggested that CMS limit the case-mix reductions to certain agencies and only apply the reduction to agencies whose average case-mix weight reflects high nominal case-mix growth.

Response: For a variety of reasons, as we have noted in previous regulations, we have not proposed targeted reductions for nominal case-mix change. We have not conducted analysis of how and whether individual agencies' coding practices have changed over time, because this is not feasible. One reason is that many agencies have small patient populations, which would make it practically impossible to measure nominal case-mix change reliably. Another reason is that we believe changes and improvements in coding have been widespread, so that such targeting would likely not separate agencies clearly into high and low coding-change groups. When performing an independent review of

our case-mix measurement methodology, Dr. Grabowski and his team at Harvard University agreed with our reasons for not proposing targeted reductions, stating their concerns about the small sample size of many agencies and their findings of significant nominal case-mix across different classes of agencies (please see the report located at *https://www.cms.gov/center/hha.asp).*

We note that although we have stated in past regulations that a targeted system would be administratively burdensome, the reasons we have just presented go beyond administrative complexity. Certain comments seem to assume that the level of case-mix can precisely identify those agencies practicing abusive coding. We do not agree with the comments which seem to assume that agency-specific case-mix levels can precisely differentiate agencies practicing abusive coding from others. System wide, case-mix levels have risen over time while patient characteristics data indicate little change in patient severity over time. That is, the main problem is not the level of case-mix reached over a period of time, but the amount of change in the billed case-mix weights not attributable to underlying changes in actual patient severity.

In addition, in this final rule, we are finalizing a revision to the case-mix weights. As described in Section II.B., we are removing two hypertension codes from our case-mix system which are not associated with additional resource use and we are reducing weights for episodes with high therapy while increasing weights for episodes with no or low therapy. This revision to the case-mix weights should slow future nominal case-mix growth and provide a more targeted approach for addressing overpayment of services, while also improving the accuracy of the HH PPS.

Comment: Some commenters stated that the payment cuts will make it difficult for small agencies to exist, leaving a market that will only be made up of large for-profit agencies. Other commenters stated that from 2000 to 2008, for-profit and free-standing agencies saw their nominal case-mix grow by approximately 3.5 percent to 4.0 percent more than non-profit, government-owned and facility-based agencies. Commenters attributed the difference in nominal case-mix growth to the idea that for-profit agencies ''pick and choose'' their patients while non-profit and government agencies tend to serve all patients needing home health care. Commenters requested that CMS either forego the proposed 5.06 percent adjustment or implement a two-tiered adjustment factor, with a much lower payment reduction factor for non-profit, government-owned and facility-based agencies.

Response: When looking at the case-mix growth by agency type, our data shows high case-mix growth across all agency types. While for-profit agencies' case-mix grew approximately 22.7 percent, the case-mix average for non-profit agencies and government agencies also grew considerably (17.8 percent and 17.5 percent). In addition, agencies with less than 99 episodes had a case-mix growth of 20.1 percent from 2000 to 2009 and agencies with 100 or more episodes had a case-mix growth of 24.8 percent from 2000 to 2009. These differences are not large enough to warrant a tiered approach. We believe our proposal to make across the board payment reductions is consistent with the data, and making distinctions by type of agency would be inappropriate.

In addition, we acknowledge that our analyses and the analysis conducted by the Harvard team revealed a difference in nominal case-mix growth between for-profit agencies and non-profit/government agencies, as cited by the commenter. However, all categories exhibited a large amount of nominal case-mix growth, and differences among categories were not large enough to warrant a tiered approach. In view of that fact, making separate adjustments according to ownership category is inadvisable because of concerns about equity and administrative feasibility. We will continue to analyze the HH PPS to determine where it may inadvertently incentivize the sort of selective admissions which a commenter described and we will continue to analyze how we can strengthen the HH PPS to increase payment accuracy while mitigating risks which would incentivize such selective admissions.

Comment: Commenters stated that we should suspend or drop case-mix adjustments because they will cause financial distress/bankruptcy among agencies, particularly ''safety-net'' agencies that take patients other agencies reject. Commenters further stated that the proposed payment reductions will cause ''safety net'' providers to have a ''negative operating margin'' and/or cause not-for-profit agencies to go out of business.

Response: Identifying the agencies that commenters call ''safety-net'' agencies is not feasible with our administrative data, so we cannot provide any evidence either to support or refute assertions that safety-net agencies are at greatest risk. Our analysis of margins of not-for-profit agencies shows that they tend to have lower margins than for-profit agencies. However, we do not agree that not-for-profit agencies will necessarily be more likely to exit the home health business than a for-profit agency. We believe the business decision is a complex one with many considerations, such as the organization's mission, the availability of alternate sources of funding, and whether or not the organization is embedded in a larger one. These influential factors are not necessarily associated with the non-profit or for-profit status of an agency, and therefore, we cannot accurately predict the business decision of an agency based solely on their status. In addition, we refer the commenters to section IV where we describe the impact of the provisions of this rule, including the revision of the case-mix weights. Section IV shows that when taking into account all of the provisions in this final rule, non-profit providers should experience less of a negative impact than for-profit providers. Also, in section IV, we describe our rationale why we believe access to Medicare home health will not be adversely affected by our policies, including the payment reductions.

Comment: Commenters stated that by implementing an across the board payment cut, agencies who have been more profitable may survive while agencies that have smaller margins may fail, thus potentially preserving those who may be committing abuse.

Response: Existing information about Medicare margins and the CR data we have analyzed suggest that most agencies will continue to have positive margins on their Medicare business. With our revisions to the case-mix weights, we expect the weight adjustments will reduce the incentive to provide more therapy than is clinically indicated. To the extent that profits are based on abusive behavior, we believe these changes will mitigate the risks of abusive behavior. We also believe the changes will result in more equitable revenues and profits.

Comment: Commenters stated that they believe that the case-mix measurement methodology takes on the approach that all case-mix change is nominal unless it can be proved otherwise.

Response: The evidence for nominal case-mix change is based on the small amount of change in patients' characteristics generally, as measured by patient demographics and information from the National Claims History on home health patients. We summarized the change in patients' characteristics in terms of the impact on the average case-mix weight. In this analysis, the remainder of the change in

average case-mix weights is unexplained, and it is generally believed that coding change is responsible. Our method to assess real and nominal case-mix change is the most effective method available to us at this time. We remind the commenter that we have presented various types of other data in previous rulemaking consistent with the model-based evidence indicating that home health care patients have not changed much since the last 12 months of the Interim Payment System.

Comment: A commenter suggested that CMS ''adjust out all data from active and closed settlement actions'' in their measurement of real and nominal case-mix growth.

Response: We are unclear what the commenter is suggesting. As we have noted previously, nominal case-mix growth is an across the board issue. If the commenter is referring to recoupments which correspond to claims denied after they were reviewed, such would typically be reflected in the claims data we use in our case mix analysis. In the case where a paid-claim dispute is still active, this data would likely not have much effect on our determination of nominal case-mix growth.

Comment: Commenters requested that CMS increase its program integrity efforts to combat fraud, waste, and abuse. Other commenters stated that instead of implementing a payment reduction, CMS should audit agencies that appear to be manipulating the case-mix system. Commenters stated that we should eliminate the proposed payment reductions and rather ''conduct targeted claims review and deny payment for claims where the case-mix weight is not supported by the plan of care.''

Response: We have taken various measures to reduce payment vulnerabilities and the Federal government has launched actions to directly identify fraudulent and abusive activities. Commenters should be aware of tip lines available that can help support investigative efforts of the Federal government. The Office of the Inspector General, Department of Health and Human Services Web site at *http://oig.hhs.gov/fraud/report-fraud/index.asp,* provides information about how to report fraud. Another Web site, *http://www.stopmedicarefraud.gov/index.html,* is oriented to Medicare patients and their families and provides information about recognizing fraud.

In addition, while we appreciate the commenters' suggestion about the targeted claims review, we cannot perform targeted claim review as suggested, because our resources are not sufficient to conduct claims review on a scale that would be required to counteract the broad-based uptrend in case-mix weights.

Comment: A commenter stated that if the payment reduction is implemented, the base rate will be less than at the start of the HH PPS.

Response: When assessing the impact of the payment reductions, one must also consider the effects of the case-mix weights. Section 1895(b)(3)(B)(iv) of the Act requires that payment adjustments in response to nominal case-mix change be made to the rates. As such, we must reduce the base rate to account for growth in nominal case-mix. However, we note that we have not reduced the average case-mix weight and the average case-mix weight has increased since the beginning of the HH PPS. Therefore, even with the payment reductions to account for nominal case-mix growth since the beginning of the HH PPS, the average payment is projected to be higher for CY 2012 than the average payment at the beginning of the HH PPS.

Comment: Commenters mentioned the Affordable Care Act study which is investigating access to care issues and stated that the payment cuts will only further exacerbate access to care issues for vulnerable populations.

Response: We appreciate the commenter's concerns and wish to note that our preliminary analysis suggests that vulnerable populations are associated with case-mix groups involving lower levels of therapy, and that we have adjusted weights upward for those lower-therapy case-mix groups. For example, whereas the average number of therapy visits for first episodes overall is 8.2 in 2009, the average for vulnerable groups in various classifications (for example, high-poverty counties or rural areas) ranged between 7.0 and 7.8. The impact analysis of this rule indicates that rural agencies will experience a smaller reduction overall than urban agencies. We note that rural agencies will continue to receive a 3 percent payment add-on in CY 2012. We anticipate that these aspects of the payment proposals will mitigate the risk of access issues. We also wish to report that the Affordable Care Act study is proceeding as planned. It will involve additional data gathering on vulnerable populations and on potential access problems that vulnerable beneficiaries may encounter in coming years. We will continue to monitor for unintended consequences and we will seek information from other government agencies, such as the Office of the Inspector General, on access. Finally, we will use Open Door Forums and other venues to solicit information from agencies on any actual access issues they witness.

Comment: Commenters stated that the payment cuts will limit access to care and hinder the effort to move to more community-based care.

Response: We do not believe this will be the case because payment will remain adequate. Medicare has implemented policies to support community-based care in other areas, such as hospital-readmissions and transition programs authorized by the Affordable Care Act. We encourage HHAs to partner with providers in their community to become a part of these efforts, thereby assisting in the movement to more community-based care.

Comment: Commenters also thought that the payment reductions would lower quality of care.

Response: Commenters did not provide specific information about why they believe payment reductions would lower quality of care. Our simulation of margins under the payment policies in this rule suggests that margins will remain adequate, and thereby support current levels of quality. We also believe that policymaking in the quality improvement area should help to ensure quality advances. OASIS–C outcome reports and CAHPS data are two important recent developments that we anticipate will support high-quality services. Over time, value-based purchasing policies will be developed, further enhancing quality-related incentives. We encourage agencies to work to their full professional potential to deliver a high standard of care to their patients.

Comment: Commenters were concerned that the proposed cuts would impede access to home health care because many agencies would be forced to close as a result of the lower payments. Commenters stated that if the proposed cuts are implemented, many providers will be operating at a negative or zero margins. A commenter stated that the reduction to payment rates along with other cuts mandated by the Affordable Care Act would cause over half of HHAs to be paid less than the cost of care to Medicare patients. This commenter provided a chart which forecasts 2012 profit margins for each State should the proposed 5.06 percent reduction to payments be finalized. The commenter further described that six States and Guam would have more than 70 percent of their agencies with negative margins in CY 2012 as a result of the reduction. Specifically, the commenter described the States and the

corresponding percent of HHAs which would be forced into negative margins as: Alaska 80 percent; Idaho 76.9 percent; North Dakota 91.7 percent; Oregon 96.2 percent; Vermont 70 percent; and Wisconsin 74.5 percent. Other commenters stated that the payment reductions place more of a hardship on certain providers. The commenters stated that rural locations would be hit the hardest. Commenters also stated that if the proposed cuts take place, over 45 percent of Minnesota providers will be operating at a zero or negative margin in 2012 and nearly 60 percent in 2017. Other commenters stated that the Northeast has a significantly lower rate of increase in case-mix growth than any other region. Commenters stated that the payment reductions will differentially impact different regions of the country and urged CMS to do a State-by-State analysis.

Response: As we have noted in prior rules, we believe that a policy of varying payment levels according to regional differences in nominal case-mix change would be perceived as inequitable by beneficiaries. That is, beneficiaries who might have access only to agencies subject to larger payment reductions might believe Medicare's policies disadvantage them unfairly.

Regarding the commenters' concerns about the effect of the proposed reductions on providers' viability and the resultant access risks, we note that in their March 2011 Report to Congress, MedPAC projected an average of 14.5 percent margins for HHAs in 2011, when taking into account various payment adjustments such as the CY 2011 payment reduction for nominal case-mix growth. We also note that in proposing the reductions, we analyzed the combined effects of all of the policies proposed and believe that a 5.06 percent reduction would not impede access to care. We believe that the margin analysis study submitted by one of the commenters, which projected the impact of the proposed policies on HHAs on a State-by-State basis, failed to take into account the effects of all of the policies in the rule. The payment reduction to the base rate is not the only policy affecting payment to HHAs described in the proposed rule. The effects of the payment update, wage index update and revision of case-mix weights also need to be taken into account when assessing the impact of the proposed provisions. We also believe that the commenter may have attempted to factor potential future reductions to HH PPS payments into the 2012 margin forecast. While the Affordable Care Act calls for CMS to rebase home health payments beginning in 2014 and apply a productivity adjustment to the yearly inflation increases beginning in 2015, the impact of these provisions would be impossible to accurately project at this time. Additionally, provisions that are targeted for implementation in 2014 and later would have no effect on CY 2012 provider margins. The following discussion describes the impact if we were to implement a 5.06 percent payment reduction in CY 2012, taking into account all of the policies in the rule. In the aggregate, HHAs would receive 3.52 percent less in payments in CY 2012 when compared to CY 2011 payments, reflecting the net effect of a 1.4 percent HH PPS payment update increase, a 0.03 percent payment increase resulting from the wage index update, and a 5.06 percent reduction in payments to account for nominal case-mix growth. We note that not all providers would experience a net 3.52 percent reduction in their payments if a 5.06 percent reduction in payments was finalized for CY 2012. As we described in the proposed rule and describe in this final rule, the revision of the case-mix weights would have a re-distributional effect which benefits rural and non-profit providers, and providers in certain areas of the country. For example, in aggregate, if a 5.06 percent reduction in payments was implemented for CY 2012, non-profit free-standing providers would experience an estimated 0.91 percent reduction and for-profit free-standing providers would experience an estimated 4.72 percent reduction in payments. Rural providers would fare better than urban providers, as rural non-profit freestanding providers would see an estimated 0.31 percent increase in payments. In response to the commenter who was concerned about providers in the Northeast, we note that New England providers are in an area of the country which would benefit from the re-distributional effects of the recalibration. On average, New England providers would experience an increase in payments in CY 2012.

We note that of the six States which the commenter contends would have 70 percent or more providers experiencing negative margins as a result of the payment reductions, five are in areas of the country which would benefit from the re-distributional effect of the case-mix weight revisions. In Table 1, we provide the estimated impact if we were to finalize a 5.06 percent payment reduction with the other policies in this final rule for purposes of addressing this comment.

TABLE 1: Impacts if a 5.06 percent payment reduction were implemented

U.S. State/ Territory	Impact in CY 2012 with a 5.06 percent payment reduction
Alaska	-0.81%
Idaho	-4.54%
Minnesota	-1.19%
North Dakota	2.73%
Oregon	0.19%
Vermont	1.45%
Wisconsin	-2.68%
Guam	0.11%

As shown in Table 1, the net effect of a 5.06 percent payment reduction with all of the other provisions of the rule is that providers from North Dakota, Oregon, and Vermont on average would experience an estimated increase in payments in CY 2012 of 2.73 percent, 0.19 percent and 1.45 percent respectively, instead of the national average, a 3.52 percent reduction in payments. Furthermore, the net effect of a 5.06 percent payment reduction with all of the other provisions of the rule is that providers from Guam on average would experience an estimated increase in payments in CY 2012 of 0.11 percent.

In addition, the net effect of a 5.06 percent payment reduction with all of the other provisions of the rule is that Alaska providers and Wisconsin providers in the aggregate would experience an estimated reduction in payments in CY 2012 of 0.81 percent and 2.68 percent respectively, instead of the national average, a 3.52 percent reduction in payments.

Table 1 shows that if we were to finalize a 5.06 percent payment reduction, Idaho would experience an estimated 4.54 percent reduction in payments in CY 2012, instead of the national average, a 3.52 percent reduction in payments. However, the non-profit providers and the rural providers in Idaho would experience an estimated reduction in payments in CY 2012 of 1.37 percent and 2.06 percent respectively. Regarding the commenters who expressed concern that a provider association reported that close to half of Minnesota providers would experience negative margins as a result of the proposed payment reductions, we disagree with the provider association's conclusion. The net effect of a 5.06 percent payment reduction with all of the other provisions in the rule is that Minnesota providers, on average, would experience an estimated 1.19 percent reduction in payments in CY 2012, instead of the national average, a 3.52 percent reduction in payments.

Furthermore, preliminary 2009 CR analysis along with MedPAC's projected margin analysis for 2011 suggest that providers in these States have margins which are strong enough to absorb the proposed 5.06 percent payment reduction.

As stated above, we have concerns and questions about the commenter's analyses. Specifically, we believe the commenter may have not taken into consideration all of the provisions of this rule and also may have included in the analyses potential future reductions to HH PPS payments into the 2012 margin forecast (which are not applicable to 2012), and therefore, overestimated the negative impact on providers. We would like to note that industry margins have remained in the mid-double digits in recent years, even in those years in which we implemented similar net payment reductions. We also note that in this final rule, as we describe in detail in the following response to a comment, we are implementing the payment reduction over 2 years, rather than the 1 year we originally proposed. We refer the commenters to Section IV for the impacts of the policies we are finalizing in this rule.

In addition, regarding the commenter's suggestion that we provide State-level impacts which reflect the provisions of the rule, we again refer the commenter to Section IV of this final rule where we describe our State-level analysis for the policies we are finalizing in this final rule. As we described in section IV, we believe that State-level impacts would be misleading unless we also provided breakouts of rural-verses-urban and ownership status of providers within the State.

Comment: Commenters described the burden which they have experienced as a result of recent regulatory and legislative changes. Specifically, commenters described the financial burdens surrounding the Affordable Care Act face-to-face encounter mandate imposed on HHAs and physicians. The commenters stated that HHAs and physicians have needed to hire additional staff to track the face-to-face paperwork. Additionally, commenters noted that the staff time spent tracking, sending, and routing the required documentation, as well as tracking appointments has also been costly for HHAs to absorb. In addition, commenters described administrative burdens associated with the CY 2011 therapy provision which requires a qualified therapist, instead of a therapy assistant, to perform the needed therapy service, as well as assess, measure, and document the effectiveness of the therapy, at key points during a course of therapy treatment. Another commenter stated that payment cuts detract from agencies' ability to attract competent staff. Other commenters stated that CMS should limit any single-year rate reductions to no greater than a combined 2.5 percent. Some commenters suggested CMS phase-in the proposed 5.06 percent adjustment over a 2- to 3-year period. Commenters stated that a 5.06 percent rate reduction is the largest ever imposed in a single year by CMS and stated that the pay cut would have a significant impact as earlier payment cuts have decreased provider margins. Another commenter was concerned that the home health community would not be able to absorb the cumulative effect of recent legislative and regulatory reductions.

Response: Our simulation analysis described in Section II.B, which takes into account all of the proposed policies for 2012 (such as a 5.06 percent payment reduction and the revision of the case-mix weights), projects that payment will exceed costs for all episodes, except for episodes with 20+ therapy visits, of which more than 60 percent would have payment that exceeds their costs. We reiterate that about 6 percent of episodes nationally in 2009 had 20 or more therapy visits. Therefore, we believe that the payment cuts will not detract from agencies' ability to attract staff. We also believe the payments in excess of estimated costs will allow agencies to adapt to recent legislative and regulatory requirements. However, we are sensitive to the challenges HHAs may have had in adapting to the Affordable Care Act provisions which were implemented in CY 2011, such as the face-to-face encounter provision. We also agree that the Affordable Care Act provisions and the CY 2011 therapy changes described by commenters likely required HHAs to incorporate process changes to adhere to these new requirements. As such, we are finalizing a phased-in implementation of a 5.06 percent reduction over 2 years, as some commenters suggested. We believe that by phasing-in the reductions over CY 2012 and CY 2013, we allow HHAs an opportunity to adopt process efficiencies associated with the CY 2011 mandates prior to imposing the full 5.06 percent payment reduction.

In CY 2011 rulemaking, we proposed to apply a 3.79 percent reduction to payments in CY 2011 and an additional 3.79 percent reduction in CY 2012 to account for nominal case-mix growth we identified through CY 2008. However, we deferred finalizing the CY 2012 reduction pending an independent review of our method for identifying real case-mix growth. (That independent review has been completed, as we reported in the CY 2012 HH PPS proposed rule.) Because we believe that providers likely expected and planned for us to impose a 3.79 percent payment reduction in CY 2012, we are finalizing a 3.79 percent reduction in CY 2012 and a 1.32 percent reduction for CY 2013. These reductions enable us to account for the nominal case-mix which we have identified through CY 2009, to follow through with the planned 3.79 percent reduction for CY2012, and to allow for HHAs' adopting process efficiencies during CY 2012.

Comment: Commenters stated that HHAs should be allowed to test the impact of the rate changes using 2011 data.

Response: Given the fact that we currently are in CY 2011, there is not a full year of data from 2011 and we caution HHAs when using a partial year's data in their analysis. In addition, due to the lag in receiving claims, we did not have full data from 2010 when developing the impacts for the CY 2011 HH PPS proposed rule. Therefore, the data used to develop the impacts of our proposed policies are from 2009. We plan to continue to assess the impacts of our policies once new complete data are available. HHAs are welcome to test the impacts of the rate changes on their data; however, when predicting the impacts, it should be noted that all of the policies in the rule should be taken into account (such as the wage index, rural add-on, and the revision of the case-mix weights, and the payment reduction).

Comment: Commenters stated that the rate reductions may adversely affect hospital-based HHAs. They stated that hospital-based HHAs represent 80.9 percent of all providers nationwide with margins below zero and that the Medicare margins which MedPAC presents, only represents freestanding agencies and that hospital-based agencies have lower, negative margins. Commenters stated that hospital-based home care agencies are currently underpaid.

Response: Medicare CR data for hospital-based HHAs does indicate that Medicare margins are lower than those of freestanding HHAs. However, hospital-based HHAs do not account for most of home health care, and there are data issues hindering understanding of hospital-based HHAs' financial status. As stated in their March 2011 Report to Congress, MedPAC focuses on freestanding agencies because they are the majority of providers and because their costs do not reflect the sort of allocation of overhead costs seen in facility-based providers' Medicare CRs (MCR), such as hospital-based HHA MCRs. They explain that in the case of hospitals, which often provide services that are paid for by multiple Medicare payment systems, measures of payments and costs for an individual sector could become distorted because of the allocation of overhead costs or complementarities of services. Another consideration is that Medicare's payment policies should cover the costs of efficient providers. Therefore, given that the payment system is prospective and not based on a provider's reasonable costs, we have reason to question whether the problem, as stated by the commenter, is that hospital-based agencies are underpaid.

Comment: Commenters stated that for those providers who do survive, the cuts will hinder their ability to enhance technology and move to electronic health records.

Response: A reduction in margins as a result of our payment changes may have an effect on the availability of resources for various types of investments. However, our analysis indicates that payments will be more than adequate under our payment changes and would still allow for investments. We do not have sufficient data to evaluate the effect on technology-specific investments from the unusually large margins that have been in existence under the HH PPS, but we welcome information about whether the numerous agencies that operated with high margins under the HH PPS made investments during those years, and the nature of those investments.

Comment: Other commenters stated that CMS should suspend further nominal case-mix adjustments until the rebasing of the HH PPS system required by the Affordable Care Act. A commenter stated that CMS should study the factors driving case-mix growth and analyze the differences in growth by provider characteristics.

Response: We are finalizing payment reductions intended to account for overpayments that were made because of nominal case-mix growth. Since our analysis indicates that margins will remain adequate, and since our analysis of rebasing is still in process, we see no reason to defer nominal case-mix adjustments in this rule. We agree that more data could be useful in understanding case-mix change, and we will continue to solicit suggestions for reliable data that can be incorporated in our studies.

Comment: Commenters urged CMS to commission studies to more accurately estimate real and nominal case weight changes and to help refine the case-mix to more closely align reimbursement with costs and eliminate incentives. Commenters stated that CMS should work on implementing a proper case-mix adjuster which accurately pays for all home health services before implementing a payment reduction.

Response: The home health study under section 3131(d) of the Affordable Care Act allows CMS to not only look at access for vulnerable populations, but also look at other issues with the payment system and payment vulnerabilities. In this study, we plan to examine issues surrounding nominal case-mix growth and ways to better align payment with patient needs. The Report to Congress describing the findings of our study is projected to be available March 1, 2014. In the meantime, while examining ways to better improve the case-mix system, we believe that we need to address previous nominal case-mix growth, and therefore, we plan to implement payment reductions.

Comment: A commenter recommended that CMS seek payment system reforms that are value-based rather than implementing payment reductions. The commenter noted that CMS should factor in the quality of care before implementing payment reductions.

Response: Medicare's value-based purchasing initiatives in home health will build upon current efforts in this area, including Outcome-Based Quality Improvement and CAHPS, and the Value-based Purchasing demonstration. As we develop and refine measures, and incorporate them in payment policies, we will involve stakeholders. Further developing value-based purchasing will take time, but commenters should be assured that it is an important goal for Medicare. However, we cannot ignore nominal case-mix growth in the interim and we believe we need to account for nominal case-mix growth through 2009.

Comment: A commenter stated that the proposed payment cuts along with the proposed case-mix weight changes will hinder agencies ability to calculate their payment.

Response: We note that we are not making significant, structural changes to our case-mix system. We are only revising the case-mix weights. Also, we plan to implement a payment reduction similar to previous payment reductions and have described the base rate payment in the Regulatory Impact Analysis in Section IV of this final rule. Therefore, we do not believe that the proposed policies will hinder agencies' ability to calculate their payment.

Comment: Commenters stated that all of the payment adjustments are based on a false assumption that clinicians and agencies have gamed the system.

Response: As we have stated in previous regulations, changes and improvements in coding are important in bringing about nominal coding change. We believe nominal coding change results mostly from changed coding practices, including improved understanding of the ICD–9 coding system, more comprehensive coding, changes in the interpretation of various items on the OASIS and in formal OASIS definitions, and other evolving measurement issues. Our view of the causes of nominal coding change does

not emphasize the idea that HHAs or clinicians in general gamed the system. However, since our goal is to pay increased costs associated with real changes in patient severity, and nominal coding change does not demonstrate that underlying changes in patient severity occurred, we believe it is necessary to exclude nominal case-mix effects that cannot be shown to be related to changes in patient severity.

Comment: Commenters stated that CMS penalizes providers for improved accuracy in patient assessment and coding. The commenters contributed the increase in case-mix to increased accuracy of OASIS answers and increased coding accuracy as a result of training of their staff and/or the use of certified and trained coders.

Response: Comments referencing coding improvements, such as increasing accuracy, do not recognize that such improvements are an inappropriate basis for increased payment. We believe that measurable changes in patient severity and patient need are appropriate bases for changes in payment. Our analysis continues to find only small changes in patient severity and need.

Comment: Commenters stated that the increase in case-mix weights is due to HHAs complying with Medicare instructions regarding patient coding ''consistent with the 2008 version of the HH PPS.''

Response: This comment is difficult to address because the commenter does not cite specifically which documents constitute CMS-issued Medicare instructions ''consistent with the 2008 version of the HH PPS.'' Nor does the comment explain how the increase in case-mix weights was driven by such CMS instructions. However, we believe our release in late 2008 of a revision of Attachment D of the OASIS Instruction Manual would not have had the effect suggested by the comment. (Attachment D was intended to provide guidance on diagnosis reporting and coding in the context of the HH PPS.) First, Attachment D reiterated traditional CMS guidance about how to select diagnoses in home health. Attachment D did not deviate from the fundamental and longstanding instruction that reported diagnoses must be relevant to the treatment plan and the progress or outcome of care and be consistent with coding guidelines.

Comment: Commenters stated that CMS should look into alternative ways to account for nominal case-mix changes. Commenters stated that coordinated educations efforts can help control nominal case-mix growth.

Response: Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth by applying reductions to the base payment. The section does not allow CMS the authority to account for nominal growth in ways other than through payment reductions. We continue to explore ways to prevent future nominal case-mix growth and we welcome any suggestions.

Comment: A commenter stated that the CMS methodology does not recognize home health care's increasing ability to care for more serious medical conditions in the home and ignores changes in patient severity. We received a number of comments stating that home health patients now have more complex conditions than previous populations of home health patients and that such patients previously would have been referred to health care facilities, but are now being cared for at home. Moreover, the commenters stated that other healthcare settings have developed stricter admission requirements, thereby increasing the number of HHA patients with high severity levels. One commenter cited as evidence diversion of patients to home care from inpatient rehabilitation facilities (IRFs) due to the CMS 60 percent rule. In addition, the commenters cited that there has been a nationwide rebalancing of care in favor of community care settings leading to a higher severity in home care admissions.

Response: Data we presented in the CY 2011 HH PPS final rule (75 FR 70379) indicate that hospital lengths of stay have been declining slightly and lengths of stay in residential post-acute settings before home health admission have increased between 2001 and 2008. We note that the proportion of initial non-LUPA home health episodes preceded by acute care within the previous 60 days has declined between 2001 and 2008, from 70.0 percent to 62.7 percent. This indicates more patients are being admitted to HHAs from non-institutional settings (for example, from the community). Also, post-acute institutional utilization data perhaps consistent with the comment regarding diversion of patients to the home care setting suggest a decline in IRFs as a source of home health patients, but this decline may have been partly offset by an increase in SNF utilization as a source. For example, the proportion of initial episodes preceded by an IRF stay that ended sometime during the 30 days before home health admission declined by more than a percentage point in 2005 and declined another 1.6 percentage points by 2009, while the percentage preceded by a SNF stay increased half a percentage point in 2005 and has remained above the 2005 level through 2009, the latest year of complete data available (based on a 10 percent beneficiary sample of initial, non-LUPA episodes). We also note that in CY 2005, when CMS began enforcing the IRF 60 percent rule, we initially saw an increase in knee joint replacement patients admitted to home health following hospital discharge. The 60 percent rule (previously, the 75 percent rule), is a criterion used to define IRFs for them to receive payment as an IRF. The rule requires that in at least 60 percent of cases an IRF admits must have one or more selected conditions which have been established as requiring the intensity of care provided in an IRF. However, more current data (2007 and 2009) shows that the prevalence of knee joint replacement patients in home health has dropped from the 2005 levels, though the prevalence is slightly higher than in 2000. The prevalence of hip joint replacement patients has dropped since 2000, as have hip and femur fracture patients. Furthermore, we note that acute stays, which normally precede stays in institutional post-acute care settings, are decreasing in the stay histories of home health patients. Therefore, we question whether there is any evidence showing an increase in home health patient severity as a result of more patients coming to home health as a result of diversion from IRF care.

Comment: Commenters stated that patient care capabilities are changing in home health services and diagnostic-specific care protocols allow targeting of patient populations. Commenters cited utilization of interdisciplinary care providers to improve patient outcomes and to provide best practice interventions, such as the prevention of falls. The commenters further expanded on this idea by stating that there is a movement towards a multidisciplinary approach to care and utilization of broader ranges of therapy services to improve outcomes and that evidence based best practices have improved patient outcome scores.

Response: To the extent that home care agency capabilities are improving, we support such developments and we hope to see them continue. This is an entirely different issue from whether the patient population has changed to the degree as indicated by the nominal coding change we isolate in our analysis.

Comment: Commenters suggested that CMS recognize changes in patient severity, improved patient assessment,

coding and reimbursement changes in their case-mix methodology and work with National Association for Home Care and Hospice (NAHC) to uncover the reasons for case-mix weight changes and to develop a valid methodology for payment reform. Another commenter stated that CMS should include industry stakeholders in the analysis and development of policies, such as the case-mix adjustment cut, that have a significant impact on access to home care services.

Response: Through the public comment process, we have obtained industry views as to the reasons for coding changes. As we have pointed out before, reasons offered, such as improved coding, are not a sufficient basis for raising payment rates. To the extent case-mix change is due to better methods of assessing patients in the home health setting, this does not justify making reimbursements as though the patients really were different in their case-mix levels of severity. We plan to solicit feasible alternative suggestions for scientific approaches to measuring real vs. nominal case-mix change in the home health study under section 3131(d) of the Affordable Care Act.

Comment: Some commenters stated that payment rate reductions due to case-mix weight changes are not warranted because Medicare expenditures on home health are well within budgeted levels, thereby demonstrating that aggregate spending has not increased enough to permit CMS to exercise its authority to adjust payment rates. Commenters cited budget projections of the Congressional Budget Office (CBO). Another commenter stated that while therapy services for home health patients have increased in volume since the start of the HH PPS in 2000, patient outcomes have improved and Medicare spending per patient and in the aggregate overall has stayed well below projections by the CBO. Some commenters stated that payment reductions in home health will lead to more institutional care, for example, by leading to increases in hospital readmissions of post-acute patients.

Response: We have no statutory authority to consider the relationship of CBO projections to home health outlays when setting the HH PPS payment rates. The Secretary's authority to respond to nominal coding change is set out at section 1895(b)(3)(B)(iv) of the Act. As stated earlier, we do not believe that the reductions will impede access to care, but we will continue to monitor for unintended consequences. There is no evidence that improvement in home health patient outcomes is related to the level of payments achieved through nominal case-mix change. Effects of payment reductions on access and patient outcomes are worthy of study, using carefully designed research. We are aware of the challenges of conducting conclusive research in this area, in part because other policy changes affecting the study question may co-occur. We may explore this area of research in the home health study under section 3131(d) Affordable Care Act.

Comment: Commenters stated that CMS should not implement payment reductions to address high therapy utilization but rather address it by implementing changes to case-mix weights, such as the proposed changes, instead.

Response: We note that we proposed to implement a 5.06 percent payment reduction to account for the residual nominal case-mix growth from 2000 to 2009. The changes to the case-mix weights were proposed to better align payment with costs and to deter incentives which contribute to nominal case-mix growth. Therefore, we believe we still need to implement payment reductions to account for nominal case-mix change from the inception of the HH PPS through 2009.

Comment: Commenters stated that therapy utilization is a coding adjustment that accompanies not only an increase in reimbursement but also an increase in provider costs, implying that a rate reduction related to increased costs is inappropriate. Another commenter stated that a typical case-mix weight change adjustment in other sectors may bring a reduction in profit margins only, whereas in home health the adjustment occurs where the higher payments from increased case-mix weights are offset by increased costs.

Response: We believe that the goal of the Medicare program is to ensure that beneficiaries receive the right care at the right time. The evolution of patterns of therapy utilization since the PPS began leaves doubt that appropriate care has been provided. In the CY 2008 proposed regulation (72 FR 25356), we described a shift in the distribution of therapy visits per episode under the HH PPS that caused two peaks: One below the therapy threshold of 10 therapy visits; and the other in the 10 to 13 visit range. Before the HH PPS, the distribution had one peak, at 5 to 7 therapy visits, well below the 10-visit therapy threshold in use prior to the 2008 refinements to the HH PPS. The distribution of episodes (LUPA and non-LUPA) changed again with the implementation of the 153-group case-mix system and its revised set of thresholds and therapy steps. At the new 7-visit step (7 to 9 visits) there was a sudden 50 percent increase in the proportion of episodes, and at the new 14-visit therapy threshold, there was a 25 percent increase in the proportion of episodes. One commenter in 2010, in writing about the questionable prescription of therapy treatment, stated that certain agencies have habitually provided therapy to patients whose natural course of recuperation would have been the same regardless of receipt of therapy. Such prescribing behavior adds to doubts that services are always provided appropriately. We also note that we implemented a declining payment with each added therapy visit with the 2008 refined case-mix system, with the intent to deter inappropriate padding of therapy prescriptions to higher and higher numbers of visits, as we added new thresholds above 10 visits. However, the pliability of therapy prescriptions, the continued growth in the proportion of episodes utilizing therapy, and the 25 percent increase in the proportion of episodes with high numbers of therapy visits (14 or more) in 2008 may be evidence that increased costs are more than offset by the increased payment associated with therapy. Furthermore, a Senate Finance Committee report concludes that among the major for-profit providers, more therapy was often provided than clinically needed in order to maximize Medicare reimbursement (Senate Finance Committee Staff, ''Staff Report on Home Health and the Medicare Therapy Threshold'', U.S. Government Printing Office, Washington: September 2011). To the extent that unnecessary therapy was provided and contributed to nominal case-mix growth, these are overpayments, regardless of whether the unnecessary therapy had a cost to the HHA that provided it.

In addition, analysis of profit margins indicates that they remain high among HHAs. For example, according to MedPAC's analysis, Medicare margins were 17.7 percent in 2009. This situation suggests that higher payments are not necessarily being offset by increased costs. In March 2011, MedPAC estimated that Medicare margins will be 14.5 percent in 2011, taking into account the then-expected payment reductions (MedPAC, *Report to Congress: Medicare Payment Policy,* March 2010). Our estimates suggest aggregate Medicare profit margins in home health will remain strong under the payment policies we are finalizing with this rule.

Comment: Commenters stated that there is an increased volume of episodes that have therapy utilization and that there have been improved patient

outcomes. Some of these commenters cited Table 8–5 in the March 2011 MedPAC Report to Congress. They stated that the beneficiary outcomes have greatly improved in all functional measures with the increased therapy services.

Response: There is not yet a body of rigorous literature that provides evidence tying improvements in home health outcome measures to the increased volume of therapy provided under the HH PPS. The standard for such evidence would be stronger than a broad correlation between improvement rates in outcomes and amount of therapy provided. In addition, we disagree that the March 2011 MedPAC Report to Congress implied or concluded that increased therapy utilization has improved patient outcomes. Rather, in the March 2011 Report, the Commission criticized the home health measures for not capturing changes in quality that were related to the patient's need for home health care. The Report further described that the improvement in walking measure is reported for all patients regardless of whether they needed home health to address a mobility condition.

Comment: A commenter stated the real case-mix change analysis omits consideration of increased therapy needs in the population. Other commenters stated that therapy use changes were not explained in the model and that CMS admitted that it could not explain the correct amount of therapy expected for patients. The commenter stated CMS should use alternative variables which would be more indicative of the changes in therapy use.

Response: The models were intended to analyze changes in case-mix over time and do not distinguish whether these changes are due to increases in therapy use or other factors. We do not believe that it would be appropriate to include utilization-related variables, such as the number of therapy visits, as predictors in the model, as such variables are provider-determined. In addition, the goal of these analyses was not to develop refinements to the payment system but rather to examine changes in measures of patient acuity that are not affected by any changes in provider coding practices. For example, the models do incorporate information about change in the types of patients more likely to use therapy, such as post-acute joint replacement patients. CMS has access to the claims histories and other administrative data for patients in our samples, and we welcome suggestions about how to better use these resources in finding alternative variables more indicative of the need for therapy, particularly if the suggestions involve the use of data and variables that are not HHA-determined.

Comment: A commenter stated that the model fails to account for any changes in HHA behavior related to patient populations served. These changes would include a marketing effort targeted to increase the proportion of patients who are high users of therapy.

Response: We disagree with this comment. The predictive model for real case-mix was designed in 2007 and includes a comprehensive set of variables. We augmented the set of predictor variables this year by adding HCC data. The model looks at case-mix change across a large sample of providers, rather than considering individual provider behavior. If the characteristics of patients have changed due to marketing efforts, this should show up as changes in the mean values of patient characteristics over time. For example, the increase in knee replacement patients since the baseline year causes an increase in the predicted case-mix weight. We will continue to research ways to modify our models and data for analyzing real case-mix change over time. A challenge with using OASIS items is that, for the most part, OASIS items associated with case-mix are already used in the grouper and thus are not appropriate to use in the case-mix change analyses (since changes in case-mix over time may be due to coding changes rather than changes in severity).

Comment: The commenter stated that MedPAC is researching and developing revised payment models which could bring therapy reimbursement more in line with how other home health services are paid for and any dramatic reimbursement changes to the HH PPS should be postponed in anticipation of a more complete revision to the payment methodology.

Response: We do not believe our proposals represent dramatic reimbursement changes. We have strived to maintain the look and feel of the refined system of 2008 in our proposals this year. We agree that dramatic changes to the HH PPS system should await the congressionally mandated study currently underway, pursuant to Section 3131(d) of the Affordable Care Act. This study may be followed by a demonstration to test major revisions to the payment methodology.

Comment: A commenter implied that the industry did not play a role in developing the HH PPS and implied that when OASIS was first used, there was a significant variation in the reporting and that the industry was disadvantaged.

Response: We followed the Administrative Procedures Act (APA) in implementing the HH PPS under the mandate in the Balanced Budget Act of 1997. Under the APA, we solicited public comments in 1999 on the then-proposed system. OASIS itself was developed with industry participation for the purpose of measuring home health outcomes (see GAO–01–205, January 2001, Appendix II). A version of OASIS was used in the original case-mix research that led to the design of the HH PPS case-mix system. The research results indicated that adequate case-mix adjustment of payments could be achieved using OASIS variables. We have noted in previous regulations that the average case-mix weight nationally, as estimated from OASIS assessments in the 12 months leading up to October 1, 2000, was about 13 percent higher than the average in the sample of agencies whose data were used for the case-mix research. We used the estimate from the 12 months leading up to October 1, 2000 as our baseline for measuring case-mix change because it represented a very large, broad-based set of episodes. It did not reflect the earliest days of OASIS use. Given that coding practices continually evolved subsequent to the last 12 months ending October 1, 2000, and that agencies were not subject to the HH PPS incentives during the 12 months ending October 1, 2000, we believe the baseline period that we selected is the most appropriate one to use to begin measuring coding change that occurred in relation to the introduction of the HH PPS. Any other period subsequent to our baseline builds in impacts on coding of the HH PPS and is questionable to use from the point of view of responsible fiscal stewardship.

Comment: Commenters stated that the model is based on administrative data rather than clinical data.

Response: The model only includes a few variables that are derived from OASIS assessments (measures of patient living arrangement) because the OASIS items can be affected by changes in coding practices. It is not practical to consider other types of home health clinical data (for example, from medical charts) in the model.

Comment: A commenter wrote that the model relies too heavily on assumptions and beliefs rather than empirical evidence. Other commenters stated that the implementation of the payment reductions should be delayed until the validity of data and methods used to calculate the payment reduction can be verified.

Response: We disagree. The prediction model for real case-mix is an empirical model, the findings of which are based entirely on empirical evidence. We also disagree with the commenter's suggestion that we have not validated the data or methods used to calculate the payment reduction. Over the last several years, we have continued to evaluate our data and methods, and this year, we procured a review of our model by Dr. Grabowski and his team at Harvard University, who found our model robust.

The real case-mix prediction model and its application account for changes in the HH patient population by quantifying the relationship between patient demographic and clinical characteristics and case-mix. The relationships in conjunction with updated measures of patient characteristics are used to quantify real case-mix change. The characteristics in the model include proxy measures for severity, including a variety of measures, namely, demographic variables, hospital expenditures, expenditures on other Part A services, Part A utilization measures, living situation, type of hospital stay, severity of illness during the stay, and risk of mortality during the stay. This year, additional diagnosis data, based on physician and hospital diagnoses in the patient's claims history, were added in the form of HCC indicators. Measurable changes in patient severity and patient need, factors mentioned by commenters, are an appropriate basis for changes in payment. Our model of real case-mix change has attempted to capture such increases.

We recognize that models are potentially limited in their ability to pick up more subtle changes in a patient population such as those alluded to by various commenters. Yet in previous regulations we presented additional types of data suggestive of only minor changes in the population admitted to home health, and very large changes in case-mix indices over a short period. We included among these pieces of evidence information about the declining proportion of home health episodes associated with a recent acute stay for hip fracture, congestive heart failure, stroke, and hip replacement, which are four situations often associated with high severity and high resource intensity. We found declining shares for these types of episodes as of 2005 (72 FR 49762, 49833 [August 2007]). We presented information showing that resource use did not increase along with billed case-mix (72 FR 49833); stable resource use data suggest that patients were not more in need of services over time, notwithstanding the rising billed case-mix weights that suggested they would be. We also analyzed changes in OASIS item guidance that clarified definitions and could have led to progress in coding practice (72 FR 25356, 25359 [May 2007]). We reported rates of OASIS conditions for the year before the beginning of the HH PPS and 2003, and found some scattered small changes indicative of worsening severity but no dramatic changes commensurate with the increase in case-mix weights (72 FR 25359). In our discussion, we cited specific instances where agencies' changing understanding of coding could have contributed to the adverse changes. However, as previously stated, Medicare payments should be based on patient level of severity, and not on coding practices.

In the CY 2011 HH PPS proposed rule, we identified a very large, sudden 1-year change (+0.0533) in the average case-mix weight by comparing a 2007 sample that we assigned to case-mix groups using the new 153-group system and a 2008 sample grouped under the same system. It is unlikely that the patient population suddenly worsened in severity so as to cause an increase of 0.0533 in the average case-mix weight in a single year. Furthermore, we concluded that the large change was not due to our use of the new, 153-group case-mix algorithm in 2008, because when we applied the previous case-mix system and the new system to a sample of 2007 claims, the average weight differed very little (the difference was 0.0054). That is, the algorithms in the previous and new case-mix systems provided highly similar case-mix weights on the sample of 2007 claims. We further examined the diagnosis coding on OASIS assessments linked to the 20 percent claims sample and found a large increase between 2007 and 2008 in the reporting of secondary diagnosis codes (75 FR 43242, July 23, 2010). The use of secondary diagnosis codes in the case-mix algorithm was introduced in 2008 as part of the new case-mix system.

Comment: A commenter stated CMS should suspend nominal case-mix-related payment reductions until it develops an accurate and reliable model to evaluate changes in case-mix weights consistent with the whole nature of patients served in home health care, not just those discharged directly from hospitals.

Response: Many variables in our model are applicable to patients who have not used hospitals recently, including variables relating to demographic status and post-acute care utilization. Another set of the model's variables, used to describe the nature of any previous hospital stay, applies to many patients nonetheless, because we searched the claims history to find the last hospital stay that occurred before the episode. Finally, this year we also added a new source of information to the model, physician diagnoses from the claims history of each patient and hospital diagnosis information from all hospitalizations occurring in the year of the HH PPS episode of the patient. This represented a substantial increase in the amount of information available about patient health characteristics. We believe that, especially since we made this change, the model includes a rich set of patient measures. It is important to note that the omission of any particular variable is not enough to change estimates of unpredicted case-mix change. Variables must have different prevalence rates in the initial and later periods. If prevalence rates for such variables were the same in both periods, the effects would net out; in other words, there would be no systematic difference in the predicted case-mix over time.

Comment: Commenters stated that the Abt report on the real case-mix change analysis (''Analysis of 2000–2008 Case-mix Change'', July 2010, link at *http://www.cms.gov/center/hha.asp*) does not discuss what signs are consistent with known relationships and, hence, is not in a position to judge the signs of the coefficients. Commenters stated that the signs for various variables in the model are counterintuitive. Commenters stated that while Abt included variables related to inpatient stays, the estimated coefficients are not consistent with expectations that ''the coefficient for any stay would be positive and the coefficient for the number of days would be negative.'' The coefficient has an opposite sign than what is expected.

Response: We thank the commenters for their comments. However, our purpose is to predict case-mix weights using all available and relevant administrative data, rather than to isolate the impact of individual variables. We have noted elsewhere that many coefficients have signs as we expect (Abt Associates 2008; 72 FR 49762, 49780, August 29, 2007). Contrary to what the commenter states, it is not clear that a hospitalization would be associated with higher case-mix; it may be that community patients are more clinically complex and have a higher case-mix than those who are discharged from a hospital to home health. This result is consistent with the impact of pre-admission location variables (from OASIS item M0175) in

the 80-group case-mix model. Furthermore, we believe that often the signs that commenters find counterintuitive are not so upon careful consideration of the variables already controlled for in the model.

Comment: Some of the technical concerns are that the model contains numerous variables that are not statistically significant and may provide spurious results.

Response: To avoid omitted variable bias, we believe it is prudent to include all available variables for which there is good reason to believe that they may be causally related to patient case-mix, and therefore, the models contained some statistically non-significant variables. In addition, the non-significant variables do not appreciably alter the results of the case-mix measurement model.

Comment: Abt does not perform any multicollinearity diagnostic statistics or consider the remedy of combining some of the variables. The model uses a large number of variables that do not have much variation. The close interaction among the variables ''is likely to pose problems with the prediction of the dependent variables.''

Response: Given the objectives of the analysis, we are not particularly concerned about redundancy among variables. It is also important to note that such redundancy, often called multicollinearity, does not actually bias results and may only cause large standard errors of the coefficients for variables that are related to one another. Standard errors are not used in our case-mix change calculations. The Abt Associates report described improvement in the predictive power of the model as each set of variables (for example, APR–DRG variables) was added beyond demographic variables alone. The addition of Part A expenditure variables, the last variable set added to the model (prior to the recent addition of HCC variables), led to little improvement in predictive power, and for that reason might be considered redundant; however, their addition did not change the essential results of the analysis (Abt Associates, 2008), which were that only a small proportion of the case-mix growth could be attributed to changes in patients' characteristics.

Comment: Commenters stated that they would like the model to meet a minimum requirement for a level of accuracy and reliability that is at least equivalent to the case-mix adjustment model that it is assessing. The commenters stated that the current HH PPS case-mix model had an R-squared explanatory power of over 40 percent while the case-mix weight change assessment model has an R-squared around 10 percent. The commenter states that the regression model R-square dropped from 19 percent to 10 percent in the 2008 analysis and the decrease in the R-square is ''unclear and unexplored.'' They stated that since the R-square of the 80 HHRG case-mix model was 0.21 while the R-square of the 153 model was 0.44, the R-square value for the case-mix measurement model should be higher for the model using the 153 grouper.

Commenters stated that the Abt models are unreliable because 40 percent of the top variables differ from one model year to the next (original IPS model and the model rebased to 2008 data), and 20 percent of the variables change signs. The commenter stated the high R-square of the current PPS case-mix model suggests that the case-mix weight change regression model analysis for 2008 should have had a higher R-square. The decrease in the R-square is ''unclear and unexplored.''

Response: We thank commenters for their comments. We note that the commenter's comments correspond to the older case-mix prediction model (which assessed real case-mix growth from 2000–2007 and from 2007–2008). We have since updated our case-mix prediction model to include HCC data and our case-mix model assesses real case-mix growth from 2000–2005, 2005–2007 and from 2007–2009.

We also note that we disagree that the difference in R-squares for the models indicates that the prediction model for real case-mix is unreliable. Comparing the results for the 2000–2005 and 2005–2007 periods, four of the top five drivers of predicted case-mix change are the same in both models, as are 13 of the top 20. Similarly, 13 of the top 20 drivers are the same for results from 2005–2007 and 2007–2009, including the HCC community score. Most of the predicted case-mix change results from the major ''drivers'' in the model, and, of the top 50 drivers of case-mix change in the 2000–2005 analyses (which account for almost 80 percent of the total predicted change in that time period), 48 have the same sign in the 2007 model and 30 also have the same sign for the 2009 model.

We would expect some change over time in the variables that are among the top drivers of case-mix change, given the large number of variables in the model and the differing dependent variables (the 80 case-mix weights for the first model, pertaining to the 2000–2005 and 2005–2007 periods, and the 153 case-mix weights for the second model, pertaining to the 2007–2009 period). With regards to the 40 percent R-squared explanatory power benchmark, given that the goal of the case-mix change analyses is to determine the extent to which case-mix changes observed over time are due to changes in patient acuity or other factors (such as coding changes) that are not observed in the model, we do not believe that this is an appropriate statistical performance benchmark for the model.

The explanatory power of the current HH PPS case-mix model is as high as it is in large part because of the therapy-related variables in the model (where a direct measure of resource use is included on the right-hand side of the regression model). We do not believe that it is appropriate to include these types of variables in the case-mix change model because they are provider determined.

Comment: A commenter stated that no explanation was provided on segmented choice of periods of evaluation. This commenter wrote that it is unclear why Abt subdivided the 2000–08 period into 2000–2007 and 2007–2008. To minimize the possibility for shifts in the relationship between resource requirements and explanatory variables, Abt could have subdivided the 8-year period in half or at least performed some sensitivity analysis to choose the time periods.

Response: The procedure of identifying nominal case-mix change relies on subtracting an average of predicted weights from the average of actual, billed weights. The case-mix group system changed from one of 80 groups to 153 groups in 2008, causing a change in the set of weights that could be billed to Medicare. Up until 2008, this was not an issue as the same set of weights was used throughout the entire history of the PPS up until that year. To be able to bridge the periods before and after the 153-group model, in last year's analysis, we rebased the prediction model to the 2008 data, the first year that the 153-group model was used for paying home health providers, creating a 2007–2008 segment. We combined the results from the original IPS-period equation with the results from the rebased 2008 equation for last year's analysis. For this year's analysis, again we defined segments to accommodate data availability. We defined three segments. We broke the 2000–2007 period that we previously analyzed into two periods, 2000–2005 and 2005–2007, because we added several variables derived from HCC model to the 80 HHRG model. It was not possible to include HCC variables in analyses of years prior to 2005. The third segment covered 2007–2009 instead of 2007–2008, to update the data to the most

current year available. This year's analysis used 2009 data, rather than 2008 data, for rebasing to the 153-group model.

Comment: Commenters criticized the model's reliance on hospital DRG data stating that over half of all Medicare home health patients are admitted to care from a setting other than a hospital and many of the patients receive care far extended past an initial episode. Commenters stated that the APR–DRG variables are less relevant for multiple episode patients. Another concern was that 848 of the 902 variables are APR–DRG related to prior use hospitalization.

Response: We disagree that the utility of the hospital information in the case-mix change analysis is so limited, and with the addition of HCC data, we have enhanced the robustness of the variable set used for the analysis to include physician diagnoses and diagnoses of other clinicians, as well as Medicaid eligibility. Regardless of whether the patient came directly from a non-hospital-setting (for example, home or a post-acute institutional stay), information from a hospital stay preceding home health is typically relevant to the type of patient being seen by the HHA, and thus can provide information about the PPS case-mix measure for the home health episode. A recent hospitalization, whether or not there is an intervening period spent in some other setting before home health admission, is common before admission to home health. The Abt Associates case-mix change report (''Analysis of 2000–2008 Case-mix Change'', July 2010, link at *http://www.cms.gov/center/hha.asp*) indicates that about 90 percent of the episodes have a hospitalization history in the data, looking back a maximum of 4 years. However, from the information we show here about the likelihood of a hospital stay before and after home health, relatively few of the hospital stays contributing information are as old as 4 years. We also note that the remaining 10 percent of episodes are not dropped from the analysis; these episodes contribute information for the model, specifically, demographic information and various proxy measures derived from Part A utilization and expenditure data.

Comment: Commenters stated that the model should recognize that home health patients are often treated in the home for conditions other than the primary condition that led to hospitalization and should consider that patients may have multiple episodes of care such that a prior hospitalization may be of little relevance to the condition of the patient.

Response: We believe our addition of HCC data addresses this comment. The data reflect the cumulative diagnostic information from the patient's claim history in the year of the episode. We would like to remind commenters that the real case-mix prediction model is not limited to diagnoses. The model also takes into account demographic factors, as well as utilization indicators of health status, such as Part A utilization measures. Moreover, the model measures the relationship between these factors and case-mix.

Comment: A commenter stated hospital discharge data demonstrate that home health patients are admitted from hospital stays with a higher degree of acuity than in the past. ''The acute care (inpatient prospective payment system (IPPS)) CMI for cases discharged to HHAs reflects the patient severity of the patients discharged to HHAs. As one of the measures for patient severity is prior hospitalization, it is believed to be unaffected by the home health CMI. The CMI for the prior hospitalization can be assumed to be a proxy measure of the ''real'' case-mix index (CMI). Based on our analyses of the 2007 and 2008 MedPAR data (Medicare discharges from short term acute care hospitals), we found that the CMI (MS DRG-based CMI) of cases discharged to HHAs increased by 2.5 percent from 1.588 in 2007 to 1.630 in 2008. Furthermore, we also found that among the acute care cases discharged to HHAs, the proportion of cases categorized as Medicare Severity Adjusted Diagnosis Related Groups (MS DRGs) with complications and comorbidities increased by 3 percentage points from 25 percent in 2007 to 28 percent in 2008. This implies that the real CMI due to comorbidities most likely increased for the cases discharged to home health agencies.''

Response: The MedPAR data analyzed in this comment cover the period when the MS–DRG system was implemented. We analyzed MS–DRG coding and found evidence of changes in coding and documentation practices that led to increases in billed acute care case-mix weights. CMS actuaries estimated that a 2.5 percent increase in case-mix in the hospital IP PPS was due to coding and documentation changes occurring in FY 2008 (75 FR 50355). The results cited by the commenter may have reflected the weight-increasing hospital coding behaviors addressed by the CMS regulatory analysis. Therefore, we have reason to believe that this measure alone is not good evidence for assessing real case-mix change. We must also point out that our analyses employing the APR–DRG system indicated that the proportion of episodes with a Mortality Risk Level 3 (Major) diagnosis increased over time while the proportion with Mortality Risk Level 2 (Moderate) decreased. However, our regression coefficients (for both the IPS and 2008 model) showed a negative relationship between being in the moderate or major risk of severity groups and case-mix. Thus, the increase in the proportion of patients in the highest mortality risk category led to an estimate of lower predicted case-mix. Given these types of findings, it is not clear the extent to which the CMI changes that the commenter notes, even if they represented an accurate measure, would lead to a prediction of higher case-mix.

Comment: The commenters stated that the Harvard team validation analysis confirms that patients discharged from a hospital to home health services are significantly different in terms of case-mix weight changes than those admitted to home health without a prior hospitalization. The case-mix weight change increased by 21.16 percent for those who were discharged to home health while the case-mix weight change increased by only 15.85 percent for those who were discharged to home health without a prior hospitalization.

Response: Both of those case-mix weight change values are substantial. In addition, as described in the CY 2012 HH PPS proposed rule, the results of the MEPS analysis did not provide evidence to suggest that the Medicare home health population has experienced a decrease in their health status over time. Given these results along with the finding of significant nominal case-mix percentage increases for the post-acute and community patients, the Harvard team concluded that the current model adequately measures real case-mix growth for home health patients, including patients admitted to home health from the community. Furthermore, we note our real and nominal case-mix change estimated for purposes of arriving at the case-mix change adjustment to the rates combine data from both populations.

Comment: Many commenters suggested that all of the payment adjustments are based on a flawed foundation and suggested that CMS should not use data from IPS and early PPS years to compare increased case-mix weights. Commenters recommend analyzing data with a different base year and analyzing case-mix weight changes for 2008 to current to see how much increase occurred in more recent years.

Response: In our May 2007 proposed rule and our August 2007 final rule, we described the IPS samples and PPS

samples that were used to calculate case-mix change. We remind the commenter that 313,447 observations is an extremely large sample by statistical standards, and that agencies began collecting OASIS data in 1999, following issuance of a series of regulations beginning on January 25, 1999 (64 FR 3764). Most of the data we used for the baseline period come from the first 3 quarters of the year 2000—months after collection was mandated to begin in August 1999. By 2000 the vast majority of agencies were complying with the reporting requirements. Indirect evidence that the data from the early years of the HH PPS were sufficiently reliable comes from model validation analysis we conducted during that period. Validation of the 80-group model on a large 19-month claims sample ending June 2002 (N = 469,010 claims linked to OASIS) showed that the goodness-of-fit of the model was comparable to the fit statistic from the original Abt Associates case-mix sample (0.33 vs. 0.34), notwithstanding that average total resources per episode declined by 20 percent. That analysis also showed that all but three variables in the scoring system remained statistically significant.

Comment: Commenters stated that CMS should suspend or drop case-mix reductions because the data used to determine the reductions do not recognize real increases in severity due to earlier and sicker hospital discharges.

Response: Although we recognize that average lengths of stay in acute care settings are in decline, our analysis shows that agencies are, in fact, caring for fewer, not more, post-acute patients. Since 2001, the average length of stay in acute care preceding home health has declined by about one day, from 7 days to 6 days. Between 2008 and 2009, the average length of stay in acute care leading directly to home health admission declined from 6.07 days to 5.85 days. However, agencies are caring for fewer highly acute patients in their caseloads. The proportion of non-LUPA episodes in which the patient went from acute care directly to home health within 14 days of acute hospital discharge declined substantially between 2001 and 2008, from 32 percent to 23 percent. Also, the median acute hospital length of stay for these non-LUPA episodes with a 14-day look back period remained unchanged at 5 days between 2002 and 2008 (see 75 FR 70379). In 2009, the median length of stay declined to an estimated four days (see Table 2). The distribution of lengths of stay has been fairly stable, with declines since 2006 limited to the upper half of lengths of stay.

We believe the declining prevalence of recent acute discharges is due in part to more patients incurring recertifications after admission to home health care, and also due to more patients entering care from the community. The shortening lengths of stay at the right tail (high percentiles) of the distribution may reflect changing utilization of long-term-care hospitals during recent years. The conclusion we draw from these data is that while patients on average have shorter hospital stays, agencies are also facing a smaller proportion of home health episodes in which the patient has been acutely ill in the very recent past. Also, the detailed data on the distribution of stay lengths suggest that for the most part lengths of stay for such patients remained fairly stable through 2009.

TABLE 2: Percentiles of acute hospital length of stay (days) (2006-2009)

Year	5th	10th	20th	30th	40th	50th	60th	70th	80th	90th	99th
2006	1	2	3	3	4	5	6	7	9	12	28
2007	1	2	3	3	4	5	6	7	9	12	28
2008	1	2	3	3	4	5	5	7	8	12	27
2009	1	2	3	3	4	4	5	6	8	11	26

Note: Based on a 10 percent random beneficiary sample of FFS home health users; excludes LUPA episodes and includes only episodes where acute hospital discharge occurred within 14 days of the from-date of the 60-day episode claim and the patient's first destination post-discharge under Part A was home health care. Updates to the sample file are the likely reason for a few differences in percentile values from previously published data.

Furthermore, we think that acuity of patients has been increasingly mitigated by lengthening post-acute stays for the substantial number of home health patients who use residential post-acute care prior to an episode. Our data show that patients who enter residential post-acute care before home health admission have experienced increasing lengths of stay in post-acute care since 2001. Using a 10 percent random beneficiary sample, we computed the total days of stay (including both acute and post-acute care days) for home health episodes with common patterns of pre-admission utilization during the 60 days preceding the beginning of the episode. We included patients whose last stay was acute, or whose next-to-last stay was acute with a follow-on residential post-acute care stay, or whose third from last stay was acute followed by two post-acute care stays. These common patterns accounted for 55 percent of the initial episodes in 2001 and 42 percent in 2008. We found that total days of stay during the 60 days leading up to the episode averaged 12.6 days in 2001, and rose to 12.8 days in 2008. This small change in total days of stay during a period when acute LOS was declining was due to increasing lengths of stay in residential post-acute care for these patients. For example, within the 30 days before admission, an average length of stay in the post-acute care setting for episodes preceded by an acute stay that was the next-to-last stay, and where the post-acute care stay was

the very last stay before the claim from-date, increased from 12.7 to 14.3 days. Our interpretation of these statistics is that patient acuity has been increasingly mitigated by longer post-acute stays for the substantial number of home health patients that use residential post-acute care prior to the start of a home health episode. Patient acuity also was mitigated by growing numbers of home health recertifications.

Comment: Commenters stated that CMS uses inconsistent approaches in estimating the coding adjustment among provider sectors. They cited that over the last four years, CMS has used different case-mix change assessment models for post-acute providers: IRFs, LTCHs, and HHAs. Other commenters stated that the methodology ''used to establish the reduction percentage'' in the inpatient system was flawed and were concerned that the methodology used to establish the payment reduction for home health is flawed as well.

Response: The payment systems, institutional conditions, data resources, case-mix assignment procedures, and many other aspects differ across care settings. Therefore, individual case-mix assessment methodologies must be developed for each of the post acute care sectors. Our general approach is consistent with the original approach CMS used to analyze the coding change problem affecting IRFs. Also, in terms of evaluating case-mix methodologies in the different settings, the methodologies must each be judged on their own individual merits. We have explained and justified the methodology in this and in previous regulations cited elsewhere in this preamble.

Comment: Commenters stated that there should be no application of the adjustment to medical supplies unless CMS can establish that there is a change in case-mix weights specifically regarding medical supplies that is not due to real changes in patient characteristics and the proposed rule is unclear whether the adjustment factor will apply to NRS.

Response: The 3.79 percent payment reduction in CY 2012 and the 1.32 percent payment reduction in CY 2013 that we are finalizing in this final rule will not be applied to non-routine medical supplies. The payment reductions will only be applied to the national standardized 60-day episode rates to fully account for growth in nominal case-mix from the inception of HH PPS through 2009. We will further explore potential payment reductions to non-routine medical supplies for future rulemaking.

Comment: One commenter stated how there is much uncertainty surrounding how the ''super committee,'' created as part of the recent debt limit deal, will move forward assigning cuts in Federal spending over the next ten years and if the committee and/or the Congress fail to reach a compromise, there may be cuts to Medicare home health rates in conjunction with the regulatory cuts that CMS is proposing. (0038) The commenter was concerned with the combined effect of these additional cuts along with our payment reduction.

Response: We will continue to monitor HHA margins and effects of payment policies on patients' access to care. CMS also must comply with current and any future Medicare laws passed by the Congress. In addition, we cannot comment on any potential legislation which the Congress may be considering.

Comment: Commenters stated that we should suspend or drop case-mix reductions in favor of the approach in S.2181/H.R. 3865 (110th Congress), which involved working with the home health industry to develop criteria and evaluating a medical records sample to determine reductions, rather than relying on hypothetical extrapolations. Another commenter mentioned that the Home Health Care Access Protection Act (S. 3315/H.R. 5803) was introduced to ''establish a more reliable and transparent process for CMS to follow in evaluating Medicare payments for home health services.'' The commenter suggested that CMS use this more transparent process which would still enable rate adjustments to be implemented provided that there is reliable evidence that there are higher case-mix scores resulting from factors other than changes in patient condition.

Response: We commissioned a review of the case-mix change methodology, as we described in our proposed rule and elsewhere in this final rule. The research team of highly qualified personnel determined that an examination of the consistency of the results across types of episodes and providers, which they conducted themselves, would provide information about the reliability of the method. They considered information that they developed from the MEPS survey as well. We have not commissioned work based on a medical records sample. We note that a medical records sample could be used to determine payment reductions; however, there are many difficulties and limitations to this analysis. First, to produce reliable results, we would need to collect a large sample which would require significant financial resources that may not be available. We would a need a sizable sample of records from both the IPS period and from a follow-up year (for example, 2009). In addition, based on our past experience in retrieving old records, it is difficult to find enough records to constitute a valid broad-based sample. The procedure would have nurses group them into a case-mix group, and compare the results with those from a similar procedure performed on recent records. Additional potential problems with using medical records include the strong possibility that records would have insufficient information to allow assignments for the activities of daily living (ADL) items of the case-mix system, have insufficient information to enable independent staging of pressure ulcers, and other kinds of underreporting. It is possible that this procedure might not return the findings that the proponents suggest it would, because the nominal case-mix change problem partly results from reporting practices that have changed through time from a state of underreporting to a state of more complete reporting. Therefore, one would expect that the source records would likely reflect underreporting in the early years, just as the OASIS reflected underreporting in the early years.

Comment: Commenters criticized the evaluation by the Harvard team. They stated that the Harvard team did not attempt to determine if the results were accurate and only validated the idea that a method that does not rely on home health specific patient data results in similar conclusions when reviewed in comparison to alternative methods that do not consider home health patient characteristics.

Response: The Harvard team was asked to review the appropriateness and strength of evidence from the case-mix change methodology we used. After their examination, they concluded that the methodology was robust and valid.

Comment: One commenter stated that they reviewed the report by Dr. Grabowski and his team at Harvard and found it provided compelling support for the case-mix measurement methodology used in the proposed rule.

Response: We thank the commenter for the comments and the support.

Comment: Commenters disagreed with the use of HCC data. The commenters stated that the HCC information has no bearing on the home health-specific condition of patients nor the condition at any provider setting and that an individual may need different levels of care at any given point in time. The commenters stated that the reliance on HCC does not offer the granular-level review of patient characteristics that is needed. Another

commenter stated that the methodology used to risk adjust for managed care is not the same as risk adjusting for home health patients at the time they received services and that they thought that this difference was not taken into account in the case-mix measurement model.

Response: We added the HCC data partly as a response to commenters' criticisms that the model of real case-mix change was too reliant on hospital-generated claims information. We disagree with the statement that the HCC information has no bearing on the home health-specific condition of patients, because we used the HCC information for the year in which the episode took place. The patient's conditions during that year, as reflected in all the diagnoses associated with physician visits, certain other types of clinician encounters, and hospital stays occurring that year, in addition to information such as Medicaid enrollment included in the HCC data, provide a relatively comprehensive picture from administrative data of the patient's health status. We do not find that a granular level review of patient characteristics would be feasible, given the immense resources needed for a large set of independent reviews.

Comment: Commenters were concerned with CMS' use of 2009 data, stating that home health services have changed from 2009 to today.

Response: As in previous rulemaking since the start of the HH PPS, we continue to use data samples that represent a 2-year lag of the service date relative to the year in which we conduct the analysis. The 2009 claims data matched to OASIS assessments and Part A information, as well as HCC information, are a complex set of analytic files that should be based on a complete year of data, to assure representativeness. If we were to begin file construction before having all the claims, we would introduce error into the results (in general, more complicated claims take longer to prepare and submit). Furthermore, we did not make major changes to the payment system that would affect most agencies between 2009 and 2011, and so we do not have strong reasons to believe that services patterns have changed dramatically. We noted in our proposed rule that in 2009 the major outlines of the therapy episode distribution exhibited a continuation of the outline established in 2008, the first year under the refinements.

An alternative to using 2009 data to determine nominal case-mix growth would be to project the level of nominal case-mix growth for 2010 and beyond and make payment reductions based on our projections. However, these projections may result in payment reductions that are larger than those being implemented. We may consider such a methodology change in future rulemaking.

Comment: The commenters stated that the payment reductions fail to take into account home health coding policy changes that negate the risk of coding weight increases, such as the elimination of hypertension from the case-mix system and the re-weighting of therapy episodes. Commenters suggested that CMS consider the impact of the hypertension adjustment in the overall analysis of nominal case-mix growth. Other commenters requested that CMS not make drastic changes to the case-mix while implementing the proposed rate reductions.

Response: We note that when removing the two hypertension codes, we reallocated the resources and revised the weights in a budget neutral manner so that they would result in the same approximate aggregate expenditures as 2009. Therefore, when removing the two hypertension codes, we are not taking away money from the case-mix system, and therefore, we can fully account for case-mix growth from 2000 to 2009.

We also note that the payment reductions we have proposed are to compensate for nominal coding changes that occurred through 2009 and we proposed to implement the elimination of hypertension beginning in 2012. Based on our analysis discussed in Section II.B, we believe a revision in the case-mix weights is warranted and are therefore proposing the change to the case-mix weights along with the payment reductions.

Comment: Commenters stated that external data references show indications of real changes in patient characteristics. They stated that the Medicare Expenditure Panel Survey (MEPS) Data analysis shows that patients are getting sicker every year and data may show a higher ''real'' case-mix change than CMS estimates.

Response: As stated in the proposed rule, to address the comment that a study which used MEPS data showed a higher rate of real case-mix growth in the entire Medicare population than our model estimated for Medicare home health patients, a more detailed analysis of the MEPS data was performed. The trends in health status of four different populations from 2000 to 2008 were analyzed. The data for the analysis were obtained from the MEPS 2000 and 2008 Full Year Consolidated Data files. The four populations that were analyzed were: (1) The full MEPS sample; (2) all Medicare beneficiaries, defined as all respondents ever having Medicare in a given year; (3) all home health patients, defined as having at least one home health provider day in a given year; and (4) all home health Medicare beneficiaries, defined as all respondents with any Medicare home health charges. Two measures of self-reported health status and one measure derived from patient information that screened for ADL limitations were used to determine the trends in health status. These types of measures have been shown to be highly correlated with actual health (Ware and Sherbourne, 1992; McHorney, Ware, and Raczek, 1993). The three measures which were analyzed for each of the populations were: (1) Whether the respondent indicated perceived health status of ''poor'' or ''fair'' as opposed to those indicating health status as ''good,'' ''very good'' or ''excellent;'' (2) whether the respondent indicated if pain limited normal work (including work in the home) in the past 4 weeks ''extremely'' or ''quite a bit'' as opposed to those indicating pain limited work ''moderately,'' ''a little bit,'' or ''not at all,'' and (3) whether respondents had a positive screen for needing assistance with ADL. In all cases, responses such as ''refused,'' ''don't know,'' or ''not ascertained'' were omitted from the analysis. The Medicare analysis samples consisted of 3,371 and 4,144 beneficiaries in 2000 and 2008, respectively. The Medicare home health subsamples consisted of 174 and 289 beneficiaries in 2000 and 2008, respectively. The survey responses were then weighted using pre-constructed MEPS survey weights to estimate nationally representative changes in the three health status variables.

All three measures indicated a slight increase in the overall health status of the Medicare home health population. Two of these results were not statistically significant, but the percent of home health Medicare beneficiaries experiencing ''extreme'' or ''quite a bit'' of work-limiting pain decreased substantially, from 56.6 percent in 2000 to 45.4 percent in 2008 (p=0.039). Unlike Dr. Deb's original study, the new MEPS analysis focuses specifically on Medicare home health users (as opposed to the entire Medicare population), and it is not reliant on expenditure data. A limitation of the Debs case-mix measure, which relies on expenditure data, is that it could reflect large increases in expenditures, such as drug expenditures, but any relationship to actual increases in impairments and other reasons for using home health resources is unclear. A possible

limitation of the new MEPS analysis is that the sample of Medicare home health respondents is relatively small, notwithstanding that the result of one of the three measures was statistically significant. Also, the ADL screening item may not capture a change in the frequency of very severe ADL limitations since the measure may be insensitive to changes at high levels of disability. However, the Harvard team asserted that the methods of the new MEPS analysis are more appropriate for assessing whether there are increases in the severity of illness burden that would specifically indicate a need for more resources in the Medicare home health population. Based on the two kinds of evidence, and a recognition of the limitations of both, we conclude that the MEPS data provide no evidence of an increase in patient severity from 2000 to 2008.

Comment: Commenters stated that the OCS data analysis on OASIS measures regarding a patient's functional status unrelated to HH PPS HHRG calculations showed that there were declines in all nine functional categories and showed increased patient acuity from 2006–2008 as measured by ADL assessments of decreasing functional capabilities of home health patients. They also stated that OCS data analysis on OASIS measures of clinical conditions that are unrelated to HH PPS HHRG calculations shows a ''large increase'' in acuity as measured by changes in clinical conditions and there are increases in the number of patients requiring IV therapy, parenteral nutrition and those who have urinary tract infections at the start of care. They stated that the data also showed an increased inability to manage oral and injectable medications. They stated that the OASIS measures are not likely to be ''upcoded'' to secure higher reimbursement as none of the measures have a direct or indirect impact on payment and that the decreases in ADL incapacities are correlated with increase in use of therapy services. Further, the decrease in functional capabilities could have been easily correlated with increase in the use of therapy services as both physical and occupational therapists directly address the ADL incapacities that are the focus of these OASIS findings. The commenter referred to reports on the July 23, 2010, Proposed Rule commissioned by the Home Health Advocacy Coalition and the National Association for Home Health and Hospice, saying both documents indicate ''non-case-mix related OASIS items, such as grooming and light meal preparation have shown increasing functional limitations among home health patients.'' Commenters stated that other data showed that home health care patients have increased functional limitations and more complex clinical conditions than in past years.

Response: Contrary to the trends reported by the commenter pertaining to treatments at home, our analysis from a large, random sample of OASIS data linked to claims shows that the proportion of episodes involving intravenous therapy or infusion therapy has remained stable at around 2.2 percent. The proportion of episodes involving parenteral nutrition remains at 0.2 percent or less during that period. As we have stated in previous regulations, we are reluctant to use OASIS data to analyze changes in real case-mix because OASIS measures reflect changes in coding practices and payment incentives including quality measurement incentives, all of which are not related to real changes in patients' acuity. We are also concerned that incentives could lead to reports of patient function—-whether or not particular function-related items are used in the case-mix assignment—that are consistent with the therapy visits planned. Unfortunately, this problem potentially limits the usefulness of non-case-mix items. We believe that independent measures are the best way to assure the reliability of our real case-mix methodology. We plan to try to identify independent measures, beyond the independent measures we are currently using in our methodology, as we go forward.

Comment: Commenters stated that patients are also taking many more medications.

Response: OASIS-C includes information about medication use, but we do not have broad-based information about changes in numbers of medications in home health users in recent years. While we intend to examine the possible role that new variables in OASIS-C, including medication use, can play in case-mix adjustment, whether a trend indicative of increased medication use is important for measuring real change in case-mix over time depends on the extent to which its effect is independent of other factors recognized in our real case-mix change analytic procedure. Also, the challenge of obtaining historical data is great, but we can at least start tracking medication use with the availability of OASIS-C.

Comment: One commenter was supportive of the payment reduction. The commenter stated that they believed that unwarranted overpayments attributable to coding practices should be recovered when possible and that the reduction is consistent with the experience of other prospective payment systems. The commenter stated that the payment reduction should not create payment adequacy or access to care issues since HHAs are projected to have margins exceeding 14 percent in 2011. The commenter stated that CMS should continue to examine nominal case-mix growth in the future and adjust payments accordingly.

Response: We thank the commenters and will continue to monitor nominal case-mix growth and implement payment adjustments as needed. In summary, we thank the commenters for their thoughtful and comprehensive comments. As we described above in response to comments, we are finalizing a phased-in implementation of a 5.06 percent reduction over 2 years, as some commenters suggested. We believe that by phasing-in the reductions over CY 2012 and CY 2013, we allow HHAs an opportunity to adopt process efficiencies associated with the CY 2011 legislative and regulatory requirements prior to imposing the full 5.06 percent payment reduction.

In CY 2011 rulemaking, we deferred finalizing a proposed 3.79 percent reduction to the CY 2012 national standardized 60-day episode rates to account for nominal case-mix growth we identified through CY 2008 pending an independent review of our method for identifying real case-mix growth. We believe that providers expected and planned for us to impose a 3.79 percent payment reduction in CY 2012. As such, we are finalizing a 3.79 percent payment reduction in CY 2012 and a 1.32 percent payment reduction for CY 2013 to the national standardized 60-day episode rates. These reductions enable us to account for the nominal case-mix which we have identified through CY 2009, to follow through with the planned 3.79 percent payment reduction for CY 2012, and to allow for HHAs' adopting process efficiencies during CY 2012.

B. Case-Mix Revision to the Case-Mix Weights

1. Hypertension Diagnosis Coding Under the HH PPS

As stated in the CY 2012 HH PPS proposed rule, in CY 2011 rulemaking, we proposed to remove ICD–9–CM code 401.1, Benign Essential Hypertension, and ICD–9–CM code 401.9, Unspecified Essential Hypertension, from the HH PPS case-mix model's hypertension group. Beginning with the HH PPS refinements in 2008, hypertension was included in the HH PPS system because

the data used in developing the refinements (data from 2003 and 2005) suggested it was associated with elevated resource use. As a result, the diagnoses Unspecified Essential Hypertension and Benign Essential Hypertension were associated with additional points from the four-equation model and, therefore, with potentially higher case-mix weights in the HH PPS case-mix system. When examining the trends in reporting of hypertension codes from 2000 to 2008, our analysis showed a large increase in the reporting of codes 401.1 and 401.9 in 2008. However, when looking at 2008 claims data, the average number of visits for claims with code 401.9 was slightly lower than the average for claims not reporting these hypertension codes. In the CY 2011 HH PPS proposed rule issued on July 23, 2010, we proposed to remove codes 401.1 and 401.9 from our case-mix model based on preliminary analysis of the trends in coding and resource use of patients with these codes. We suspected that the 2008 refinements, which newly awarded points for the diagnosis codes 401.1 and 401.9, led to an increase in reporting of these codes and that this reporting was a key driver of the high 2008 growth in nominal case-mix.

In response to this proposed policy change, we received numerous comments, several of which stated that additional analysis was needed to substantiate the rationale for removing hypertension codes 401.1 and 401.9. In the CY 2011 HH PPS final rule, we withdrew our proposal to eliminate 401.1 and 401.9 from our model and stated our intention to do a more comprehensive analysis of the resource use of patients with these two hypertension codes. As noted in our CY 2012 HH PPS proposed rule, we have since completed a more thorough analysis. Based on the results of our latest analyses, we proposed to remove ICD–9–CM code 401.1, Benign Essential Hypertension, and ICD–9–CM code 401.9, Unspecified Essential Hypertension, from the HH PPS case-mix model's hypertension group. Our data showed there continued to be an increase in the prevalence of ICD–9–CM code 401.9 from 2008 to 2009. In addition, agencies (regardless of ownership type) typically had a twofold or higher increase in the prevalence of a 401.9 diagnosis from 2005 to 2009, with the exception of the East North and the West North Central regions, which had an increase of about 1.7- and 1.5-fold, respectively. Most compelling, our analysis indicates that currently these diagnoses are not predictors of higher home health patient resource costs. Rather, current data indicates a lower cost associated with home health patients when these codes are reported. The results from two regression models testing the impact of the two hypertension codes on resource costs provided strong support for removing the 401.1 and 401.9 diagnoses from the case-mix system. The results showed that the presence of these diagnoses is associated with lower costs, when controlling for other case-mix related factors. Therefore, we proposed to remove codes 401.1 and 401.9 to more accurately align payment with resource use.

In the CY 2011 HH PPS final rule, in response to comments, we stated that if we were to finalize removing these codes from our case-mix system, we would do so in such a way that we would revise our case-mix weights to ensure that the removal of the codes would result in no change in aggregate expenditures. Therefore, we proposed to revise the HH PPS case-mix weights in such a manner so as to not reduce aggregate home health expenditures. Please see the following section for details on our revision to the case-mix weights. The proposed revisions of the case-mix weights redistributed HH PPS payments among the case-mix groups such that removal of these hypertension codes was budget neutral.

2. Revision of the Case-Mix Weights

As we described in section II.B.1 of this preamble, we proposed to revise our HH PPS case-mix weights to remove two hypertension codes from our case-mix system while maintaining budget neutrality. In the CY 2012 HH PPS proposed rule, we also justified another proposal for further revisions to the case-mix weights because of incentives that exist in the HH PPS to provide unnecessary therapy services. We described that our review of HH PPS utilization data shows a shift to an increased share of episodes with very high numbers of therapy visits. This shift was first observed in 2008 and it continued in 2009. In last year's regulation, we described an increase of 25 percent in the share of episodes with 14 or more therapy visits. In the 2009 sample, the share with 14 or more therapy visits continued to increase while the share of episodes with no therapy visits continued to decrease. The frequencies also indicate that the share of episodes with 20 or more therapy visits was 6 percent in 2009 (data not shown), which is a 50 percent increase from the share of episodes of 2007, when episodes with at least 20 therapy visits accounted for only 4 percent of episodes.

Furthermore, we described that in their 2010 and 2011 Reports to Congress, MedPAC suggests that the HH PPS contains incentives which likely result in agencies providing more therapy than is needed. In their March 2010 Report to Congress, MedPAC stated that ''therapy episodes appear to be overpaid relative to others and that the amount of therapy changed significantly in response to the 2008 revisions to the payment system.'' In support of this statement, MedPAC showed that in 2008, there was a sudden shift to episodes with therapy services at the new therapy thresholds, which suggests inappropriate therapy utilization. In their March 2011 Report to Congress, MedPAC stated, ''The volume data for 2009 indicate that the shifts that occurred in 2008 are continuing * * * Episodes with 14 or more therapy visits increased by more than 20 percent, and those with 20 or more therapy visits increased by 30 percent.''

Also, in their March 2011 Report to Congress, MedPAC suggested that the current HH PPS may ''overvalue therapy services and undervalue nontherapy services.'' In this report, MedPAC describes that HHA margins average 17.7 percent in 2009, with 20 percent of agencies achieving an aggregate margin of 37 percent. MedPAC further stated that their analysis of high-margin and low-margin agencies suggests that the HH PPS overpays for episodes with high case-mix values and underpays for episodes with low-case-mix values. Furthermore, MedPAC reported that HHAs with high margins had high case-mix values which were attributable to the agencies providing more therapy episodes (MedPAC, March 2011 Report to Congress). MedPAC went on to assert that ''unless the case-mix system is revised, agencies will continue to have significant incentives to favor therapy patients, avoid high-cost nontherapy patients, and base the number of therapy visits on payment incentives instead of patient characteristics.''

We stated that we concur that the therapy utilization shifts and the correlation between high agency margins and high volumes of therapy episodes strongly suggest that the costs which the HH PPS assigns to therapy services when deriving the relative payment weights are too high in comparison to actual costs incurred by agencies for therapy services. We believe that one factor which contributes to this overpayment for therapy services is the growing use of therapy assistants, instead of qualified

therapists, to provide home health therapy services. Current data suggest that the percentage of therapy assistants that is reflected in the therapy-wage weighted minutes used in the calculations of HH PPS relative resource costs is too low. For our 2008 refinements, to construct the relative resource costs for episodes, we used the labor mix percentages reported in the Occupational Employment Statistics (OES) data by the Bureau of Labor Statistics. In 2005, which is the year of data that was used to develop the HH PPS refinements, the OES data showed that 15 percent of physical therapy was provided by therapy assistants and that 11 percent of occupational therapy was provided by therapy assistants. This data was then used to develop the resource costs for episodes which were used to develop the current HH PPS payment weights. In 2008, the OES data showed that 19 percent of physical therapy was provided by therapy assistants and that 13 percent of occupational therapy was provided by therapy assistants. In addition, by 2009, OES data has shown that the percentage of physical therapy provided by therapy assistants was 20 percent and the percentage of occupational therapy provided by therapy assistants was 16 percent. We noted that these statistics reflect the mix for all home health providers. We also noted that in CY 2011, we began collecting G-code data on HH PPS claims which will enable us to quantify the percentage of therapy assistants who are providing therapy and to assess how the percentages vary relative to the quantity of therapy provided and the type of provider. We have since performed some preliminary analysis on the G-code data, which is further discussed in our responses to comments.

In the CY 2012 HH PPS proposed rule, we stated that we believe that MedPAC has provided strong evidence that our reimbursement for episodes with high therapy is too high. Also, based on MedPAC's analysis and our own findings, we believe that the resource costs reflected in our current case-mix weights for therapy episodes, in particular for those episodes with high amounts of therapy, are higher than current actual resource costs and that an adjustment to the HH PPS therapy case-mix weights is warranted. We noted that fully addressing MedPAC's concerns with the way the HH PPS factors therapy visits into the case-mix system will be a complex process which will require more comprehensive analysis and potentially additional structural changes to the HH PPS. While we plan to address their concerns in a more comprehensive way in future years, for CY 2012 we proposed to revise the current case-mix weights by lowering the relative weights for episodes with high therapy and increasing the weights for episodes with little or no therapy. It should be noted that we proposed to revise the case-mix weights in a budget neutral way. In other words, our proposal redistributed some HH PPS dollars from high therapy payment groups to other HH PPS case-mix groups, such as the groups with little or no therapy. We believe our proposed revision to the payment weights would result in more accurate HH PPS payments for targeted case-mix groups while addressing MedPAC concerns that our reimbursement for therapy episodes is too high and our reimbursement for non-therapy episodes is too low. Also, we believe our proposed revision of the payment weights will discourage the provision of unnecessary therapy services and will slow the growth of nominal case-mix.

Our detailed approach, analysis, and case-mix revision methodology which supported our proposal was described in our CY 2012 HH PPS proposed rule. Before we described our approach to revise the case-mix weights to address therapy incentives, we first explained the changes we made to remove the hypertension diagnoses ICD–9–CM code 401.1, Benign Essential Hypertension, and ICD–9–CM code 401.9, Unspecified Essential Hypertension from our case-mix system. Our method of redistributing the resources started with changes to the four-equation model, which is the foundation for the subsequent revised payment regression and creation of revised case-mix weights. The changes to the four-equation model as described in the proposed rule are reiterated below.

To examine the effects of removing the two hypertension codes 401.1 and 401.9 from the case-mix system and determine whether the thresholds for the clinical severity indicators need to be changed if 401.1 and 401.9 are removed from the case-mix system, we estimated the four-equation model with and without codes 401.1 and 401.9 in the hypertension group. We used 2005 data for this estimation because we wanted to achieve comparability between the current four-equation model with the revised four-equation model without the two hypertension codes using the same sample upon which we based the 2008 case-mix system refinements. We estimated the revised four-equation model to maintain the same variables we developed for our current four-equation model and thereby minimize changes to our current model and scoring system. The adjusted R-squared value for the four-equation model without codes 401.1 and 401.9 derived from 2005 data was 0.4621. We then used the coefficients from the four-equation model without codes 401.1 and 401.9 to determine the points which would be associated with all the clinical and functional severity levels found in our current four-equation model, as described on Table 2a of the CY 2008 HH PPS final rule (Table 3). We note that Table 3 has been updated since the CY 2012 HH PPS proposed rule to reflect OASIS-C items.

When comparing the four-equation model with the two hypertension diagnoses (which is equivalent to our current model) to the four equation model without the two hypertension diagnoses, there were some differences in the points assigned to variables (Table 4). We detailed these differences, which were no larger than one point in the 58 (out of 225) variables affected. Table 3 shows the points for each variable after the re-estimation of the four-equation model.

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TABLE 3: Points Associated with the Updated 4-Equation Model without hypertension codes 401.1 and 401.9

Case-Mix Adjustment Variables and Scores (Note: 4-Equation Model was Estimated on Episodes from 2005 where 401.1 and 401.9 were not counted in the Hypertension Diagnosis Group)					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
CLINICAL DIMENSION					
1	Primary or Other Diagnosis = Blindness/Low Vision	3	3	3	3
2	Primary or Other Diagnosis = Blood disorders	2	5		
3	Primary or Other Diagnosis = Cancer, selected benign neoplasms	3	8	3	10
4	Primary Diagnosis = Diabetes	5	13	1	8
5	Other Diagnosis = Diabetes	3	5	1	5
6	Primary or Other Diagnosis = Dysphagia ***AND*** Primary or Other Diagnosis = Neuro 3 – Stroke	2	6		6
7	Primary or Other Diagnosis = Dysphagia ***AND*** M1030 (Therapy at home) = 3 (Enteral)		6		
8	Primary or Other Diagnosis = Gastrointestinal disorders	2	6	1	5
9	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** M1630 (ostomy)= 1 or 2	2			

Case-Mix Adjustment Variables and Scores (Note: 4-Equation Model was Estimated on Episodes from 2005 where 401.1 and 401.9 were not counted in the Hypertension Diagnosis Group)					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
10	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis, OR Neuro 2 - Peripheral neurological disorders, OR Neuro 3 - Stroke, OR Neuro 4 - Multiple Sclerosis			2	
11	Primary or Other Diagnosis = Heart Disease OR Hypertension	3	6	1	7
12	Primary Diagnosis = Neuro 1 - Brain disorders and paralysis	3	8	5	8
13	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***AND*** M1840 (Toilet transfer) = 2 or more	3	10	3	10
14	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis OR Neuro 2 - Peripheral neurological disorders ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	1	4	1	2
15	Primary or Other Diagnosis = Neuro 3 - Stroke		2		
16	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	1	3	2	8
17	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1860 (Ambulation) = 4 or more	1	5		
18	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis ***AND AT LEAST ONE OF THE FOLLOWING:*** M1830 (Bathing) = 2 or more OR M1840 (Toilet transfer) = 2 or more ***OR*** M1850 (Transferring) = 2 or more ***OR*** M1860 (Ambulation) = 4 or more	3	3	12	18

Case-Mix Adjustment Variables and Scores (Note: 4-Equation Model was Estimated on Episodes from 2005 where 401.1 and 401.9 were not counted in the Hypertension Diagnosis Group)					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
19	Primary or Other Diagnosis = Ortho 1 - Leg Disorders or Gait Disorders ***AND*** M1324 (most problematic pressure ulcer stage)= 1, 2, 3 or 4	2			
20	Primary or Other Diagnosis = Ortho 1 - Leg OR Ortho 2 - Other orthopedic disorders ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	5	5		
21	Primary or Other Diagnosis = Psych 1 – Affective and other psychoses, depression	4	6	2	6
22	Primary or Other Diagnosis = Psych 2 - Degenerative and other organic psychiatric disorders	1	3		3
23	Primary or Other Diagnosis = Pulmonary disorders	1	5	1	5
24	Primary or Other Diagnosis = Pulmonary disorders ***AND*** M1860 (Ambulation) = 1 or more	1			
25	Primary Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications	10	20	8	20
26	Other Diagnosis = Skin 1 - Traumatic wounds, burns, post-operative complications	6	6	4	4
27	Primary or Other Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications OR Skin 2 – Ulcers and other skin conditions ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	2		2	
28	Primary or Other Diagnosis = Skin 2 - Ulcers and other skin conditions	6	12	5	12
29	Primary or Other Diagnosis = Tracheostomy	4	4	4	
30	Primary or Other Diagnosis = Urostomy/Cystostomy	6	22	4	22
31	M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	8	15	5	11
32	M1030 (Therapy at home) = 3 (Enteral)	4	11		11
33	M1200 (Vision) = 1 or more	1			2
34	M1242 (Pain)= 3 or 4	1			

Case-Mix Adjustment Variables and Scores (Note: 4-Equation Model was Estimated on Episodes from 2005 where 401.1 and 401.9 were not counted in the Hypertension Diagnosis Group)					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
35	M1308 = Two or more pressure ulcers at stage 3 or 4	3	3	5	5
36	M1324 (Most problematic pressure ulcer stage)= 1 or 2	5	11	5	11
37	M1324 (Most problematic pressure ulcer stage)= 3 or 4	16	26	12	22
38	M1334 (Stasis ulcer status)= 2	7	7	7	7
39	M1334 (Stasis ulcer status)= 3	11	11	11	11
40	M1342 (Surgical wound status)= 2		2	3	
41	M1342 (Surgical wound status)= 3	4	4	4	4
42	M1400 (Dyspnea) = 2, 3, or 4	2	2		
43	M1620 (Bowel Incontinence) = 2 to 5	1	2	1	
44	M1630 (Ostomy)= 1 or 2	5	9	3	9
45	M2030 (Injectable Drug Use) = 0, 1, 2, or 3	0	1	2	3
FUNCTIONAL DIMENSION					
46	M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	2	4	2	2
47	M1830 (Bathing) = 2 or more	3	3	6	6
48	M1840 (Toilet transferring) = 2 or more	2	3	2	
49	M1850 (Transferring) = 2 or more		1		
50	M1860 (Ambulation) = 1, 2 or 3	1		1	
51	M1860 (Ambulation) = 4 or more	3	3	4	5

Notes: The data for the regression equations come from a 20 percent random sample of episodes from CY 2005. The sample excludes LUPA episodes, outlier episodes, and episodes with SCIC or PEP adjustments.

Points are additive, however, points may not be given for the same line item in the table more than once.

Please see Medicare Home Health Diagnosis Coding guidance at http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp for definitions of primary and secondary diagnoses.

TABLE 4: The Difference in Points between the Current and Proposed Case-mix Adjustment Scores

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
CLINICAL DIMENSION					
1	Primary or Other Diagnosis = Blindness/Low Vision	0	0	0	0
2	Primary or Other Diagnosis = Blood disorders	0	0		
3	Primary or Other Diagnosis = Cancer, selected benign neoplasms	-1	1	0	0
4	Primary Diagnosis = Diabetes	0	1	0	0
5	Other Diagnosis = Diabetes	1	1	0	1
6	Primary or Other Diagnosis = Dysphagia ***AND*** Primary or Other Diagnosis = Neuro 3 – Stroke	0	0		0
7	Primary or Other Diagnosis = Dysphagia ***AND*** M1030 (Therapy at home) = 3 (Enteral)		0		
8	Primary or Other Diagnosis = Gastrointestinal disorders	0	0	0	1
9	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** M1630 (ostomy)= 1 or 2	-1			
10	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis, OR Neuro 2 - Peripheral neurological disorders, OR Neuro 3 - Stroke, OR Neuro 4 - Multiple Sclerosis			0	
11	Primary or Other Diagnosis = Heart Disease OR Hypertension	0	-1	0	-1
12	Primary Diagnosis = Neuro 1 - Brain disorders and paralysis	0	0	0	0
13	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***AND*** M1840 (Toilet transfer) = 2 or more	0	0	0	0
14	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis OR Neuro 2 - Peripheral neurological disorders ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	-1	0	-1	0
15	Primary or Other Diagnosis = Neuro 3 - Stroke		1		
16	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	0	0	0	0

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
17	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1860 (Ambulation) = 4 or more	0	0		
18	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis ***AND AT LEAST ONE OF THE FOLLOWING:*** M1830 (Bathing) = 2 or more OR M1840 (Toilet transfer) = 2 or more ***OR*** M1850 (Transferring) = 2 or more ***OR*** M1860 (Ambulation) = 4 or more	0	0	0	0
19	Primary or Other Diagnosis = Ortho 1 - Leg Disorders or Gait Disorders ***AND*** M1324 (most problematic pressure ulcer stage)= 1, 2, 3 or 4	0			
20	Primary or Other Diagnosis = Ortho 1 - Leg OR Ortho 2 - Other orthopedic disorders ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	0	0		
21	Primary or Other Diagnosis = Psych 1 – Affective and other psychoses, depression	1	1	0	1
22	Primary or Other Diagnosis = Psych 2 - Degenerative and other organic psychiatric disorders	0	1		1
23	Primary or Other Diagnosis = Pulmonary disorders	0	0	0	0
24	Primary or Other Diagnosis = Pulmonary disorders ***AND*** M1860 (Ambulation) = 1 or more	0			
25	Primary Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications	0	0	0	0
26	Other Diagnosis = Skin 1 - Traumatic wounds, burns, post-operative complications	0	0	0	0
27	Primary or Other Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications OR Skin 2 – Ulcers and other skin conditions ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	0		0	

	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
28	Primary or Other Diagnosis = Skin 2 - Ulcers and other skin conditions	0	0	0	0
29	Primary or Other Diagnosis = Tracheostomy	0	0	0	
30	Primary or Other Diagnosis = Urostomy/Cystostomy	0	-1	0	-1
31	M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	0	0	0	-1
32	M1030 (Therapy at home) = 3 (Enteral)	0	-1		-1
33	M1200 (Vision) = 1 or more	0			1
34	M1242 (Pain)= 3 or 4	0			
35	M1308 = Two or more pressure ulcers at stage 3 or 4	0	0	0	0
36	M1324 (Most problematic pressure ulcer stage)= 1 or 2	0	0	0	0
37	M1324 (Most problematic pressure ulcer stage)= 3 or 4	0	0	0	-1
38	M1334 (Stasis ulcer status)= 2	-1	-1	-1	-1
39	M1334 (Stasis ulcer status)= 3	0	0	0	0
40	M1342 (Surgical wound status)= 2		0	0	
41	M1342 (Surgical wound status)= 3	0	0	0	0
42	M1400 (Dyspnea) = 2, 3, or 4	0	0		
43	M1620 (Bowel Incontinence) = 2 to 5	0	0	0	
44	M1630 (Ostomy)= 1 or 2	0	0	0	0
45	M2030 (Injectable Drug Use) = 0, 1, 2, or 3	-1	0	0	-1
FUNCTIONAL DIMENSION					
46	M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	0	0	0	0
47	M1830 (Bathing) = 2 or more	0	0	0	0
48	M1840 (Toilet transferring) = 2 or more	0	0	0	
49	M1850 (Transferring) = 2 or more		-1		
50	M1860 (Ambulation) = 1, 2 or 3	0		0	
51	M1860 (Ambulation) = 4 or more	0	-1	0	0

Notes: The data for the regression equations come from a 20 percent random sample of episodes from CY 2005. The sample excludes LUPA episodes, outlier episodes, and episodes with SCIC or PEP adjustments.

Points are additive, however points may not be given for the same line item in the table more than once.

Please see Medicare Home Health Diagnosis Coding guidance at http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp for definitions of primary and secondary diagnoses.

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In the CY 2012 HH PPS proposed rule, we also stated that we examined how episodes in the sample shifted into a different clinical severity level when going from a four-equation model that includes 401.1 and 401.9 to a four-equation model that does not include 401.1 and 401.9. It should be noted that a small number of episodes also changed functional groups. In our analysis, we looked at the distribution

of episodes in each clinical severity level (low, medium, high) by the four-equation model indicators (early/late episodes and low/high therapy episodes). When comparing the distribution of episodes using the four-equation model without the 401.1 and 401.9 hypertension codes to the distribution of episodes using the four-equation model with the hypertension codes (our current four-equation model), there was a similar distribution of episodes between the low, medium and high clinical levels, for each of the four-equation model indicators. We also looked at the distribution of episodes in each functional severity level by the four-equation model indicator. There was also a very similar distribution of episodes for the three functional severity levels using the four-equation model without the two hypertension codes compared to the distribution of episodes using the current four-equation model, for each of the four-equation model indicators. Since the four-equation model without the hypertension codes 401.1 and 401.9 had similar clinical and functional distributions of episodes as the current model, we decided that it was not necessary to change the thresholds for the clinical and functional severity levels.

We revised the payment regression model using the clinical and functional severity groups constituted after removal of the hypertension codes. In addition, as we described in the proposed rule, at this stage of case-mix system redevelopment, we decided to implement a revision of the weights using a new method of decelerating therapy resources with higher numbers of therapy visits. The new method involved the removal of the therapy visit step indicators from the payment regression model (a step indicator is a subgroup of episodes defined by a range of therapy visits, such as 7 to 9 therapy visits). This approach has the advantage of staging the introduction of clinical and functional severity levels into the model as a separate step, to avoid excessive influence on the clinical and functional effects from numerous therapy step variables that would otherwise be simultaneously entered into the regression. In other words, we eliminated the therapy visit step indicators from the payment regression model to ensure that more of the resource use would be captured by clinical and functional variables, rather than therapy variables. Later, we implemented a method to account for the resource use for the therapy step variables. The new payment regression model that was developed estimated the relationship between an episode's total resource cost (as measured in dollars corresponding to wage weighted minutes) and the clinical severity indicators, functional severity indicators, and four-equation indicators (early/late episodes and low/high therapy services).

It should be noted that for the payment regression model, we used data from 2007, which is the most recent data available before the implementation of the HH PPS refinements. The coefficients for the payment regression model using 2007 data can be found in Table 5. The adjusted R-squared value for the payment regression model using 2007 data is 0.3769.

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TABLE 5: Payment Regression Model

Variable Name	Variable Description	New Payment Regression Coefficients
clin_grp2_1	Step 1, Clinical Score 5 to 8	$6.55
clin_grp3_1	Step1, Clinical Score 9 or More	$37.72
func_grp2_1	Step 1, Functional Score = 6	$88.99
func_grp3_1	Step1, Functional Score 7 or More	$129.81
clin_grp2_21	Step 2.1, Clinical Score 7 to 14	$87.49
clin_grp3_21	Step 2.1, Clinical Score 15 or More	$191.74
func_grp2_21	Step 2.1, Functional Score = 7	$43.63
func_grp3_21	Step 2.1, Functional Score 8 or More	$65.49
clin_grp2_22	Step 2.2, Clinical Score 9 to 16	$76.41
clin_grp3_22	Step 2.2, Clinical Score 17+	$177.93
func_grp2_22	Step 2.2, Functional Score = 8	$36.55
func_grp3_22	Step 2.2, Functional Score 9 or More	$109.94
clin_grp2_3	Step 3, Clinical Score 3 to 5	$28.53
clin_grp3_3	Step 3, Clinical Score 6 or More	$112.15
func_grp2_3	Step 3, Functional Score = 9	$73.68
func_grp3_3	Step 3, Functional Score 10 or More	$113.33
clin_grp2_4	Step 4, Clinical Score 8 to 14	$84.62
clin_grp3_4	Step 4, Clinical Score 15 or More	$213.78
func_grp2_4	Step 4, Functional Score = 7	$73.13
func_grp3_4	Step 4, Functional Score 8 or More	$133.71
step2_1	Step 2.1, 1st and 2nd Episodes, 14 to 19 Therapy Visits	$386.71
step2_2	Step 2.2, 3rd+ Episodes, 14 to 19 Therapy Visits	$413.85
step3	Step 3, 3rd+ Episodes, 0-13 Therapy Visits	-$63.66
step4	Step 4, All Episodes, 20+ Therapy Visits	$700.20
_cons	Intercept	$348.74

Note: The data for the payment regression model come from a 20 percent random sample of episodes from 2007.

The raw weights for each of the 153 groups were then calculated based on the payment regression model. It should be noted that the raw weights do not change across the graduated therapy steps between the therapy thresholds. In the next step of weight revision, the weights associated with 0 to 5 therapy visits were increased. The weights associated with 14–15 therapy visits were decreased and the weights associated with 20+ therapy visits were further decreased as well. These adjustments were made to discourage inappropriate use of therapy while addressing concerns that non-therapy services are undervalued. As stated in the CY 2012 HH PPS proposed rule, the larger reduction factor for episodes with 20 or more therapy visits compared to the reduction factor for episodes with 14 to 15 therapy visits implemented a more aggressive deceleration than we used in the current weights. Currently, there is a high payment weight associated with the 20 or more therapy visit threshold to capture the costs associated with providing 20 therapy visits, as well as numbers of therapy visits well beyond 20 therapy visits. As a result, there is a large increase in the payment weight between the 18–19 therapy visit step and the 20 or more therapy visit threshold. This large increase in the payment weight may create incentives for agencies to provide unnecessary therapy visits to reach the 20 therapy visit threshold, and may explain MedPAC's observation that there was a larger increase in the number of episodes in the 20 or more therapy visit group than the 14 or more therapy visit group. By implementing a larger reduction to episodes with 20 or more therapy visits, we will provide a disincentive for agencies to pad episodes just to 20 visits or slightly more, to be able to realize a large margin from that threshold, which was designed to pay for not only episodes involving 20 or just above 20 therapy visits, but also episodes involving considerably more than 20 therapy visits.

After the adjustments were applied to the raw weights, the weights were further adjusted to create an increase in the payment weights for the therapy visit steps between the therapy thresholds. Weights with the same

clinical severity level, functional severity level, and early/later episode status were grouped together. Then within those groups, the weights for each therapy step between thresholds were gradually increased. We did this by interpolating between the main thresholds on the model (from 0–5 to 14–15 therapy visits, and from 14–15 to 20+ therapy visits). We used a linear model to implement the interpolation so the payment weight increase for each step between the thresholds (such as the increase between 0–5 therapy visits and 6 therapy visits and the increase between 6 therapy visits and 7–9 therapy visits) was constant. The interpolated weights were then normalized so that the average case-mix weight in the 2007 sample was equal to 1.

After applying the adjustments to the raw weights, applying the interpolation between the therapy thresholds, and normalizing the weights so that the average case-mix for the weights was equal to 1 in the 2007 sample, we applied a budget neutrality factor to the weights to ensure that the case-mix weights result in aggregate expenditures in 2009, which was the most current and complete data available to us, equal to expenditures using the current payment weights. It is important to note that our authority allows us to reduce home health payments only as described in section 1895(b)(3)(B)(iv) of the Act. As such, we must revise our payment weights in a budget neutral manner. Therefore, after deriving revised relative case-mix weights, we increased the weights to achieve budget neutrality to the most current, complete data available, which was 2009. In the CY 2012 proposed rule, as we described in section A of this final rule, we proposed to reduce payments under our authority in section 1895(b)(3)(B)(iv) of the Act to reduce the home health base episode payment to account for nominal case-mix growth through 2009.

We also noted that we would continue to evaluate and potentially refine the payment weights as new data and analysis became available. We discuss our new data, analysis, and changes to the proposed payment weights in our comment responses below.

The following is a summary of the comments we received regarding the proposal to revise the HH PPS case-mix weights.

Comment: Commenters stated that the levels of weight changes are more arbitrary than evidence based and it appears that CMS picked a level of adjustment rather than develop a real analysis of the differences in episode costs/resource use from episode reimbursement rates. Commenters stated that the proposal to increase and decrease therapy episode case-mix weights is not supported by any evidence that the therapy related episode case-mix weights have a different relative resource cost today than they did in 2008 when CMS implemented the refinements. The commenters also stated that there is no resource cost change rationale for the proposed change in case-mix weights. In addition, commenters stated that they would like the data to directly show that the resource costs justify the specific adjustments proposed. Some commenters stated that if the payment model improperly incentivizes the provision of therapy care with higher than warranted payment rates, there should be data available to show the extent to which therapy episodes are overpriced and what level of payment would be appropriate. Commenters suggested that CMS undertake a study to provide additional rationale for the proposed adjustments to the case-mix weights.

Response: As we stated in the CY 2012 HH PPS proposed rule, we believe that MedPAC has provided strong evidence that our reimbursement for episodes with high therapy is too high. Also, based on MedPAC's analysis and our own findings, we believe that the resource costs reflected in our current case-mix weights for therapy episodes, in particular for those episodes with high amounts of therapy, are too high and that an adjustment to the HH PPS therapy case-mix weights is warranted.

In the proposed rule, we stated that we would continue to analyze therapy resource costs as more current and complete data became available. Since the publication of the proposed rule, complete 2009 CR data and partial 2011 claims data, which include the new therapy G-codes, have become available. These data have enabled us to expand on MedPAC's and our analysis for this final rule.

We performed a variety of analyses to look at the resource costs of home health episodes, particularly those episodes with high therapy. As part of the analysis, we have developed methods to examine cost data from freestanding HHAs' MCRs for FY 2009. The methodology involves an initial screening for incomplete and questionable data (for example, extreme ratios of payments to costs) similar to MedPAC's ''trimming'' methodology and two additional trims, one which excludes providers whose Medicare home health outlier payments exceeded 10 percent of their total Medicare home health payments and another which trims extreme values at the top and bottom 1 percent of the distribution of costs per visit for each discipline. We excluded providers whose Medicare home health outlier payments exceeded 10 percent of their total Medicare home health payments because in CY 2010 rulemaking, we found an association between high outlier payments and providers with questionable billing practices. We note that since only non-audited MCRs are available, we found it necessary to perform trims to ensure reasonably accurate cost estimates. Using the trimmed MCRs, we developed agency specific costs per visit for each discipline. In the sample of 4,309 MCRs, if a particular agency's cost-per-visit for a discipline was trimmed out when the trimming methodology was applied to the MCRs, the average cost-per-visit for all MCRs in the sample was used for that agency. For example, if a MCR had a value for the cost-per-visit for physical therapy that was in the top or bottom 1 percent of the distribution of cost-per-visits for physical therapy, that value would be imputed as the average cost-per-visit from values retained in the data after trimming. If any agency needed all 6 discipline costs-per-visits imputed, its MCR was excluded from the dataset. We imputed the cost-per-visit using the average cost-per-visit in approximately 10 percent of instances. Most of the imputations involved occupational therapy, speech therapy, and medical social work, which together account for a relatively small share of visits. Combined these three disciplines accounted for only 1.5 visits out of total visits per episode, which averaged 18.8 visits in 2009.

The file preparation procedure described above resulted in a dataset consisting of 4,309 MCRs from freestanding agencies in 2009, approximately half the number in the original MCR file. Most of the losses occurred at the initial screening stage (incomplete and questionable data). We examined characteristics of the agencies represented in the final sample, and found that distributions in the original and final samples were very similar. Unsurprisingly, however, small agencies (with fewer than 95 episodes) were nearly halved as a proportion of all agencies represented in the MCRs; they accounted for approximately 7.5 percent of the MCRs we used. These agencies tended more often to have incomplete or questionable data in their MCRs.

After developing agency specific costs per visit for each discipline, we merged the MCRs with 100 percent of the included providers' claims for 2009. We estimated the cost of each provider's

episodes by multiplying the number of visits, by discipline, by the average cost-per-visit, by discipline, calculated from the provider's MCR. Due to data incompleteness and reliability issues related to costs and payments for non-routine medical supplies (NRS), we did not include NRS in our estimate of the costs or payments.

We compared the costs of these episodes to their Medicare payment. Our analysis of the differences in episodes' costs and reimbursements suggests that payment on average exceeds costs by about 30-percent for normal episodes with 14 or more therapy visits. We defined normal episodes as non-LUPA, non-PEP, non-outlier episodes. Because the reimbursement for episodes with at least 14 therapy visits is high, the 30 percent estimate represents a large financial incentive. For instance, our analysis shows that in 2009, the average amount that payment exceeded cost for a normal episode with 14–19 therapy visits was more than $1100 (Table 6) and the average amount that payment exceeded costs for a normal episode with 20 or more therapy visits was more than $1500 (Table 7). We note that the average amount that payment exceeded costs for a normal episode with 1 to 5 therapy visits was around $300. Ideally, we wish to avoid marked differences in the amount that payment exceeds costs for different types of episodes to lessen the incentive to admit certain types of patients to maximize Medicare reimbursements.

TABLE 6: Episodes with 14-19 therapy visits

Type of episode		Estimated average cost	Estimated average payment	Estimated payment excess as proportion of cost	Amount that payment exceeds cost per episode
Normal	**Mean**	$3,730	$4,843	29.8%	$1,113
	Median	$3,560	$4,805	35.0%	$1,245

TABLE 7: Episodes with 20+ therapy visits

Type of episode		Estimated average cost	Estimated average payment	Estimated payment excess as proportion of cost	Amount that payment exceeds cost per episode
Normal	**Mean**	$5,231	$6,811	30.2%	$1,579
	Median	$4,964	$6,713	35.2%	$1,749

Normal episodes are defined as non-LUPA, non-PEP, non-outlier episodes. The analysis was run on a 100% sample of 2009 claims and based on 2009 dollars. The table is based on a sample of 4,309 providers.

We conducted a simulation to examine our proposal's impact on margins and profit for different categories of episodes, using the data from the MCR providers that was also found in the 20 percent sample of 2009 claims from which we estimate the proposed rule's reimbursement impacts. The analysis was based on 3,361 providers whose MCR period was precisely matched to the time period covered by the claims (that is, MCR periods had to begin and end in 2009). Although this sample was smaller than the cleaned CR sample from which we estimated per-episode costs and payments in 2009, the distributions of provider characteristics were changed little by the reduction in agencies. The simulation incorporated the proposed payment weights and the other payment parameters in our proposal (that is, a 5.06 percent payment reduction due to nominal case-mix growth, the wage index, and rate updates). The simulation updated the costs of episodes to 2012 dollars using the market basket increase and estimated the payment for episodes in terms of 2012 dollars. This analysis suggested that all episodes would have payments in excess of estimated costs, except for some episodes in the 20 or more therapy visit group. We note that about half of the episodes with 20 or more therapy visits would break even or retain a positive margin under the proposed revised case-mix weights. About 6 percent of episodes nationally in 2009 had 20 or more therapy visits. However, the results of this analysis also indicated that the revised case-mix weights in the proposed rule would result in episodes with 14 or more therapy visits having considerably less payments in excess of estimated costs than episodes with less than 14 therapy visits.

We note that our analyses of the costs to reimbursement for high therapy episodes clearly indicates that we are currently overpaying for these episodes and we believe an adjustment to the case-mix weights for high therapy weights is necessary. However, based on the results of our simulation analysis on our proposed weights, we decided to test whether a different set of payment

adjustment factors would result in more even payments in excess of estimated costs across therapy and non-therapy episodes. As stated in the proposed rule, we examined a number of different sets of adjustments when developing the payment weights. One of the sets of adjustments was an adjustment where the weights associated with 0 to 5 therapy visits were increased by 3.75 percent, the weights associated with 14–15 therapy visits were decreased by 2.5 percent, and the weights associated with 20+ therapy visits were decreased by 5 percent. We applied this set of adjustments in the same manner as the adjustments we originally proposed. When re-running the simulation analysis on these new weights, we saw relatively even payments in excess of estimated costs across the various types of episodes, including episodes with 14–19 therapy visits, episodes with 20–25 visits, episodes with low therapy, and non-therapy episodes. It should be noted that episodes with 26 or more therapy visits did not have payments in excess of estimated costs; however, we believe there are efficiencies used when providing these high therapy episodes and that the costs we estimated for these episodes are higher than actual costs. In addition, some of these high therapy episodes may be eligible for outlier payments. As a result of the findings from the simulation analysis, which show relatively even payments in excess of estimated costs across episodes, we are finalizing these new weights created using the new adjustment factors.

We note that for future rulemaking, we plan to do further analysis using audited CRs, if available, and data on the use of therapy assistants (G-code data) and we plan to make adjustments accordingly. In the CY 2011 HH PPS final rule, we finalized a requirement that HHAs report G-codes on the HH PPS claims which differentiate therapy provided by a qualified therapist versus therapy provided by a therapy assistant. We have preliminary data using claims from early in the period after reporting of the G-codes began in 2011. We have assessed how the percentages of therapy provided by a therapy assistant vary relative to the quantity of therapy provided. In our analysis, we looked at claims which had a start date on or after April 1, 2011 and examined the percentage of therapy provided by therapy assistants for various levels of therapy, such as episodes with 1–5 therapy visits, 6–9 therapy visits, 10–13 therapy visits, 14–19 therapy visits, and 20+ therapy visits. In addition, we looked at the percentages of therapy provided by therapy assistants when episodes from all providers were included and when episodes from providers in areas where suspect billing practices are relatively widespread were excluded. The results from these two analyses were similar.

Table 8 shows the percentage of therapy visits provided by therapy assistants when providers in areas associated with suspect billing practices are excluded. The overall results suggest that on average our assumptions, built into the resource cost estimates concerning the share of physical therapy assistants in the labor force are somewhat lower than reported so far in the G-code data. In 2007 (the data year used to estimate the payment regression leading to the relative weights), the assumption concerning the proportion of the labor share for physical therapy assistants was 17 percent. The national average in the initial G-code data for physical therapy assistants is 22.1 percent. For occupational therapy, the results were different. The assumption concerning the labor share proportion for occupational therapy assistants was 12 percent, while the national average in the G-code data for occupational therapy assistants is very similar, 11.8 percent.

Further results from the G-code data show that there is variation in the percentage of physical therapy provided by therapy assistants and the percentage of occupational therapy provided by therapy assistants when different levels of therapy are provided. The initial G-code data suggest the percentages of physical therapy visits provided by therapy assistants for episodes with 14–19 therapy visits and 20+ therapy visits are 25.9 percent and 29.0 percent, respectively. We note that these results seem to indicate that providers may be using more therapy assistants for episodes with high therapy, and therefore, the costs for these high therapy episodes may be even less than what was reflected in our earlier cost-to-reimbursement analyses. Furthermore, we note that the OES data produced by the Bureau of Labor Statistics showed that in 2009, 20 percent of physical therapy was provided by therapy assistants and that 16 percent of occupational therapy was provided by therapy assistants.

TABLE 8: Percentage of Therapy Provided by Therapy Assistants for Episodes with Different Levels of Therapy

Category (therapy visits in episode)	All therapy visits	Physical therapy visits	Occupational therapy visits	Speech therapy visits	PT ass't percent	OT ass't percent
1 TO 5	89,934	77,400	10,903	1,631	10.1	3.4
6 TO 9	213,234	189,824	20,843	2,567	20.2	7.6
10 TO 13	192,207	160,405	28,861	2,941	25.6	11.6
14 TO 19	133,840	99,731	30,329	3,780	25.9	13.0
20+	86,094	52,031	28,215	5,848	29.0	16.9
TOTAL	715,309	579,391	119,151	16,767	22.1	11.8

We believe our analysis of the G-codes indicates that the new adjustments to the case-mix weights may be conservative. We have decided to use a conservative approach while we wait for more complete data. We will continue to analyze data as they become available and may make further adjustments to the case-mix weights if necessary.

Comment: Commenters stated that CMS should develop the necessary objective clinical and financial data to support any change in case-mix weights for therapy related episodes prior to

implementing any change in the weights. Commenters recommended that CMS limit changes to those that have a reliable and transparent base in evidence. Another commenter recommended that CMS refrain from methodology which only shifts reimbursement to different parts of the model and instead focus on working with the industry to make more substantive and appropriate changes that stabilize home care reimbursement and provides more accurate payment. The commenter stated that payment cuts and methodology changes that can influence clinical behavior have not been successful at accurately paying for therapy services and may have disproportionately harmed providers that are providing appropriate levels of care.

Response: We wish to point out to commenters that our revised approach to deriving weights for therapy-related episodes shares a fundamental commonality with the method used to derive the weights currently. As we described in our CY 2008 proposed and final regulations (72 FR 25363 and 72 FR 49764), in the four-equation model regression equation, we imposed a deceleration in the marginal increase in resources with each added therapy visit. We did this by imposing restrictions on the coefficients of the therapy visit variables during regression estimation. In fact, data analysis before imposing those restrictions showed no clear trend for the trajectory of growth in resources as therapy visits increased. Thus, the data did not provide a sensible guide. Commenters seem to assume that ''objective'' clinical and financial data would provide a clear answer for modeling resources in therapy-related episodes, but this isn't necessarily the case. We decided that a declining amount for marginal resources is appropriate in view of the need to address incentives to overuse therapy. After observing unexpected increases in episodes of 14 or more therapy visits, as well as other evidence and analysis bearing on the profitability of those categories of episodes, we sought a more aggressive approach.

We pursued a data-driven approach at many decision points in this year's modeling procedure. We examined the results from various perspectives, including graphically. The main impact of the changes to our modeling procedure was generally to dampen the upward slope of the weights. Please refer to the Abt report ''Revision of the Case-Mix Weights for the Home Health Prospective Payment System Report'' located at *http://www.cms.gov/center/hha.asp* for additional information about the trends in the weights.

In addition, our methodology was designed to be budget neutral. Our intention was to redirect resources to groups in accordance with updated information on resource use, to avoid having therapy resources dominate the results of the resource modeling procedure, and to reduce incentives to provide higher numbers of therapy visits than would be clinically indicated. We would be concerned that an approach which, as recommended by commenters, depends on negotiation with providers would stray too far from the data in the absence of clear consensus about how to treat patients in different situations.

Our simulation of profits suggests that our proposals move away from gross overpayment for high therapy cases to more even payments in excess of estimated costs across episodes with varying levels of therapy. We understand that in occasional circumstances this approach may be interpreted to mean that clinicians no longer would enjoy decision-making unfettered by cost considerations when faced with high-therapy-need patients. We wish to remind providers that utilization and cost data in health care contain a large random element; therefore, it is not possible to predict the cost of every case with the hoped-for precision. We anticipate that our current research, as provided for in Section 3131 of the Affordable Care Act, will ultimately advance the precision of our payment groups, and this mandate has involved and will continue to involve consultation with providers. However, at the current time we are obliged to use the data available to increase the accuracy of the HH PPS.

Comment: Commenters stated that CMS failed to take into account the greater administrative costs associated with providing high therapy visits.

Response: We do not have data in the MCRs or reliable data from commenters allowing us to estimate additional costs as mentioned in the comment. At this time, based on our data analysis described earlier in this section and MedPAC's analyses, we believe that a substantial incentive exists to provide increasing numbers of high-therapy episodes and we conclude that high therapy episodes are excessively overpaid.

Comment: Some commenters stated that they agree that the reimbursement for high therapy episodes is too high and that it is appropriate to adjust relative case-mix weights to better align resource use associated with care plans. Commenters stated that the proposed changes to the case-mix weights would improve access for patients who need non-therapy services and reduce the incentive to manipulate therapy visits to reap higher payments. Also, commenters stated that by reducing the overpayment associated with high therapy groups and redistributing it to lower therapy and other groups, CMS has encouraged more appropriate therapy use based on need. Furthermore, commenters stated that the proposed changes in the case-mix weights will help to decrease future nominal case-mix growth. Commenters believed that the proposed changes to the case-mix weights will reduce waste and help assure patients who need therapy will get the appropriate amount. Some commenters stated that they value the ongoing cooperation and collaboration on policy issues.

Response: We thank the commenters for their feedback and we appreciate the support.

Comment: Commenters stated that the case-mix weight changes are proposed to modify provider behavior by removing ''incentives'' for increased therapy utilization. They stated that the adjustments have the sole intent of changing clinical behavior for HHAs. Commenters stated that CMS should not use a payment model to direct clinical care planning and patient admission practices to address any concerns in care utilization.

Response: We disagree that our proposals are intended to force a change in clinical behavior. The purpose of the revision to the case-mix weights is to more accurately pay for services. We also wish to discourage provision of unnecessary therapy services and slow nominal case-mix growth. When we proposed and finalized the 153-group system, we stated our concern that clinical judgment had been overtaken by financial incentives. Subsequent utilization data showing a sudden shift in the proportion of episodes with very high numbers of therapy visits suggested that agencies were providing high amounts of therapy to maximize reimbursements. Since our simulations indicate that providers will be adequately or more than adequately paid for varying numbers of therapy visits within episodes, except perhaps in some cases for episodes with the highest numbers of therapy visits, we believe the proposed system of weights will be accommodating to clinical judgment.

Comment: Commenters stated that there should not be an across the board reduction in the payment for episodes with high therapy visits but rather CMS should conduct targeted medical review

so that those HHAs that are properly using therapy services are not punished for the actions of others. In addition, commenters stated that by implementing an across the board payment cut, agencies that have been more profitable may survive while agencies that have smaller margins may fail, thus potentially preserving those who may be committing abuse.

Response: Although we appreciate the commenters' suggestion, we cannot act on it because our resources are not sufficient to conduct claims review on a scale that would be required. In addition, we would like to clarify that our method of adjusting the therapy-related episode weights did not result in an across the board reduction. Procedures we followed at the beginning of weight construction, based on 2007 data, resulted in a realignment of the weights. At the end of the weight construction process, we examined the change in weights and noted a wide range of differences in the weights, both positive and negative. Furthermore, we do not believe we are punishing agencies for the actions of others. The revision of the payment weights should result in relatively even payments in excess of estimated costs across various types of episodes, and therefore, result in more appropriate payment for services.

Comment: Commenters were concerned by the use of four year old data (data from 2007). Commenters stated that just as the 2008 data may be tainted due to the impact of the change in therapy thresholds, the 2005 data may also be tainted due to the impact of the 10-visit single therapy utilization threshold.

Response: We used 2007 data in our payment regression model because of our concerns about the reliability of the data from 2008 or later. In 2008, we implemented refinements to the HH PPS and our analysis showed an increase in nominal case-mix growth of about 4 percent, when previous years showed a case-mix growth of only 1 percent. In addition, MedPAC commented on a sudden change in the provision of therapy after the three therapy thresholds were implemented in 2008 and a decrease in episodes with no therapy. Due to these observations, we were concerned about using data from 2008 or later. We also described in our proposed rule that during the process of revising the case-mix weights, we originally re-estimated the payment regression model on 2008 data using the same dependent and independent variables as the payment regression model in our 2008 refinements and we compared the results to the current payment regression, which was based on 2005 data. We saw that if we were to use 2008 data in our payment regression to develop the weights, the regression would assign a higher relative resource cost to high therapy episodes and would assign a lower relative resource cost to episodes with little or no therapy than was assigned when deriving the current weights. Given MedPAC's conclusion that the payment system overvalues therapy and undervalues non-therapy episodes and the sudden change in the distribution of therapy episodes, we decided to use the most current pre-refinement data in our payment regression model, which was from 2007. We believe the 2007 data are more reflective of costs associated with patients' actual clinical needs than the 2008 and later data.

Comment: Commenters stated that there is no evidence that the level of therapy visits provided to patients is unnecessary. Commenters stated that CMS has not reviewed the claims involving the therapy visits to see if the level that was provided is unnecessary. Other commenters stated that there is no unnecessary utilization of therapy services by HHAs in their area and that the overuse of therapy services is a perception and not data based. They stated that therapy services are limited in their rural community and there are not enough therapists for HHAs to overutilize their services.

Response: The Senate Finance Committee recently performed an investigation of the nation's three largest home-health companies and found that ''they encouraged employees to make enough home-therapy visits to reach thresholds that triggered bonus payments, whether or not the visits were medically necessary'' (''Home-Health Firms Blasted'', October 3, 2011, Wall Street Journal, p. B1). In addition, our analysis showed a 1-year change in the distribution of therapy services in 2008 and showed that a significant portion of case-mix growth in 2008 and 2009 was due to the increased provision of therapy services. Furthermore, our analysis on the costs of high therapy services showed that the payment exceeds costs by 30 percent or more. Our analysis indicated that the average cost of episodes with 14–19 therapy visits and the average cost of episodes with 20+ therapy visits are more than $1100 and $1500 below Medicare reimbursement levels, respectively. Therefore, we believe there is a payment incentive to provide high therapy services and that certain agencies may be providing more therapy services to maximize reimbursement. The goal of the revision to the case-mix weights is to more accurately pay for services and since data indicates that we are overpaying for services, we are revising our weights to better reflect costs. In addition, based on our analysis of the costs and our predictions about the payment with the new case-mix weights, almost all episodes with high therapy will still be paid above costs and that payment under the new weights will result in more similar payments in excess of estimated costs across episodes with varying levels of therapy than our current weights, thereby encouraging more appropriate therapy use based on patient need rather than reimbursement.

Comment: Commenters suggested that CMS convene a technical expert panel of therapists and nurses to examine the appropriate use of all therapist assistants and nursing personnel in the home health benefit before implementing any changes to the HH PPS based on the premise that the utilization of therapy assistants is not clinically appropriate. One commenter provided examples of the use of therapy assistants. Commenters stated that there is no evidence to suggest that there is utilization of therapy assistants to increase the number of visits provided. Another commenter stated that the costs for therapy assistant services cannot be estimated by only looking at the assistant salary levels but also must include supervision time by the therapist and other related costs. Other commenters stated that therapy staffing agencies charge the same amount for therapist and therapy assistants, so some agencies don't see a decrease in costs. The commenter stated that since the OES data is not specific to Medicare home health, CMS should wait to review the data on G-codes and should wait to collect a year's worth of data before implementing any changes.

Response: Commenters are mistaken in concluding that our proposals assume that therapy assistants are inappropriately used in home health care. Our concern is that our reimbursement rates are too high in comparison to the actual costs incurred by providers, including costs related to recent shifts in the labor mix for therapy.

Our cost-to-reimbursement analysis used the average per-visit costs, inclusive of allocated overhead and the other costs of doing business for HHAs (except, as noted previously, NRS costs). The data available are not detailed enough to discern the drawing of resources to therapy assistant services as suggested by the commenter. Our analysis indicates that the average cost of episodes with 14–19 therapy visits

and the average cost of episodes with 20+ therapy visits are more than $1100 and $1500 below Medicare reimbursement levels, respectively, which leads us to believe that even given unrecognized costs for therapy assistant services, there would still be an inappropriate overpayment. Our OES data are limited to home health services, among which Medicare is the dominant payer for skilled services. The elements used in our rate-setting process come from national averages for firms in North American Industry Classification System (NAICS) Code 621600, Home Health Care Services. We do not know whether staffing agency practices as described by the commenter are widespread, but the data needed to incorporate reliably such information in resource cost estimates may be very difficult to develop. Although OES data also reflect services beyond Medicare's services, OES offers the most representative labor mix data available at this writing. We also note that analysis of preliminary G-code data shows a higher percentage of physical therapy provided by therapy assistants for episodes with high therapy than what is reflected in the OES data, and therefore, resource costs for episodes with high therapy may be less than the costs we used to develop our current proposed weights. We agree with the commenter that more accurate information on therapy labor mix will be available as a result of the G-codes and we may consider making future adjustments based on G-code information.

Comment: One commenter stated that there has been an increase in the past several years in therapy utilization and that only in recent years have they had adequate therapists to meet patient needs. In addition, the commenter stated that their HHAs only minimally use physical therapist assistants (PTAs) and certified occupational therapist assistants (COTAs) and that if CMS implements their new policies, their HHAs will be forced to reconsider/increase their use of PTAs and COTAs to survive.

Response: We are primarily concerned with increasing use of high numbers of therapy visits that may represent padding of the treatment plan to maximize reimbursement. Assuming the commenter's agency is meeting patient needs and is cost efficient, we see no reason why they would be induced to increase their use of PTAs and COTAs, especially if they think it would represent a decline in quality. We reiterate that our payment simulations show adequate payment relative to costs for all episodes, except for some episodes in the 20+ therapy group, which may be eligible for outlier payments.

Comment: A commenter stated that if CMS moves forward with the revision of the case-mix weights, then there should be a three-year phase-in to the new weights, beginning in 2012. The commenter stated that the phasing in would allow home care providers time to adjust to the financial consequences of the revised weights.

Response: Our analysis of the costs of episodes with high therapy suggests that the payments for normal 60-day episodes with 14–19 therapy visits may average approximately $1,100 more than the costs and the payments for normal 60-day episodes with 20+ therapy visits may average approximately $1,500 more than the costs. Given the large positive payments in excess of estimated costs suggested by these data, we believe that an adjustment to the weights is necessary and to phase-in or defer revising the weights any longer would be wasteful.

Comment: A commenter recommended that CMS adjust its proposed policy and continue to pay the current rates for certain groups such as those patients discharged from the hospital and entering their first or second episode of home health.

Response: Our method of weight construction takes account of the timing of the episode but it does not consider whether the patient was recently discharged from the hospital. We stopped using the patient's pre-admission location in the case-mix algorithm in 2008 because of difficulties agencies reported in obtaining accurate data and because the impact on resources was not clear in the 2005 data used for the model. We plan to revisit the role of pre-admission location as part of our study mandated by Section 3131 of the Affordable Care Act. This will be done in the context of studying various kinds of new data that might be used in payment adjustments, to ameliorate possible access problems.

Comment: Commenters stated that CMS has not examined the impact of the new proposed rule and cannot predict the effects of the implementation of the change in case-mix weights.

Response: We disagree with the commenter. As we described in responses to commenters earlier in this preamble, we have done simulations that show that the revised case-mix weights with the new adjustments would result in more similar levels of net reimbursements (payments in excess of estimated costs) across episodes than the net reimbursements resulting from our current weights. In addition, Section IV shows the projected impacts of all of our policies (including the payment reduction for nominal case-mix growth). These impacts represent a negative impact on reimbursements well within the Medicare margins that were estimated by MedPAC.

Comment: A commenter recommended monitoring quality outcomes and patient satisfaction after implementing these changes to ensure that the changes do not adversely affect patient care.

Response: We agree that tracking the indicators mentioned by the commenter is a good idea. We note that statistical information on quality outcomes is publicly available on the CMS Web site for commenters to study. We anticipate that patient satisfaction information will be added to home health compare data in the future. We intend to monitor the effect of all of the provisions of this final rule for unintended consequences.

Comment: Commenters stated that due to the therapy requirements implemented on April 1, 2011, there is less flexibility in using the therapy assistants.

Response: The therapy requirements implemented in the CY 2011 HH PPS final rule which require an assessment by a qualified therapist at the 13th and 19th visit were meant to confirm that the patient needs high therapy services and to ensure more involvement of qualified therapists in high therapy cases. Research studies conducted by Linda Resnick (of Brown University) *et al.,* entitled ''Predictors of Physical Therapy Clinic Performance in the Treatment of Patients with Low Back Pain Syndromes'' (2008, funded by a grant from the National Institute of Child Health) and ''State Regulation and the Delivery of Physical Therapy Services'' (2006, funded in part through a grant from the Agency for Healthcare Research and Quality) concluded that more therapy time spent with a qualified physical therapist, and less time with a physical therapy assistant, is more efficient and leads to better patient outcomes.

We note that according to our cost-to-reimbursement analysis, we are overpaying for high therapy services and we are finalizing with this rule an adjustment to the payment weights to more accurately pay for these services. We also note that preliminary analysis of G-code data from 2011, the same time period that the therapy requirements were implemented, shows a higher percentage of physical therapy provided by assistants for high therapy cases than is reflected in our current weights. We will be continuing to examine the trends in the G-code reporting going forward

and we plan to use the information in rate setting.

Comment: Commenters stated that CMS needs to analyze data to see whether their previous policies have addressed issues with the use of inappropriate therapy services before implementing the change in case-mix weights to address therapy issues. A commenter stated that it was not necessary to implement the payment reductions since CMS implemented the outlier policy and enhanced documentation requirements for therapy services.

Response: As stated earlier, the purpose of the revision to the case-mix weights is to more accurately pay for services. We customarily base payment revisions on the most recent data available, consistent with our judgment as to its integrity. At this time, the data indicate that CMS is paying for episodes with 14–19 therapy visits by an average of more than $1100 over the agencies' costs and is paying for episodes with 20+ therapy visits by an average of more than $1500 over the agencies' costs, and as such CMS is overpaying for high therapy cases. Previously implemented policies were intended to promote appropriate use of therapy and to increase the involvement of qualified therapists in high therapy cases to ensure that therapy is being provided in an efficient and effective manner. We again refer to the studies which described the improved patient outcomes with greater qualified therapist involvement. However, given that existing data show such high payments in excess of estimated costs for high therapy episodes, we believe an adjustment to the payment weights is necessary to more accurately pay for high therapy services.

Comment: Commenters stated that the Affordable Care Act provisions along with the payment reductions would leave a huge negative impact on HHAs and commenters suggested that CMS not implement their proposed changes to the case-mix weights.

Response: Our cost data show that we are paying too much for high therapy episodes, as our reimbursement exceeds costs by about 30 percent. We believe it is necessary to make adjustments to our case-mix weights to more accurately pay for high therapy episodes. Our simulation analysis indicates that the new, revised weights should still result in payments in excess of estimated costs for all high therapy episodes, except for some episodes in the 20+ therapy group. In addition, the new, revised weights should result in relatively even payments in excess of estimated costs across episodes with varying levels of therapy, as well as episodes with no therapy. As the Affordable Care Act provisions come into play, we will analyze reimbursement adequacy, as well as beneficiary access to services and make proposals accordingly.

Comment: Commenters urged CMS to expedite that comprehensive study of the case-mix system, to involve home health industry experts in the process, and to implement a revamped case-mix system by 2014.

Response: We have included industry representatives on the Technical Expert Panel meetings conducted under the Affordable Care Act Section 3131 research and demonstration project. Further data collection and analysis will be conducted over the coming two years. Please see Section G for an update on the status of the study.

Comment: Commenters stated that as an alternative to the adjustments to the weights, CMS should try to find cost savings by stopping overpayment to Medicare Advantage plans and suggested that CMS hold them accountable to the same Medicare Compare outcomes that HHAs must report.

Response: We disagree with the commenter's suggestion that CMS find cost savings by stopping overpayment to Medicare Advantage plans as an alternative to implementing adjustments to the weights. Our goal is to address the overpayment for high therapy services and we can only do so by adjusting the case-mix weights for high therapy cases. The goal of the revision of the case-mix weights is not to achieve a cost savings; we reiterate that the change in the case-mix weights is budget neutral. (In contrast, the case-mix adjustment to the national standardized amounts is intended to recover previous overpayments that resulted from coding practice changes.) The goal of the weight adjustments is to more appropriately pay for high therapy services given our findings about the costs for these services and MedPAC's request to address therapy vulnerabilities.

Comment: Commenters stated that the proposed case-mix weight changes would increase the weights assigned to episodes with no therapy visits; however, commenters stated that these non-therapy episodes have not had an increase in relative resource costs since 2008.

Response: In their 2011 Report to Congress, MedPAC suggested that HH PPS may ''overvalue therapy services and undervalue nontherapy services.'' MedPAC also stated that through their analysis of high and low margin agencies, they concluded that ''episodes with high case-mix values are overpaid and episodes with low case-mix values are underpaid.'' We also note that the non-therapy episodes tend to have a much higher rate of outlier cases than episodes with therapy, and therefore, HH PPS may not be sufficiently paying for some of these episodes. In addition, we conducted a preliminary analysis looking at the differences in costs relative to reimbursement across different types of home health episodes and different agency characteristics. The findings suggested that unprofitable episodes on average had significantly more skilled nursing, home health aide visits, and total visits than average, while they also had fewer therapy visits. Furthermore, the results suggested that therapy and post-acute care episodes were more likely to be more profitable than mutually exclusive subpopulations of non-therapy and community-referred episodes, respectively. Moreover, regarding the HHRG, less profitable episodes were slightly more likely to be assigned the lowest functional or service utilization severity level (that is, C1F1S1, C2F1S1, C3F1S1). We note that this analysis did have some limitations. One limitation was that nationally aggregated costs were used instead of individual agency costs. However, we believe that the findings of the preliminary analysis, along with our observations of the incidence of outliers, and MedPAC's findings indicate that the current system may undervalue non-therapy episodes.

Comment: Commenters stated by increasing the weights for non-therapy episodes, the proposal discourages HHAs to provide any therapy. They stated that the proposal will lead to an adverse discrimination against patients in need of therapy at all levels of need and utilization. They stated that they are concerned that the change in case-mix weights will discourage rehabilitation and patient self-sufficiency.

Response: We disagree with the commenters. Our data shows that we are currently overpaying for high therapy services. Also, we proposed to increase the weights for episodes with low therapy. Therefore, we do not believe that we are discouraging HHAs from providing therapy. We believe by more appropriately reimbursing for high therapy episodes, we are encouraging more appropriate therapy use based on patient need. We note that when projecting the payments for episodes with high therapy, payments are adequate and result in a profit, except on average for a small number of episodes with extreme levels of therapy, which in some cases may be eligible for outlier payments.

Comment: Commenters stated that there is a movement towards a multidisciplinary approach to care and utilization of broader ranges of therapy services to improve outcomes and that evidence based best practices have improved patient outcome scores. They stated that patients need a high number of therapy visits to implement the intervention practices, such as fall prevention. In a similar vein, other commenters stated that due to the use of interdisciplinary care, there is an increase in the provision of therapy and coordination between physical therapy, occupational therapy, and speech language therapy. They stated that proposed adjustments to the case-mix weights do not account for the cost of providing interdisciplinary care and they suggested that CMS and the home health community need to work together to develop a new system that accounts for the costs of the interdisciplinary patient care. Other commenters stated that OASIS data shows continued functional improvement in the status of home health patients and that HHAs are providing services well in excess of 20 visits in an episode despite the lack of increase in payment after 20+ visits. Commenters stated that CMS should not consider all of the change to the higher therapy groups as unnecessary.

Response: As part of our industry outreach efforts associated with the home health access study, we plan to solicit input from the industry regarding evidence pointing to the improved outcomes from the multidisciplinary approach, so that we can evaluate the strength of it. We have noted previously MedPAC's concerns with the validity of outcome measurement in home health care. In addition, we reiterate that we do not believe the new case-mix weights will disincentivize interdisciplinary patient care, as the payments for episodes with high therapy are still projected to exceed costs.

We also note that, as we described in the CY 2011 HH PPS final rule (75 FR 70390 through 70391), research shows a direct relationship between improved patient outcomes, and the percentage of therapy provided by qualified therapists. As previously described, research studies conducted by Linda Resnick (of Brown University) *et al.,* entitled ''Predictors of Physical Therapy Clinic Performance in the Treatment of Patients with Low Back Pain Syndromes'' (2008, funded by a grant from the National Institute of Child Health) and ''State Regulation and the Delivery of Physical Therapy Services'' (2006, funded in part through a grant from the Agency for Healthcare Research and Quality) concluded that more therapy time spent with a qualified physical therapist, and less time with a physical therapist assistant, is more efficient and leads to better patient outcomes. In these studies, the lower percentage of time seen by a qualified therapist and the greater percentage of time seen by an assistant or aide, the more likely a patient would have more visits per treatment per episode. The studies also concluded that, although delegation of care to therapy support personnel such as assistants may extend the productivity of the qualified physical therapist, it appears to result in less efficient and effective services.

The commenter suggests that high therapy cases are the result of interdisciplinary care. While interdisciplinary therapy would increase the volume of therapy provided, we note that given the apparent high percentage of therapy assistants utilized in these episodes when compared to other therapy episodes, research would suggest that inefficiencies in care may be a factor in high therapy cases as well. Our current payments for these episodes would incentivize these inefficiencies. Additionally, as we have described in other comment responses, our simulation analysis shows that the revised weights will result in similar payments in excess of estimated costs for all episodes. As such, we believe we are lessening the incentive to provide particular types of episodes, while providing adequate reimbursements.

Comment: Commenters stated that CMS should institute safeguards to monitor discriminatory patient admission practices and misguided clinical care practices.

Response: We appreciate this comment but must point out that this is a costly and difficult task. Eventually, as a result of research mandated by the Congress in section 3131(d) of the Affordable Care Act, we hope to modify the HH PPS to lower the risk of discriminatory patient admission practices. As part of the outreach efforts for the section 3131(d) Affordable Care Act study, we plan to solicit comments on how we could launch a cost-effective effort without imposing unacceptable burdens on providers and patients. We also encourage continued efforts in the home health industry, aided by Medicare quality initiatives, to improve the consistency and appropriateness of clinical care plans and their implementation. In addition, we reiterate that based on our simulation analysis, we expect the new weights to result in similar payments in excess of estimated costs episodes and should therefore lessen discriminatory patient admission practices in home health.

Comment: Commenters advised CMS to analyze provider costs in 2011 and 2012 before implementing the change to the case-mix weights.

Response: Due to the lag in providers' preparation and submission of CRs, we do not have a complete set of data on provider costs for any given year until more than one year after the end of the year. As a result, the 2009 MCR data are the most current, complete cost data available. Given our analysis of the costs and payment for high therapy episodes using 2009 data, we believe that Medicare is overpaying for high therapy services by 30 percent or more. In addition, as we mentioned in a previous response, for our simulation analysis, we updated the costs of episodes to 2012 dollars using the market basket increase and estimated the 2012 payment for episodes. The simulation analysis using the new weights suggested that in 2012, the payment for episodes will still exceed costs and that there is a relatively even payments in excess of estimated costs across episodes, except for some episodes in the 20+ therapy group. We note that some of the episodes in the 20+ therapy group may be eligible for outlier payments.

Comment: Some commenters stated that the proposal to change the case-mix weights is premature and unproductive. Other commenters stated that CMS should dedicate their resources to develop a case-mix adjuster that does not use therapy utilization as a variable in determining payment; instead CMS should look into using patient characteristics to pay for therapy. Commenters stated that they would be supportive of any change in the case-mix weights that moves the model away from using utilization factors in determining payment.

Response: In their 2010 and 2011 Reports to Congress, MedPAC has urged us to address the therapy incentives in our payment system. We note that completely addressing MedPAC's concerns with the way we factor therapy services into our reimbursement will be a complex process, requiring comprehensive structural changes and a great deal of additional research and analysis. However, we believe there is evidence that we are overpaying for high therapy services and that it is appropriate to revise the case-mix weights now, to mitigate therapy vulnerabilities in the short term while we develop a longer term solution.

Comment: Commenters asked how CMS would check that the changes in

the case-mix weights would in fact be budget neutral. A commenter stated that in the past when changes in the HH PPS resulted in profits to the industry, CMS implemented a plan to recover the excess reimbursement. The commenter asked what would happen if the industry was under-reimbursed by the proposed changes, stating that in this situation, the proposed changes would not be budget neutral.

Response: We are uncertain what the commenter's concern is. As we described earlier in this section, we applied a budget neutrality factor to ensure that the new weights result in approximately the same aggregate expenditures as 2009, the most current data that were available. We equated the aggregate expenditures by setting the average of the case-mix weights under the new revised weights equal to the average under the current weights which we reimbursed in 2009. A slight difference between the aggregate totals remained, due to the effects of outlier payments. However, this difference amounted to only 0.01 percent. Also we reiterate that data shows that we are overpaying for high therapy services and we believe the new weights will more accurately align payment with costs. In addition, as stated in Section II.A, we will continue to assess real and nominal case-mix growth and if we were to see real case-mix growth increase more than the reported home health case-mix growth, we would increase payments accordingly. Furthermore, since the HH PPS began, the industry has never been under-reimbursed in the aggregate and when it was determined that certain LUPAs were on average under-reimbursed, we implemented the LUPA add-on to compensate for the underpayment.

Comment: A number of commenters stated that a failure to recalibrate the whole system weights would result in a change that was not budget neutral and Federal law prohibits changes in case-mix that are not budget neutral. Another commenter requested that CMS explain in detail the methodology used to develop the budget neutrality adjustment for the proposed case-mix weights.

Response: As stated in the proposed rule, to remove the two hypertension codes from our case-mix system, we needed to revise our case-mix weights to redistribute the dollars without reducing aggregate payments. To redistribute the dollars, we re-estimated the four equation models without codes 401.1 and 401.9. We then used the results from the four equation model to determine the clinical and functional severity level groups for each episode. This information was then used to estimate the payment regression model, which in turn was used to develop the weights. In addition, CMS has applied a budget neutrality factor of 1.2832 so that the new case-mix weights result in approximately the same aggregate expenditures as 2009. More details about the methodology used to ensure budget neutrality can be found in an updated version of the Abt Associates report ''Revision of the case-mix weights for the Home Health Prospective Payment System'' at *http://www.cms.gov/center/hha.asp.*

We also note that the payment reductions arising out of the nominal case-mix changes we have identified are not intended to be budget neutral (discussed in Section II.A). We reduce payment rates to account for nominal case-mix change.

Comment: CMS should publicly disclose the revised formula and factors employed in the calculation of a revised budget neutrality adjustment and provide an opportunity for public comment prior to finalization of the revised case-mix weights.

Response: We note that the Abt Associates report ''Revision of the Case-Mix Weights for the Home Health Prospective Payment System'' contains details about the methods used to achieve budget neutrality. This Abt Associates report was made publicly available around the same time that the CY 2012 HH PPS proposed rule was published. We have received comments on our methodology during this comment process. An updated version of this report will be made available at *http://www.cms.gov/center/hha.asp.*

Comment: Commenters stated that CMS should update its occupational mix assumptions in the 2012 refinements and that the increased use of therapy assistants should be reflected in the case-mix weights.

Response: We thank the commenter for their comment and we would like to clarify our methodology. As stated in the Abt Associates report ''Revision of the Case-mix Weights for the Home Health Prospective Payment System'' which can be accessed at *http://www.cms.gov/center/hha.asp,* the payment weights are based on wage-weighted time spent on home health visits in our sample. The wages come from estimates of the national hourly wage for six disciplines of home health care workers (skilled nursing, physical therapist, occupational therapist, speech language therapist, medical social services, and home health aides) from the Bureau of Labor Statistics Occupational Employment Survey (OES). When re-estimating the payment regression model on 2007 data, we used the wage-weighted minutes based on the 2007 OES data for average labor mix within each discipline and average hourly wages, including benefits. The 2007 OES labor mix for physical therapists is composed of 17 percent physical therapist assistants, 1 percent physical therapy aides, and 82 percent physical therapists. The 2007 OES labor mix for occupational therapists is composed of 12 percent occupational therapist assistants and 88 percent occupational therapists. The payment regression is modeling the wage-weighted time (resources) as predicted by the severity levels and therapy variables for early and later episodes, using 2007 claims. We note that before updating the labor mix in the wage-weighted minutes to more current data than 2007, we will wait for more complete G-code data. We will continue to assess the accuracy of our case-mix weights and may make adjustments in future rulemaking as more G-code data becomes available.

Comment: Commenters stated that CMS should calculate the budget neutrality adjustment to equate 2012 expenditures under the current and proposed case-mix weight models. Commenters recommended that CMS recalculate the budget neutrality adjustment to reflect the idea that HHAs have experienced some ''real'' case-mix change in 2010 and 2011 and will experience more in 2012.

Response: We applied a budget neutrality factor (1.2832) to the weights to ensure that the final proposed weights result in aggregate expenditures in 2009 approximately equal to expenditures using the current payment weights. We made the weights budget neutral to 2009 because the data from 2009 were the most current complete data available at the time. Using the most complete actual data available to achieve budget neutrality is a method consistent with case-mix weight recalibration methodology utilized by other Medicare payment systems. Similarly, the methodology is consistent with the method we have utilized since CY 2008 rulemaking to analyze and account for case-mix growth unrelated to real changes in patient acuity (nominal case-mix). Our current method assesses case-mix growth and reduces payment rates as warranted only after the claims data are complete. This method for both establishing budget neutrality in the weights and adjusting for nominal case-mix growth confines the correction on account of nominal case-mix growth to the rates while allowing the average case-mix level to evolve in the claims history without

intervention. However, the commenter's suggestion to project case-mix growth for future years is intriguing and we may consider such a methodology change in future rulemaking. Such a methodology change would allow us to project changes in case-mix based on expected trends in case-mix growth. It would also require us to make projections for payment adjustments to account for nominal case-mix growth based on trends. This projection method may be preferable to delaying the ability to account for future nominal case-mix increase. We believe that such a change in long-standing methodology would require rulemaking.

Our continued analyses of current claims data as they become available allows us to make adjustments to HH PPS case-mix weights as warranted, achieving budget neutrality using the most current complete data available, and account for growth in nominal case-mix as warranted.

Comment: Commenters stated that CMS explicitly proposes that the case-mix weight changes will affect clinical and patient admission behavior of HHAs. They stated that if the case-mix weight changes are implemented, the proportion of patient episodes with 14 or more therapy visits will decline and the proportion of non-therapy episodes will increase.

Response: Based on observation of sharp changes in distribution of episodes by the number of therapy visits, on information coming to us about provider practices in the field, as well as on analysis of margins in HH PPS, an effect on the behavior of HHAs would not be surprising.

Comment: The commenters stated that the therapy episodes have higher case-mix weights on average than non-therapy episodes so the reduction in the proportion of therapy episodes will reduce the average case-mix weight nationally and that failure to account for this behavioral change reduces the budget neutrality adjustment. Other commenters stated that the change in case-mix weights does not appear to be budget neutral because only 30 of the case-mix weight values increased while 123 of the case-mix weight values decreased from the current levels.

Response: To date, we have not incorporated forecasts of the sort indicated by the commenter in our budget neutrality adjustments. We may consider this for future rulemaking. However, we think that forecasting changes in the national case-mix average due to the utilization changes mentioned by the commenter would be difficult and perhaps not a reliable basis for payment. Regarding the positive and negative changes the case-mix weight values, we note that when developing the budget neutrality factor, we took into account the number of episodes in each HHRG along with the change in weights. We developed the factor so that the change in the weights would result in the same aggregate expenditures as 2009. One cannot only look at the increases or decreases in the case-mix weight values but one must also look at the degree of the change in the weights and the number of episodes associated with each of the weights when looking at budget neutrality. In general, the case-mix weight values that increased had higher volumes than the ones that decreased.

Comment: A commenter appreciated that the proposed changes to the case-mix weights are budget neutral.

Response: We thank the commenter for their support.

Comment: A commenter asked that CMS identify how the points from the hypertension 401.1 and 401.9 codes are reallocated in the proposed case-mix weight changes.

Response: The points are reallocated in the course of estimating the four-equation model's regression equation. In Table 3 shown above, we show the points associated with various clinical and functional variables based on the results of the four-equation model. The four-equation model is a linear regression explaining an episode's wage weighted minutes of care in the home as measured in dollars (the dependent variable) as a function of the episode's timing, therapy visits, clinical variable indicators (for example, pressure ulcer stage), and functional indicators (for example, limitation in bathing). After estimating the model, we determine the points associated with clinical and functional variables by dividing the coefficients by 10. By re-estimating the four-equation model on data without hypertension codes 401.1 and 401.9, we redistributed the points which would be associated with the two hypertension codes to other variables in the model. Table 4 shows the differences in points between the current and proposed case-mix adjustment scores. As stated in the proposed rule, for 13 of the 33 clinical and functional variables which had a different number of points, there was an extra point assigned when the two hypertension codes were excluded and for 20 of the 33 clinical and functional variables, there was one less point assigned compared to the current model.

Comment: Commenters stated that CMS presented strong and objective data indicating that an elimination of hypertension codes 401.1 and 401.9 was warranted. Commenters stated that they would like to see a comparable approach for therapy utilization. Other commenters stated that despite the data analysis of the resource costs of patients with hypertension codes 401.1 and 401.9, from a clinical viewpoint, there are still concerns that the removal of the hypertension codes might undervalue the resources need to address the needs of patients with hypertension.

Response: Our past exploration of modeling therapy elements of the case-mix in home health showed that predictive power is relatively low. MedPAC's recent results in their preliminary models of therapy elements are consistent with our experience. We will continue to study this issue. We remind the commenters concerned about removal of hypertension codes that our analysis showed that after the 153-group system went into effect, hypertension was no longer associated with marginal added resources. This was probably due to a big change in the frequency of reporting hypertension and meant that the average patient with hypertension (after accounting for other clinical conditions) was not as costly to care for as the average patient reported to have hypertension in 2005 (the year of the data that originally used to create the 153-group system). The new guidelines developed by the National Heart Lung and Blood Institute (NHLBI) concerning the appropriate reporting of these hypertension codes were released in late 2004. It is possible that prior to the NHLBI guidelines, HHAs were using codes 401.1 and 401.9 to reflect more severe hypertensive conditions. Our 2008 refinements analysis utilized 2003 data (prior to the NHLBI guidelines) and 2005 data (shortly after the guidelines release and likely prior to widespread adoption of them). As such, one probable reason that the 2008 refinements analysis identified these codes as more resource intensive, when more current data analysis does not, would be HHA use of these codes to reflect more severe hypertensive patients.

Comment: Commenters urged CMS to check that the removal of weights for the hypertension codes 401.1 and 401.9 is not premature and based on sound methodology. Commenters stated that coding experts believe that eliminating the two hypertension codes will result in up to a 7 percent decrease in coding-related reimbursement.

Response: In our proposal, we explained that the new point allocation from the re-estimated four-equation model redistributed resources across the other conditions in the model. Our other procedures for deriving the weights

were designed to maintain the effects of the redistribution. Therefore, a change in reimbursement for patients with the hypertension codes would in general not be 7 percent. The change for any given patient would depend on their combination of case-mix recognized conditions.

Comment: Commenters stated that CMS proposed to eliminate the codes 401.1 and 401.9 based on their concerns surrounding the new guidelines developed by the NHLBI.

Response: In addition to our concerns about changes in coding due to the new guidelines developed by the NHLBI, which we believe resulted in more accurate coding, we have also shown that the two hypertension codes are not associated with additional resources, and therefore, we are implementing the removal of these codes.

Comment: Commenters stated that there are certain areas where the increase in hypertension makes sense given the high prevalence of heart disease and obesity. Another commenter was concerned with the removal of hypertension from the case-mix system, stating that there may be external factors that CMS has not taken into account and that treatment of hypertension is an important part of home health.

Response: We thank the commenters for their comments. However, we note that we presented various analyses which showed that the two codes 401.1 and 401.9 are not associated with additional resource use. Therefore, we believe that the two codes should be removed from our case-mix system. However, we would like to clarify that we are not completely removing hypertension from our case-mix system; we are only removing codes 401.1 and 401.9. Currently, we believe that certain types of hypertension, such as hypertensive heart disease and hypertensive chronic kidney disease, are associated with additional resource use and should be included in our payment system; however, all of our analysis confirms that the two hypertension codes for benign essential and unspecified essential hypertension on average are not associated with additional resource use, and therefore, we are removing the codes to more accurately align payment with resource use.

Comment: Commenters stated that when changing or removing part of the model, CMS should perform the same comprehensive approach as it used for the 2008 refinements. The commenter stated that we should use the same criteria we used for the refinements to determine whether certain diagnoses codes and variables should be included in the model.

Response: As a result of research we are undertaking pursuant to Section 3131 of the Affordable Care Act, we plan a comprehensive re-examination of the variable set that is potentially available to us to use for case-mix and other payment adjustments. We decided to defer a comprehensive re-modeling effort until new and/or revised variables have been researched and can be tested. On OASIS, reported hypertension prevalence more than doubled between 2005 and 2008, the first year of the refined 153-group system. By 2008, hypertension prevalence was more than 60 percent. Given the large amount of coding change associated with hypertension, and the resulting extraordinary prevalence, we saw a need to revisit its impact on costs. The results indicated that for the average hypertension patient, the condition was not associated with a statistically significant increase in resources.

Comment: Commenters stated they would like to see CMS run the full, original regression models on test data from 2009 to see whether the indicators for hypertension codes 401.1 and 401.9 should be kept in the case-mix system. The commenters stated that after running the data, they would like to see the coefficients for the indicators for codes 401.1 and 401.9 from the full regression models for all 4 equations using the 2009 data.

Response: We did not pursue the commenters' suggestion, pending the outcome of ongoing research. We previously mentioned in this preamble concerns that data from 2008 and later reflect a large amount of nominal coding change. Without intensive work developing and reviewing current, discarded, and potentially new variables for the model, we would not necessarily arrive at an appropriate score for the hypertension variables. Also, we believe making significant scoring changes piecemeal (before a thorough review of potential variable sets) adds unacceptable burdens to administrative and HHA operations. We also note that re-estimating the full original regression models is not necessary to support our decision to remove the two hypertension codes. The reason is that we did re-run one multivariate regression models used to test the impact of the hypertension codes in our proposed rule. This model isolated the additional resources associated with codes 401.1 and 401.9 and is an additional analysis to that which we described in the proposed rule. When developing the proposed rule, we ran the test regression model controlling for the current weights because at the time, we had not yet developed the proposed weights. The results supported the removal of the codes. Table 9 shows the results of an updated test regression model. One can see the coefficients from the regression model of total resource use on the case-mix weight (using the refined revised case-mix weights that do not include the 401.1 or 401.9 diagnoses in calculating case-mix weight) and indicator variables for the presence of the 401.1 and 401.9 hypertension diagnoses. This equation is based on 2009 data with LUPAs and outliers excluded. The coefficients show that, controlling for the revised case-mix weights that we are finalizing in this rule, the presence of either a 401.1 or a 401.9 diagnosis is associated with significantly lower resource use. The mean value of the dependent variable is 543.17, so the magnitude of the coefficients is not particularly large, especially for the 401.9 diagnosis, but the results support dropping the two diagnoses from the case-mix calculation since they are not associated with higher resource use. We believe that this analysis along with the other analysis presented in the proposed rule support the removal of the two hypertension codes 401.1 and 401.9.

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TABLE 9: Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	t Value	Pr > |t|
Intercept	**1**	-186.10324	0.77887	-238.94	<.0001
Case-mix weight (recalibrated)	**1**	539.86486	0.47910	1126.84	<.0001
ICD9 401.1 present	**1**	-7.07870	1.57995	-4.48	<.0001
ICD9 401.9 present	**1**	-2.91112	0.54903	-5.30	<.0001

In summary, as described in our response to comments, we are finalizing our proposal to revise the case-mix weights. Based on our analyses after the publication of the CY 2012 HH PPS proposed rule, we have refined the revision to the case-mix weights and the new adjustments to the case-mix weights can be seen in Table 10.

TABLE 10: Adjustments to the Raw Weights

Therapy step Group	New Adjustments
0 to 5 Therapy Visits	1.0375
14 to 15 Therapy Visits	0.975
20+ Therapy Visits	0.95

We reiterate that we used the same methodology described in the proposed rule when developing the new revised case-mix weights. To ensure that the revised weights result in approximately the same aggregate expenditures as we incurred in 2009, the budget neutrality factor applied to the weights changed slightly from 1.2847 to 1.2832. The new revised case-mix weights can be seen in Table 11.

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TABLE 11: Final Payment Weights (2007 sample)

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
10111	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F1	0.8186
10112	1st and 2nd Episodes, 6 Therapy Visits	C1F1	0.9793
10113	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F1	1.1401
10114	1st and 2nd Episodes, 10 Therapy Visits	C1F1	1.3008
10115	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F1	1.4616
10121	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F2	1.0275
10122	1st and 2nd Episodes, 6 Therapy Visits	C1F2	1.1657
10123	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F2	1.3039
10124	1st and 2nd Episodes, 10 Therapy Visits	C1F2	1.4421
10125	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F2	1.5804
10131	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F3	1.1233
10132	1st and 2nd Episodes, 6 Therapy Visits	C1F3	1.2520
10133	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F3	1.3807
10134	1st and 2nd Episodes, 10 Therapy Visits	C1F3	1.5094
10135	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F3	1.6381
10211	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F1	0.8340
10212	1st and 2nd Episodes, 6 Therapy Visits	C2F1	1.0302
10213	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F1	1.2265
10214	1st and 2nd Episodes, 10 Therapy Visits	C2F1	1.4228
10215	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F1	1.6190
10221	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F2	1.0429
10222	1st and 2nd Episodes, 6 Therapy Visits	C2F2	1.2166
10223	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F2	1.3903

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
10224	1st and 2nd Episodes, 10 Therapy Visits	C2F2	1.5641
10225	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F2	1.7378
10231	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F3	1.1387
10232	1st and 2nd Episodes, 6 Therapy Visits	C2F3	1.3029
10233	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F3	1.4671
10234	1st and 2nd Episodes, 10 Therapy Visits	C2F3	1.6313
10235	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F3	1.7956
10311	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F1	0.9071
10312	1st and 2nd Episodes, 6 Therapy Visits	C3F1	1.1348
10313	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F1	1.3624
10314	1st and 2nd Episodes, 10 Therapy Visits	C3F1	1.5900
10315	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F1	1.8177
10321	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F2	1.1160
10322	1st and 2nd Episodes, 6 Therapy Visits	C3F2	1.3211
10323	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F2	1.5262
10324	1st and 2nd Episodes, 10 Therapy Visits	C3F2	1.7313
10325	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F2	1.9364
10331	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F3	1.2118
10332	1st and 2nd Episodes, 6 Therapy Visits	C3F3	1.4074
10333	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F3	1.6030
10334	1st and 2nd Episodes, 10 Therapy Visits	C3F3	1.7986
10335	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F3	1.9942
21111	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F1	1.6223
21112	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F1	1.8331
21113	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F1	2.0438
21121	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F2	1.7186

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
21122	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F2	1.9496
21123	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F2	2.1807
21131	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F3	1.7668
21132	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F3	2.0252
21133	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F3	2.2836
21211	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F1	1.8153
21212	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F1	2.0224
21213	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F1	2.2294
21221	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F2	1.9116
21222	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F2	2.1389
21223	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F2	2.3663
21231	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F3	1.9598
21232	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F3	2.2145
21233	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F3	2.4691
21311	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F1	2.0453
21312	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F1	2.2682
21313	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F1	2.4911
21321	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F2	2.1415
21322	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F2	2.3848
21323	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F2	2.6280
21331	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F3	2.1897

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
21332	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F3	2.4603
21333	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F3	2.7309
22111	3rd+ Episodes, 14 to 15 Therapy Visits	C1F1	1.6822
22112	3rd+ Episodes, 16 to 17 Therapy Visits	C1F1	1.8730
22113	3rd+ Episodes, 18 to 19 Therapy Visits	C1F1	2.0638
22121	3rd+ Episodes, 14 to 15 Therapy Visits	C1F2	1.7628
22122	3rd+ Episodes, 16 to 17 Therapy Visits	C1F2	1.9791
22123	3rd+ Episodes, 18 to 19 Therapy Visits	C1F2	2.1954
22131	3rd+ Episodes, 14 to 15 Therapy Visits	C1F3	1.9247
22132	3rd+ Episodes, 16 to 17 Therapy Visits	C1F3	2.1305
22133	3rd+ Episodes, 18 to 19 Therapy Visits	C1F3	2.3362
22211	3rd+ Episodes, 14 to 15 Therapy Visits	C2F1	1.8508
22212	3rd+ Episodes, 16 to 17 Therapy Visits	C2F1	2.0460
22213	3rd+ Episodes, 18 to 19 Therapy Visits	C2F1	2.2412
22221	3rd+ Episodes, 14 to 15 Therapy Visits	C2F2	1.9314
22222	3rd+ Episodes, 16 to 17 Therapy Visits	C2F2	2.1521
22223	3rd+ Episodes, 18 to 19 Therapy Visits	C2F2	2.3729
22231	3rd+ Episodes, 14 to 15 Therapy Visits	C2F3	2.0933
22232	3rd+ Episodes, 16 to 17 Therapy Visits	C2F3	2.3035
22233	3rd+ Episodes, 18 to 19 Therapy Visits	C2F3	2.5136
22311	3rd+ Episodes, 14 to 15 Therapy Visits	C3F1	2.0747
22312	3rd+ Episodes, 16 to 17 Therapy Visits	C3F1	2.2878
22313	3rd+ Episodes, 18 to 19 Therapy Visits	C3F1	2.5009
22321	3rd+ Episodes, 14 to 15 Therapy Visits	C3F2	2.1553
22322	3rd+ Episodes, 16 to 17 Therapy Visits	C3F2	2.3940
22323	3rd+ Episodes, 18 to 19 Therapy Visits	C3F2	2.6326
22331	3rd+ Episodes, 14 to 15 Therapy Visits	C3F3	2.3172
22332	3rd+ Episodes, 16 to 17 Therapy Visits	C3F3	2.5453
22333	3rd+ Episodes, 18 to 19 Therapy Visits	C3F3	2.7734
30111	3rd+ Episodes, 0 to 5 Therapy Visits	C1F1	0.6692
30112	3rd+ Episodes, 6 Therapy Visits	C1F1	0.8718
30113	3rd+ Episodes, 7 to 9 Therapy Visits	C1F1	1.0744
30114	3rd+ Episodes, 10 Therapy Visits	C1F1	1.2770
30115	3rd+ Episodes, 11 to 13 Therapy Visits	C1F1	1.4796
30121	3rd+ Episodes, 0 to 5 Therapy Visits	C1F2	0.8421
30122	3rd+ Episodes, 6 Therapy Visits	C1F2	1.0263
30123	3rd+ Episodes, 7 to 9 Therapy Visits	C1F2	1.2104
30124	3rd+ Episodes, 10 Therapy Visits	C1F2	1.3945

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
30125	3rd+ Episodes, 11 to 13 Therapy Visits	C1F2	1.5787
30131	3rd+ Episodes, 0 to 5 Therapy Visits	C1F3	0.9352
30132	3rd+ Episodes, 6 Therapy Visits	C1F3	1.1331
30133	3rd+ Episodes, 7 to 9 Therapy Visits	C1F3	1.3310
30134	3rd+ Episodes, 10 Therapy Visits	C1F3	1.5289
30135	3rd+ Episodes, 11 to 13 Therapy Visits	C1F3	1.7268
30211	3rd+ Episodes, 0 to 5 Therapy Visits	C2F1	0.7361
30212	3rd+ Episodes, 6 Therapy Visits	C2F1	0.9591
30213	3rd+ Episodes, 7 to 9 Therapy Visits	C2F1	1.1820
30214	3rd+ Episodes, 10 Therapy Visits	C2F1	1.4049
30215	3rd+ Episodes, 11 to 13 Therapy Visits	C2F1	1.6278
30221	3rd+ Episodes, 0 to 5 Therapy Visits	C2F2	0.9091
30222	3rd+ Episodes, 6 Therapy Visits	C2F2	1.1136
30223	3rd+ Episodes, 7 to 9 Therapy Visits	C2F2	1.3180
30224	3rd+ Episodes, 10 Therapy Visits	C2F2	1.5225
30225	3rd+ Episodes, 11 to 13 Therapy Visits	C2F2	1.7269
30231	3rd+ Episodes, 0 to 5 Therapy Visits	C2F3	1.0022
30232	3rd+ Episodes, 6 Therapy Visits	C2F3	1.2204
30233	3rd+ Episodes, 7 to 9 Therapy Visits	C2F3	1.4386
30234	3rd+ Episodes, 10 Therapy Visits	C2F3	1.6568
30235	3rd+ Episodes, 11 to 13 Therapy Visits	C2F3	1.8751
30311	3rd+ Episodes, 0 to 5 Therapy Visits	C3F1	0.9324
30312	3rd+ Episodes, 6 Therapy Visits	C3F1	1.1609
30313	3rd+ Episodes, 7 to 9 Therapy Visits	C3F1	1.3893
30314	3rd+ Episodes, 10 Therapy Visits	C3F1	1.6178
30315	3rd+ Episodes, 11 to 13 Therapy Visits	C3F1	1.8463
30321	3rd+ Episodes, 0 to 5 Therapy Visits	C3F2	1.1054
30322	3rd+ Episodes, 6 Therapy Visits	C3F2	1.3154
30323	3rd+ Episodes, 7 to 9 Therapy Visits	C3F2	1.5254
30324	3rd+ Episodes, 10 Therapy Visits	C3F2	1.7353
30325	3rd+ Episodes, 11 to 13 Therapy Visits	C3F2	1.9453
30331	3rd+ Episodes, 0 to 5 Therapy Visits	C3F3	1.1985
30332	3rd+ Episodes, 6 Therapy Visits	C3F3	1.4222
30333	3rd+ Episodes, 7 to 9 Therapy Visits	C3F3	1.6460
30334	3rd+ Episodes, 10 Therapy Visits	C3F3	1.8697
30335	3rd+ Episodes, 11 to 13 Therapy Visits	C3F3	2.0935
40111	All Episodes, 20+ Therapy Visits	C1F1	2.2546
40121	All Episodes, 20+ Therapy Visits	C1F2	2.4117
40131	All Episodes, 20+ Therapy Visits	C1F3	2.5419
40211	All Episodes, 20+ Therapy Visits	C2F1	2.4364
40221	All Episodes, 20+ Therapy Visits	C2F2	2.5936

Payment Group	Step (Episode and/or Therapy Visit Ranges)	Clinical and Functional Levels (1 = Low; 2 = Medium; 3 = High)	Final Weights (using new adjustments)
40231	All Episodes, 20+ Therapy Visits	C2F3	2.7238
40311	All Episodes, 20+ Therapy Visits	C3F1	2.7140
40321	All Episodes, 20+ Therapy Visits	C3F2	2.8712
40331	All Episodes, 20+ Therapy Visits	C3F3	3.0014

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As stated earlier in our responses to comments, we performed a simulation analysis on the new revised weights. When re-running the simulation analysis on these new weights, we saw relatively even payments in excess of estimated costs across the various types of episodes, including but not limited to the episodes with 14–19 therapy visits, episodes with 20–25 visits, and non-therapy episodes. We note that in our analysis, we looked at various groups of episodes, such as non-therapy episodes, episodes with 1–5 therapy visits, episodes with 6–9 therapy visits, episodes with 10–13 therapy visits, episodes with 14–19 therapy visits and episodes with 20–25 therapy visits, as well as episodes with 26+ therapy visits. The analysis showed an even, similar payment in excess of estimated costs between almost all of the groups of episodes, except for episodes with 26+ therapy visits. We also note that in our sample, episodes with 20–25 visits are 64 percent of all of the episodes with 20+ therapy visits.

In addition, when performing a regression of the episode's total resource (dependent variable) using the new revised case-mix weights (independent variable), the R-squared value is 0.5436, which is slightly higher than the R-squared value for the proposed weights. As more data becomes available, such as G-code data and possibly audited CR data, we may further implement changes to the weights in future rulemaking.

C. Outlier Policy

1. Background

As we highlighted in our proposed rule (76 FR 41012), section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the national standardized 60-day case-mix and wage-adjusted episode payment amounts in the case of episodes that incur unusually high costs due to patient home health (HH) care needs. In the proposed rule, we noted that prior to the enactment of the Affordable Care Act in March 2010, this section of the Act stipulated that estimated total outlier payments could not exceed 5 percent of total projected or estimated HH payments in a given year. We also provided historical milestones for the development of the outlier payment policy, including an overview of the July 2000 final rule (65 FR 41188 through 41190), in which we described the method for determining outlier payments.

As part of our proposed rule (76 FR 41013), we reiterated what was said in the CY 2010 HH PPS final rule (74 FR 58080 through 58087), in which we discussed excessive growth in outlier payments, the reasons for this growth, and our policy changes and methodologies to address it, which culminated in a 10 percent agency level outlier cap. We noted that this cap was implemented in concert with a reduced fixed dollar loss (FDL) ratio of 0.67. These policies resulted in a projected target outlier pool of approximately 2.5 percent.

In our proposed rule (76 FR 41013), we also provided an overview of how the outlier payment percentage is determined and the relationship between the FDL and loss-sharing ratios.

At the time of the proposed rule, a preliminary look at partial CY 2010 Health Care Information System (HCIS) data showed total outlier payments to be 1.68 percent of total HH PPS payments. As such, we proposed to maintain the current FDL ratio of 0.67 until more recent and complete data became available on which to conduct further analysis.

As we stated in the proposed rule (76 FR 41013), we must deliver a Report to Congress regarding the results and recommendations of a home health study no later than March 1, 2014. Section 3131(d)(1)(A)(iii) of the Affordable Care Act requires the Secretary to analyze potential revisions to outlier payments to better reflect costs of treating Medicare beneficiaries with high levels of severity of illness.

2. Comments and Responses

The following is a summary of the comments we received regarding the outlier policies in the proposed rule.

Comment: Several commenters expressed general agreement with the methodology used to review the outlier policy, including possibly adjusting the fixed-dollar loss (FDL) ratio from its current value of 0.67 based on more current data becoming available. Many of these commenters urged CMS to refine its outlier policies to ensure access to care for Medicare beneficiaries, and also ensure that the full 2.5 percent of expected HH expenditures be spent on outlier payments. Some of these commenters noted that data presented by CMS showed less than 2.5 percent of outlier dollars were expended. Commenters also noted that outlier expenditures are less than prior years, reflecting that the impact of the outlier cap has been successful in addressing abuse of this provision of the payment system.

Response: We thank commenters for their recognition of the need for the outlier payment limit and recognize the concerns expressed by many to ensure that the 2.5 percent target in outlier payments allowed is expended. We agree on the importance of ensuring access to care for high cost Medicare beneficiaries. We also agree that the outlier cap policy plays an important part in addressing abuse of the payment system. As stated in our proposed rule, we will continue to monitor outlier payments as a percentage of total HH PPS payments as newer data becomes available.

At the writing of this final rule, the most current 2010 claims data shows the outlier payment outlay has increased from 1.68 to 1.91 percent of total 2010 HH expenditures. We recognize that this percentage still falls below the 2.5 percent outlier target. We believe it is necessary to finalize the outlier policy 0.67 FDL ratio and 0.80 loss-sharing ratio as proposed to ensure we do not violate the statutory mandate to not exceed 2.5 percent of expected HH expenditures in outlier payments. We also note that an expected correction to a claims processing error related to the outlier cap may change the final outlier expenditures in CY 2010.

We assure commenters that we intend to thoroughly analyze ways to improve the HH PPS's ability to identify patient severity and cost, address possible home health access issues for high cost patients, and investigate options for improving the HH PPS outlier policies as part of the home health study.

Comment: A number of commenters specifically suggested that the cost sharing ratio of 0.80 be increased rather than lowering the FDL and that CMS should move away from using the low utilization payment adjustment (LUPA) as the proxy for actual cost in computing the outlier payment, believing that actual agency-specific costs subject to a cap or a per visit outlier cap would further reduce outlier abuse and better compensate agencies that use the outlier provision judiciously. Many commenters expressed their belief that outlier payments should play an important part in addressing the needs of patients whose extraordinary costs are beyond the compensation offered by regular HH PPS payments. One of the commenters stated that CMS continues to focus on the outlier payment boost as if it were a profit-making tool for HHAs even though most outlier episodes lose money. Another commenter requested in particular that CMS exempt special needs certified HHAs that serve high-cost patients with multiple clinical issues from the 10 percent outlier cap threshold. One such commenter added that CMS should further evaluate the outlier threshold in relationship to non-routine supplies (NRS) due to this commenter's concern that patients with complex wounds might be adversely impacted.

Response: We reiterate that we intend to analyze alternatives to our current outlier policy as part of the home health study mandated by section 3131 of the Affordable Care Act. The study calls for CMS to investigate improvements to the HH PPS to account for patients with varying severity of illness. We agree with commenters that the current HH PPS outlier payments play an important role in addressing the needs of patients whose costs are beyond the compensation offered by regular HH PPS payments. Regarding possible exemptions for special needs certified HHAs that serve high-cost patients with multiple clinical issues from the 10 percent outlier cap threshold, we note that section 3131(b) of the Affordable Care Act does not allow for exceptions to the mandate of the outlier policy which reduces estimated aggregate HH payments by 5 percent, allows no more than an estimated 2.5 percent of aggregate HH payments to be outlier payments, and requires the 10 percent agency-level outlier cap. We do not have statutory authority to exempt any providers from the 10 percent outlier cap. Lastly, we will also include the commenter's suggested NRS analysis as part of the Affordable Care Act-mandated home health access study.

In summary, as described above, preliminary analysis of partial 2010 claims described in the proposed rule indicated outlier payments to be approximately 1.68 percent of total HH PPS payments. For this final rule, we have updated our analysis with a full year of CY 2010 data. The data show the outlier payment percentage has increased to 1.91 percent of total HH PPS payments.

TABLE 12: Outlier Payment History (CY 2004 through CY 2010)

Year	Outlier Payment	Total HH PPS Payment	Outlier Payment Percentage
2004	$309,198,604	$11,500,462,624	2.69%
2005	$527,096,653	$12,885,434,951	4.09%
2006	$701,945,386	$14,041,853,560	5.00%
2007	$996,316,407	$15,677,329,001	6.36%
2008	$1,127,162,152	$17,114,906,875	6.59%
2009	$1,204,246,569	$18,895,476,901	6.37%
2010	$369,659,900	$19,346,889,521	1.91%

In addition, there exists a claims processing issue/problem that upon being corrected, could change the final outlier expenditures in CY 2010.

To ensure that we adhere to our statutory mandate to expend no more than 2.5 percent of expected total HH PPS payments in outlier payments, we are maintaining our current policies of a FDL ratio of 0.67 and a loss-sharing ratio of 0.80 for CY 2012. Table 18 from our proposed rule has been updated and shows the outlier payment history as a percentage of total HH PPS payments between Calendar Years 2004 and 2010.

D. CY 2012 Rate Update

1. Home Health Market Basket Update

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2012 be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. Section 3401(e) of the Affordable Care Act amended section 1895(b)(3)(B) of the Act by adding a new clause (vi) which states, ''After determining the home health market basket percentage increase * * * the Secretary shall reduce such percentage * * * for each of 2011, and 2012, by 1 percentage point. The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year,

and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.''

In the proposed rule, we proposed a home health (HH) market basket update of 2.5 percent for CY 2012. This update was based on IHS Global Insight Inc.'s first quarter 2011 forecast, utilizing historical data through the fourth quarter of 2010. Since publication of the proposed rule, we have a revised HH market basket update of 2.4 percent based on IHS Global Insight Inc.'s third quarter 2011 forecast, utilizing historical data through the second quarter of 2011. A detailed description of how we derive the HH market basket is available in the CY 2008 HH PPS proposed rule (72 FR 25356, 25435). Due to the requirement in section 1895(b)(3)(B)(vi) of the Act, the CY 2012 HH PPS payment update percentage is to be calculated by reducing the CY 2012 HH market basket update of 2.4 percent by 1 percentage point. In effect, the final CY 2012 HH PPS payment update percentage is calculated to be 1.4 percent.

The following is a summary of the comments we received regarding the HH market basket update.

Comment: One commenter objected to CMS decreasing the market basket increase.

Response: Section 3401(e) of the Affordable Care Act mandates the 1 percentage point decrease to the home health market basket update.

Comment: One commenter criticized the market basket index, claiming that it fails to include consideration of the direct cost increases that CMS rules may have on the delivery of care. Instead, it evaluates general cost changes such as the cost of caregivers, transportation, insurance, and office space.

The commenter further stated that this approach does not provide CMS with the information needed to adjust payment rates in relation to regulatory cost increases. When the home health services ''product'' changes because of new regulatory or administrative requirements, CMS must include an element in the market basket index to address the resulting cost changes. Or alternatively, they request CMS adjust base payment rates to account for such cost, as it has done in the past for costs such as OASIS.

Finally, the commenter claims the weaknesses in the current market basket index calculation method is highlighted this year in the significant difference between the index rate applied to hospitals and the index rate proposed for HHAs. A difference of 0.5 is, on its face, unsupportable, as HHAs have experienced significantly increased administrative costs for the face-to-face encounter rule and the requirements to greatly increase professional therapist assessments of patients along with increases in gas costs for a provider group that travels nearly 5 billion miles a year.

Response: The home health market basket is a fixed-weight Laspeyres-type price index. The index is not, nor is it intended to be, a cost index. Its weights reflect the cost distribution for a selected base year while current-period price changes are measured. As such, the index measures ''pure'' price changes only. The effects on total expenditures resulting from periodic changes in the quantity or mix of goods and services purchased by home health providers are, by design, captured in the base year weights (or cost shares), which are updated on a recurring basis.

The 0.5 percentage point difference referenced by the commenter (3.0 percent final FY 2012 IPPS market basket update minus the 2.5 percent proposed CY 2012 HH market basket update [not the 2.4 percent final CY 2012 HH market basket update]) between the HHA market basket increase and IPPS market basket increase is the result of the differences in the inputs that HHAs and IPPS hospitals purchase to provide medical care services and the expected price changes associated with those inputs. For instance, IPPS hospitals tend to employ a staff with a higher skill mix (with the price growth associated with that skill mix tending to grow slightly more rapidly). Likewise, a significant share of hospital costs is dedicated to prescription drug expenses (a category that is projected to experience relatively higher price growth in the coming year).

2. Home Health Care Quality Reporting Program

a. Background and Quality Reporting Requirements

Section 1895(b)(3)(B)(v)(II) of the Act states that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.'' In addition, section 1895(b)(3)(B)(v)(I) of the Act dictates that ''for 2007 and each subsequent year, in the case of a HHA that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the HH market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.'' This requirement has been codified in regulations at § 484.225(i). HHAs that meet the quality data reporting requirements would be eligible for the full home health market basket percentage increase. HHAs that do not meet the reporting requirements would be subject to a 2 percent reduction to the home health market basket increase.

b. OASIS Data

Accordingly, for CY 2012, we proposed to continue to use a HHA's submission of OASIS data as one form of quality data to meet the requirement that the HHA submit data appropriate for the measurement of health care quality. We proposed for CY 2012 to consider OASIS assessments submitted by HHAs to CMS in compliance with HHA Conditions of Participation and Conditions for Payment for episodes beginning on or after July 1, 2010 and before July 1, 2011 as fulfilling one portion of the quality reporting requirement for CY 2012. This time period would allow 12 full months of data collection and would provide us the time necessary to analyze and make any necessary payment adjustments to the payment rates for CY 2012. We proposed to reconcile the OASIS submissions with claims data to verify full compliance with the OASIS portion of the quality reporting requirements in CY 2012 and each year thereafter on an annual cycle July 1 through June 30 as described above.

As set forth in the CY 2008 final rule, agencies do not need to submit OASIS data for those patients who are excluded from the OASIS submission requirements under the Home Health Conditions of Participation (CoPs) § 484.1–§ 484.265, as well as those excluded, as described at 70 FR 76202:

- Those patients receiving only nonskilled services;
- Those patients for whom neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Those patients receiving pre- or post-partum services; or
- Those patients under the age of 18 years.

As set forth in the CY 2008 HH PPS final rule (72 FR 49863), agencies that become Medicare-certified on or after May 1 of the preceding year (2011 for payments in 2012) are excluded from any payment penalty for quality reporting purposes for the following CY. Therefore, HHAs that are certified on or after May 1, 2011 are excluded from the quality reporting requirement for CY

2012 payments. These exclusions only affect quality reporting requirements and do not affect the HHA's reporting responsibilities under the Conditions of Participation and Conditions of Payment.

(1) OASIS Data and Annual Payment Update

HHAs that submit OASIS data as specified above are considered to have met one portion of the quality data reporting requirements. Additional portions of the quality data reporting requirements are discussed below under sections D.2.c and D.2.d.

(2) OASIS Data and Public Reporting

Section 1895(b)(3)(B)(v)(III) of the Act further states that ''[t]he Secretary shall establish procedures for making data submitted under sub clause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.''

To meet the requirement for making such data public, we proposed to continue using a subset of OASIS data that is utilized for quality measure development and reported on the Home Health Compare Web site. Currently, the Home Health Compare Web site lists 23 quality measures from the OASIS data set as described below. The Home Health Compare Web site, which was redesigned in October 2010, is located at *http://www.medicare.gov/HHCompare/Home.asp*. Each HHA currently has pre-publication access, through the CMS contractor, to its own quality data that the contractor updates periodically. We proposed to continue this process, to enable each agency to view its quality measures before public posting of data on Home Health Compare.

The following 13 OASIS–C process measures have been publicly reported on Home Health Compare since October 2010:

- Timely initiation of care.
- Influenza immunization received for current flu season.
- Pneumococcal polysaccharide vaccine ever received.
- Heart failure symptoms addressed during short-term episodes.
- Diabetic foot care and patient education implemented during short-term episodes of care.
- Pain assessment conducted.
- Pain interventions implemented during short-term episodes.
- Depression assessment conducted.
- Drug education on all medications provided to patient/caregiver during short-term episodes.
- Falls risk assessment for patients 65 and older.
- Pressure ulcer prevention plans implemented.
- Pressure ulcer risk assessment conducted.
- Pressure ulcer prevention included in the plan of care.

We published information about these new process measures in the **Federal Register** in the CY 2010 HH PPS proposed and final rules (74 FR 40960 and 74 FR 58096, respectively), and in the CY 2011 HH PPS proposed and final rules (75 FR 43250 and 75 FR 70401, respectively). We proposed and finalized the decision to update Home Health Compare in October 2010 to reflect the addition of the process measures.

We proposed to continue publicly reporting these 13 process measures and consider them as measures of home health quality.HERE

The following 10 OASIS–C outcome measures are currently listed on Home Health Compare:

- Improvement in ambulation/locomotion.
- Improvement in bathing.
- Improvement in bed transferring.
- Improvement in management of oral medications.
- Improvement in pain interfering with activity.
- Acute care hospitalization.
- Emergency Department Use Without Hospitalization.
- Improvement in dyspnea.
- Improvement in status of surgical wounds.
- Increase in number of pressure ulcers.

As proposed and finalized in the CY 2011 HH PPS final rule (75 FR 70401), these OASIS–C outcome measure calculations were publicly reported for the first time in July 2011.

(3) Transition From OASIS–B1 to OASIS–C

The implementation of OASIS–C on January 1, 2010 impacted the schedule of quality measure reporting for CY 2010 and CY 2011. Although sufficient OASIS–C data were collected during CY 2010 and early CY 2011 and risk models were in development, the outcome reports (found on Home Health Compare and the contractor outcome reports used for HHA's performance improvement activities) remained static with OASIS–B1 data. The last available OASIS–B1 reports remained in the system and on the Home Health Compare site until they could be replaced with OASIS–C reports. Sufficient numbers of patient episodes were needed to report measures based on new OASIS–C data. This is important because measures based on patient sample sizes taken over short periods of time can be inaccurate and misleading due to issues like seasonal variation and under-representation of long-stay home health patients. Once sufficient OASIS–C data were collected and submitted to CMS's national repository, we could begin producing new reports based on OASIS–C.

December 2009 was the last month for which outcome data were calculated for OASIS–B1 data and OASIS–B1 CASPER outcome reports continued to be available after March 2010. OASIS–C process measures were made available to preview in September 2010 and were publicly reported in October 2010. OASIS–C outcome measures were made available to preview in June 2011 and were publicly reported in July 2011.

c. Claims Data, Requirements, and Outcome Measure Change

We proposed to continue to use the aforementioned specified measures derived from the OASIS–C data for purposes of measuring home health care quality. We proposed to also use measures derived from Medicare claims data to measure home health quality. This would also ensure that providers would not have an additional burden of reporting quality of care measures through a separate mechanism, and that the costs associated with the development and testing of a new reporting mechanism would be avoided.

The change to OASIS–C brought about modifications to the OASIS–B1 measure ''Emergent Care,'' and resulted in the following change to that measure:

- *Emergency Department Use without Hospitalization:* This measure replaces the previously reported measure: Emergent care. It excludes emergency department visits that result in a hospital admission because those visits are already captured in the acute care hospitalization measure.

Upon review of actual claims data for emergency department visits and responses to OASIS–C data item M2300, we determined that the claims data are a more robust source of data for this measure, therefore the OASIS-based measure ''Emergency Department (ED) Use Without Hospitalization'' was not publicly reported effective July 2011. The ED Use Without Hospitalization measure will be recalculated from claims data and we proposed that public reporting of the claims-based measure would begin January 2012. We invited comment on the proposed use of claims data in the calculation of home health quality measures and as an additional measurement of home health quality.

To summarize, we proposed that the following 13 process and 9 outcome measures, which comprise measurement of home health care quality, would continue to be publicly reported in July 2011 and quarterly thereafter:

- Timely initiation of care.
- Influenza immunization received for current flu season.
- Pneumococcal polysaccharide vaccine ever received.
- Heart failure symptoms addressed during short-term episodes.
- Diabetic foot care and patient education implemented during short-term episodes of care.
- Pain assessment conducted,
- Pain interventions implemented during short-term episodes.
- Depression assessment conducted.
- Drug education on all medications provided to patient/caregiver during short-term episodes.
- Falls risk assessment for patients 65 and older.
- Pressure ulcer prevention plans implemented.
- Pressure ulcer risk assessment conducted.
- Pressure ulcer prevention included in the plan of care.
- Improvement in ambulation/locomotion.
- Improvement in bathing.
- Improvement in bed transferring.
- Improvement in management of oral medications.
- Improvement in pain interfering with activity.
- Acute care hospitalization.
- Improvement in dyspnea.
- Improvement in status of surgical wounds.
- Increase in number of pressure ulcers.

We proposed that the claims-based measure ''Emergency Department Use without Hospitalization'' would be publicly reported in January 2012.

Increase in Number of Pressure Ulcers Measure

We did not receive any comment related to the Increase in Number of Pressure Ulcers measure. However, as a part of our measure maintenance process which was ongoing at the time of the proposed rule, we determined that the rates for this measure do not distinguish between poor performance and good performance and the risk adjustment model for this measure is insufficient. For these reasons, we will not finalize this measure for public reporting.

The following is summary of the comments we received regarding the Home Health Care Quality Improvement: OASIS proposal.

Comment: We received a total of 11 comments pertaining to the home health quality reporting program, OASIS section. Ten of those comments were supportive of the proposal for continued use of the OASIS based process and outcome measures, as well as the use of claims based data when claims data are applicable and not burdensome to collect. The Emergency Department Use without Hospitalization and the Acute Care Hospitalization measures were specifically noted by commenters as measures for which claims would be more precise and readily available data sources. One commenter requested further clarification of what data CMS will use to calculate this quality measure (for example, how would observation stays be calculated after a planned procedure and how would the agency monitor the timing of when the last OASIS assessment was completed as compared to when the ER visit occurred?). Addition of a claims-based measure related to observation stays was also suggested.

Response: We appreciate the positive feedback supporting the proposed use of OASIS process and outcome measures and particularly those comments supporting the addition of claims as a data source. In response to the request for further clarification, CMS is still working with the measure developer to determine the precise specifications for the claims-based measure of Emergency Department Use Without Hospitalization. The specific disposition of observation stays is undetermined. Details of the measure specifications will be provided when finalized.

Comment: We received one comment expressing confusion regarding the use of claims data, expressing concern that slow claims filing might potentially impact the accuracy of the ED Use Without Hospitalization measure, noting that using the same data base for all measures makes more sense and stating that the fact that CMS has concerns about the reliability of OASIS data for one measure suggests concern about the reliability of OASIS data overall. This commenter recommends that CMS abandon the proposal to substitute hospital claims data as the source for the ED Use Without Hospitalization measure.

Response: In this response, we intend to clarify the reason for use of claims data for the ED Use Without Hospitalization measure. OASIS item M2300 asks: ''Since the last time OASIS data were collected, has the patient utilized a hospital emergency department?'' OASIS data is not collected on every home health visit, and M2300 is reported only at the time of transfer or discharge. CMS contractors compared responses on OASIS item M2300 to submitted outpatient claims for ER visits for continuously enrolled Medicare fee-for-service beneficiaries who had a home health stay of less than 60 days during 2010. This analysis showed that only 25 percent of outpatient ER visits were correctly reported on item M2300, implying that a measure of emergency department use without hospitalization calculated from M2300 is unreliable. Although there is a delay in receiving outpatient claims, 90 percent of outpatient claims are received within 2 months of service date and thus utilization measures calculated from claims can be reported for the same periods as measures calculated from OASIS data. Additionally, as CMS relies on submitted outpatient claims for payment purposes, these data are already extensively verified.

Using a single database as the source of all measures is not the best approach. It is not feasible to do so because the data collected on ED Use Without Hospitalization via OASIS is not reliable and enhancing the reliability of this data may impose undue burden on providers. The benefits of reliable data outweigh the slight complication of drawing quality data from two sources.

The problem with item M2300 does not necessarily imply there may be problems with other OASIS items. Other OASIS items involve a home health practitioner reporting direct observation of the patient. M2300, however, asks for information that the home health practitioner does not directly observe. The decision to visit the emergency room is typically made by the patient or by the patient's family or other primary care-giver. The HHA's knowledge that an emergency department visit occurred is dependent on the patient or caregiver informing the HHA about the event.

Reliance on Medicare outpatient claims is considerably less burdensome to HHAs than requiring additional investigation of potential emergency department visits. The claims-based measure is still under development and will be thoroughly tested and validated prior to public reporting. As a result of the comments and ongoing evaluation of the proposed measures, we finalize all as we proposed with these exceptions:

- Public reporting of the claims-based ED Use Without Hospitalization measure will begin as early as January 2012, contingent on the measure's readiness for public reporting; and
- The Increase in Number of Pressure Ulcers measure will no longer be publicly reported effective as early as October 2011.

d. Home Health Care CAHPS Survey (HHCAHPS)

In the CY 2011HH PPS final rule Rate Update for (75 FR 70404 *et seq.*), we stated that the expansion of the HH quality measures reporting requirements for Medicare-certified agencies will include the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care (HHCAHPS) Survey for the CY 2012 annual payment update (APU). We are maintaining our existing policy as issued in the CY 2011 HH PPS Rate Update, and moved forward to have HHCAHPS linkage to the pay-for-reporting (P4R) requirements affecting the HH PPS rate update for CY 2012.

(1) Background and Description of HHCAHPS

As part of the U.S. Department of Health and Human Services' (DHHS) Transparency Initiative, we have implemented a process to measure and publicly report patient experiences with home health care using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) CAHPS® program, and endorsed by the National Quality Forum (NQF). The HHCAHPS survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The Home Health Care CAHPS (HHCAHPS) survey presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care. Prior to this survey, there was no national standard for collecting information about patient experiences that would enable valid comparisons across all HHAs. The history of the HHCAHPS has been given in previous rules, but it also available on our Web site at *https://homehealthcahps.org* and also, in the *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from our Web site.

For public reporting purposes, we will report five measures—three composite measures and two global ratings of care from the questions on the HHCAHPS survey. The publicly reported data will be adjusted for differences in patient mix across HHAs. We anticipate that HHCAHPS will first be publicly reported in April 2012 on Home Health Compare on *http://www.medicare.gov.* For the HHCAHPS reported measures, each composite measure consists of four or more questions regarding one of the following related topics:

- Patient care (Q9, Q16, Q19, and Q24);
- Communications between providers and patients (Q2, Q15, Q17, Q18, Q22, and Q23);
- Specific care issues on medications, home safety, and pain (Q3, Q4, Q5, Q10, Q12, Q13, and Q14);

The two global ratings are the overall rating of care given by the HHA's care providers, and the patient's willingness to recommend the HHA to family and friends.

The HHCAHPS survey is currently available in six languages. At the time of the CY 2010 HH PPS final rule, HHCAHPS was only available in English and Spanish. In the proposed rule for CY 2010, we stated that we would provide additional translations of the survey over time in response to suggestions for any additional language translations. We now offer HHCAHPS in English, Spanish, Mandarin (Simplified) Chinese, Cantonese (Classical) Chinese, Russian, and Vietnamese languages. We will continue to consider additional translations of the HHCAHPS in response to the needs of the home health patient population.

All of the requirements about eligibility for HHCAHPS and conversely, which home health patients are ineligible for HHCAHPS are delineated and detailed in the *HHCAHPS Protocols and Guidelines Manual* which is downloadable from the official Home Health Care CAHPS Web site *https://homehealthcahps.org.* To be eligible, home health patients must have received at least two skilled home health visits in the past 2 months, paid for by Medicare or Medicaid. HHCAHPS surveys will *not* be taken from patients who are:

- Under the age of 18;
- Deceased;
- Receiving hospice care;
- Receiving routine maternity care only;
- Living in a State that restricts the release of patient information for a specific condition or illness that the patient has; or are
- Requesting that their names not be released to anyone.

We stated in previous rules that Medicare-certified agencies are required to contract with an approved HHCAHPS survey vendor. Beginning in summer 2009, interested vendors applied to become approved HHCAHPS survey vendors. HHCAHPS survey vendors are required to attend introductory and all update trainings conducted by CMS and the HHCAHPS Survey Coordination Team, as well as to pass a post-training certification test. We now have approximately 40 approved HHCAHPS survey vendors. The list of approved vendors is available at *https://homehealthcahps.org.*

(2) HHCAHPS Requirements for CY 2012

In the CY 2010 HH PPS final rule (74 FR 58078 *et seq.*), we stated that HHCAHPS would not be required for the APU for CY 2011. We did this so that HHAs would have more time to prepare for the implementation of HHCAHPS. Therefore, in the CY 2010 HH PPS final rule, we stated that data collection should take place beginning in the third quarter of CY 2010 to meet the HHCAHPS reporting requirements for the CY 2012 APU. In the CY 2010 HH PPS final rule, and in the CY 2011 HH PPS final rule, we stated that Medicare-certified agencies would be required to participate in a dry run for at least 1 month in third quarter of 2010 (July, August, and/or September), and to begin continuous monthly data collection in October 2010 through March 2011, for the CY 2012 APU. The dry run data were due to the Home Health CAHPS® Data Center by 11:59 p.m., Eastern standard time (e.s.t.) on January 21, 2011. The dry run data will not be publicly reported on the CMS Home Health Compare Web site. The purpose of the dry run was to provide an opportunity for vendors and HHAs to acquire first-hand experience with data collection, including sampling and data submission to the Home Health Care CAHPS Data Center.

In the CY 2011 HH PPS final rule, it was stated that the mandatory period of data collection for the CY 2012 APU would include the dry run data in the third quarter 2010 that were due 11:59 p.m., e.s.t., on January 21, 2011, data from each month in the fourth quarter of 2010 (October, November and December 2010), and data from each month in the first quarter 2011 (January, February and March 2011). We previously stated that all Medicare-certified HHAs should continuously collect HHCAHPS survey data for every month in every quarter beginning October 2010, and submit these data for the fourth quarter of 2010 to the Home Health CAHPS Data Center by 11:59 p.m., Eastern Daylight Time (e.d.t.), on April 21, 2011. In the CY 2011 HH PPS final rule, we stated that the data collected for the 3 months of the first quarter 2011 would have to be submitted to the Home Health CAHPS Data Center by 11:59 p.m., e.d.t., on July 21, 2011. We also stated that these data submission deadlines would be firm (that is, no late submissions would be accepted). HHAs must monitor their HHCAHPS survey vendors to ensure that their HHCAHPS data are submitted

on time to the Home Health Care CAHPS Data Center. HHAs can access and review their data submission reports on *https://homehealthcahps.org,* and follow the directions on how to access these reports in their HHA account.

These periods (a dry run in third quarter 2010, and 6 months of data from October 2010 through March 2011) were deliberately chosen to comprise the HHCAHPS reporting requirements for the CY 2012 APU because they coincided with the OASIS-C reporting requirements that would already have been due on June 30, 2011 for the CY 2012 APU. We also exempted Medicare-certified agencies from the HHCAHPS reporting requirements if they had fewer than 60 HHCAHPS-eligible unique patients from April 1, 2009 through March 31, 2010. In the CY 2011 HH PPS final rule, we stated that by January 21, 2011 HHAs would need to provide CMS with patient counts for the period of April 1, 2009 through March 31, 2010. We posted a form on *https://homehealthcahps.org* that the HHAs needed to use to submit their patient counts. This patient counts reporting requirement pertains only to Medicare-certified HHAs with fewer than 60 HHCAHPS eligible, unduplicated or unique patients for that time period. The aforementioned agencies are exempt from conducting the HHCAHPS survey for the APU in CY 2012.

We stated in the CY 2010 HH PPS final rule (74 FR 58078) and in the CY 2011 HH PPS final rule that we would exempt newly Medicare-certified HHAs. If an HHA became Medicare-certified April 1, 2010 and after, then they would be exempt from participating in HHCAHPS.

For CY 2012, we maintain our policy that all HHAs, unless covered by specific exclusions, must meet the quality reporting requirements or be subject to a two (2) percentage point reduction in the HH market basket percentage increase, in accordance with section 1895(b)(3)(B)(v)(I) of the Act.

(3) HHCAHPS Reconsiderations and Appeals Process

We stated in the CY 2011 HH PPS final rule that we would propose a reconsiderations and appeals process for HHAs not meeting the HHCAHPS reporting requirements for CY 2012. We are finalizing our proposed reconsiderations and appeals process for HHAs that fail to meet the HHCAHPS data collection requirements. HHAs that are not compliant with OASIS-C and/or HHCAHPS reporting requirements for the CY 2012 APU were notified that they were noncompliant with CY 2012 quality reporting requirements. We issued a Joint Signature Memorandum to RHHIs/MACs with a list of HHAs not compliant with OASIS and/or HHCAHPS (TDL–aa453, 08–26–2011 in a CMS Memorandum dated September 2, 2011). The September Memorandum included language regarding the evidence required for the reconsideration process, how to prepare a request for reconsideration of the CMS decision, and that HHAs will have 30 days to file their requests for reconsiderations to CMS. We will examine each request and make a determination about whether we plan to uphold our original decision. HHAs will receive CMS' reconsideration decision by December 31, 2011. HHAs have a right to appeal under 42 CFR part 405, subpart R, to the Provider Reimbursement Review Board (PRRB) if they were not satisfied with the CMS reconsideration determination.

The CMS Memorandum dated September 2, 2011 included the TDL–11353, and was published in the CMS Manual System, Medicare Claims Processing. The CMS Memorandum was sent to Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs) and/or Carriers. The RHHIs/MACs verified the claims submissions for the identified timeframe for the 2012 APU period, to confirm that the claims match the HHAs we identified as noncompliant with OASIS and HHCAHPS. The RHHIs/MACs identified and notified the HHAs that they could lose 2 percent of their 2012 APU, and provided them with instructions on how to request reconsideration of their noncompliant status in respect to reporting OASIS and/or HHCAHPS for the CY 2012 APU. If HHAs choose to seek reconsideration of the CMS decision (that they did not fulfill the HHCAHPS reporting requirements), then HHAs are strongly advised to access and review their data submissions reports on *https://homehealthcahps.org* for information regarding their vendors data submission activities for the months comprising the APU period. The RHHIs/MACS will forward the HHAs requests for reconsideration of their noncompliance status for HHCAHPS and/or OASIS reporting requirements to CMS on a flow basis so that CMS can review and prepare recommendations for cross component review. The HHAs would be informed about CMS' final decisions by December 31, 2011.

(4) HHCAHPS Oversight Activities

We stated in the CY 2011 HH PPS final rule that vendors and HHAs are required to participate in HHCAHPS oversight activities to ensure compliance with HHCAHPS protocols, guidelines, and survey requirements. The purpose of the oversight activities is to ensure that HHAs and approved survey vendors follow the *HHCAHPS Protocols and Guidelines Manual.* As stated, all approved survey vendors must develop a Quality Assurance Plan (QAP) for survey administration in accordance with the *HHCAHPS Protocols and Guidelines Manual.* The first QAP must be submitted within 6 weeks of the data submission deadline after the vendor's first quarterly data submission. The HHCAHPS Coordination Team reviews the QAPs and recommends specific revisions. HHCAHPS survey vendors must revise their QAP until it is fully satisfactory to the HHCAHPS Coordination Team. Once the vendor has a fully acceptable QAP, the vendor will submit subsequent updated QAPs to the HHCAHPS Coordination Team on an annual basis thereafter, or update the QAP at any time that changes occur in staff, vendor capabilities, or systems. A model QAP is included in the *HHCAHPS Protocols and Guidelines Manual.* The QAP should include the following:

- Organizational Background and Staff Experience.
- Work Plan.
- Sampling Plan.
- Survey Implementation Plan.
- Data Security, Confidentiality and Privacy Plan.
- Questionnaire Attachments.

As part of the oversight activities, the HHCAHPS Survey Coordination Team conducts on-site visits to the HHCAHPS vendors. The purpose of the site visits is to allow the HHCAHPS Coordination Team to observe the entire Home Health Care CAHPS Survey implementation process, from the sampling stage through file preparation and submission, as well as to assess how the HHCAHPS data are stored. The HHCAHPS Survey Coordination Team reviews the survey vendor's survey systems, and assesses administration protocols based on the *HHCAHPS Protocols and Guidelines Manual* posted at *https://homehealthcahps.org.* The HHCAHPS Survey Coordination Team includes the CMS staff assigned to work on HHCAHPS, and the Federal contractor for the HHCAHPS implementation. HHCAHPS survey vendors are not part of the HHCAHPS Survey Coordination Team. The systems and program review include, but are not limited, to the following:

- Survey management and data systems;
- Printing and mailing materials facilities;

- Telephone call center facilities;
- Data receipt, entry and storage facilities; and
- Written documentation of survey processes.

After the site visits, HHCAHPS survey vendors are given a defined time period in which to correct any identified issues and provide follow-up documentation of corrections for review. In general, the defined time periods will be between 2 weeks to 1 month after these issues are stated in the HHCAHPS Coordination Team's site visit report to the HHCAHPS survey vendor. HHCAHPS survey vendors will be subject to follow-up site visits as needed.

(5) HHCAHPS Requirements for CY 2013

For the CY 2013 APU, HHCAHPS data collection and reporting are required for four continuous quarters. The data collection period includes second quarter 2011 through first quarter 2012. HHCAHPS survey vendors acting on behalf of their contracted HHAs are required to submit HHCAHPS data files quarterly to the Home Health CAHPS Data Center on October 21, 2011, January 23, 2012, April 19, 2012, and July 19, 2012.

For the CY 2013 APU, HHAs will be required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2013 as follows: The data for the second quarter 2011 by 11:59 p.m., e.d.t., on October 21, 2011; the data for the third quarter 2011 by 11:59 p.m., e.s.t., on January 23, 2012; the data for the fourth quarter 2011 by 11:59 p.m., e.d.t., on April 19, 2012; and the data for the first quarter 2012 by 11:59 p.m., e.d.t., on July 19, 2012. Beginning with April 2012 quarterly data submissions and moving forward, HHCAHPS quarterly data submissions will always be the third Thursday of the month (in the months of April, July, October, and January). HHAs must monitor their HHCAHPS survey vendors to ensure that their HHCAHPS data is submitted on time to the Home Health Care CAHPS Data Center. HHAs can access and review their data submission reports on *https://homehealthcahps.org,* and follow the directions on how to access these reports on their HHA account.

HHAs that have fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2010 through March 31, 2011 are exempt from the HHCAHPS data collection and submission requirements for the CY 2013 APU. For the CY 2013 APU, agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients are required to submit their counts on the Participation Exemption Request form posted at *https://homehealthcahps.org* by 11:59 p.m., e.d.t., on April 19, 2012. This deadline is firm, as are all of the HHCAHPS quarterly data submission deadlines.

HHAs receiving Medicare certification on or after April 1, 2011 are exempt from the HHCAHPS data collection and submission requirements for the CY 2013 APU, because these HHAs were not Medicare-certified in the period of April 1, 2010 and March 31, 2011.

(6) HHCAHPS Codified Criteria

The following criteria from the CY 2011 HH PPS final rule are now revised so that the requirements for OASIS and Home Health CAHPS are clearly distinguishable in the Federal regulations. We are revising this section to clarify that HHCAHPS is associated with the APU described at § 484.225(i) and the quality reporting requirements, and *not* with other payment requirements.

In the CY 2011 HH PPS final rule (75 FR 70465), we stated for § 484.250, Patient Assessment Data, that ''An HHA must submit to CMS the OASIS–C data described at § 484.55(b)(1) and Home Health Care CAHPS data for CMS to administer the payment rate methodologies described in § 484.215, § 484.230, and § 484.235 of this subpart, and meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act.''

We are revising this section to clarify that HHCAHPS is only associated with the APU described at § 484.225(i) and the quality reporting requirements, and not with other payment requirements.

(7) HHCAHPS Requirements for CY 2014

For the CY 2014 APU, HHCAHPS data collection and reporting is required for four continuous quarters. The data collection period includes the second quarter 2012 through the first quarter 2013. HHAs are required to submit their HHCAHPS data files to the Home Health CAHPS Data Center the third Thursday of the month for the months of October 2012, January 2013, April 2013 and July 2013. HHAs are required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2014 as follows: For the second quarter 2012 by 11:59 p.m., e.d.t., on October 18, 2012; for the third quarter 2012 by 11:59 p.m., e.s.t., on January 17, 2013; for the fourth quarter 2012 by 11:59 p.m., e.d.t., on April 18, 2013; and for the first quarter 2013 by 11:59 p.m., e.d.t., on July 18, 2013. HHAs must monitor their HHCAHPS survey vendors to ensure that their HHCAHPS data is submitted on time to the Home Health Care CAHPS Data Center. HHAs can access and review their data submission reports on *https://homehealthcahps.org,* and follow the directions on how to access these reports on their HHA account.

As noted, we exempt HHAs receiving Medicare certification on or after April 1, 2012 from the HHCAHPS data collection and submission requirements for the CY 2014 APU, as data submission and analysis will not be possible for an agency that late in the reporting period for the CY 2014 APU requirements.

As noted, all HHAs that have fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2011 through March 31, 2012 are exempt from the HHCAHPS data collection and submission requirements for the CY 2014 APU. For the CY 2014 APU, agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients are required to submit their counts on the Participation Exemption Request form posted on *https://homehealthcahps.org* by 11:59 p.m., e.d.t., on April 18, 2013. This deadline is firm, as are all of the HHCAHPS quarterly data submission deadlines.

(8) For Further Information on the HHCAHPS Survey

We strongly encourage HHAs interested in learning about the survey to view the official Web site for the HHCAHPS at *https//homelhealthcahps.org.* HHAs can also send an email to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org.* or telephone toll-free (1–(866) 354–0985) for more information about HHCAHPS.

The following is summary of the comments we received regarding the HHCAHPS proposal.

Comment: We received several comments about the proposed reconsiderations and appeals process. We were urged not to have the process be burdensome to HHAs.

Response: We agree that the process should not be burdensome to HHAs. We have modeled the HHCAHPS reconsiderations and appeals process after the one that is used for Hospital CAHPS, which has been in use for 6 years. We have described the HHCAHPS requirements in the notification memo that the RHHIs/MACs will be sending to the affected HHAs, on behalf of CMS. We believe that the HHAs will have enough time to prepare their reconsideration appeal to CMS within

30 days. CMS will fully examine every reconsideration request.

Comment: We received comments that there are several variables that may result in the collection of inaccurate HHCAHPS data that are beyond the control of the HHA such as patient confusion on how to complete the survey or patient refusal to complete the survey.

Response: We allow proxies to complete the HHCAHPS survey for home health patients who are unable to complete the survey on their own. Patient refusal to complete the survey does not result in the collection of inaccurate HHCAHPS data.

As long as the HHCAHPS protocols are followed, HHAs will not be penalized. To meet the APU requirements, HHAs must follow the survey protocols, which allow for non-response and proxy response.

Comment: We received comments that recommended that the results of the HHCAHPS vendor oversight activities be made available to HHAs so they can make informed decisions when selecting or changing their HHCAHPS vendors.

Response: If a vendor has significant issues that would put HHAs at risk for not meeting the APU requirements, CMS will immediately alert the affected HHAs, thereby providing agencies with sufficient time to switch vendors and to ensure that the HHAs will not be penalized if their data collection activities are interrupted because of circumstances outside of their control. We would also note this next to the vendor name on the vendor list that is posted on *https://homehealthcahps.org.* If we find that a vendor does not comply with HHCAHPS protocols and guidelines, or correct in a timely manner any deficiencies that are found during oversight activities, then we will remove that vendor from the approved list.

Comment: We received comments that recommended that CMS explicitly hold HHAs harmless for any failures of HHCAHPS vendors to comply with HHCAHPS protocols and guidelines.

Response: We believe that HHAs must monitor their vendors to ensure that vendors submit data on time, by using the information that is available to them on the HHCAHPS Data Submission Reports. This will also ensure that data is submitted in the proper format, and will subsequently be successfully submitted to the HHCAHPS Data Center.

Comment: We received comments that recommended that CMS provide clear instructions to HHAs on when and what information is appropriate for the HHA to share with its patients regarding the HHCAHPS survey. While we are aware that some of this information has been provided by HHCAHPS contractors, there is still some confusion among providers, and therefore, we believe that additional guidance from the Agency is warranted.

Response: HHAs can say to clients that they may receive an HHCAHPS survey and that it is a legitimate survey that is implemented and sponsored by the Federal government. However, the HHAs should not give information that would coach the patients as to how to complete the HHCAHPS survey. Also, we are assuming that when the commenters wrote that ''we are aware that some of this information has been provided by HHCAHPS contractors'' that they were referring to the HHCAHPS survey vendors, which are not CMS contractors.

Comment: We received comments of concern that the HHCAHPS data may be more subjective impressions of interpersonal relationships with staff than valid measures of clinical and administrative excellence. We would urge CMS to work more closely with the members of the home health community like us as the data begins to be compiled prior to public reporting to prevent possible misunderstanding of these measures by the public.

Response: The HHCAHPS is not supposed to measure the aspects of clinical care that can be captured through a medical record. HHCAHPS focuses on areas where the patient is the best or only source for the information. We believe that the HHCAHPS is a valid measure of patient's perspectives of home health care. The developmental work on the Home Health Care CAHPS began in mid-2006, and the first survey was field-tested (to validate the length and content of the survey) in 2008 by the AHRQ and the CAHPS grantees, and the final survey was used in a national randomized mode experiment in 2009 through 2010.

A rigorous, scientific process was used in the development of the survey, including: A public Call for Measures; literature reviews; focus groups with HH patients; cognitive interviews (several rounds in 2007) with HH patients; extensive stakeholder input; technical expert panel reviews in each phase of the developmental work; comprehensive assessment review and subsequent endorsement in March 2009 by the National Quality Forum. The NQF represents the consensus of many health care providers, consumer groups, professional associations, purchasers, Federal agencies and research and quality organizations); and public responses to **Federal Register** notices. The survey received OMB clearance in July 2009. Key stakeholders and home health experts have been regularly providing feedback to CMS about the draft HHCAHPS data displays and draft information that is being prepared for the display of HHCAHPS data that is being reported on Home Health Compare on *http://www.medicare.gov* in April 2012 and forward.

Comment: We received comments that support the implementation of HHCAHPS because it will meaningfully reduce the incidence of improper home health service use and it will complement the changes approved by the Congress.

Response: We appreciate supportive comments about HHCAHPS. The survey will provide an opportunity for patients to share their perspective about the care provided, and will complement the changes approved by the Congress to expand the quality measures and to increase transparency in home health.

Comment: We received a comment that urged CMS to involve HHA representatives in the analysis of CAHPS to determine which measures are most appropriate for public reporting before posting them on Medicare Compare.

Response: We are following the precedence of other CAHPS surveys that publicly report the data concerning health care providers. We tested and analyzed the individual questions and how they are best grouped together in the formative and developmental stages of the survey that included a national field test. The Technical Expert Panel and the public stakeholders for the Home Health Care CAHPS survey chose these measures after they reviewed the findings of the research grantees that tested the CAHPS survey in the field on behalf of the Federal government. The three composite measures and the two global overall ratings were chosen to best inform the public about the HHCAHPS results for national comparisons.

Comment: We received a comment that the HHA should receive an administrative reimbursement to cover the costs of implementing HHCAHPS.

Response: The collection of the patient's perspectives of care quality data for similar CAHPS surveys, such as the Hospital CAHPS survey, follow the same model where in the health care providers pay the approved survey vendors for the data collection costs and we pay for the training, technical assistance, oversight of vendors and data analysis costs. HHAs are strongly encouraged to report their respective HHCAHPS costs on their CRs but should note that these costs are not

reimbursable under the HH PPS. It is advised that HHAs ''shop around'' for the best cost value for them before contracting with an approved HHCAHPS vendor to conduct the survey on their behalf. The HHCAHP approved survey vendors list is on *https://homehealthcahps.org.*

In summary, we are finalizing the HHCAHPS requirements for the CY 2012 APU as proposed in the CY 2012 HH PPS proposed rule (76 FR 41051). There are no policy changes in HHCAHPS from the proposed rule to the final rule regarding HHCAHPS. The same requirements and deadlines stand as final. The HHCAHPS data submission due date for the CY 2012 APU are in the CY 2011 HH PPS final rule, and they mirror the dates that we stated in this CY 2012 HH PPS final rule. All data submission deadlines for HHCAHPS are posted on the official Web site for HHCAHPS, *https://homehealthcahps.org.*

The periods of a dry run in the third quarter 2010, and monthly data collection beginning in October 2010 through March 2011, comprise the HHCAHPS reporting requirements for the CY 2012 APU. HHAs with patient counts of 59 or fewer patients for the period of April 1, 2009 through March 31, 2010 are exempt from the HHCAHPS reporting requirements for the CY 2012 APU. HHAs that became Medicare-certified on April 1, 2010 or later are exempt from the HHCAHPS reporting requirements for the CY 2012 APU. Continuous monthly data collection is required for HHCAHPS, as the data collection period of April 2011 through March 2012, comprise the data collection months for the CY 2013 APU, and the data collection period of April 2012 through March 2013, comprise the data collection months for the CY 2014 APU.

3. Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). Previously, we determined each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We have consistently used the pre-floor, pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates. We believe the use of the pre-floor, pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of the costs, as required by statute.

In the November 9, 2005 final rule for CY 2006 (70 FR 68132), we began adopting revised labor market area definitions as discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for MSAs and the creation of Micropolitan Statistical Areas and Core-Based Statistical Areas (CBSAs). The bulletin is available online at *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. This rule incorporates the CBSA changes published in the most recent OMB bulletin. The OMB bulletins are available at *http://www.whitehouse.gov/omb/bulletins/index.html.*

Finally, we continue to use the methodology discussed in the CY 2007 HH PPS final rule for (71 FR 65884) to address those geographic areas in which there are no Inpatient Prospective Payment System (IPPS) hospitals and, thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For rural areas that do not have IPPS hospitals and, therefore, lack hospital wage data on which to base a wage index, we use the average wage index from all contiguous CBSAs as a reasonable proxy. Since CY 2007, this methodology has been used to calculate the wage index for rural Massachusetts. However, as indicated in the CY 2012 HH PPS proposed rule (76 FR 41019), there is now a rural IPPS hospital with wage data upon which to base a wage index for rural Massachusetts. Therefore, it is not necessary to apply this methodology to rural Massachusetts for CY 2012.

For rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005).

For urban areas without IPPS hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. At the time of the proposed rule, both CBSA 49700, Yuba City, CA, and CBSA 25980, Hinesville-Fort Stewart, GA, did not have IPPS hospital wage data. However, for this final rule, Yuba City, CA now has IPPS hospital wage data. Therefore, the only urban area without IPPS hospital wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

The wage index values are available on the CMS Web site at *http://www.cms.gov/HomeHealthPPS/HHPPSRN/list.asp.*

The following is summary of the comments we received regarding the home health wage index proposal.

Comment: A commenter stated that the current method of adjusting labor costs using the hospital wage index does not accurately account for increased travel costs and lost productivity for time spent traveling to provide services in less densely populated/rural areas. The commenter believes that, pending development of an industry specific wage index, CMS should fully investigate the impact of population density on HHAs costs and efficiency. The commenter suggested that CMS add a population density factor by zip code during calculation of the labor portion of the payment to account for increased costs of providing services in less densely populated areas. This would provide an incentive to providers to serve patients in rural areas while at the same time reducing excess reimbursement for services provided in densely populated urban and congregate living facilities. The net result of the adjustment should be budget neutral or perhaps even result in a cost savings.

Response: We do not have evidence that a population density adjustment is an appropriate adjustment to the wage index. Section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on HHA costs involved with providing ongoing access to care to low-income beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness. Because medically underserved areas may be associated with population density, the purview of the above mentioned study may possibly include feasibility of such an adjustment as part of that research. However, we note that in setting up the original HH PPS rates in 2000, we were not able to find any cost differences between rural and urban HHAs. While rural agencies cite the added cost of long distance travel to treat their patients, urban/non-rural agencies also cite added costs such as needed security measures and the volume of traffic that they must absorb. We will consider this suggestion in future research activities.

Comment: One commenter disagreed with the CMS decision to switch from MSAs to CBSAs for the wage index calculation because it had a negative

financial impact on the commenter's geographic area. The commenter notes that more than half of the CBSAs in his State will experience a decrease in CY 2012.

Response: We continue to believe that using OMB's CBSA designations reflect the most recent available geographic classifications and are a reasonable and appropriate way to define geographic areas for purposes of determining wage index values.

Comment: Several commenters expressed concerns about inequities in how the wage index is calculated and implemented for HHAs as compared to hospitals within the same CBSA. The wage index for HHA's is based on pre-floor, pre-reclassified hospital wage data, but hospitals in the same geographic area have the ability to apply for reclassification and may be eligible for a rural floor wage index. The commenters state that this inequity has created a competitive advantage for hospitals in recruiting and retaining increasingly scarce nurses and therapists. Any wage index deviations available to hospitals should be equally available to other types of providers.

Response: The regulations that govern the HH PPS currently do not provide a mechanism for allowing providers to seek geographic reclassification. As we have explained in past rulemaking (most recently, in the CY 2011 HH PPS final rule (75 FR 70411)), the rural floor and geographic reclassification in the IPPS are statutorily authorized and are only applicable to hospital payments. The rural floor provision is provided at section 4410 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) and is exclusive to hospitals. The reclassification provision provided at section 1886(d)(10) of the Act is also specific to hospitals.

Comment: One commenter stated that the hospitals in his area are CAHs and are cost reimbursed. The commenter stated that HHAs cannot offer competitive wages for caregivers who are paid higher and receive better benefits from CAHS in their same service area.

Response: Section 1895(b)(4)(C) of the Act states that the wage adjustment factors used under the HH PPS may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. Accordingly, we continue to believe that the pre-floor/pre-reclassified hospice wage index continues to be the appropriate wage index used by the HH PPS.

Comment: Several commenters recommended that CMS overhaul the entire wage index system, as recommended by MedPAC in its comments to CMS regarding the hospital wage index, to eliminate such inequities in the future. The commenters requested CMS to put a freeze on any wage index decreases. One commenter believes that the Affordable Care Act gives CMS the authority needed to issue the appropriate changes. However, the commenter did not support the institution of a new index model except when it applies in all provider sectors with whatever distinctions are appropriate to a provider's employment mix. Another commenter believes that the use of the hospital wage index to adjust non-hospital reimbursement rates was originally intended to be an interim measure while CMS examined industry-specific wage data for post-acute services.

Response: As several commenters noted, we have research currently under way to examine alternatives to the wage index methodology, including the issues the commenters mentioned about ensuring that the wage index minimizes fluctuations, matches the costs of labor in the market, and provides for a single wage index policy. Section 3137 of the Affordable Care Act provides that the Secretary of Health and Human Services shall submit a report to the Congress by December 31, 2011, that includes a plan to reform the hospital wage index system. Section 3137 of the Affordable Care Act further instructs the Secretary to take into account MedPAC's recommendations on the Medicare wage index classification system, and to include one or more proposals to revise the wage index adjustment applied under section 1886(d)(3)(E) of the Act for purposes of the IPPS. The proposal(s) are to consider each of the following:

- The use of Bureau of Labor Statistics data or other data or methodologies to calculate relative wages for each geographic area.
- Minimizing variations in wage index adjustments between and within MSAs and statewide rural areas.
- Methods to minimize the volatility of wage index adjustments while maintaining the principle of budget neutrality.
- The effect that the implementation of the proposal would have on health care providers in each region of the country.
- Issues relating to occupational mix, such as staffing practices and any evidence on quality of care and patient safety, including any recommendations for alternative calculations to the occupational mix.
- Provide for a transition.

To assist us in meeting the requirements of section 106(b)(2) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, enacted on December 20, 2006) (TRHCA), in February 2008, we awarded a Task Order under our Expedited Research and Demonstration Contract to Acumen, LLC. Acumen, LLC conducted a study of both the current methodology used to construct the Medicare wage index and the recommendations reported to the Congress by MedPAC. Parts 1 and 2 of Acumen's final report, which analyzes the strengths and weaknesses of the data sources used to construct the CMS and MedPAC indexes, is available online at *http://www.acumenllc.com/reports/cms.*

MedPAC's recommendations were presented in the FY 2009 IPPS final rule (available online at *http://edocket.access.gpo.gov/2008/pdf/E8-17914.pdf*). We plan to monitor these efforts closely, and to determine what impact or influence they may have on the HH PPS wage index. At this time, we will continue to use the wage index policies and methodologies described in this final rule to adjust the HH PPS rates for differences in area wage levels. However, we will continue to monitor MedPAC and Acumen's progress on any revisions to the IPPS wage index to identify any policy changes that may be appropriate for HHAs and potential changes may be presented in a future proposed rule. The latest information on hospital wage index reform is discussed in the ''Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates'' proposed rule, published in the May 5, 2011 **Federal Register** (76 FR 25788).

Comment: Another commenter objects to the use of the pre-floor, pre-reclassified wage index for home health due to the inaccuracy of using a mix of hospital costs to measure home health labor costs. Problems with the errors and omissions in the hospital cost reporting method are well documented.

Response: We utilize efficient means to ensure and review the accuracy of the hospital CR data and resulting wage index. The home health wage index is derived from the pre-floor, pre-reclassified hospital wage index which is calculated based on CR data from hospitals paid under the hospital IPPS. All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare CRs. Cost reports will be rejected if Worksheet S–3 is not completed. In addition, our intermediaries perform desk reviews on all hospitals'

Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. Furthermore, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period. Therefore, we believe our review processes result in an accurate reflection of the applicable hospital wages for the areas given. We also believe the use of this hospital wage data results in an appropriate adjustment to the labor portion of the home health costs, as required by statute.

Comment: A commenter stated that CMS exacerbates HH wage index disparities by changing the methodology used to address geographic areas in which there are no IPPS hospitals, and thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For rural areas that do not have IPPS hospitals, CMS used the average wage index from all contiguous CBSAs as a reasonable estimate. This methodology was used to calculate the wage index for only one state, Massachusetts. It is well documented that two CAHs in Massachusetts converted back from CAH status even though doing so would not benefit them directly. By giving up their cost based reimbursement, these two hospitals increase the home health wage index in Massachusetts. Due to the budget neutral nature of this methodology, the HHAs in the other 49 states will face a reduction in payments. The commenter requested that CMS re-evaluate the methodology used to calculate the wage index for rural areas that do not have IPPS hospitals such as was the case for the State of Massachusetts. The inequitable distribution of Medicare payments due to obvious manipulation by specific providers clearly represents preferential treatment.

Response: By nature, the hospital wage index is constructed, in the aggregate, to average to 1.0. Therefore, the index is designed to be budget neutral in the sense that for areas where wage index values increase, those increases are offset by decreases in other areas. The hospital wage index is based on hospital cost data and hospital utilization, and thus, in the aggregate, when applied to HH utilization for the purposes of impacts, the average wage index value may not result to be exactly 1.0. For instance, as explained in the impact analysis section for this final rule, the new wage index will result in an estimated increase of $10 million in aggregate payments to HHAs in CY 2012.

When there is an IPPS hospital in an area, we use the IPPS hospital(s) wage data to calculate the pre-floor, pre-reclassified hospital wage index which is used for the HH PPS wage index. In the CY 2007 HH PPS final rule (71 FR 65905), we established a policy to address rural areas without an IPPS hospital. We use the average wage index from CBSAs which are contiguous to the rural area as an acceptable proxy for a rural wage index. Other post acute payment systems such as SNF and IRF adopted this policy as well. When an IPPS hospital emerges in an area that previously had none, our policy requires that we use the CR data from that hospital to compute that areas wage index.

Comment: Beginning in FY 2004, excluding CAH data from the calculation of the hospital wage index affects the calculation of the HH Wage index. As CAHs are located in rural areas, the absence of CAH wage data further compromises the accuracy, and therefore, appropriateness, of using a hospital wage index to determine the labor costs of HHAs located in rural areas.

Response: As stated above, beginning with the CY 2007 HH PPS final rule (71 FR 65905), we established a policy to address rural areas without an IPPS hospital. In that rule, we addressed commenters concerns with our former policy of using the last available rural wage index for those areas which no longer had an IPPS hospital. We outlined four alternatives for imputing a wage index for those rural areas. We believe that using the average wage index from CBSAs which are contiguous to the rural area as an acceptable proxy for a rural wage index is accurate and appropriate.

Comment: One commenter noted that the wage index is subject to swings in area values that are far beyond manageable by providers. With a wage index reduction of over 10 points in some cases, it is impossible to sensibly budget a fiscal year, particularly when the index is not published until a few months before a calendar year. The commenter suggested that CMS apply limits on the decreases and increases that can occur from one year to the next with the wage index.

Response: Updating the wage index must be done in a budget neutral manner. Establishing limits on how much a particular wage index could increase or decrease from one year to another would not be consistent with budget neutrality. Consequently, we implement updated versions of the wage index, in their entirety.

Comment: A commenter is concerned that the wage index in his locale was proposed to decrease by 4.54 percent from CY 2011 to CY 2012.

Response: The wage index values are based on hospital cost data. Consequently, increases and decreases in the wage index values are normal.

4. CY 2012 Annual Payment Update

a. National Standardized 60-Day Episode Rate

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS is a national standardized 60-day episode rate. As set forth in § 484.220, we adjust the national standardized 60-day episode rate by a case-mix relative weight and a wage index value based on the site of service for the beneficiary.

In the CY 2008 HH PPS final rule with comment period, we refined the case-mix methodology and also rebased and revised the home health market basket. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage difference, we apply the appropriate wage index value to the labor portion of the HH PPS rates. The labor-related share of the case-mix adjusted 60-day episode rate is 77.082 percent and the non-labor-related share is 22.918 percent. The CY 2012 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the CY 2008 HH PPS final rule with comment period. Following are the steps we take to compute the case-mix and wage adjusted 60-day episode rate:

(1) Multiply the national 60-day episode rate by the patient's applicable case-mix weight.

(2) Divide the case-mix adjusted amount into a labor (77.082 percent) and a non-labor portion (22.918 percent).

(3) Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

(4) Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 60-day episode rate, subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, this document constitutes the annual update of the HH PPS rates. The HH PPS regulations at § 484.225 set forth the specific annual percentage update methodology. In accordance with § 484.225(i), for a HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national

prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus two percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be considered in computing the prospective payment amount for a subsequent calendar year.

For CY 2012, we proposed to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit rates by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit rate by the appropriate wage index based on the site of service for the beneficiary, as set forth in § 484.230. We proposed to adjust the labor portion of the updated national per-visit rates used to calculate LUPAs by the most recent pre-floor and pre-reclassified hospital wage index. We also proposed to update the LUPA add-on payment amount and the NRS conversion factor by the applicable home health market basket update of 1.4 percent for CY 2012.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A PEP adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

HH PPS payment rates are updated, annually, by the HH PPS payment update percentage. For CY 2012, the HH PPS payment update percentage is the CY 2012 home health market basket update percentage (2.4 percent) minus 1 percentage point (per the Affordable Care Act) for a CY 2012 HH PPS payment update percentage of 1.4 percent. For HHAs that do not submit the required quality data, the CY 2012 HH PPS payment update percentage (1.4 percent) is reduced by 2 percentage points for a CY 2012 HH PPS payment update percentage (for HHAs that do not submit the required quality data) of −0.6 percent.

b. Updated CY 2012 National Standardized 60-Day Episode Payment Rate

In calculating the annual update for the CY 2012 national standardized 60-day episode payment rates, we first look at the CY 2011 rates as a starting point. The CY 2011 national standardized 60-day episode payment rate is $2,192.07. Next, we update that payment amount by the CY 2012 HH PPS payment update percentage of 1.4 percent.

As previously discussed in section II.A. of this final rule (''Case-Mix Measurement''), our updated analysis of the change in case-mix that is not due to an underlying change in patient health status reveals an additional increase in nominal change in case-mix. Therefore, we reduce rates by 3.79 percent in CY 2012, resulting in an updated CY 2012 national standardized 60-day episode payment rate of $2,138.52. The updated CY 2012 national standardized 60-day episode payment rate for an HHA that submits the required quality data is shown in Table 13. The updated CY 2012 national standardized 60-day episode payment rate for an HHA that does not submit the required quality data is updated by the CY 2012 HH PPS payment update percentage (1.4 percent) minus 2 percentage points and is shown in Table 14.

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TABLE 13: National 60-Day Episode Payment Amount Updated by the CY 2012 HH PPS Payment Update Percentage, Before Case-Mix Adjustment and Wage Adjustment Based on the Site of Service for the Beneficiary

CY 2011 National Standardized 60-Day Episode Payment Rate	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent	Reduce by 3.79 percent for nominal change in case-mix	CY 2012 National Standardized 60-Day Episode Payment Rate.
$2,192.07	x 1.014	x 0.9621	$2,138.52

TABLE 14: For HHAs that Do Not Submit the Quality Data –National 60-Day Episode Payment Amount Updated by the CY 2012 HH PPS Payment Update Percentage (minus 2 percentage points) Before Case-Mix Adjustment and Wage Adjustment Based on the Site of Service for the Beneficiary

CY 2011 National Standardized 60-Day Episode Payment Rate	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent minus 2 percentage points (-0.6 percent)	Reduce by 3.79 percent for nominal change in case-mix	CY 2012 National Standardized 60-Day Episode Payment Rate.
$2,192.07	x 0.994	x 0.9621	$2096.34

c. National Per-Visit Rates Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations

In calculating the CY 2012 national per-visit rates used to calculate payments for LUPA episodes and to compute the imputed costs in outlier calculations, the CY 2011 national per-visit rates for each discipline are updated by the CY 2012 HH PPS payment update percentage of 1.4 percent. National per-visit rates are not subject to the 3.79 percent reduction related to the nominal increase in case-mix. The CY 2012 national per-visit rates per discipline are shown in Table 15. The six home health disciplines are as follows:

- Home Health Aide (HH aide);
- Medical Social Services (MSS);
- Occupational Therapy (OT);
- Physical Therapy (PT);
- Skilled Nursing (SN); and
- Speech Language Pathology Therapy (SLP).

TABLE 15: National Per-Visit Amounts for LUPAs (Not including the LUPA Add-On Amount for a Beneficiary's Only Episode or the Initial Episode in a Sequence of Adjacent Episodes) and Outlier Calculations Updated by the HH PPS Payment Update Percentage, Before Wage Index Adjustment

		For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
Home Health Discipline Type	CY 2011 Per-Visit Amounts Per 60-Day Episode	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent	CY 2012 per-visit payment	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent minus 2 percentage points (-0.6 percent)	CY 2012 per-visit payment
HH Aide	$50.42	X 1.014	$51.13	X 0.994	$50.12
MSS	$178.46	X 1.014	$180.96	X 0.994	$177.39
OT	$122.54	X 1.014	$124.26	X 0.994	$121.80
PT	$121.73	X 1.014	$123.43	X 0.994	$121.00
SN	$111.32	X 1.014	$112.88	X 0.994	$110.65
SLP	$132.27	X 1.014	$134.12	X 0.994	$131.48

d. LUPA Add-On Payment Amount Update

Beginning in CY 2008, LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by adding an additional amount to the LUPA payment before adjusting for area wage differences. We update the LUPA payment amount by the CY 2012 HH PPS payment update percentage of 1.4 percent. The LUPA add-on payment amount is not subject to the 3.79 percent reduction related to the nominal increase in case-mix. For CY 2012, we update the add-on to the LUPA payment to HHAs that submit the required quality data by the CY 2012 HH PPS payment update percentage of 1.4 percent. The CY 2012 LUPA add-on payment amount is shown in Table 16. We update the add-on to the LUPA payment to HHAs that do not submit the required quality data by the CY 2012 HH PPS payment update percentage (1.4 percent) minus two percentage points, for a –0.6 percent update.

TABLE 16: CY 2012 LUPA Add-On Amounts

	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
CY 2011 LUPA Add-On Amount	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent	CY 2012 LUPA Add-On Amount	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent minus 2 percentage points (-0.6 percent)	CY 2012 LUPA Add-On Amount
$93.31	X 1.014	$94.62	X 0.994	$92.75

e. Nonroutine Medical Supply Conversion Factor Update

Payments for nonroutine medical supplies (NRS) are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. We increase CY 2011 NRS conversion factor ($52.54) by the CY 2012 HH PPS payment update percentage of 1.4 percent. The final updated CY 2012 NRS conversion factor for 2012 appears in Table 17. For CY 2012, the NRS conversion factor is $53.28.

TABLE 17: CY 2012 NRS Conversion Factor for HHAs that DO Submit the Required Quality Data

CY 2011 NRS Conversion Factor	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent	CY 2012 NRS Conversion Factor
$52.54	X 1.014	$53.28

Using the NRS conversion factor ($53.28) for CY 2012, the payment amounts for the various severity levels are shown in Table 18.

TABLE 18: CY 2012 NRS Payment Amounts for HHAs that DO Submit the Required Quality Data

Severity Level	Points (Scoring)	Relative Weight	CY 2012 NRS Payment Amount
1	0	0.2698	$14.37
2	1 to 14	0.9742	$51.91
3	15 to 27	2.6712	$142.32
4	28 to 48	3.9686	$211.45
5	49 to 98	6.1198	$326.06
6	99+	10.5254	$560.79

For HHAs that do not submit the required quality data, we again begin with the CY 2011 NRS conversion factor. We increase the CY 2011 NRS conversion factor ($52.54) by the CY 2012 HH PPS payment update percentage of 1.4 percent minus 2 percentage points, or –0.6 percent. The CY 2012 NRS conversion factor ($52.22) for HHAs that do not submit quality data is shown in Table 19.

TABLE 19: CY 2012 NRS Conversion Factor for HHAs that DO NOT Submit the Required Quality Data

CY 2011 NRS Conversion Factor	Multiply by the CY 2012 HH PPS payment update percentage of 1.4 percent minus 2 percentage points (-0.6 percent)	CY 2012 NRS Conversion Factor
$52.54	X 0.994	$52.22

The payment amounts for the various severity levels based on the updated conversion factor ($52.22) for HHAs that do not submit quality data are calculated in Table 20.

TABLE 20: CY 2012 NRS Payment Amounts for HHAs that DO NOT Submit the Required Quality Data

Severity Level	Points (Scoring)	Relative Weight	NRS Payment Amount
1	0	0.2698	$14.09
2	1 to 14	0.9742	$50.87
3	15 to 27	2.6712	$139.49
4	28 to 48	3.9686	$207.24
5	49 to 98	6.1198	$319.58
6	99+	10.5254	$549.64

5. Rural Add-On

Section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173, enacted on December 8, 2003 and as amended by section 3131(c) of the Affordable Care Act) provides an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010 and before January 1, 2016. The statute waives budget neutrality related to this provision, as the statute specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 3 percent rural add-on is applied to the national standardized 60-day episode rate, national per-visit rates, LUPA add-on payment, and NRS conversion factor when home health services are provided in rural (non-CBSA) areas. Refer to Tables 21 thru 25 for these payment rates.

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TABLE 21: CY 2012 Payment Amounts for 60-Day Episodes for Services Provided in a Rural Area Before Case-Mix and Wage Index Adjustment

For HHAs that DO Submit Quality Data			For HHAs that DO NOT Submit Quality Data		
CY 2012 National Standardized 60-Day Episode Payment Rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 National Standardized 60-Day Episode Payment Rate	CY 2012 National Standardized 60-Day Episode Payment Rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 National Standardized 60-Day Episode Payment Rate
$2,138.52	X 1.03	$2,202.68	$2,096.34	X 1.03	$2,159.23

TABLE 22: CY 2012 Per-Visit Amounts for Services Provided in a Rural Area, Before Wage Index Adjustment

	For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
Home Health Discipline Type	CY 2012 per-visit rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 per-visit rate	CY 2012 per-visit rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 per-visit rate
HH Aide	$51.13	X 1.03	$52.66	$50.12	X 1.03	$51.62
MSS	$180.96	X 1.03	$186.39	$177.39	X 1.03	$182.71
OT	$124.26	X 1.03	$127.99	$121.80	X 1.03	$125.45
PT	$123.43	X 1.03	$127.13	$121.00	X 1.03	$124.63
SN	$112.88	X 1.03	$116.27	$110.65	X 1.03	$113.97
SLP	$134.12	X 1.03	$138.14	$131.48	X 1.03	$135.42

TABLE 23: CY 2012 LUPA Add-On Amounts for Services Provided in Rural Areas

For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
CY 2012 LUPA Add-On Amount	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 LUPA Add-On Amount	CY 2012 LUPA Add-On Amount	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 LUPA Add-On Amount
$94.62	X 1.03	$97.46	$92.75	X 1.03	$95.53

TABLE 24: CY 2012 NRS Conversion Factor for Services Provided in Rural Areas

For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
CY 2011 Conversion Factor	Multiply by the 3 Percent Rural Add-On	Rural CY 2012 Conversion Factor	CY 2012 Conversion Factor	Multiply by the 3 Percent Rural Add-On	CY Rural 2012 Conversion Factor
$53.28	X 1.03	$54.88	$52.22	X 1.03	$53.79

TABLE 25: CY 2012 NRS Payment Amounts for Services Provided in Rural Areas

		For HHAs that DO submit quality data (NRS Conversion Factor=$54.88)		For HHAs that DO NOT submit quality data (NRS Conversion Factor=$53.79)	
Severity Level	Points (Scoring)	Relative Weight	Total NRS Payment Amount for Rural Areas	Relative Weight	Total NRS Payment Amount for Rural Areas
1	0	0.2698	$14.81	0.2698	$14.51
2	1 to 14	0.9742	$53.46	0.9742	$52.40
3	15 to 27	2.6712	$146.60	2.6712	$143.68
4	28 to 48	3.9686	$217.80	3.9686	$213.47
5	49 to 98	6.1198	$335.85	6.1198	$329.18
6	99+	10.5254	$577.63	10.5254	$566.16

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E. Therapy Corrections and Clarifications

1. Therapy Technical Correction to Regulation Text

In the CY 2012 HH PPS proposed rule (76 FR 41023 through 41024), we noted that regulation text at § 409.44(c)(2)(i)(D)(2) associated with changes we made to our regulations for CY 2011 required a technical correction. This technical correction was to change the word ''before'' in this regulation to the phrase ''no later than'' such that the final wording would read, ''Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide the therapy service and functionally reassess the patient in accordance with § 409.44(c)(2)(i)(A) during the visit which would occur close to but no later than the 19th visit per the plan of care.''

2. Occupational Therapy Policy Clarifications

We also proposed (76 FR 41024) to clarify when occupational therapy would be considered a dependent service versus when it would be considered a qualifying service under the Medicare home health benefit, explaining the history of occupational therapy as a skilled yet dependent service under the benefit. We highlighted key regulations that explain the status of occupational therapy and clarified the status of when occupational therapy becomes a qualifying service by proposing to change the regulation text at § 409.42(c)(4) to establish exactly when occupational therapy becomes a qualifying service. We proposed to amend § 409.42(c)(4) to state that occupational therapy services that meet the requirements of § 409.44(c) initially qualify for home health coverage as a dependent service as defined in § 409.45(d) if the beneficiary's eligibility for home health services was established by virtue of a prior need for intermittent skilled nursing care, speech-language pathology services, or physical therapy in the current or prior certification period. Subsequent to an initial covered occupational therapy service, continuing occupational therapy services which meet the requirements of § 409.44(c) would be considered qualifying services.

We also proposed a change to § 409.44(c) to include a technical correction to this regulation text. We proposed to correct ''(c)(1) through (4)'' to, ''(c)(1) and (2),'' which is the correct reference.

The following is a summary of the comments we received regarding the therapy corrections and clarifications.

Comment: All commenters were supportive of or neutral toward the policy clarification regarding when occupational therapy becomes a qualifying service. Among these comments, some requested we further clarify whether occupational therapy can continue to be the qualifying service when the need for occupational therapy spans into a subsequent episode. One commenter asked for further clarification regarding when occupational therapy must be followed by a skilled nursing, physician therapy, or speech therapy service. Another commenter urged CMS to follow up this policy clarification with detailed explanations in the Medicare Benefit Policy Manual, including through the use of examples. Another commenter expressing agreement with our policy clarification, equated the clarifying policy with the elimination of the requirement that an original qualifying service must complete at least one covered visit after the initial dependent occupational therapy visit.

Response: We thank commenters for their positive response to our clarification of when occupational therapy becomes a qualifying service.

Because some commenters have suggested that the regulation text could be clarified for episodes beyond the initial episode for patients receiving more than one episode of home health, we are revising § 409.42(c)(4) to further clarify the regulation text in this final rule.

In response to the commenter who stated that the proposed policy removed the requirement that an original qualifying service must complete at least one covered visit after the initial dependent occupational therapy visit, we note that the commenter's interpretation of the proposed policy is not accurate as we will describe below. In response to the commenter who requested further clarification regarding when occupational therapy must be followed by a skilled nursing, physician therapy, or speech therapy service, we clarify that the initial occupational therapy service must be followed by another qualifying service to be covered. Subsequent occupational therapy services, however, do not require another qualifying service to follow them. Specifically, we are clarifying that once a beneficiary's eligibility for home

health services has been established by virtue of a prior need for an intermittent skilled service (that is, skilled nursing care, physical therapy, or speech-language pathology therapy), and the beneficiary also meets each of the criteria specified in § 409.44(c), the first occupational therapy service provided to the patient is considered a dependent service. We note that § 409.45(a) describes that in order for Medicare to cover a dependent service, the service must be followed by a qualifying skilled service, which meets the criteria in § 409.44(c), except when certain unexpected circumstances occur, such as an unexpected inpatient admission or the death of the beneficiary. As such, the first occupational therapy service, which is a dependent service, is covered only when followed by an intermittent skilled nursing care service, speech-language pathology service, or physical therapy service which meet the criteria in § 409.44(c), unless the exceptional circumstance criteria is met. Once that requirement for covered occupational therapy has been met, all subsequent occupational therapy services that meet the criteria in § 409.44(c) are considered to be qualifying, both in the current and in subsequent certification periods (subsequent adjacent episodes). Once occupational therapy has become a qualifying service, it remains a qualifying service from that point on as long as the services continue to meet the criteria in § 409.44(c). Therefore, there is no need for another qualifying skilled service to follow a covered qualifying occupational therapy service at the end of a home health episode. It is possible for covered qualifying occupational therapy services to exist at the end of an initial episode for a given beneficiary, if all of the above described requirements/criteria are met, without additional qualifying skilled nursing care, physical therapy, or speech-language pathology services following that covered qualifying occupational service. We plan to include these clarifications in Pub. 100–02, Chapter 7, Medicare Benefit Policy Manual.

Comment: We received several comments regarding the therapy reassessment requirements finalized with the CY 2011 HH PPS final rule. Some commenters called for CMS to stop all or part of the requirements. A number of commenters expressed their belief that with the 13th and 19th reassessment visit requirement, the 30-day reassessment requirement is not needed. These commenters stated the same exceptions permitted for the 13th and 19th-reassessment visit policy should apply to the 30-day reassessment policy as well to make it more flexible. A few commenters gave hospitalizations as an example of when there should be an exception to the 30-day reassessment requirement, noting that sometimes when home health patients are admitted to the hospital, the hospital might be delayed several days in contacting the HHA or not contact the HHA at all. One commenter questioned the logic of these therapy regulations, suggesting that they decrease the productivity of therapists and other home health staff, leading to agencies having to hire more staff to cover the needs of the aging population. Many commenters stated the therapy requirements are causing an undue burden on agencies while interfering with quality therapy care that a patient receives. Another commenter suggested that these therapy policies have had the opposite effect of what we intended because agencies that previously did not use therapy assistants are now using them more due to the increased costs associated with our policies. Among the alternatives that commenters proposed were to have reassessments required every 14 days, every 12–15 days for the first 30 days and then at least every 30 days, and between days 15–21 and 29–35 (that is, within the 3rd and 5th weeks of the episode).

Among those commenters who referred to the issues of administrative burden and inefficiency, especially in light of State licensure requirements for therapists (for example, New York requires PTAs must be supervised every 6 visits or every 30 days, whichever comes first), one commenter mentioned adding a 0.5 full time equivalent (FTE) for clinical auditing and 1 FTE as a scheduler to assure appropriate scheduling and track compliance. Some commenters suggested that the policy requires too many assessments; speaking of multiple-therapy cases, one commenter stated that these excessive assessments lead to lumping back-to-back assessments by multiple therapists. The commenter also suggested that due to our recalibration of therapy weights that de-emphasize high-therapy episodes less than before, these 13th and 19th-reassessment visits are no longer needed. One commenter stated that a physical therapist is expected to document for an occupational therapist. Another commenter recommended that we reconvene a technical expert panel to examine the appropriate use of therapy assistants and nursing personnel under the benefit to verify whether use of therapy assistants in particular is clinically inappropriate. The commenter also provided detailed explanations on the role of therapists and therapy assistants and how they interact with one another in such areas as communication, decision-making, and patient care delivery. The commenter also provided detailed recommendations on how the therapy CY 2011 policies can be better communicated, including through manual additions and revisions, and additional Questions and Answers. This commenter noted that some of the confusion over the 13th and 19th-visit requirements has to do with whether the ''count'' includes both covered and non-covered visits. Last, this commenter suggested that no additional changes to our therapy policies be made until a technical evaluation panel (TEP) can develop an alternate payment system for therapy alone. This commenter and another requested that CMS provide additional training for therapists and HHAs regarding these therapy requirements.

Response: We thank the commenters for their feedback, but note that the comments regarding the therapy reassessment requirements from the CY 2011 HH PPS final rule (75 FR 70372) are outside of the scope of this rule. However, we are further clarifying our policies and respond to comments regarding the administrative burden of these requirements and the suggestion that due to our recalibration of therapy weights that these requirements are no longer needed. We respectfully remind commenters that our reasons for the therapy reassessments outlined in the CY 2011 HH PPS final rule were not only to address payment vulnerabilities that have led to high use and sometimes overuse of therapy services, but also to ensure more qualified therapist involvement for beneficiaries receiving high amounts of therapy which evidence shows results in better patient outcomes. We note again, as we did in the CY 2011 HH PPS final rule (75 FR 70390 through 70391), that research studies conducted by Linda Resnick (of Brown University) *et al.,* entitled ''Predictors of Physical Therapy Clinic Performance in the Treatment of Patients with Low Back Pain Syndromes'' (2008, funded by a grant from the National Institute of Child Health) and ''State Regulation and the Delivery of Physical Therapy Services'' (2006, funded in part through a grant from the Agency for Healthcare Research and Quality) provide support for our therapy policies. Both studies concluded that more therapy time spent with a qualified physical therapist, and less time with a physical therapist assistant, is more efficient and leads to better patient outcomes. In these

studies, the lower percentage of time seen by a qualified therapist and the greater percentage of time seen by an assistant or aide, the more likely a patient would have more visits per treatment per episode. The studies also concluded that, although delegation of care to therapy support personnel such as assistants may extend the productivity of the qualified physical therapist, it appears to result in less efficient and effective services. We believe that by requiring regular visits by a qualified therapist during a course of treatment, we will achieve more appropriate and efficient provision of therapy services while also achieving better therapy outcomes.

We also note that even with reductions in payments for high-therapy episodes, HHAs receive higher payments for these episodes than other episodes. We continue to believe that the requirement for a qualified therapist (instead of an assistant) to perform the needed therapy service at key points in a patient's course of treatment, as well as to assess, measure and document the effectiveness of the therapy provided promotes more effective and efficient care. Regarding the issue of the at least every 30-days reassessment requirement and hospitalizations, we also note that through a recently-posted Question and Answer, available at *http://www.cms.gov/HomeHealthPPS/Downloads/Therapy_Questions_and_Answers.pdf,* we have allowed for one exception to the 30-day reassessment requirement (that is, when there is a hold on therapy due to the patient's hospitalization for an unexpected change in the patient's condition). As we stated in this question and answer, we believe that the policy that requires a qualified therapist to perform the necessary therapy service, assess the patient, measure, and document the effectiveness of the therapy at least once every 30 days during a course of therapy treatment is essential to ensuring that effective, reasonable, and necessary therapy services are being provided to the patient. In the case of a home health patient where the therapy goals in the plan of care have not been met, but the doctor has instead ordered a temporary interruption in therapy, we would usually expect that the unique clinical condition of the patient would enable the HHA to anticipate that an interruption in therapy may be needed. In such cases, the HHA should ensure that the requirements are met earlier than the end of the 30-day period to ensure the HHA meets the 30-day requirement.

Where unexpected sudden changes in the patient's condition result in a need to stop therapy, we would expect to see documentation and evidence in the medical record which would support an unexpected change in the patient's condition which precludes delivery of the therapy service. We will modify our manual to describe that in such documented cases, the 30-day qualified therapist visit/assessment/measurement requirement can be delayed until the patient's physician orders therapy to resume.

We also note in response to the commenter that stated a physical therapist would be asked to do the assessment for an occupational therapist that, as we stated in the CY 2011 HH PPS final rule (75 FR 70392), in§ 409.44(c)(2)(i)(A), we clarified that our expectation is that only the therapist of his or her own corresponding discipline should complete the reassessment for that therapy discipline. Because we recognize that agencies and therapists continue to have questions on how to count therapy visits to determine when the required therapy assessment visits (which are to occur close to both the 14th and 20th Medicare-covered therapy visits but no later than the 13th and 19th Medicare-covered therapy visits) should occur, we have provided a clarification in § 409.44(c)(2)(i)(C)(*2*) and § 409.44(c)(2)(i)(D)(*2*) that from a Medicare payment perspective, only Medicare-covered visits are to be considered and counted. Specifically, to reflect that Medicare payment policy recognizes only Medicare-covered visits, we are inserting the words, ''Medicare-covered'' before the words, ''therapy-visit'' in both these regulations related to multiple therapy disciplines being provided because commenters have expressed confusion over the process of counting at both of these junctures. We have also inserted the words, ''the 14th Medicare-covered therapy visit'' at § 409.44(c)(2)(i)(C)(*2*) and the words, ''the 20th Medicare-covered therapy visit'' at § 409.44(c)(2)(i)(D)(*2*) to further reinforce that the counting of therapy visits for Medicare payment purposes should include only those Medicare-covered visits which are close to the 14th and 20th Medicare-covered therapy visits, but no later than the 13th and 19th Medicare-covered therapy visit. Last, to further address commenters' confusion, we have made minor changes to the regulation text to make the language between § 409.44(c)(2)(i)(C)(*2*) and 409.44(c)(2)(i)(D)(*2*) consistent.

We note that the counting of therapy visits for Medicare payment purposes might differ from how agencies and therapists would count therapy visits for a patient's plan of care. Consequently, we have also removed the references to the patient's ''plan of care'' in § 409.44(c)(2)(i)(C)(*2*) and § 409.44(c)(2)(i)(D)(*2*). We also note that both Medicare-covered and non-covered visits are included on the Medicare home health claim forms, where they should continue to be designated as covered or non-covered. We conclude by stating that we are committed to continuing our provider education efforts related to these therapy policies.

Comment: Another commenter stated that there are situations in which a 30-day skilled therapist visit for assessment of therapy must be followed by yet another skilled therapist visit for reassessment based on the therapy threshold.

Response: Again, while this comment is outside of the scope of this rule, we would like to note that every time a qualified therapist performs the therapy service, assesses the patient, measures and documents the effectiveness of the therapy service for that therapy discipline, the 30-day clock is 'reset'. As such, a qualified therapist visit/assessment/measurement and documentation which satisfies the threshold requirement could also satisfy the 30-day requirement.

Comment: We received one comment from a physical therapist who provided an overview of the profession from the commenter's perspective, highlighting payment trends for therapists, depending on which type of entity therapists work for (for example, directly for a HHA or as a contractor or subcontractor). The commenter provided examples of personal employment experiences that substantiate our concerns regarding intentional overprescribing of therapy and inappropriate use of therapy assistants. Consequently, the commenter recommended program integrity policies for CMS' consideration.

Response: We thank this commenter for taking the time to provide such a thoughtful response and will share this commenter's suggestions with our program integrity colleagues.

3. Summarization of Final Policies

As a result of the comments we received, we will finalize our technical corrections to § 409.44(c) and § 409.44(c)(2)(i)(D)(*2*). We will also finalize our regulation text at § 409.42(c)(4) to reflect that subsequent to an initial covered occupational therapy service, continuing occupational therapy services which meet the requirements of § 409.44(c) are considered to be qualifying services. In addition, we further clarify the intent of

this policy on when occupational therapy becomes a qualifying service by making the following change to § 409.42(c)(4) as it appeared in our proposed rule: We are adding the phrase, ''in the current and subsequent adjacent certification periods (subsequent adjacent episodes)'' to the first line of this regulation text after the words, ''Occupational therapy services.''. Last, as we summarized above, we further clarify the method for counting visits for the 13th and 19th reassessment visit requirements by adding the words, ''Medicare-covered'' and deleting the words, ''per the plan of care,'' at § 409.44(c)(2)(i)(C)(*2*) and § 409.44(c)(2)(i)(D)(*2*).

F. Home Health Face-to-Face Encounter

As described in the CY 2011 HH PPS final rule (75 FR 70427), section 6407(a) of the Patient Protection and Affordable Care Act, as amended by section 10605 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), amended the requirements for physician certification of home health services contained in sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act by requiring that, as a condition for payment, prior to certifying a patient's eligibility for the home health benefit, the physician must document that the physician himself or herself or a permitted nonphysician practitioner (NPP) has had a face-to-face encounter with the patient.

However, we believe that the statute does not preclude a patient's acute or post-acute physician from informing the certifying physician regarding their experience with the patient for the purpose of the face-to-face encounter requirement, as an NPP can. Instead, we believe that for patients admitted to home health following discharge from an acute or post-acute stay, the statutory language contains an unintentional gap in that it does not explicitly include language which allows the acute or post-acute attending physician to inform the certifying physician regarding his or her face-to-face encounters with the patient.

Therefore, for patients admitted to home health upon discharge from a hospital or post-acute facility, we proposed to allow the physician who cared for the patient in an acute or post-acute facility to inform the certifying physician regarding their encounters with the patient to satisfy the face-to-face encounter requirement, much like an NPP currently can.

The following is a summary of the comments we received regarding the home health face-to-face encounter proposal.

Comment: Several commenters expressed concern regarding scenarios where a face-to-face encounter occurs late. Specifically, commenters believe that when the encounter occurs more than 30 days after the episode start, that CMS should allow providers the flexibility to restart the episode with the start of care date within 30 days of the face-to-face encounter. Commenters described longstanding CMS policy that has allowed such restarting of the episode for Medicare payment purposes in certain situations beyond the agency's control. Commenters described that longstanding claims processing manual guidance has always allowed some flexibility in the OASIS completion in targeted scenarios, such as when a patient's payer source changes from Managed Care to Medicare fee-for-service (FFS). At times, the HHA is not notified timely that such a payer change has occurred. Commenters described that this same payer change scenario may result in a late face-to-face encounter, which is a Medicare FFS requirement. Allowing OASIS flexibility in targeted scenarios enables the provider to begin to bill Medicare at the point in time when all Medicare eligibility criteria are met.

Response: We thank the commenters for their comment and while this comment is outside the scope of this rule, we are taking this opportunity to clarify the policy. Conditions of participation regulations at § 484.55 require HHAs to complete a comprehensive assessment for each patient no later than 5 days after the start of care. In the scenarios described by the commenter, there exists a comprehensive assessment which includes the OASIS assessment which was completed within 5 days of the agency providing care to the patient. However, Medicare FFS eligibility was not met until later. We acknowledge that longstanding guidance in Section 80 of Chapter 10 of the Medicare Claims Processing Manual states that if a Medicare beneficiary changes from a different pay source to Medicare FFS, a new start of care OASIS assessment must be completed that reflects a start of care date equal to the start of the beneficiary's change to Medicare FFS. The manual allows for this OASIS completion flexibility in targeted situations, to meet both Medicare billing and eligibility rules. In these cases, the OASIS which was completed to satisfy the Medicare billing and eligibility requirement could have a completion date which is later than 5 days after the start of care date. We believe a late face-to-face encounter is another of these targeted situations which justifies OASIS completion flexibility. Specifically, where a face-to-face encounter did not occur within the 90 days prior to the start of care or within 30 days after the start of care, a provider may complete another OASIS with a start of care date equal to the date when all Medicare eligibility is met. However, Medicare will not pay for services provided before the date of eligibility.

Comment: Some commenters suggested that, if a face-to-face encounter does not occur within 30 days of the start of care, CMS should shift the burden of responsibility away from the HHA for financial loss and include physician communication requirements as a component of the CMS initiatives associated with the transition of care. Commenters suggested that the financial burden of the face-to-face documentation alone has significantly added to HHAs' operating costs. Other commenters stated the face-to-face requirement presents such an administrative burden that HHAs have had to add full-time staff to track the documentation requirements.

Response: We thank the commenters for their comments but these comments are outside the scope of this rule. However, we would like to remind commenters that we do not have the statutory authority to exempt HHAs from responsibility for the face-to-face encounter requirement, as the Affordable Care Act mandates that it is a condition for payment.

Comment: Some commenters requested that, due to difficulties securing documentation and physician refusal to write a narrative documenting why the patient needs skilled services and why the patient is homebound, the face-to-face documentation requirement should be limited to the statements that the patient needs skilled services and is homebound, and that the primary reason for home health services was addressed in the encounter, accompanied by the physician's signature and date. Another commenter suggested that CMS allow NPPs to document and sign the face-to-face documentation. Some commenters asked CMS to allow the narrative on a patient's plan of care to satisfy the documentation requirement. Other commenters suggested that CMS require a universal format of documentation to prevent Medicare contractor payment denials. Commenters requested that the face-to-face documentation be reduced to a check box on the plan of care or the Form 485. One commenter suggested that a separate, single certification form

be used for patients referred from the hospital to home care.

Response: We thank the commenters for their comments but these comments are outside the scope of this rule. However, we will briefly respond to the commenters' questions to ensure that commenters clearly understand the law and the policy. We would like to remind commenters that the law requires the certifying physician to document that the physician or an allowed NPP has had a face-to-face encounter with the patient. As such, a change in the statute would be required to allow an NPP to document the encounter. In response to the commenters who suggested that a standard form which contains checkboxes should be allowed to satisfy the documentation requirement and the commenter who asked CMS to allow the physician to simply sign a standard statement that the patient needs skilled services and is homebound, in our view, these suggestions would not satisfy the statutory requirement that the certifying physician document the encounter itself. We have reviewed forms which contained generic questions with checkboxes for the physician to simply check off and sign. We believe that such a form would not satisfy the documentation mandate in the law. Similarly, we believe a form that contains a pre-printed statement that the patient is homebound and needs skilled services which the physician would sign, as one commenter suggested, would also not meet the statutory requirement. Further, documentation which was drafted by another commenter which the physician would sign also would not meet the requirement. In using the words ''document the encounter'' in the statute instead of ''attest to the encounter,'' we believe that the Congress intended the certifying physician to include factual information about the patient's condition as seen during the encounter which would support the physician's certification of the patient's eligibility (homebound status and the need for skilled services).

We have provided certifying physicians the flexibility to generate the documentation from their electronic medical record entries concerning the patient. The physician's own medical record entries would contain the factual information about the patient's condition as seen during the encounter. We also allow the physician's support staff to extract the documentation from the physician's medical record entries for the physician's signature. We accept documentation which was generated or extracted from a physician's medical record, assuming it contains all the required content, regardless of what format it is in, even when that generated format contains checkboxes. Additionally, as we describe in more detail later in this section, if an allowed practitioner other than the certifying physician performs the encounter, the certifying physician may incorporate the practitioner's communication regarding the patient's clinical condition as part of the certifying physician's documentation.

In response to the commenter who requested that the physician's narrative on the plan of care satisfy the documentation requirement, we note that this would be acceptable in certain cases. As described above, we do not mandate that the documentation be in any particular format. We do require that the content requirements be met. We would expect that a physician's orders referring the patient to home health could satisfy some or all of the documentation content requirements. However, as stated above, we believe the law would not allow an HHA to draft the documentation for the physician to sign. CMS is aware that often HHAs will draft the plan of care narrative for the physician to sign. In these cases, the plan of care narrative would not satisfy the documentation requirement because the narrative is drafted by the HHA instead of the physician, and is based on the HHA's assessment of the patient, not the physician's encounter.

In response to the commenters who requested that CMS require a universal format for the documentation, we note that since 2002, we have not mandated the use of a specific form when physicians certify a patient's eligibility for Medicare's home health benefit. Instead, we allow physicians and HHAs to meet the certification documentation requirements in a way that utilizes their respective practice documentation system, and gives providers flexibility to use electronic medical record software.

Comment: We received comments that the face-to-face requirement presents an unnecessary barrier to care for all patients, but especially for bed bound patients who need ambulance transportation to physician appointments. Also, a commenter suggested that the Affordable Care Act be revised to expand the definition of telehealth services to allow individuals to meet the face-to-face requirements through technologies available in their homes. A commenter suggested that telehealth could be used to satisfy the face-to-face encounter, and asked CMS to revise its regulations so that the patient's home could be a telehealth originating site. Further, some commenters requested that CMS immediately halt the face-to-face requirement. Some commenters requested that the requirement be revised to establish exemptions to the face-to-face encounter for post-acute home health patients or those patients with barriers to physician care. We also received comments asking CMS to expand the current face-to-face timeframes.

Response: We thank the commenters for their input but these comments are outside the scope of this rule. However, we will take the opportunity to briefly respond to the commenters to ensure better understanding of the statute. We would like to remind commenters that the face-to-face requirement is only required for initial certifications, not recertifications. In response to the commenters who asked us to halt or change the provision, we would not have the authority to do so. In response to the commenter who asked CMS to revise its regulation to add the home as a telehealth originating site, we note that section 1834(m) of the Act limits those sites where a telehealth service can be provided. Regarding the timeframe of the face-to-face requirement, we believe the current timeframe of 90 days prior to the start of care and 30 days after the start of care is appropriate and best meets the program integrity and quality goals associated with the provision.

Comment: Some commenters requested the elimination of the face-to-face requirement for patients admitted to home health within certain timeframes of hospital discharges. Commenters stated that patients who are discharged from a hospital have clearly seen a physician and discharge planning team who determined home health to be an appropriate post-discharge follow-up. Commenters believed that the intent of this provision, which is a program integrity provision, is to ensure that the patient recently saw his or her physician.

Response: We thank the commenters for their suggestions. However, this exemption would violate the statutory mandate. We do not have the authority to exempt post-acute home health admissions from the face-to-face encounter requirement.

Comment: We received comments questioning whether or not the acute or post-acute physician will still be allowed to initiate the plan of care, perform and document the face-to-face encounter, certify the patient's home health eligibility, and ''hand off'' the plan of care to the patient's community physician. Commenters were confused by the proposed regulation text language

at § 424.22(a)(1)(v)(A) stating that the acute or post-acute physician ''must'' inform the certifying physician of the face-to-face encounter clinical findings. As the proposed regulatory text reads, commenters believed the use of ''must'' indicated that an attending acute or post-acute physician must inform the certifying physician of the findings from the face-to-face encounter rather than being able to perform the encounter, document the encounter and certify home health eligibility himself or herself.

Response: We thank the commenters for their comments. The physician who cared for the patient in an acute or post-acute facility prior to the patient's home health admission can perform and document the face-to-face encounter and certify the patient's home health eligibility, initiate the plan of care, and hand off the plan of care to the patient's community physician. These physicians often complete the certification of home health eligibility for a patient, which now includes the face-to-face documentation. In this rule, we simply proposed additional flexibility for the physician who cared for the patient in an acute or post-acute facility to inform the certifying physician of the patient's need for skilled services and homebound status in the same manner that an NPP can. To address any confusion that may exist, we will revise § 424.22(a)(1)(v)(A) to only require the physician who cared for the patient in the acute or post-acute facility to inform the certifying physician when the physician who cared for the patient in the acute or post-acute facility is not the certifying physician.

Comment: A commenter suggested that in an acute or post-acute facility, a patient is often seen by many physicians and any of those physicians should be able to inform the certifying physician. Therefore, the commenter suggested that CMS consider removing the word ''attending'' from the regulation text and use the term ''acute'' or ''post-acute'' physician instead. The commenter described how a patient's home health initiation and supervision may be most appropriately managed by a specialist, primary care physician, hospitalist, or surgeon, irrespective of who is the attending physician.

Response: We found the comment compelling and will remove ''attending'' from the regulatory text. Instead, we will describe that a physician who cared for the patient in an acute or post-acute facility and who has privileges at the facility can inform the certifying physician regarding the patient's clinical condition. The certifying physician can use that information to document the face-to-face encounter.

Comment: Many commenters disagreed with the proposed rule to require a face-to-face encounter and supporting documentation for Medicaid patients.

Response: These comments are outside the scope of this rule. The Medicaid face-to-face provision was proposed in the Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health proposed rule published in the July 12, 2011 **Federal Register** (76 FR 41032).

Comment: We received comments supporting the added flexibility associated with the face-to-face encounter provision, given that physicians who care for the patient in an acute or post-acute facility are the most familiar with the patient's condition upon discharge, yet may not want the burden of designing a plan of care and certifying eligibility, and should be allowed to inform the physician as an NPP.

Response: We thank the commenters for their support.

Comment: We received a comment asking for CMS to include language in the final rule that clearly outlines that the HHA may assist with the communication between the physician who cared for the patient in an acute or post-acute facility, who performed the face-to-face encounter, and the certifying physician. We received comments asking CMS to clarify whether verbal and/or written or typed documentation qualifies as communication between the physician who cared for the patient in an acute or post-acute facility and the patient's certifying physician. Other commenters questioned whether the documentation of the face-to-face encounter must be in the HHA record.

Response: We thank the commenters for their comments. The HHA may facilitate communication between the physician who cared for the patient in an acute or post-acute facility and the patient's community physician. We note that this would be considered a part of the patient's care coordination. However, we reiterate that the HHA cannot draft the encounter documentation for the certifying physician to sign. Similarly, we note that the information flow/communications from the allowed NPP or physician who cared for the patient in an acute or post-acute facility to the certifying physician concerning the patient's condition cannot be altered by the HHA. For example, in most cases we would expect the patient's discharge plan to contain the information, from the allowed NPP or the physician caring for the patient in the acute or post-acute facility, needed by the certifying physician to document the encounter. We would expect that both the HHA and the patient's community physician (certifying physician) would receive the patient's discharge plan. When this does not occur, or it does not occur in a timely manner, the HHA can send a copy of the discharge plan to the certifying physician to expedite the information exchange. However, it would be unacceptable for the HHA to fill in missing clinical information concerning the patient, based on the HHA's assessment of the patient. The documentation must reflect the physician's (or NPP's) experience with the patient, not the HHA's. Regarding the commenters who asked for guidance on what sort of communication CMS expects would occur between the physician who cared for the patient in the acute or post-acute facility and the certifying physician, we do not require a specific communication protocol to occur between an NPP, or a physician who cared for the patient in an acute or post-acute facility, and the certifying physician. We intend for the communication between an NPP, or a physician who cared for the patient in an acute or post-acute facility, and the certifying physician to occur in a way that works best for the two health care professionals involved. We would expect that often the patient's discharge summary, even if not in the form of a discharge plan, with the information flow/communications from the allowed NPP or the physician who cared for the patient in the acute or post-acute facility, can serve as the face-to-face documentation so long as it includes the signature of the certifying physician and the required content. To address the commenter who asked whether or not the HHA needs to have the face-to-face encounter documentation on record, we remind the commenter that the face-to-face encounter documentation is part of the certification of eligibility and as such must be in the HHA's records.

Comment: Commenters stated that the face-to-face documentation is redundant, given the documentation of a patient's needs on the discharge plan and/or plan of care. Commenters questioned whether a certifying physician would need to rewrite the documentation of the face-to-face encounter rather than just review the information documented by the physician who cared for the patient in an acute or post-acute facility regarding the encounter. Commenters also

expressed concern that in the case of hospital support staff assisting in the documentation, the level of detail on a hospital patient's post-acute needs that is typically available in standard hospital medical record notes is not adequate to satisfy the face-to-face documentation requirements. Furthermore, commenters suggested that hospital-based physicians typically lack information on the criteria related to Medicare's homebound status and are not trained to make judgments on homebound status following discharge. Commenters suggested that the proposed additional flexibility needs to be integrated with existing discharge processes. Other commenters suggested that once the patient is discharged from the hospital, the hospitalist no longer feels accountable for the patient. Commenters were concerned that patients may be denied access to home health services in cases where collaboration between the physician who cared for the patient in an acute or post-acute facility and the certifying physician is not timely, because the certifying physician might be unable to obtain the needed documentation information. We also received comments that this added flexibility will add to an already strained relationship between the acute or post-acute physician and the community physician since they will be doing each other's work. Commenters suggested that the proposed flexibility will add a new burden to community physicians since they will not be paid for certifying the patient's eligibility for home health. Other commenters asked that CMS allow for community physicians to bill G0180 if the patient's physician who cared for the patient in an acute or post-acute facility is performing the face-to-face encounter and certifying home health eligibility.

Response: We thank the commenters for their comments. Regarding the commenter who asked whether the certifying physician must retype the acute or post-acute physician's documentation on the certification form, we note that we allow for the face-to-face documentation to be part of the certification or an addendum to it. Therefore, it would be acceptable for the certifying physician (or his or her support staff) to attach a communication (such as a discharge summary) from an allowed NPP, or a physician who cared for the patient in an acute or post-acute facility, who performed the encounter to the certification as an addendum. If, for example, a discharge summary from a physician who cared for the patient in an acute or post-acute facility contains all of the needed documentation content, the certifying physician would simply need to sign and date the discharge summary and ensure it is attached as an addendum to the certification.

In response to the commenter who was concerned that acute physicians may not communicate a patient's homebound status to the certifying physician, we note that this additional flexibility does not change the documentation content requirements or change the requirement that the certifying physician must document the encounter. If the information sent to the certifying physician does not explicitly contain statements which describe why the patient requires skilled services and how the patient's condition supports homebound status, we would expect it to contain enough information regarding the patient's clinical condition for the certifying physician (or his or her support staff) to complete the documentation. A typical discharge summary would contain enough clinical information to enable the certifying physician to assess homebound status, for example. Where the information lacks the clinical detail which would enable the certifying physician to complete the documentation, we would expect the certifying physician or the physician's support staff to obtain the additional information from the physician who cared for the patient in an acute or post-acute facility, discharge planner, or the acute or post-acute physician's support staff. We would expect that most of the time, a phone call or electronic mail exchange between the physicians' support staffs would address gaps in information. In response to the commenters who were concerned that the information sharing might not occur in a timely manner or the information exchange would be burdensome to the community physician and may strain the community physician and acute or post-acute physician relationship, we note that we believe that this information sharing between the physician who cared for the patient in an acute or post-acute facility and the community physician who assumes care for the patient upon discharge (certifying physician) for the purposes of documenting the face-to-face encounter, is consistent with the sort of communication which occurs when any patient is discharged from an inpatient setting to the community. Discharge procedures generally require that the discharge plan includes the patient's clinical condition and that the discharge plan and supporting documentation be shared with the patient's follow-up care provider. Where the discharge plan is not sent to the certifying physician and instead is sent to the HHA, the HHA would forward a copy of the discharge plan to the certifying physician. We also note that the physician who completes and signs the certification of eligibility can bill Medicare using the G0180 code.

Comment: Commenters suggested that CMS should allow any physician to work with another physician colleague sharing the face-to-face encounter and documentation responsibilities, as well as the certification. Commenters also asked CMS to expand the physicians who may perform the face-to-face encounter to include partners or colleagues of the certifying physician or urgent care center physicians for non-acute inpatient settings. Further, a commenter stated that if a patient goes to an outpatient clinic appointment and sees an alternate physician, the alternate physician should be allowed to perform the encounter and inform the certifying physician of the patient's clinical condition, homebound status, and need for skilled services.

Response: We thank the commenters for their suggestions. While we are sensitive to the scenarios which the commenters describe, we do not believe we would have a strong justification to assert that the Congress intended to allow any physician to inform the certifying physician and as such, we believe we would not have the statutory authority to allow this additional flexibility. We note that the Medicare home health benefit relies on the patient's physician to determine eligibility for home health services. This type of physician involvement is critical from both a quality of care and program integrity perspective. Prior to enactment of the face-to-face encounter provision, the patient's physician often relied on information provided by an HHA when making decisions about patient care. The Affordable Care Act established the requirement for a physician face-to-face encounter prior to certifying a patient's eligibility for home health services, along with other program integrity provisions, to address concerns surrounding ineligible patients receiving home health services and concerns that physicians who had no firsthand knowledge of the patient's clinical condition were certifying the patient's eligibility for home health. Additionally, in the CY 2011 HH PPS final rule, we described research which showed fewer re-hospitalizations when the home health patient had a recent encounter with the physician responsible for the home health care plan. We also refer the commenters to

the CY 2012 HH PPS proposed rule (76 FR 41024 through 41025), where we described our reasons for believing that the Congress did not intend to exclude physicians who care for the patient in an acute or post-acute facility from informing the certifying physician regarding their recent encounters with the patient as the Congress allowed certain NPPs to do. We described why we believed that in adding this flexibility, we are increasing communication between HHAs and physicians, why we believed that adopting this flexibility introduced no program integrity risks or quality concerns and why we believed the flexibility is consistent with the goals of the law, including the goal of achieving more physician involvement with the patient when ordering home health services. If the hospital physician is unwilling to certify a patient's eligibility for home health, the hospital discharge plan sent to the certifying physician would contain current clinical information regarding the patient, enabling the certifying physician to make determinations regarding the patient care. However, we do not believe that a similar strong argument exists that the Congress intended to allow any physician to inform the certifying physician. As such, we would not have the statutory authority to allow this additional flexibility.

Comment: Commenters suggested that CMS study transitions from hospitals to home care to evaluate whether the face-to-face improves care coordination, discourages home health utilization by patients who do not qualify for Medicare-covered home health services, or contributes to preventing or delaying access to medically necessary home care. Other commenters suggested that CMS regularly meet with the NAHC for industry input. Commenters also suggested that CMS has not provided adequate education to the physician community and should consider initiatives such as Patient Care Transitions and Accountable Care to manage a more widespread effort for physician communication. Another commenter noted that CMS' Web-based ''Frequently Asked Questions'' (FAQ) for provider clarity are sporadically updated without notice and are seemingly ad hoc policy developments. A commenter also suggested that CMS date its policy guidance so that providers know which guidance is most recent.

Response: We thank the commenters for their comments but these comments are outside the scope of this rule. However, we will continue to work with the industry to educate providers and we will continue to monitor the effects of the face-to-face requirement.

Comment: We received a comment that a major issue with the face-to-face requirement is that patients should have the right to refuse a clinic visit that is not medically necessary.

Response: We thank the commenter for the comment but this comment is outside the scope of this rule. We would like to clarify, however, that the face-to-face requirement is a statutory requirement for payment. Further, we would expect that practitioners would typically be conducting a medically necessary service to the patient, and this service would also meet the face-to-face encounter requirement. We also remind the commenter that, to be eligible for the Medicare home health benefit, a patient must be under the care of a physician. Should a patient refuse to have a face-to-face encounter with the physician responsible for care, we would question whether the patient was legitimately under the care of the physician.

As a result of the comments, we will finalize the proposed implementation approach with the following revisions:

- We will remove ''attending'' from the regulatory language and add additional language at § 424.22(a)(1)(v) to describe physicians who qualify as the physician who cared for the patient in an acute or post-acute facility.
- We will revise § 424.22(a)(1)(v) so that the certifying physician's documentation of the face-to-face encounter clearly states that either the certifying physician himself or herself, the allowed NPP, or, for patients admitted to home health immediately after an acute or post-acute stay, a physician who cared for the patient in an acute or post-acute facility, has had a face-to-face encounter with the patient.
- We will add clarifying language to § 424.22(a)(1)(v)(A) to address scenarios where the physician who cared for the patient in an acute or post-acute facility performing the face-to-face encounter is also the certifying physician. We will revise § 424.22(a)(1)(v)(A) to describe that the NPP or the physician who cared for the patient in an acute or post-acute facility performing the face-to-face encounter must communicate the clinical findings of the encounter to the certifying physician, unless the physician who cared for the patient in an acute or post-acute facility is also the certifying physician.

We will finalize the above face-to-face encounter provisions for starts of care beginning January 1, 2012 and later.

G. Payment Reform: Home Health Study and Report

As we noted in our proposed rule (76 FR 41025), section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on HHA costs of providing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness (specifically, patients with ''high levels of severity of illness''). In our proposed rule, we provided a completed description of the varied areas for which we have the authority to explore as part of our payment reform activities (76 FR 41025 through 41026). We continue to plan for the study to evaluate the current HH PPS and develop payment reform options which might minimize vulnerabilities and more accurately align payment with patient resource costs to prepare the Report to Congress regarding the study that we must deliver no later than March 1, 2014.

In our proposed rule, we also highlighted multiple activities that included those associated with the development of a study analytic approach (76 FR 41025), as well as our progress to date. We have held a second technical evaluation panel (TEP) since publishing our proposed rule and plan to publish the TEP proceedings on the CMS Web Site in the coming weeks.

As we announced in the proposed rule, we anticipate awarding another contract that will build upon the foundation established. Specifically, this contract will include refinement of the analytic plan performance of the detailed analysis, and ultimately recommendations for payment model options. We will provide updates regarding our progress in future rulemaking and open door forums.

The following is a summary of the comments we received regarding this study and report.

Comment: We received a number of comments expressing appreciation for the status report on our progress and future plans for the payment reform study. Commenters' specific suggestions for topics to incorporate into the study design and plan included the following: analysis and revisions for the HH PPS to more appropriately capture and align resource costs to payment among all the different service groups; research on the underutilization of therapy services in rural and underserved areas; and ways of improving physician interaction with home health patients separate from the face-to-face requirement. A few commenters expressed particular concern that the study explore the

hypothesis that a subset of HHAs, concentrated in the non-profit sector, have become safety net providers, continuing to offer access to those vulnerable patients that can be challenging and costly to serve, relative to HH PPS payments.

Response: We thank commenters for their expressed support of our efforts to date. We will attempt to include as many of the recommended areas of study as part of the final study design as possible, including those suggestions related to the outlier policy as we noted above in that section (see II.C. Outlier Policy). We will continue to solicit input from stakeholders as we develop the final study plan and provide periodic updates on our progress through multiple avenues such as the CMS Web Site and Open Door Forums.

Finally, we will continue to provide periodic updates on our progress.

H. International Classification of Diseases 10th Edition (ICD–10) Coding

In the CY 2012 HH PPS proposed rule, we discussed our preliminary plans to transition to the use of ICD–10–CM codes in October 2013. Based upon experience gained in our review of the ICD–10–CM codes we are striving to have the draft code lists out in the spring of 2012 versus October 2011. In addition, based upon comments received on our transition plans we are aiming to get the draft ICD–10–CM HHRG out on or before April 2013 versus the proposed July 2013 target contained in the proposed rule.

Effective March 17, 2009, we finalized our policies for the Health Insurance and Portability Accountability Act Administrative Simplification: Modifications to the Medical Data Code Set Standards to Adopt ICD–10–CM and ICD–10–PCS (74 FR 3328). The March 17, 2009 final rule modifies the standard medical data code sets for coding diagnoses by adopting the International Classification of Disease, 10th Revision, Clinical Modification (ICD–10–CM) for diagnosis coding, including the Official ICD–10–CM Guidelines for Coding and Reporting. These new codes replace the International Classification of Diseases, 9th Revision, Clinical Modification, Volumes 1 and 2, including the Official ICD–9–CM Guidelines for Coding and Reporting. Entities are required to have implemented the adopted policies by October 1, 2013. On October 1, 2013, the ICD–9 code sets used to report medical diagnoses will be replaced by the ICD–10 code sets. In preparation for the transition to use of ICD–10–CM codes, CMS is currently undergoing extensive efforts to update the Medicare payment systems.

One of the key activities identified under this transition to ICD–10–CM codes is the need for CMS to review and update the payment systems which currently use ICD–9–CM codes. Home health agencies report ICD–9–CM codes for their patients through OASIS–C. The HHAs enter data (including the ICD–9–CM codes) collected from their patients' OASIS assessments into a data collection software tool. For Medicare patients, the data collection software invokes HH PPS Grouper software to assign a Health Insurance Prospective Payment System (HIPPS) code on the Medicare HH PPS bill, ultimately enabling CMS' claims processing system to reimburse the HHA for services provided to patients receiving Medicare's home health benefit. The HH PPS Grouper currently utilizes ICD–9–CM codes to calculate the HIPPS code. Effective October 1, 2013, the HH PPS Grouper will utilize the ICD–10–CM codes to calculate the HIPPS code.

We have been working with the HHRG maintenance contractor to revise the HHRG to accommodate ICD–10–CM codes, as well as identify the appropriate ICD–10–CM codes to be included in each diagnosis group within the HHRG. In addition, we have also contracted with Abt Associates to assist with resolving the transition of certain codes that may be mapped to more than one diagnosis code under ICD–10–CM.

To assist HHAs and their vendors in preparing for this transition, the Agency is committed to providing information for transitioning the HHRG to accommodate ICD–10–CM codes effective October 1, 2013. The Agency will update providers and vendors through the ICD–10–CM National Provider outreach calls on our conversion plans. Additional detail concerning teleconference registration is available at *http://www.cms.gov/ICD10/Tel10/list.asp?intNumPerPage=20&submit=Go.* Further details pertaining to our plans will be announced through the National Provider outreach calls.

We will provide a draft list of ICD–10–CM codes for the HHRG through the ICD–10 section of the Web site. Specific dates regarding our roll-out plans will be announced through the National Provider outreach calls. The preliminary plans include publishing the draft list of ICD–10–CM codes for the HHRG by the spring of 2012, for industry review, as well as describing our testing approach for the HHRG to accommodate and process ICD–10–CM codes through the ICD–10 section of the CMS Web site. In reviewing the list of proposed ICD–10–CM codes we have identified that more time is needed to complete our review and develop a draft lists for industry review. However, the release of the draft list in early 2012 permits ample time for consideration of any comments received to be taken into consideration during our development of the CY 2013 HH PPS proposed rule. The objective of the ICD–10–CM HHRG testing is to verify that all properly formatted input data containing ICD–10–CM diagnosis codes will produce the expected output. The HHRG maintenance contractor will convert current OASIS–C records to their translated ICD–10–CM codes to determine that appropriate outputs are achieved. CMS and the HHRG maintenance contractor will review the results of the testing to determine if additional testing is required.

In addition, in April 2013, we plan to share the ICD–10–CM HHRG software with those vendors and HHAs that have agreed to serve as Beta Testers and get their feedback regarding the software's functionality. We may expand the release of this draft version by releasing the draft ICD–10 HHRG to all interested parties. We are pursuing a wider release of the draft HHRG based upon comments received requesting that the agency release the draft HHRG to all interested parties. Issues and concerns noted will be reviewed and addressed by the HHRG Maintenance Contractor in consultation with CMS.

We plan to release the final version of the ICD–10–CM HHRG in July 2013 (or earlier if feasible) to permit HHAs and their vendors sufficient time to install the software. We will strive to release the final version of the ICD–10–CM HHRG as early as possible based upon comments received from the industry requesting an earlier release date.

The following is summary of the comments we received regarding the International Classification of Diseases 10th Edition (ICD–10) Coding.

Comment: One commenter suggested that CMS should consider an earlier release of the HHRG software which was proposed to be released to Beta Testers in April 2013. In addition, the commenter suggested that CMS should publish and make available the draft HHRG available to the entire industry for their review versus the current approach of soliciting input from vendors that have volunteered to review our HHRG.

Response: We appreciate the feedback provided and are committed to developing an earlier release of the HHRG if possible and will take into consideration the suggestion concerning industry wide release of the draft October 2013 ICD–10–CM HHRG. Final details concerning our implementation plans will be released through the scheduled Provider Outreach

teleconferences and posted on the ICD–10 section of the CMS Web site.

Comment: Several commenters' suggested that CMS has committed to publishing this information in a format that crosswalks the ICD–9–CM to ICD–10 codes.

Response: We have not reached any decisions regarding the format of the code lists. Additional information concerning the format will be provided through the ICD–10–CM provider outreach teleconferences and posted on the ICD–10 section of the CMS Web site.

Comment: Several commenter's noted their appreciation of our plans to release the proposed lists of ICD–10–CM codes as early as October 1, 2011.

Response: Based upon our current progress in reviewing the code lists developed by our support contracts and resolving potential conflicts, we will be revising the language in our final regulation. The regulation will reflect that the proposed lists of ICD–10–CM codes may be made available on the ICD–10 section of the CMS Web site in the spring of 2012.

As a result of the comments, we have made modifications to the language to indicate that we will take into consideration a commenters' suggestion that all interested parties should be included in the review of the draft ICD–10–CM HHRG. A final decision will be announced in a future ICD–10 Provider Outreach teleconference and posted on the ICD–10 section of the CMS Web site. In addition, the agency will consider the suggestion surrounding the format of the ICD–10 translation list and a final decision will be announced as outlined earlier in this section. Lastly, based upon our current experience in reviewing the ICD–10–CM codes we believe that the draft code list will not be made available on the ICD–10 section of the CMS Web site until early 2012.

I. Clarification To Benefit Policy Manual Language on ''Confined to the Home'' Definition

To address the recommended changes of the Office of Inspector General (OIG) to the home health benefit policy manual, CMS proposed to clarify its ''confined to the home'' definition to more accurately reflect the definition as articulated in the Act. We proposed to move the requirements that the patient require physical assistance to leave the home or if leaving home is medically contraindicated, and that the condition of the patient should be such that there exists a normal inability to leave home and, consequently, leaving the home would require a considerable and taxing effort to the beginning of section 30.1.1 of the Chapter 7 Home Health Benefit Policy Manual as necessary requirements to be considered ''confined to the home.'' Further, we proposed to remove vague terms from section 30.1.1, such as ''generally speaking,'' to ensure clear and specific requirements for the definition. These changes present the requirements first and more closely align our policy manual with the Act to prevent confusion and promote a clearer enforcement of the statute and more definitive guidance to HHAs for compliance. As such, we proposed that section 30.1.1 begin with the following, revised language:

''30.1.1—Patient Confined to the Home

For a patient to be eligible to receive covered home health services under both Part A and Part B, the statute requires that a physician certify in all cases that the patient is confined to his/her home. For purposes of the statute, an individual shall be considered ''confined to the home'' (that is, homebound) if the following exist:

(1) The individual has a condition due to an illness or injury that restricts his or her ability to leave their place of residence except with: the aid of supportive devices such as crutches, canes, wheelchairs, and walkers; the use of special transportation; or the assistance of another person; or if leaving home is medically contraindicated.

(2) The individual does not have to be bedridden to be considered ''confined to the home''. However, the condition of the patient should be such that there exists a normal inability to leave home and, consequently, leaving home would require a considerable and taxing effort.

If the patient does in fact leave the home, the patient may nevertheless be considered homebound if the absences from the home are infrequent or for periods of relatively short duration, or are attributable to the need to receive health care treatment. Absences attributable to the need to receive health care treatment include, but are not limited to:

- Attendance at adult day centers, licensed or certified by a State or accredited to furnish adult day-care services in the State, to receive therapeutic, psychological, or medical treatment;
- Ongoing receipt of outpatient kidney dialysis; or
- The receipt of outpatient chemotherapy or radiation therapy.

Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited to furnish adult day-care services in a State, shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of an infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. It is expected that in most instances, absences from the home that occur will be for the purpose of receiving health care treatment. However, occasional absences from the home for nonmedical purposes, for example, an occasional trip to the barber, a walk around the block or a drive, attendance at a family reunion, funeral, graduation, or other infrequent or unique event would not necessitate a finding that the patient is not homebound if the absences are undertaken on an infrequent basis or are of relatively short duration and do not indicate that the patient has the capacity to obtain the health care provided outside rather than in the home.

Some examples of homebound patients that illustrate the factors used to determine whether a homebound condition exists would be: * * *''

The following is a summary of the comments we received regarding clarification to benefit policy manual language on ''confined to the home'' definition.

Comment: Commenters were not clear on whether the individual needs to meet both of the requirements of (1) needing physical assistance to leave the home or if leaving home is medically contraindicated and (2) the condition of the patient being such that there exists a normal inability to leave home and, consequently, leaving the home would require a considerable and taxing effort; or if meeting either one of the requirements is acceptable. A commenter recommended adding ''and'' at the end of statement ''1'' to clarify.

Response: As the statute is written, statement ''1'' must first be met and then statement ''2'' must also be true about a patient to be considered homebound. We found this comment compelling and will add ''and'' to the end of statement ''1'' to better match the manual guidance to the statutory language and to more clearly distinguish the requirements. Therefore, it will be clear that, to be considered ''confined to the home'' a patient must first meet one of the requirements within statement ''1'' (if the patient requires physical assistance to leave the home or if

leaving home is medically contraindicated), and the individual must then also meet both of the requirements of statement ''2'' (the condition of the patient should be such that there exists a normal inability to leave home and, consequently, leaving the home would require a considerable and taxing effort).

Comment: Several commenters suggested that CMS add clarifying language differentiating absences from the home for entertainment versus those required to preserve independent living to prevent premature disqualification of otherwise eligible patients. Commenters also stated that the vagueness of the definition forces HHAs to submit post-payment demand bills to Medicare for Medicare/Medicaid dually eligible patients, even when the patient may not be confined to the home, causing administrative burden and waste. Further, commenters suggested that CMS provide guidance about this provision to State Medicaid offices to prevent inconsistent application and better control the administrative burdens. Still other commenters recommended removing the ''confined to the home'' definition to align with Medicaid. A commenter stated that the statement about not being bedridden is confusing.

Response: We believe the comments are out of the scope of the proposed rule. We only proposed to align the manual language with the statutory language at this time. Further clarification of the definition would need to be proposed through the rulemaking process. However, we will continue to work with the industry to better inform and educate about the requirements of the benefit.

Comment: We received comments suggesting that CMS leave the current definition in place so as to prevent the definition from becoming narrower and arbitrary. Further, commenters stated that the need for aid of a supportive device, the use of special transportation or the assistance of another person does not necessarily entail a normal inability to leave home and requiring a considerable and taxing effort to do so, which could lead to further misapplication of the benefit.

Response: We proposed to align the manual language to better mirror the statutory language with regard to the ''confined to the home'' definition, thereby intending to make the definition clearer and more consistent. However, we do not believe that the proposed clarification makes the homebound definition narrower and more arbitrary. Rather, the clarification moves the two requirements (one of which must be met) to the beginning of the manual guidance before further description of examples and exceptions.

Comment: We received support for the proposed clarification, maintaining that the clarification better addresses providers' concerns about how patients' occasional absences from the home affect their homebound status and eligibility for the home health benefit.

Response: We thank the commenters for their support.

As a result of the comments, we will finalize the proposed clarification of the manual language with the following exceptions: We are adding ''and'' to the end of statement ''1'' of the two requirements for homebound status to more clearly convey that to be considered ''confined to the home,'' the patient first must meet one of the following two requirements. The patient must either need physical assistance leaving the home or leaving is medically contraindicated. If the patient meets one of those requirements, the patient must then also meet the two additional requirements as follows: There must also be a normal inability to leave home and leaving the home must require a considerable and taxing effort.

III. Collection of Information Requirements

This document does not impose any new information collection and recordkeeping requirements. The information collection requirements discussed in proposed § 424.22 are currently approved under OMB control number 0938–1083. The information collection requirements discussed in proposed § 484.250, the OASIS–C and Home Health Care CAHPS, are currently approved under OMB control numbers 0938–0760 and 0938–1066, respectively. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

IV. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule has been designated an ''economically significant'' rule under section 3(f)(1) of Executive Order 12866 and a major rule under the Congressional Review Act. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Statement of Need

This final rule adheres to the following statutory requirements. Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Act, entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare. In addition, section 1895(b)(3)(A) of the Act requires (1) the computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited CR data available to the Secretary, and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services

furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(5) of the Act, as amended by section 3131 of the Affordable Care Act, gives the Secretary the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Also, section 3131 of the Affordable Care Act requires that HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) for episodes and visits ending on or after April 1, 2010, and before January 1, 2016, receive an increase of 3 percent the payment amount otherwise made under section 1895 of the Act.

C. Overall Impact

The update set forth in this final rule applies to Medicare payments under HH PPS in CY 2012. Accordingly, the following analysis describes the impact in CY 2012 only. We estimate that the net impact of the proposals in this rule is approximately $430 million in CY 2012 savings. The $430 million impact due to the proposed CY 2012 HH PPS rule reflects the distributional effects of an updated wage index ($10 million increase) plus the 1.4 percent HH PPS payment update percentage ($280 million increase), for a total increase of $290 million. The 3.79 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($720 million decrease) plus the combined wage index and HH PPS payment update percentage ($290 million increase) results in a total savings of $430 million in CY 2012. The $430 million in savings is reflected in the first row of column 3 of Table 26 as a 2.31 percent decrease in expenditures when comparing the current CY 2011 HH PPS to the CY 2012 HH PPS.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any 1 year. For the purposes of the RFA, our updated data show that approximately 98 percent of HHAs are considered to be small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. The Secretary has determined that this final rule would have a significant economic impact on a substantial number of small entities. We define small HHAs as those with total revenues of $13.5 million or less in any 1 year. Analysis reveals a 2.62 percent decrease in estimated payments to small HHAs in CY 2012.

A discussion on the alternatives considered is presented in section V.E. below. The following analysis, with the rest of the preamble, constitutes our final RFA analysis.

In this final rule, we have stated that our analysis reveals that nominal case-mix continues to grow under the HH PPS. Specifically, nominal case-mix has grown from the 17.45 percent growth identified in our analysis for CY 2011 rulemaking to 19.03 percent for this year's rulemaking (see further discussion in sections II.A. and II.B.). Nominal case-mix is an increase in case-mix that is not due to an increase in patient acuity. We believe it is appropriate to reduce the HH PPS rates to account for the increase in nominal case-mix, so as to move towards more accurate payment for the delivery of home health services. Our analysis shows that smaller HHAs are impacted slightly more than are larger HHAs by the provisions of this rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of 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. This final rule applies only to HHAs. Therefore, the Secretary has determined that this final rule would not have a significant economic impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This final rule is not anticipated to impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $136 million or more.

D. Detailed Economic Analysis

This final rule sets forth updates to the HH PPS rates contained in the CY 2011 HH PPS final rule. The impact analysis of this final rule presents the estimated expenditure effects of policy changes proposed in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on Medicare claims from 2009. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to inaccuracies resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Comment: A commenter recommended that we modify our impact analysis approach. The commenter states that the proposed rule simply quantifies the percentage cut in rates on a geographic basis and broadly evaluates the impact of the changes on home health categories such as freestanding, hospital-based, nonprofits, and urban and rural providers.

Response: We believe that State-level impacts would be misleading unless we also provided break-outs of rural-verses-urban and ownership status of providers within the State. While we believe that our impact analysis is reflective of how HHAs are impacted by the provisions of this rule in that we provide impacts by type of facility, urban/rural, regions and other areas of the country, and facility size, we did perform a State-level analysis as the commenters suggested. That analysis shows similar results in that States estimated to see the more significant negative impacts, as a result of the provisions of this rule, are located in those areas of the country that are

estimated to see the most significant negative impact (that is, East South Central, West South Central, South Atlantic, East North Central, and Mountain). Analysis shows, for the States hit hardest in these areas of the country, not-for-profit HHAs and HHAs in rural areas are somewhat protected by provisions of this rule such as the redistributional effects of decreasing case-mix weights for high therapy cases and increasing case-mix weights for low and non-therapy cases, and the 3 percent rural add-on update.

In addition, for States in which significant negative impacts exist for non-profit and/or rural HHAs, we performed a preliminary analysis using 2009 freestanding Medicare cost report data (MCR). This analysis indicates a more than adequate volume of providers with margins strong enough to absorb the payment reductions to account for nominal case-mix growth. For example, our State-level analysis shows that Tennessee is the hardest hit State by the provisions of this rule, and is estimated to see a −6.18 percent decrease in payments from CY 2011 to CY 2012. While the impact on rural and not-for-profit HHAs in Tennessee is somewhat lessened for the reasons described above, they are still estimated to see significant decreases in payments in CY 2012. However, our preliminary analysis of 2009 freestanding MCR data indicate that Tennessee providers, including rural and not-for-profit HHAs, are experiencing margins which would enable them to absorb the reductions. Our analysis shows similar results in several other States in these areas of the country which are estimated to see relatively significant negative impacts as a result of the provisions of this rule. As such, since our analysis of freestanding HHA MCR data shows strong positive margins in these areas of the country, we believe that the provisions of this rule, should not lead to access to access to care issues. That being said, we would like to note that predicting agencies' margins (particularly, the increase in the number of agencies with negative margins) as a result of the provisions of this rule is difficult to do because many agencies may find ways to cut costs so that margins remain strong. This is supported by the fact that Medicare margins have remained strong since PPS implementation even with reductions in payments similar to the reduction being finalized in this final rule. We also understand that our analyses has limitations since it is based on 2009 MCR data, the latest complete MCR data at the time of preparation of this rulemaking. However, in their March 2011 Report to Congress, MedPAC projected an average of 14.5 percent margins for HHAs in 2011, when taking into account various payment adjustments such as the CY 2011 payment reduction for nominal case-mix growth.

To supplement the above described analysis, similar to analysis that we have performed in previous rulemaking when the issue of ''access to care'' was a concern, we also looked at estimated margins of HHAs, by county after estimating the impact of the provisions of this rule. We performed this analysis for the purposes of possibly identifying potential access risks associated with this rule. In particular, we looked to identify whether the finalized policies of this rule might increase the number of counties not served by at least one HHA with a positive margin. The analysis demonstrated that the occurrence of such counties was very infrequent. Looking further, we also identified that the counties we identified as not having at least one HHA with a positive margin did have at least one HHA in a contiguous county with a positive margin, or at a minimum it was determined that the provisions of this rule did not create a scenario where, for a county without at least one HHA with a positive margin, that county did not have a contiguous county with at least one HHA with a positive margin.

As we have previously described, our preliminary analyses indicate HH industry margins are sufficient to support a rate reduction of this size. We note that margin analysis alone is not an accurate access to care indicator. Many factors affect whether agencies with low or negative margin would close or not, such as the organization's mission, the availability of alternate sources of funding, and whether or not the organization is embedded in a larger one. We would also like to note that the number of agencies continues to grow, totaling around 11,000 in 2010, a 65 percent increase since 2002 and that access to care was not found to be inadequate in 2002, when the number of agencies nationally was much lower than it is today. Thus, given these reasons along with our described analysis above we do not believe that the finalized policies in this rule should result in access to care issues. At the core of our policies is our objective to pay appropriately for the efficient delivery of reasonable and necessary home health services. As always, we will, of course, continue to monitor for unintended consequences of the final policies of this rule.

Table 26 represents how HHA revenues are likely to be affected by the policy changes proposed in this rule. For this analysis, we used linked home health claims and OASIS assessments; the claims represented a 20-percent sample of 60-day episodes occurring in CY 2009. The first column of Table 26 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the payment effects of the wage index only. The third column shows the payment effects of all the proposed policies outlined earlier in this rule. For CY 2012, the average impact for all HHAs due to the effects of the wage index is a 0.03 percent increase in payments. The overall impact for all HHAs, in estimated total payments from CY 2011 to CY 2012, is a decrease of approximately 2.31 percent.

As shown in Table 26, the combined effects of all of the changes vary by specific types of providers and by location. Rural and voluntary non-profit agencies fare considerably better than urban and proprietary agencies as a result of the proposed provisions of this rule. We believe this is due mainly to the distributional effects of the recalibration of the case-mix weights as described in section II.A of the proposed rule. Essentially, these impacts suggest that under the current case-mix system, rural and voluntary non-profit agencies bill less for high therapy episodes than do urban and proprietary agencies.

There is not much difference in the estimated impact (2.79 to 2.98 percent decreases) on HHAs when looking at the facility size based on the number of first episodes, with the lone exception being that the largest HHAs are estimated to see a 1.88 percent decrease in payments in CY 2012. There is considerable variation in the estimated impacts depending on the region of the country in which the HHA is located. HHAs in the North are estimated to see a 1.31 percent increase in payments while HHAs in other regions are estimated to receive between a 0.09 percent increase in payments (West) and a 3.83 percent decrease (South). HHAs in the New England, Mid Atlantic, and Pacific areas of the country are estimated to receive increases of 1.37 percent, 1.27 percent and 1.33 percent, respectively. However, HHAs in the South Atlantic, East South Central, West South Central, East North Central, West North Central, and Mountain areas of the country are estimated to receive decreases in payments ranging from 0.50 percent to 4.78 percent. Freestanding HHAs are estimated to see a 2.73 percent decrease in payments while facility-based HHAs

are estimated to see a 0.53 percent increase in payments. Voluntary not-for-profit HHAs are estimated to see a 0.52 percent increase in payments, while for-profit HHAs are estimated to see a 3.49 percent decrease in payments in CY 2012. Rural agencies are estimated to see a 1.52 percent decrease in payments in CY 2012, while urban agencies are estimated to see a 2.45 percent decrease in payments. Rural, freestanding, voluntary not-for-profit HHAs are estimated to see a 1.56 percent increase in payments. As described above, we believe the considerable variation in some of the estimated impacts is due mainly to the distributional effects of the recalibration of the case-mix weights.

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TABLE 26: Home Health Agency Policy Impacts for CY 2012, by Facility Type and Area of the Country

Group	Comparisons	Impact of all CY 2012 Policies[1] (Percent)
	Percent change due to the effects of the updated wage index (Percent)	
All Agencies	0.03	-2.31
Type of Facility		
Free-Standing/Other Vol/NP	0.20	0.30
Free-Standing/Other Proprietary	0.02	-3.51
Free-Standing/Other Government	-0.23	-1.33
Facility-Based Vol/NP	-0.09	0.87
Facility-Based Proprietary	-0.02	-1.88
Facility-Based Government	-0.12	0.05
Subtotal: Freestanding	0.05	-2.73
Subtotal: Facility-based	-0.09	0.53
Subtotal: Vol/NP	0.09	0.52
Subtotal: Proprietary	0.02	-3.49
Subtotal: Government	-0.17	-0.65
Type of Facility (Rural * Only)		
Free-Standing/Other Vol/NP	1.82	1.56
Free-Standing/Other Proprietary	0.13	-3.09
Free-Standing/Other Government	-0.28	-0.74
Facility-Based Vol/NP	-0.14	0.80
Facility-Based Proprietary	-0.29	-1.44
Facility-Based Government	-0.15	0.15
Type of Facility (Urban * Only)		
Free-Standing/Other Vol/NP	-0.04	0.11
Free-Standing/Other Proprietary	0.00	-3.58
Free-Standing/Other Government	-0.16	-2.13
Facility-Based Vol/NP	-0.07	0.90
Facility-Based Proprietary	0.17	-2.18
Facility-Based Government	-0.08	-0.06
Type of Facility (Urban* or Rural*)		
Rural	0.27	-1.52
Urban	-0.01	-2.45
Facility Location: Region*		
North	0.56	1.31

Group	Comparisons	Impact of all CY 2012 Policies[1] (Percent)
	Percent change due to the effects of the updated wage index (Percent)	
South	-0.11	-3.83
Midwest	-0.28	-2.72
West	0.39	0.09
Outlying	0.23	-1.87
Facility Location: Area of the Country		
New England	1.23	1.37
Mid Atlantic	0.18	1.27
South Atlantic	-0.35	-3.94
East South Central	-0.63	-4.78
West South Central	0.31	-3.36
East North Central	-0.41	-3.21
West North Central	0.32	-0.50
Mountain	0.23	-2.71
Pacific	0.46	1.33
Outlying	0.23	-1.87
Facility Size: (Number of First Episodes)		
< 19	0.13	-2.93
20 to 49	0.15	-2.98
50 to 99	0.17	-2.80
100 to 199	0.05	-2.79
200 or More	-0.03	-1.88
Facility Size: (estimated total revenue)		
Small (estimated total revenue <= $13.5 million)	0.03	-2.62
Large (estimated total revenue > $13.5 million)	0.05	-0.92

Note: Based on a 20 percent sample of CY 2009 claims linked to OASIS assessments.
*Urban / rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

REGION KEY:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; **Middle Atlantic**=Pennsylvania, New Jersey, New York; **South Atlantic**=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; **East North Central**=Illinois, Indiana, Michigan, Ohio, Wisconsin; **East South Central**=Alabama, Kentucky, Mississippi, Tennessee; **West North Central**=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; **West South Central**=Arkansas, Louisiana, Oklahoma, Texas; **Mountain**=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; **Pacific**=Alaska, California, Hawaii, Oregon, Washington; **Outlying**=Guam, Puerto Rico, Virgin Islands

[1] Percent change due to the effects of the updated wage index, the 1.4 percent proposed HH PPS payment update percentage, the 3.79 percent case-mix adjustment, and the 3 percent rural add-on.

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E. Alternatives Considered

As described in section V.C. above, implementing the case-mix adjustment for CY 2012 along with the HH PPS payment update percentage and the updated wage index, the aggregate impact would be a net decrease of $430 million in payments to HHAs, resulting from a $290 million increase due to the updated wage index and the HH PPS payment update percentage and a $720 million reduction from the 3.79 percent case-mix adjustment. If we were to not implement the case-mix adjustment for CY 2012, Medicare would pay an estimated $720 million more to HHAs in CY 2012, for a net increase in payments

to HHAs in CY 2012 of $290 million (HH PPS payment update percentage and updated wage index). We believe that not implementing a case-mix adjustment, and paying out an additional $720 million to HHAs when those additional payments are not reflective of HHAs treating sicker patients, would not be in line with the intent of the HH PPS, which is to pay accurately and appropriately for the delivery of home health services to Medicare beneficiaries. If we were to implement a 5.06 case-mix adjustment for CY 2012 along with the HH PPS payment update percentage and the updated wage index, the aggregate impact would be a net decrease of $670 million in payment to HHAs, resulting from a $290 million increase due to the updated wage index and the HH PPs payment update percentage and a $960 million reduction from a 5.06 percent case-mix adjustment. As we stated in our response to comments in Section II.A. of this rule, we are sensitive to the challenges HHAs may have had in adapting to the Affordable Care Act provisions which were implemented in CY 2011, such as the face-to-face encounter provision. We also agree that the Affordable Care Act provisions and the CY 2011 therapy changes described by commenters likely required HHAs to incorporate process changes to adhere to these new requirements. As such, we are finalizing a phased-in implementation of the 5.06 percent reduction over 2 years, as some commenters suggested. We believe that by phasing-in the reductions over CY 2012 and CY 2013, we allow HHAs an opportunity to adopt process efficiencies associated with the CY 2011 mandates prior to imposing the full 5.06 percent payment reduction.

Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth, changes in case-mix that are unrelated to actual changes in patient health status. We are committed to monitoring the accuracy of payments to HHAs, which includes the measurement of the increase in nominal case-mix, which is an increase in case-mix that is not due to patient acuity. As discussed in section II.A. of this rule, we have determined that there is a 19.03 percent nominal case-mix change from 2000 to 2009. To account for the remainder of the 19.03 percent residual increase in nominal case-mix beyond that which was has been accounted for in previous payment reductions (2.75 percent in CY 2008 through CY 2010 and 3.79 percent in CY 2011),), as described in the proposed rule and restated in Section II.A. of this rule, we have estimated that the percentage reduction to the national standardized 60-day episode rates for nominal case-mix change for CY 2012 would be 5.06 percent. As described in a comment and response in Section II.A. of this rule, commenters expressed concern that the proposed cut of 5.06 percent would impede access to home health care. Some commenters stated that rural areas would be hit the hardest by a case-mix reduction to payments. One commenter described his analysis which concluded that over 55 percent of agencies would be forced into negative margins as a result of the reductions. The commenter further stated that six States and Guam would have more than 70 percent of their agencies with negative margins in CY 2012 as a result of the proposed 5.06 percent reduction. In response to these comments, we noted that the effects of the payment update, the wage index update, and the revision of case-mix weights must also be taken into account when assessing the impact of a 5.06 percent reduction and that we believe the commenter did not do consider these in his analysis. We described our analysis which showed that the revision of the case-mix weights would have a re-distributional effect on HH PPS payments which benefit rural and non-profit HHAs, and HHAs in certain areas of the country. Our analysis showed that some rural and non-profit HHAs, as well as HHAs in certain areas of the country, were estimated to see an increase in payments in CY 2012, even with a 5.06 percent nominal case-mix reduction. We described our analysis of the combined effects of all the policies in the proposed rule, our preliminary analysis of Medicare CRs, and MedPAC's margin projections, and we concluded that Medicare margins are strong enough to absorb a 5.06 percent reduction to account for growth in nominal case-mix without impeding access. However, for the reasons described in section II.A. in this final rule, we are phasing-in the implementation of a 5.06 percent reduction over 2 years, finalizing a 3.79 percent reduction in CY 2012 and a 1.32 percent reduction in CY 2013.

We believe that the alternative of not implementing a case-mix adjustment to the payment system in CY 2012 to account for the increase in case-mix that is not real would be detrimental to the integrity of the PPS. As discussed in section II.A. of this rule, because nominal case-mix continues to grow (about 1 percent each year in 2006 and 2007, 4 percent in 2008, and 2 percent in 2009), and thus to date we have not accounted for all the increase in nominal case-mix growth, we believe it is appropriate to reduce HH PPS rates now, thereby paying more accurately for the delivery of home health services under the Medicare home health benefit. The other reduction to HH PPS payments, a 1.0 percentage point reduction to the proposed CY 2012 home health market basket update, is discussed in this rule and is not discretionary as it is a requirement in section 1895(b)(3)(B)(vi) of the Act (as amended by the Affordable Care Act).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 27, we have prepared an accounting statement showing the classification of the transfers associated with the provisions of this final rule. This table provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this final rule.

TABLE 27: Accounting Statement: Classification of Estimated Transfers, from the CY 2011 HH PPS to the CY 2012 HH PPS

Category	Transfers
Annualized Monetized Transfers	-$430 million
From Whom to Whom?	Federal Government to HH providers

G. Conclusion

In conclusion, we estimate that the net impact of the proposals in this rule is approximately $430 million in CY 2012 savings. The $430 million impact to the final CY 2012 HH PPS reflects the distributional effects of an updated wage index ($10 million increase), the 1.4 percent HH PPS payment update

percentage ($280 million increase), and the 3.79 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($720 million decrease). This analysis, together with the remainder of this preamble, provides a Regulatory Impact Analysis.

V. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it would not have substantial direct effects on the rights, roles, and responsibilities of States, local or Tribal governments.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

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

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Home Health Services Under Hospital Insurance

■ 2. Section 409.42 is amended by revising paragraph (c)(4) to read as follows:

§ 409.42 Beneficiary qualifications for coverage of services.

* * * * *

(c) * * *

(4) Occupational therapy services in the current and subsequent certification periods (subsequent adjacent episodes) that meet the requirements of § 409.44(c) initially qualify for home health coverage as a dependent service as defined in § 409.45(d) if the beneficiary's eligibility for home health services has been established by virtue of a prior need for intermittent skilled nursing care, speech-language pathology services, or physical therapy in the current or prior certification period. Subsequent to an initial covered occupational therapy service, continuing occupational therapy services which meet the requirements of § 409.44(c) are considered to be qualifying services.

* * * * *

■ 3. Section 409.44 is amended by revising paragraphs (c) introductory text, (c)(2)(i)(C)(*2*), and (c)(2)(i)(D)(*2*) to read as follows:

§ 409.44 Skilled services requirements.

* * * * *

(c) *Physical therapy, speech-language pathology services, and occupational therapy.* To be covered, physical therapy, speech-language pathology services, and occupational therapy must satisfy the criteria in paragraphs (c)(1) and (2) of this section.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is scheduled to occur close to the 14th Medicare-covered therapy visit, but no later than the 13th Medicare-covered therapy visit.

(D) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is scheduled to occur close to the 20th Medicare-covered therapy visit, but no later than the 19th Medicare-covered therapy visit.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 4. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Certification and Plan Requirements

■ 5. Section 424.22 is amended by revising paragraphs (a)(1)(v) introductory text and (a)(1)(v)(A) to read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(a) * * *

(1) * * *

(v) The physician responsible for performing the initial certification must document that the face-to-face patient encounter, which is related to the primary reason the patient requires home health services, has occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care by including the date of the encounter, and including an explanation of why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter, respectively. The face-to-face encounter must be performed by the certifying physician himself or herself, by a nurse practitioner, a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) who is working in collaboration with the physician in accordance with State law, a certified nurse midwife (as defined in section 1861(gg)of the Act) as authorized by State law, a physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the physician, or, for patients admitted to home health immediately after an acute or post-acute stay, the physician who cared for the patient in an acute or post-acute facility and who has privileges at the facility. The documentation of the face-to-face patient encounter must be a separate and distinct section of, or an addendum to, the certification, and must be clearly titled, dated and signed by the certifying physician.

(A) If the certifying physician does not perform the face-to-face encounter himself or herself, the nonphysician practitioner or the physician who cared for the patient in an acute or post-acute facility performing the face-to-face encounter must communicate the clinical findings of that face-to-face patient encounter to such certifying physician.

* * * * *

PART 484—HOME HEALTH SERVICES

■ 6. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

Subpart E—Prospective Payment System for Home Health Agencies

■ 7. Section 484.250 is revised to read as follows:

§ 484.250 Patient assessment data.

(a) *Data submission.* An HHA must submit the following data to CMS:

(1) The OASIS–C data described at § 484.55(b)(1) of this part for CMS to administer the payment rate methodologies described in §§ 484.215, 484.230, and 484.235 of this subpart, and to meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act.

(2) The Home Health Care CAHPS survey data for CMS to administer the payment rate methodologies described in § 484.225(i) of this subpart, and to meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act.

(b) *Patient count.* An HHA that has less than 60 eligible unique HHCAHPS patients annually must annually submit to CMS their total HHCAHPS patient count to CMS to be exempt from the HHCAHPS reporting requirements for a calendar year period.

(c) *Survey requirements.* An HHA must contract with an approved, independent HHCAHPS survey vendor to administer the HHCAHPS Survey on its behalf.

(1) CMS approves an HHCAHPS survey vendor if such applicant has been in business for a minimum of 3 years and has conducted surveys of individuals and samples for at least 2 years.

(i) For HHCAHPS, a ''survey of individuals'' is defined as the collection of data from at least 600 individuals selected by statistical sampling methods and the data collected are used for statistical purposes.

(ii) All applicants that meet these requirements will be approved by CMS.

(2) No organization, firm, or business that owns, operates, or provides staffing for a HHA is permitted to administer its own Home Health Care CAHPS (HHCAHPS) Survey or administer the survey on behalf of any other HHA in the capacity as an HHCAHPS survey vendor. Such organizations will not be approved by CMS as HHCAHPS survey vendors.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: October 13, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 25, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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FEDERAL REGISTER

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Part III

The President

Proclamation 8743—Military Family Month, 2011
Proclamation 8744—National Adoption Month, 2011
Proclamation 8745—National Alzheimer's Disease Awareness Month, 2011
Proclamation 8746—National Diabetes Month, 2011
Proclamation 8747—National Entrepreneurship Month, 2011
Proclamation 8748—National Family Caregivers Month, 2011
Proclamation 8749—National Native American Heritage Month, 2011

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Presidential Documents

Title 3—

The President

Proclamation 8743 of November 1, 2011

Military Family Month, 2011

By the President of the United States of America

A Proclamation

With every step we take on American soil, we tread on ground made safer for us through the invaluable sacrifices of our service members and their families. During Military Family Month, we celebrate the exceptional service, strength, and sacrifice of our military families, whose commitment to our Nation goes above and beyond the call of duty.

Just as our troops embody the courage and character that make America's military the finest in the world, their family members embody the resilience and generosity that make our communities strong. They serve with heroism in their homes and neighborhoods while they are without the comfort of having loved ones nearby. Day after day, week after week, spouses resolutely accomplish the work of two parents, sons and daughters diligently keep up with homework and activities, and parents and grandparents patiently wait for news of their child and grandchild's safe return. To these families, and to those whose service members never come home, we bear a debt that can never be fully repaid.

As Americans, we are at our best when we honor and uphold our obligations to one another and to those who have given so much to our country. Earlier this year, First Lady Michelle Obama and Dr. Jill Biden challenged all Americans to serve those who sacrifice in our name with the Joining Forces initiative. Joining Forces strives to enlist support for our men and women in uniform and our veterans not only when they are away at war, but at every stage of their lives. My Administration is dedicated to doing more for our military families by enhancing learning opportunities for our military children, championing our military spouses as they advance their careers and education, and providing better mental health counseling to heal the wounds left in war's wake.

Our service members swore an oath to protect and defend, and with each step we take on this land we cherish, we remember our steadfast promise to protect the well-being of the family members they hold dear. Every act of kindness we can offer helps cultivate a culture of support for our military families, and I encourage each American to make a difference in the lives of these patriots.

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 November 2011 as Military Family Month. I call on all Americans to honor military families through private actions and public service for the tremendous contributions they make in the support of our service members and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



[FR Doc. 2011–28838
Filed 11–3–11; 11:15 am]
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Presidential Documents

Proclamation 8744 of November 1, 2011

National Adoption Month, 2011

By the President of the United States of America

A Proclamation

As a Nation, one of our highest responsibilities is to ensure the health and well-being of our children. With generous hearts and open minds, we strive to make sure all children grow up knowing they have a family that shares with them the warmth, security, and unconditional love that will help them succeed. And yet, more than 100,000 children in America await this most basic support, and still more children abroad live without families. During National Adoption Month, we celebrate the acts of compassion and love that unite children with adoptive families, and we rededicate ourselves to the essential task of providing all children with the comfort and safety of a permanent home.

The decision to adopt a child has brought profound joy and meaning into the lives of Americans across our country. Parents are moved to adopt for reasons as unique and varied as the children they embrace, but they are unified by the remarkable grace of their acts. Adoptive families come in all forms. With so many children waiting for loving homes, it is important to ensure that all qualified caregivers are given the opportunity to serve as adoptive parents, regardless of race, religion, sexual orientation, or marital status.

My Administration remains steadfast in our support of adoptive families and children in need of homes. Earlier this year, I signed the Child and Family Services Improvement and Innovation Act, which reauthorizes child welfare programs and makes new provisions to help reduce the amount of time young children are without permanent families. I also signed the Healthy, Hunger-Free Kids Act to provide balanced, nutritious meals to all children in the foster care system. Last year, during National Adoption Month, I signed the International Adoption Simplification Act, which removed unnecessary regulations and barriers to international adoption. These efforts come in addition to the Adoption Tax Credit, which was extended and expanded as part of the Affordable Care Act to make adoption more accessible to American families. Through these key pieces of legislation, my Administration is moving forward with our commitment to stand with youth in foster care and find new ways to encourage adoption.

Adoption has become a part of many Americans' lives and has contributed to the character of our Nation. As parents and as family members, it is our task to do all we can to give our children the very best. In caring for our youth and putting them before ourselves, we make a lasting investment not only in their future, but also in the prosperity and strength of our Nation in the years to come. This month and throughout the year, let us recommit to ensuring every child is given the sustaining love of family, the assurance of a permanent home, and the supportive upbringing they deserve.

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 November 2011 as National Adoption Month. I encourage all Americans to observe this month by answering the call to find homes for every child in America

in need of a permanent and caring family, and to support the families who care for them.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



[FR Doc. 2011–28839
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Presidential Documents

Proclamation 8745 of November 1, 2011

National Alzheimer's Disease Awareness Month, 2011

By the President of the United States of America

A Proclamation

For millions of Americans, the heartbreak of watching a loved one struggle with Alzheimer's disease is a pain they know all too well. Alzheimer's disease burdens an increasing number of our Nation's elders and their families, and it is essential that we confront the challenge it poses to our public health. During National Alzheimer's Disease Awareness Month, we stand united in our commitment to improve care for Alzheimer's patients, identify new therapies for the disease, and support all those whose lives have been touched by this tragic ailment.

As we confront the challenges of supporting an aging population, my Administration is dedicated to advancing research that brings us closer to understanding and treating Alzheimer's disease. In January, I signed the National Alzheimer's Project Act, which calls for an aggressive and coordinated national strategy to enable earlier diagnosis of the disease, improve strategies for long-term care, and accelerate the search for a cure by promoting collaboration among researchers. The Act also establishes an Advisory Council on Alzheimer's Research, Care, and Services, which brings together some of our Nation's foremost experts on Alzheimer's disease to ensure our efforts do the most good for patients and their families.

My Administration, in collaboration with a variety of private and public partners, is making headway in the fight to eliminate Alzheimer's disease. Research funded by the National Institutes of Health has identified genetic markers that may indicate increased risk of developing Alzheimer's, and researchers across our Nation and around the world continue to shed new light on the disease. These discoveries bring us closer than ever to lifting the immense physical, emotional, and financial burdens that Alzheimer's disease imposes upon aging Americans and their families.

This month, we remember the Americans we have lost to Alzheimer's disease, and we stand with the individuals and families who have felt the pain and sorrow brought in its wake. In light of their hardship, let us make every effort to support the families, caregivers, medical professionals, and researchers who improve the lives of those affected by this disease. We join them in looking toward a future free of Alzheimer's disease, and we recommit to making that vision a reality.

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 November 2011 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to learn more about Alzheimer's disease and to offer their support to the individuals living with this disease and to their caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



[FR Doc. 2011–28840
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Presidential Documents

Proclamation 8746 of November 1, 2011

National Diabetes Month, 2011

By the President of the United States of America

A Proclamation

Though we have made substantial progress in combating diabetes, the number of Americans burdened by this disease continues to grow at a rapid pace. During National Diabetes Month, we commemorate the work of caregivers, researchers, medical professionals, and advocates who lead the fight against diabetes, and we recommit to educating ourselves and our communities about how we can manage, treat, and prevent this disease.

Diabetes can have a devastating impact on the health and well-being of those it affects, and it remains an urgent threat to our public health. In addition to immediate health issues, people with diabetes are more likely to suffer from complications such as heart attacks, strokes, high blood pressure, or kidney failure. Most often diagnosed in young people, Type 1 diabetes inhibits the body's ability to produce insulin and can be managed with insulin injections, diet, and exercise. Research suggests that, unlike Type 1 diabetes, it is possible to prevent or delay Type 2 diabetes. Yet, Type 2 diabetes accounts for 90 percent of diabetes cases in the United States, and it continues to grow more prevalent in adults and children alike. It is essential that all Americans take steps to assess and reduce their risk of developing Type 2 diabetes by adopting a healthy diet, exercising regularly, and consulting a medical professional about their individual needs and risk factors.

My Administration remains committed to advancing diabetes education, research, prevention, and treatment. The National Diabetes Education Program—a partnership between the National Institutes of Health, the Centers for Disease Control and Prevention, and more than 200 public and private organizations—works to improve outcomes for people living with diabetes, encourage early diagnosis, and prevent or delay the onset of Type 2 diabetes. In addition, the National Diabetes Prevention Program serves as part of a coordinated national strategy to reduce the prevalence of Type 2 diabetes by encouraging healthy eating habits and offering group support for adults who are striving to lose weight and get physically active. The Affordable Care Act ensures that all Americans joining a new health plan can receive recommended preventive services, like diabetes screenings, with no out-of-pocket costs. And, by 2014, Americans will not be denied insurance coverage because they have diabetes or other pre-existing conditions.

The increase in Type 2 diabetes among our Nation's children is linked to the rise of childhood obesity. To end the epidemic of childhood obesity within a generation, First Lady Michelle Obama's *Let's Move!* initiative is inspiring children to be physically active and empowering parents and caregivers to make healthy choices for their families. By encouraging our sons and daughters to develop healthy habits today, we help ensure they have a brighter, healthier tomorrow.

During National Diabetes Month, we remember those we have lost to diabetes, and we stand with the millions of Americans who have been touched by its consequences. As a Nation, it is our task to reduce the incidence of this illness and offer care and support to those it affects. This month

and throughout the year, let us continue to pursue a diabetes-free future for our children, our families, and all Americans.

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 November 2011 as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, research institutions, and other interested groups to join in activities that raise diabetes awareness and help prevent, treat, and manage the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



[FR Doc. 2011–28841
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Presidential Documents

Proclamation 8747 of November 1, 2011

National Entrepreneurship Month, 2011

By the President of the United States of America

A Proclamation

From inventing the traffic light to developing the artificial heart, our Nation's doers, makers, and entrepreneurs have proven time and again that, in America, it takes only a single good idea and the courage to pursue it to change history. In fulfilling this simple promise, these visionaries play a critical role in sparking new industries, expanding our economy, and generating new job growth across our country. This month, we celebrate the remarkable and everyday successes of our entrepreneurs and innovators, and we reaffirm our commitment to ensuring that our economy remains the engine and the envy of the world.

Earlier this year, my Administration launched the Startup America initiative, which accelerates the success of our entrepreneurs by unlocking access to capital, cutting red tape, and expanding mentorship and educational opportunities. The initiative works to improve the climate for all high-growth companies, and includes specific provisions to bring expertise and services to entrepreneurial scientists, students, immigrants, and veterans. Startup America also coordinates action across the Federal Government to bolster private investment in early-stage companies, helping ensure that our best ideas have a chance to get off the ground and into the marketplace. By making it faster and easier for entrepreneurs to turn new ideas into new businesses and new jobs, we are building an innovation economy that will propel our Nation into the future.

To fast-track our startups and enable them to bring products to market more quickly, I signed the America Invents Act in September of this year. This essential legislation will help entrepreneurs and inventors secure a patent three times faster than they can today, drastically cutting the time it takes to roll out novel technologies and products. The Act will also improve the quality of our patents and do more to give entrepreneurs the protection and confidence they need to attract investment, grow their businesses, and hire more workers. We stand at a moment when our Nation's economy must become more dynamic and flexible than ever before, and these reforms will help us meet this challenge.

My Administration is also working to create new opportunities for collaboration within the private sector. Run by and for entrepreneurs, the independent Startup America Partnership has assembled an extensive network of mentors, advisors, investors, and established corporations to share strategic assets with our country's next great innovators. This movement harnesses the agility, intelligence, and ingenuity that has powered our success for generations and uses it to fuel our growth in rapidly evolving, global markets.

The task of making America competitive throughout the 21st century is a job for all of us. By cultivating innovation on our college and university campuses, we can inspire the next generation of entrepreneurial leaders. With the help of experienced entrepreneurs and companies, and through events like Global Entrepreneurship Week, which begins on November 14, we can ensure our startups have access to the resources, connections, and partnerships that will promote their success. To encourage great ideas in all parts of our country, our lending institutions, foundations, and investors

can finance vibrant entrepreneurial ecosystems that extend to our rural and underserved communities. By pooling our talents and investing in the creativity and imagination of our people, we can move forward with the spirit of hope and ambition that has defined our past and will drive our Nation in the years to come.

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 November 2011 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



[FR Doc. 2011–28842
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Presidential Documents

Proclamation 8748 of November 1, 2011

National Family Caregivers Month, 2011

By the President of the United States of America

A Proclamation

Across our country, millions of family members, neighbors, and friends provide care and support for their loved ones during times of need. With profound compassion and selflessness, these caregivers sustain American men, women, and children at their most vulnerable moments, and through their devoted acts, they exemplify the best of the American spirit. During National Family Caregivers Month, we pay tribute to the individuals throughout America who ensure the health and well-being of their relatives and loved ones.

Many of our Nation's family caregivers assist seniors and people with disabilities to help improve their quality of life. Their efforts help deliver short-term comfort and security, facilitate social engagement, and help individuals stay in their homes and communities as long as possible. This heroic work is often done while caregivers balance other commitments to their families, jobs, and communities. As these remarkable individuals put their own lives on hold to tend to their family members, it is our responsibility to ensure they do not have to do it alone.

To ease the emotional and financial burdens that can accompany caregiving, my Administration has striven to support family caregivers for the crucial role they perform. Vice President Joe Biden's Middle Class Task Force has focused on the importance or investing in respite care, counseling, and training for individuals who serve aging Americans. These initiatives would give family caregivers a leg up as they continue to support their aging loved ones.

One of our Nation's greatest responsibilities is to ensure our veterans, their families, and their caregivers receive lasting and comprehensive support. Last year, I signed the Caregivers and Veterans Omnibus Health Services Act, which helps fulfill this obligation by extending additional assistance to family members who care for severely wounded veterans from Iraq and Afghanistan. Our military caregivers exemplify the heroism found not only on the fields of battle, but also in the hearts of those who tend to our wounded warriors when they come home.

As we observe National Family Caregivers Month, we honor the tireless compassion of Americans who heal, comfort, and support our injured, our elders, and people with disabilities. This month and throughout the year, let the quiet perseverance of our family caregivers remind us of the decency and kindness to which we can all aspire.

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 November 2011 as National Family Caregivers Month. I encourage all Americans to pay tribute to those who provide for the health and well-being of their family members, friends, and neighbors.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



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Presidential Documents

Proclamation 8749 of November 1, 2011

National Native American Heritage Month, 2011

By the President of the United States of America

A Proclamation

From the Aleutian Islands to the Florida Everglades, American Indians and Alaska Natives have contributed immensely to our country's heritage. During National Native American Heritage Month, we commemorate their enduring achievements and reaffirm the vital role American Indians and Alaska Natives play in enriching the character of our Nation.

Native Americans stand among America's most distinguished authors, artists, scientists, and political leaders, and in their accomplishments, they have profoundly strengthened the legacy we will leave our children. So, too, have American Indians and Alaska Natives bravely fought to protect this legacy as members of our Armed Forces. As service members, they have shown exceptional valor and heroism on battlefields from the American Revolution to Iraq and Afghanistan. Native Americans have demonstrated time and again their commitment to advancing our common goals, and we honor their resolve in the face of years of marginalization and broken promises. My Administration recognizes the painful chapters in our shared history, and we are fully committed to moving forward with American Indians and Alaska Natives to build a better future together.

To strengthen our economy and win the future for our children, my Administration is addressing problems that have burdened Native American communities for too long. We are working to bolster economic development, expand access to affordable health care, broaden post-secondary educational opportunities, and ensure public safety and tribal justice. In June, I signed an Executive Order establishing the White House Rural Council, to strengthen Federal engagement with tribal governments and promote economic prosperity in Indian Country and across rural America. This comes in conjunction with several settlements that will put more land into the hands of tribes and deliver long-awaited trust reform to Indian Country.

To bring jobs and sustainable growth to tribal nations, my Administration is connecting tribal economies to the broader economy through transportation infrastructure and high-speed Internet, as well as by focusing on clean energy development on tribal lands. First Lady Michelle Obama's recently launched *Let's Move! in Indian Country* initiative will also redouble efforts to encourage healthy living for American Indians and Alaska Natives. These actions reflect my Administration's ongoing commitment to progress for Native Americans, which was reaffirmed last year when we announced our support for the United Nations Declaration on the Rights of Indigenous Peoples. Through a comprehensive strategy where the Federal Government and tribal nations move forward as equal partners, we can bring real and lasting change to Indian Country.

This month, we celebrate the rich heritage and myriad contributions of American Indians and Alaska Natives, and we rededicate ourselves to supporting tribal sovereignty, tribal self-determination, and prosperity for all Native Americans. We will seek to strengthen our nation-to-nation relationship by ensuring tribal nations have a voice in shaping national policies impacting tribal communities. We will continue this dialogue at the White House Tribal Nations Conference held in Washington, D.C. next month.

As we confront the challenges currently facing our tribal communities and work to ensure American Indians and Alaska Natives have meaningful opportunities to pursue their dreams, we are forging a brighter future for the First Americans and all Americans.

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 November 2011 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 25, 2011, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



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H.R. 2832/P.L. 112–40

To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

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United States-Korea Free Trade Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 428)

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United States Parole Commission Extension Act of 2011 (Oct. 21, 2011; 125 Stat. 532)

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