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# FEDERAL REGISTER

Vol. 80 Tuesday,

No. 86 May 5, 2015

Pages 25571–25896

OFFICE OF THE FEDERAL REGISTER

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# Presidential Documents

Title 3—

The President

**Proclamation 9261 of April 30, 2015**

## Jewish American Heritage Month, 2015

**By the President of the United States of America**

**A Proclamation**

From our Nation's earliest days, Jewish Americans have been a critical part of our story. In the face of unspeakable discrimination and adversity, they have fought tirelessly to realize their piece of the American dream and the promise of our founding, holding tight to the belief that a better day lies ahead. Their relentless spirit and remarkable achievements have enriched our country, stirred our conscience, and challenged us to extend the miracles of freedom and security. This month, we honor the vast contributions Jewish Americans have made to our world, and we recommit to standing up for the traditions we believe in and the values we share.

As we celebrate the rich heritage of the Jewish American community, it is impossible to separate their accomplishments from the struggles of Jewish people around the world. American Jews have worked to strengthen the promise of religious freedom because their ancestors were tested from the moment they came together and professed their faith. Today, they continue to teach us empathy and compassion, inspired by the lessons of their parents and grandparents who knew how it felt to be a stranger, and to stand up for a more perfect Union for all—relentlessly pursuing tikkun olam—because they have always understood that we must recognize ourselves in the struggles of our fellow man.

This year, Jewish American Heritage Month begins as the world commemorates the 70th anniversary of the liberation of Dachau by American soldiers, and we are once again reminded that the vibrant culture of the Jewish people has not always been embraced. As tragic events show us all too often, Jewish communities continue to confront hostility and bigotry, including in America. Our Nation shares an obligation to condemn and combat anti-Semitism and hatred wherever it exists, and we remain committed to standing against the ugly tide of anti-Semitism in all its forms, including in the denial or trivialization of the Holocaust.

In celebrating the contributions of the Jewish people to the progress of our country, we also reaffirm America's unwavering commitment to the security of the State of Israel and the close bonds between our two nations and our peoples.

For centuries, Jews have reached for the blessings of freedom and opportunity in the United States. Today—as pillars of their families and leaders in their communities—Jewish Americans represent a link in an unbroken chain of perseverance. During Jewish American Heritage Month, we celebrate the hard-fought progress won through struggle and sacrifice, and we rededicate ourselves to building a world where diversity is cherished and faith is protected.

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 May 2015 as Jewish American Heritage Month. I call upon all Americans to visit *www.JewishHeritageMonth.gov* to learn more about the heritage and contributions of Jewish Americans and to observe this month with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10630
Filed 5–4–15; 8:45 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9262 of April 30, 2015**

## National Building Safety Month, 2015

**By the President of the United States of America**

**A Proclamation**

From skyscrapers and schools to hospitals and homes, America's buildings are the foundations of our communities. When disasters strike, we rely on the structural integrity of our buildings to keep us safe. This month, we pay tribute to the innovative professionals who implement our safety standards, and we redouble our efforts to make our buildings as resilient as our people.

All Americans can take action to protect their loved ones and their property by preparing their homes and workplaces for any disaster. If earthquakes are common where you live, you can restrain heavy appliances, anchor tall bookcases and file cabinets, and install latches on drawers and cabinet doors. To protect against hurricanes, tornadoes, and high winds, you can reinforce garage doors and prepare covers for your windows and house doors. To learn more about how to prepare for all types of disasters and improve the safety and resilience of the places in which you spend time, visit *www.Ready.gov.*

My Administration is committed to creating stronger, safer, disaster-resistant communities and to empowering Americans to do their part. We are collaborating with engineers, scientists, construction workers, and other professionals to develop cutting-edge tools focused on bolstering the safety of our buildings and infrastructure while also improving their energy efficiency—because we can increase our Nation's resilience while also being good stewards of our environment. And we are working with States, tribal leaders, and local partners to ensure neighborhoods across our Nation adopt the most up-to-date building codes and standards that not only help protect individuals and their families, but also support the needs of our cities and towns.

As our Nation faces longer wildfire seasons, more severe droughts, heavier rainfall, and more frequent flooding in a changing climate, safeguarding the resilience of our infrastructure is more critical than ever. That is why, as part of my Climate Action Plan, my Administration is committed to building infrastructure that can withstand more frequent and more devastating natural disasters. To support these efforts, earlier this year I established a flood standard for new and rebuilt federally funded structures in and around floodplains, ensuring taxpayer dollars are well spent on resilient infrastructure while reducing the risk and cost of future flood disasters.

Across the United States, buildings bring us together and protect us from harm. As a Nation, our capacity to continue to withstand threats and recover quickly from disaster depends on what we do today. During National Building Safety Month, let us rededicate ourselves to making the places we live, work, and play more stable and secure for generations 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 May 2015 as National Building Safety Month. I encourage citizens, government agencies, businesses,

nonprofits, and other interested groups to join in activities that raise awareness about building safety. I also call on all Americans to learn more about how they can contribute to building safety at home and in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10638
Filed 5–4–15; 8:45 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9263 of April 30, 2015**

## National Foster Care Month, 2015

**By the President of the United States of America**

**A Proclamation**

At the heart of the American story is the simple truth that all children should have a fair chance at success, no matter who they are or where they come from. Central to this promise of opportunity are the love and support of family—which all girls and boys deserve, but not enough have. During National Foster Care Month, we recommit to caring for all our Nation's daughters and sons, and we reaffirm our basic belief: in America, there is a place for everyone, and no young person should feel like they are on their own.

Over the last decade, our Nation has made significant progress in reducing the number of young people in foster care, but we have more work to do to ensure all children can thrive in a safe and nurturing environment. Today, there are over 400,000 boys and girls in our foster care system. More than 100,000 of them are waiting to be adopted, and every year, 23,000 young people age out of the system—never having found the security of a permanent home. There also continue to be disproportionate numbers of African-American and Native American youth in the foster care system, compounding the disparities these communities too often face.

All young people, regardless of what they look like, which religion they follow, who they love, or the gender they identify with, deserve the chance to dream and grow in a loving, permanent home. When our Nation's daughters and sons lack stable homes and strong support structures, they face enormous barriers to reaching their fullest potential—difficulties no child should have to experience, especially not on their own. And those who age out of the foster care system often face obstacles as they transition into adulthood, including challenges completing their education, remaining financially secure, and staying out of the justice system.

My Administration is committed to expanding what is possible for all our Nation's children and empowering them to overcome every challenge they face. From day one, we have been working to create a better, more-supportive foster care system, and we have taken steps to increase the safety, permanency, and well-being of America's children. Last year, we announced new initiatives to help protect the financial security of foster youth, expand their opportunities for education and employment, and keep them out of the justice system. We are partnering with State and tribal leaders to support innovative strategies that strengthen families, improve the foster care system, and prevent children from entering it in the first place, and each day we continue the fight to secure every child's right to earn their piece of the American dream.

We know that children are best raised in families, not institutions. And each year, men and women of all backgrounds open their homes and hearts to foster children. These selfless individuals step up and serve as loving parents and family members and dedicated teachers, mentors, caseworkers, and faith leaders—helping foster children realize their highest aspirations despite the great odds stacked against them. My Administration is striving to bolster all those who support foster children by providing the resources and assistance they need. With so many children waiting for loving homes,

it is important to ensure all qualified caregivers have the opportunity to serve as foster or adoptive parents, regardless of race, religion, sexual orientation, gender identity, or marital status. That is why we are working to break down the barriers that exist and investing in efforts to recruit more qualified parents for children in foster care.

In the face of often unimaginable challenges, foster children demonstrate extraordinary courage and determination. Their resolve reminds us that we have obligations to them and to one another, and that we all share in the responsibility of lifting up our Nation's youth. This month, we honor these young people and all those who dedicate themselves to making a difference in the lives of girls and boys in foster care. Let us each recognize the large and small ways we can brighten the future of a foster child this month and every month, and together let us reach for the day when everyone knows the love and safety of a permanent home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2015 as National Foster Care Month. I call upon all Americans to observe this month by taking time to help youth in foster care and recognizing the commitment of all who touch their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10647
Filed 5–4–15; 8:45 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9264 of April 30, 2015**

## National Physical Fitness and Sports Month, 2015

**By the President of the United States of America**

**A Proclamation**

Sports are a fundamental part of American culture. They foster our country's competitive drive, help us stay healthy, and teach us what it takes to succeed—not only on the softball diamond or the basketball court, but also in life. Sports and fitness reflect our national character, and they help us unlock our full potential. During National Physical Fitness and Sports Month, we recognize parents, coaches, educators, and all those who instill in our children the importance of regular exercise, and we invite all people to invest in their own well-being by finding a way to be active each day.

Physical fitness is an essential component of a healthy lifestyle. Regular exercise can produce long-term health benefits; it can help prevent chronic diseases, combat obesity, relieve stress, and increase the chances of living longer. By making physical activity part of your daily routine—at least 30 minutes for adults and 60 minutes for children—you can put yourself on the path to better physical and mental health.

This year marks the fifth anniversary of First Lady Michelle Obama's *Let's Move!* initiative, which has helped increase opportunities for physical activity and inspire Americans of all ages to lead healthy, active lives. To celebrate, the First Lady is challenging everyone to #GimmeFive things they are doing to eat better, be more active, and live more healthfully. To join the fun and find new ways to stay fit, challenge your family, friends, and colleagues to #GimmeFive this month.

Communities all across our country have embraced my Administration's national call to action and encouraged each other to stay active and make smart life choices. The President's Council on Fitness, Sports, and Nutrition is also promoting physical activity to ensure all Americans have the chances they deserve to lead healthy lives. Their *I Can Do It, You Can Do It!* program is working to empower Americans with disabilities and make certain they have equal opportunities to participate in regular physical activity in their schools and communities. And the *Go4Life* campaign is helping older Americans, including those with chronic conditions, to be active every day.

By making daily healthy choices, all Americans can strengthen their bodies and minds and build a foundation that supports their greatest aspirations. This month, let us encourage one another to get involved in sports and fitness activities and together, forge a healthier future for ourselves, our loved ones, and our Nation. To learn how you can get involved, visit *www.LetsMove.gov* and *www.Fitness.gov.*

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 May 2015 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily physical activity, sports participation, and good nutrition a priority in their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10658
Filed 5–4–15; 8:45 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9265 of April 30, 2015**

## Law Day, U.S.A., 2015

**By the President of the United States of America**

**A Proclamation**

Throughout the world, the rule of law is central to the promise of a safe, free, and just society. Respect for and adherence to the rule of law is the premise upon which the United States was founded, and it has been a cornerstone of my Presidency. America's commitment to this fundamental principle sustains our democracy—it guides our progress, helps to ensure all people receive fair treatment, and protects our Government of, by, and for the people.

This Law Day, we celebrate a milestone in the extraordinary history of the rule of law by marking the 800th anniversary of the Magna Carta. Centuries ago, when kings, emperors, and warlords reigned over much of the world, it was this extraordinary document—agreed to by the King of England in 1215—that first spelled out the rights and liberties of man. The ideals of the Magna Carta inspired America's forefathers to define and protect many of the rights expressed in our founding documents, which we continue to cherish today.

The Magna Carta has also provided a framework for constitutional democracies throughout the world, and my Administration is committed to supporting good governance based upon the rule of law. Around the globe, we support strong civil institutions, independent judiciaries, and open government—because the rule of force must give way to the rule of law. For more than two centuries, we have witnessed these values drive opportunity and prosperity here in the United States, and as President, I will continue to work to bolster our systems of justice and advance efforts that do the same overseas.

America is and always has been a nation of laws. Our institutions of justice are vital to securing the promise of our country, and they are bound up with the values and beliefs that have united peoples through the ages. The United States and our citizens are inextricably linked to all those around the world doing the hard work of strengthening the rule of law—joined in common purpose by our mutual interest in building freer, fairer, more just societies.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2015, as Law Day, U.S.A. I call upon all Americans to acknowledge the importance of our Nation's legal and judicial systems with appropriate ceremonies and activities, and to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10671
Filed 5–4–15; 8:45 am]
Billing code 3295–F5

# Rules and Regulations

Federal Register
Vol. 80, No. 86
Tuesday, May 5, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 THE TREASURY

### Community Development Financial Institutions Fund

### 12 CFR Part 1806

**RIN 1505–AA91**

### Bank Enterprise Award Program

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award Program (BEA Program), administered by the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury. This revised interim rule reflects requirements set forth in a final rule, published by the Department of the Treasury (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, December 19, 2014), hereafter referred to as the Uniform Administrative Requirements. The Uniform Administrative Requirements constitute a government-wide framework for grants management codified by the Office of Management and Budget (OMB); they combine several OMB guidance circulars aimed at reducing administrative burden for award Recipients and reducing the risk of waste, fraud and abuse of Federal financial assistance. The Uniform Administrative Requirements establish financial, administrative, procurement, and program management standards with which Federal award-making programs, including those administered by the CDFI Fund, and Recipients must comply. This revised BEA Program interim rule includes revisions necessary to implement the Uniform Administrative Requirements, as well as to make certain technical corrections and other updates to the current rule.

**DATES:** Effective May 5, 2015; written comments must be received by the offices of the CDFI Fund on or before July 3, 2015.

**ADDRESSES:** You may submit comments concerning this revised interim rule via the Federal e-Rulemaking Portal at *http://www.regulations.gov* (please follow the instructions for submitting comments). All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert Ibanez, Program Manager, Community Development Financial Institutions Fund, at *bea@cdfi.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The CDFI Fund, Department of the Treasury, was authorized by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.)* (the Act). The mission of the CDFI Fund is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The BEA Program provides awards to depository institutions, insured by the Federal Deposit Insurance Corporation (FDIC), that demonstrate an increase in their activities in the form of loans, investments, services, and Technical Assistance, in Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and Technical Assistance.

Through the BEA Program, the CDFI Fund seeks to: Strengthen and expand the financial and organizational capacity of CDFIs; provide monetary awards to insured depository institutions that increase their lending and financial services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive application process, in which the CDFI Fund evaluates applications based on the value of their increases in certain Qualified Activities. BEA Program award Recipients receive award proceeds in the form of a grant after successful completion of specified Qualified Activities.

On January 30, 2009, the CDFI Fund published in the **Federal Register** an interim regulation (74 FR 5790) implementing the BEA Program. The deadline for submission of comments was March 2, 2009.

## II. Comments on the January 30, 2009 Interim Rule

As of the close of the March 2, 2009 comment period, the CDFI Fund received no comments on the current rule.

## III. Summary of Changes

(A) *Section 1806.102, Relationship to other programs:* This section has been revised to clarify that the restrictions on entities applying for, receiving, and using BEA Program Award in conjunction with awards through other CDFI Fund programs, will be described in the applicable notice of funding opportunity for each program. This section also prohibits Applicants from submitting any transactions as Qualified Activities if they are funded in whole or in part with award proceeds from another CDFI Fund program or other Federal program.

(B) Section 1806.103, *Definitions:* Throughout the revised interim rule, the defined term ''Awardee'' has been replaced by ''Recipient'' and the term ''disbursement'' has been replaced with the term ''payment'' as it relates to award funds being transmitted from the CDFI Fund to the Recipient. These changes were made to align the terminology in the BEA Program regulations with the terms used in the Uniform Administrative Requirements, 2 CFR part 1000.

The term ''CDFI Partner'' is revised in subsection 1806.103 to prohibit a CDFI Partner from being an affiliated organization of the Applicant. ''Community Development Entity'' has been removed from the definition section because such term is not used in this part. The term ''Development Service Activities'' is now defined in

subsection 1806.103. ''Geographic Units'' is revised in subsection 1806.103 to align with the updated terminology used by the U.S. Bureau of the Census. ''Home Improvement Loan'' is revised in subsection 1806.103 to ensure that the borrower meets the definitions of Low- and Moderate-Income. ''Individual Development Account'' is revised in subsection 1806.103 to provide for more flexibility and is now less prescriptive. ''Insured Depository Institution'' is defined in subsection 1806.103. ''Integrally Involved'' is revised in subsection 1806.103 to reflect that the definition no longer applies to non-CDFIs. The term ''Small Dollar Consumer Loan,'' added as an eligible activity in the definition of ''Distressed Community Financing Activities'' (subsection 1806.103), has been defined in subsection 1806.103. ''State'' is defined in subsection 1806.103. The term ''Targeted Financial Services'' is revised in subsection 1806.103 to reflect that such term must be targeted to Eligible Residents that meet Low- and Moderate-Income requirements. The term ''Technical Assistance'' is now defined in subsection 1806.103.

(C) *Subsection 1806.104(a), Uniform Administrative Requirements:* Subsection 1806.104(a) has been added to assert that the Uniform Administrative Requirements are applicable to BEA Program Awards.

(D) *Subpart B:* The title of Subpart B has been revised from ''Awards'' to ''Eligibility'' and describes the basic application requirements that an Applicant must meet in order to receive a BEA Program Award. The former content of Subpart B, dealing with the specifics of how a Recipient's award amount is determined, is now located in Subpart D ''Award Determinations,'' with new content in Section 1806.400 describing the period from which an Applicant's increases in Qualified Activities will be measured. The addition of this new section caused the numbering of subsequent sections to change.

(E) *Subpart C:* The title of Subpart C has been revised to ''Use of Funds/Qualified Activities,'' describes the eligible uses of a BEA Program Award, and identifies restrictions on the use of award dollars set forth in Section 1806.301. The former Subpart C, ''Terms and Conditions of Assistance,'' is now designated as Subpart E.

(F) *Subpart D:* In Subpart D, Section 1806.404(c), the priority of awards has been adjusted to provide the CDFI Fund with the discretion to cap, in the applicable Notice of Funding Availability (NOFA), the maximum amount of funding available for the Distressed Community Financing Activities category. The three Qualified Activities are prioritized based on the type of Qualified Activity, as well as the type of Applicant (meaning, CDFI versus non-CDFI). Section 1806.404(c) makes clear that in each Qualified Activity, a CDFI Applicant will be prioritized over a non-CDFI Applicant. The restrictions on the use of award dollars also apply to Qualified Activities, as set forth in Section 1806.402(d).

(G) *Subpart E:* Subpart E has been revised by adding a new paragraph (subsection 1806.500(a)(5)) to accommodate the audit requirements of the Uniform Administrative Requirements, and it provides a general description of the report types to be collected from Recipients on an annual basis. Specific reporting requirements, using OMB Paperwork Reduction Act (PRA) approved information collections, will be described in the applicable NOFAs and Award Agreements. In addition, this subsection has been revised to require the submission of annual reports within 90 days of the Recipients' fiscal year end, per the Uniform Administrative Requirements. Section 1806.501, previously reserved, has been deleted which resulted in the subsequent sections being renumbered.

## IV. Rulemaking Analysis

*A. Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

*B. Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, the Regulatory Flexibility Act does not apply.

*C. Paperwork Reduction Act*

The collections of information contained in this revised interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable OMB Control Number associated with the CDFI Fund under 1559–0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a valid control number assigned by OMB. The revised interim rule imposes collections of new information, for which the CDFI Fund has OMB approval.

*D. National Environmental Policy Act*

The revised interim rule has been reviewed in accordance with the CDFI Fund's Environmental Quality regulations (12 CFR part 1815), promulgated pursuant to the National Environmental Protection Act of 1969 (NEPA), which requires that the CDFI Fund adequately consider the cumulative impact that proposed activities have upon the human environment. It is the determination of the CDFI Fund that the revised interim rules does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the NEPA and the CDFI Fund Environmental Quality regulations, neither an Environmental Assessment nor an Environmental Impact Statement is required.

*E. Administrative Procedure Act*

Because the revisions to this revised interim rule relate to grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

*F. Comment*

Public comment is solicited on all aspects of this interim regulation. The CDFI Fund will consider all comments made on the substance of this interim regulation, but it does not intend to hold hearings.

*G. Catalog of Federal Domestic Assistance Number*

Bank Enterprise Award Program—21.021.

**List of Subjects in 12 CFR Part 1806**

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, 12 CFR part 1806 is revised to read as follows:

## PART 1806—BANK ENTERPRISE AWARD PROGRAM

Sec.

**Subpart A—General Provisions**

1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to other programs.
1806.103 Definitions.
1806.104 Uniform Administrative Requirements; Waiver authority.
1806.105 OMB control number.

**Subpart B—Eligibility**

1806.200 Applicant eligibility.

**Subpart C—Use of funds/Qualified Activities**

1806.300 Qualified Activities.
1806.301 Restrictions on use of award.

**Subpart D—Award Determinations**

1806.400 General.
1806.401 Community eligibility and designation.
1806.402 Measuring and reporting Qualified Activities.
1806.403 Estimated award amounts.
1806.404 Selection process; actual award amounts.
1806.405 Applications for BEA Program Awards.

**Subpart E—Terms and Conditions of Assistance**

1806.500 Award Agreement; sanctions.
1806.501 Compliance with government requirements.
1806.502 Fraud, waste, and abuse.
1806.503 Books of account, records, and government access.
1806.504 Retention of records.

**Authority:** 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

## Subpart A—General Provisions

### § 1806.100 Purpose.

The purpose of the Bank Enterprise Award (BEA) Program is to provide grants to Insured Depository Institutions that provide financial and technical assistance to Community Development Financial Institutions and increase their activities in Distressed Communities.

### § 1806.101 Summary.

Through the BEA Program, the CDFI Fund will provide monetary awards in the form of grants to Applicants selected by the CDFI Fund that increase their investments in or provide other support of CDFIs, increase their lending and investment activities in Distressed Communities, or increase their provision of certain services and assistance. Distressed Communities must meet minimum geographic, poverty, and unemployment criteria. Applicants are selected to receive BEA Program Awards through a merit-based, competitive application process. The amount of a BEA Program Award is based on the increase in Qualified Activities that are carried out by the Applicant during the Assessment Period. BEA Program Awards are disbursed by the CDFI Fund after the Recipient has successfully completed projected Qualified Activities. Each Recipient will enter into an Award Agreement, which will require it to abide by terms and conditions pertinent to any assistance received under this part, including the requirement that BEA Program Award proceeds must be used for Qualified Activities, as well as the Uniform Administrative Requirements, as applicable. All BEA Program Awards are made subject to funding availability.

### § 1806.102 Relationship to other programs.

(a) Restrictions on applying for, receiving and using BEA Program Awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Capital Magnet Fund, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance Program, and the New Markets Tax Credit Program) are as set forth in the applicable notice of funding opportunity or Notice of Allocation Availability.

(b) *Prohibition against double funding.* Qualified Activities may not include transactions funded in whole or in part with award proceeds from another CDFI Fund program or Federal program.

### § 1806.103 Definitions.

For purposes of this part, the following terms shall have the following definitions:

*Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

*Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction, and/or development of single- or multi-family residential real property, where at least 60 percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Eligible Residents who meet Low- and Moderate-Income requirements;

*Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or ''soft second'' mortgages and other similar types of down payment assistance loans, but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements;

*Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

*Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

*Assessment Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant will carry out, or has carried out, Qualified Activities;

*Award Agreement* means a formal agreement between the CDFI Fund and a Recipient pursuant to § 1806.500;

*Bank Enterprise Award* (or *BEA Program Award)* means an award made to an Applicant pursuant to this part;

*Bank Enterprise Award Program* (or *BEA Program)* means the program authorized by section 114 of the Act and implemented under this part;

*Baseline Period* means an annual or a semi-annual period specified in the applicable NOFA, in which an Applicant has previously carried out Qualified Activities;

*CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant;

*CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

*CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the CDFI Fund in the applicable NOFA and that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, Technical Assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the CDFI Fund) below market rates;

*Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes;

*Community Development Financial Institution* (or *CDFI)* means an entity that has been certified as a CDFI by the CDFI Fund as of the date specified in the applicable NOFA;

*Community Development Financial Institutions Fund* (or *CDFI Fund)* means the Community Development Financial Institutions Fund established pursuant

to Section 104(a)(12 U.S.C. 4703(a)) of the Act;

*Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of Technical Assistance and financial education to Eligible Residents regarding managing their personal finances;

(2) Provision of Technical Assistance and consulting services to newly formed small businesses and nonprofit organizations located in the Distressed Community;

(3) Provision of Technical Assistance and financial education to, or servicing the loans of, homeowners and homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements;

(4) Other services provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in a Distressed Community, as deemed appropriate by the CDFI Fund;

*Deposit Liabilities* means time or savings deposits or demand deposits. Any such deposit must be accepted from Eligible Residents at the offices of the Applicant or of the Subsidiary of the Applicant and located in the Distressed Community. Deposit Liabilities may only include deposits held by individuals in transaction accounts (*e.g.,* demand deposits, negotiable order of withdrawal accounts, automated transfer service accounts, and telephone or preauthorized transfer accounts) or non-transaction accounts (*e.g.,* money market deposit accounts, other savings deposits, and all time deposits), as defined by the Appropriate Federal Banking Agency;

*Development Service Activities* means activities that promote community development and are integral to the Applicant's provision of financial products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the financial products or Financial Services of the Applicant. Development Service Activities include financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills.

*Distressed Community* means a geographically defined community that meets the minimum area eligibility requirements specified in section 1806.401 and such additional criteria as may be set forth in the applicable NOFA;

*Distressed Community Financing Activities* means: Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; Small Business Loans and related Project Investments; and Small Dollar Consumer Loans;

*Education Loan* means an advance of funds to a student who is an Eligible Resident, for the purpose of financing a college or vocational education;

*Electronic Transfer Account* (or *ETA)* means an account that meets the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the **Federal Register** on July 16, 1999 (64 FR 38510), as such requirements may be amended from time to time;

*Eligible Resident* means an individual who resides in a Distressed Community;

*Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund;

*Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment that meets such criteria as set forth in the applicable NOFA;

*Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA, that are provided by the Applicant to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in the Distressed Community;

*Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and Indian Areas or Native American Areas (as each is defined by the U.S. Bureau of the Census), or other areas deemed appropriate by the CDFI Fund;

*Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence, where such borrower is an Eligible Resident who is Low- and Moderate-Income;

*Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

*Individual Development Account* (or *IDA)* means a special savings account that matches the deposits of Low- and Moderate-Income individuals and that enables Low-and Moderate-Income individuals to save money for a particular financial goal including, but not limited to, and as determined by the CDFI Fund: buying a home, paying for post-secondary education, or starting or expanding a small business;

*Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

*Integrally Involved* means, for a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*i.e.,* loans or Equity Investments), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA;

*Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

*Metropolitan Area* means an area designated as such (as of the date of the BEA Program application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, Part 1949–1953 Comp., p. 758), as amended;

*Notice of Funding Availability* (or *NOFA)* means the public notice of funding opportunity that announces the availability of BEA Program Award funds for a particular funding round and that advises prospective Applicants

with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

*Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as established by the CDFI Fund in the applicable NOFA. A priority factor represents the CDFI Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

*Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity (approved by the CDFI Fund), including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

*Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

*Recipient* means an Applicant that receives a BEA Program Award pursuant to this part and the applicable NOFA;

*Service Activities* means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

*Small Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community;

*Small Dollar Consumer Loan* means affordable consumer lending products that serve as available alternatives in the marketplace for individuals who are Eligible Residents and meet criteria further specified in the applicable NOFA;

*State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

*Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a Subsidiary of any Insured Depository Institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

*Targeted Financial Services* means ETAs, IDAs, and such other banking products targeted to Eligible Residents who meet Low- and Moderate-Income requirements, as may be specified by the CDFI Fund in the applicable NOFA;

*Targeted Retail Savings/Investment Products* means certificates of deposit, mutual funds, life insurance, and other similar savings or investment vehicles targeted to Eligible Residents who meet Low- and Moderate-Income requirements, as may be specified by the CDFI Fund in the applicable NOFA;

*Technical Assistance* means the provision of consulting services, resources, training, and other nonmonetary support relating to an organization, individual, or operation of a trade or business, as may be specified by the CDFI Fund in the applicable NOFA; and

*Unit of General Local Government* means any city, county town, township, parish, village, or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

#### § 1806.104 Uniform Administrative Requirements; Waiver authority.

(a) *Uniform Administrative Requirements.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements), codified by the Department of the Treasury at 2 CFR part 1000, apply to awards, regardless of type of award Recipient, made pursuant to this part.

(b) *Waiver authority.* The CDFI Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the **Federal Register**.

#### § 1806.105 OMB control number.

The collection of information requirements in this Part have been approved by the Office of Management and Budget and assigned the applicable, approved OMB Control Number associated with the CDFI Fund under 1559–0005.

### Subpart B—Eligibility

#### § 1806.200 Applicant Eligibility.

*General requirements.* An entity that is an Insured Depository Institution is eligible to apply for a BEA Program Award if the CDFI Fund receives a complete BEA Program Award application by the deadline set forth in the applicable Notice of Funding Availability (NOFA). Additional eligibility requirements are set forth in the applicable NOFA.

### Subpart C—Use of Funds/Qualified Activities

#### § 1806.300 Qualified Activities.

To receive a BEA Program Award, an Insured Depository Institution must increase its Qualified Activities within the period of time set forth in the applicable NOFA. Recipients of BEA Program Awards must also use their payments for Qualified Activities, as described in the applicable NOFA and the Award Agreement.

#### § 1806.301 Restrictions of use of award.

A Recipient may not distribute BEA Program Award funds to an Affiliate without the CDFI Fund's prior written consent.

### Subpart D—Award Determinations

#### § 1806.400 General.

The amount of a BEA Program Award shall be based on the Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period, as set forth in the applicable NOFA.

#### § 1806.401 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Service Activities or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. The Applicant may designate different Distressed Communities for each category of activity. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community as specified in the applicable NOFA.

(b) *Minimum area and eligibility requirements.* A Distressed Community must meet the following minimum area and eligibility requirements:

(1) *Minimum area requirements.* A Distressed Community:

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries of the area must be contiguous; and

(iii) The area must:

(A) have a population, as determined by the most recent US Bureau of the Census data available, of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) have a population, as determined by the most recent US Bureau of the Census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

(2) *Eligibility requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census or in other sources as set forth in guidance issued by the CDFI Fund;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recently published data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census-Share calculation method, or in other sources as set forth in guidance issued by the CDFI Fund; and

(iii) Such additional requirements as may be specified by the CDFI Fund in the applicable NOFA.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation.* The CDFI Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

**§ 1806.402 Measuring and reporting Qualified Activities.**

(a) *General.* An Applicant may receive a BEA Program Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The CDFI Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the CDFI Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category for which it is seeking a BEA Program Award.

(1) If an Applicant elects to apply for an award in either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category, unless the Applicant can provide a reasonable explanation, acceptable to the CDFI Fund in its sole discretion, as to why it cannot report on all activities in such category.

(2) If an Applicant elects to apply for an award in the Service Activities category, it may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* CDFI Related Activities must be provided to a CDFI. CDFI Partners that are the recipients of CDFI Support Activities must demonstrate that they are Integrally Involved in a Distressed Community. Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in the Distressed Community.

(d) *Certain Limitations on Qualified Activities.* Activities funded with the proceeds of Federal funding or tax credit programs are ineligible for purposes of calculating or receiving a Bank Enterprise Award. Please see the applicable NOFA for each funding round's limitations on Qualified Activities. Qualified Activities shall not include loans to or investments in those business types set forth in the Uniform Administrative Requirements.

(e) *Measuring the Value of Qualified Activities.* Subject to such additional or alternative valuations as the CDFI Fund may specify in the applicable NOFA, the CDFI Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the CDFI Fund will assess the value of the full amount of the rolled-over deposit. Where an existing loan is refinanced (meaning, a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the CDFI Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described in paragraphs (e)(3)(i) and (ii) of this section:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as set forth by the CDFI Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the CDFI Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of Technical Assistance based on the administrative costs of providing such services.

(f) *Closed transactions.* A transaction shall be considered to have been closed and carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee, which agreement specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the CDFI Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the CDFI Fund), unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the CDFI Fund.

(g) *Reporting period.* An Applicant must only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the CDFI Fund in the applicable NOFA.

**§ 1806.403 Estimated award amounts.**

(a) *General.* An Applicant must calculate and submit to the CDFI Fund an estimated award amount as part of its BEA Program Award application.

(b) *Award percentages.* The CDFI Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for Qualified Activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for Qualified Activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted value of the applicable Qualified Activities shall be calculated by:

(1) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) Multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated award eligibility review.* The CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. Based upon this review, the CDFI Fund will calculate the actual award amount for which such Applicant is eligible.

**§ 1806.404 Selection process; actual award amounts.**

(a) *Sufficient funds available to cover estimated awards.* All BEA Program Awards are subject to the availability of funds. If the amount of appropriated funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the CDFI Fund in the manner specified in § 1806.403.

(b) *Insufficient funds available to cover estimated awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, then the CDFI Fund will select Recipients and determine actual award amounts based on the process described in subsection 1806.404(c) and any established maximum dollar amount of awards that may be awarded for the Distressed Community Financing Activities category, as described in the applicable NOFA.

(c) *Priority of awards.* In circumstances where there are insufficient funds to cover estimated awards, the CDFI Fund will rank Applicants based on whether the Applicant is a CDFI or a non-CDFI, and in each category of Qualified Activity (*e.g.,* Service Activities) according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each category, and based on whether the Applicant is a CDFI or a non-CDFI, subject to the availability of funds.

(1) *First priority.* If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to CDFI Applicants that engaged in CDFI Related Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities ranked in the ratio as set forth in the applicable NOFA.

(2) *Second priority.* If the amount of funds available during a funding round is sufficient for all first priority Applicants but insufficient for all remaining estimated award amounts, second priority will be given to CDFI Applicants that engaged in Distressed Community Financing Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities, ranked in the ratio as set forth in the applicable NOFA.

(3) *Third priority.* If the amount of funds available during a funding round is sufficient for all first and second priority Applicants, but insufficient for all remaining estimated award amounts, third priority will be given to CDFI Applicants that engaged in Service Activities, followed by non-CDFI Applicants that engaged in Service Activities, ranked in the ratio as set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The CDFI Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the CDFI Fund will combine the award amounts into a single BEA Program Award.

(e) *Unobligated or deobligated funds.* The CDFI Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) *Limitation.* The CDFI Fund, in its sole discretion, may deny or limit the amount of a BEA Program Award for any reason.

**§ 1806.405 Applications for BEA Program Awards.**

(a) *Notice of funding availability; applications.* Applicants must submit applications for BEA Program Awards in accordance with this section and the applicable NOFA. An Applicant's application must demonstrate a realistic course of action to ensure that it will meet the requirements described in subpart D within the period set forth in the applicable NOFA. Detailed application content requirements are found in the related application and applicable NOFA. The CDFI Fund will not disburse an award to an Applicant before it meets the eligibility requirements described in the applicable NOFA. The CDFI Fund shall

require an Applicant to meet any additional eligibility requirements that the CDFI Fund deems appropriate. After receipt of an application, the CDFI Fund may request clarifying or technical information related to materials submitted as part of such application and/or to verify that Qualified Activities were carried out in the manner prescribed in this Part. The CDFI Fund, in its sole discretion, shall determine whether an applicant fulfills the requirements set for forth in this part and the applicable NOFA.

(b) *Application contents.* An application for a BEA Program Award must contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Assessment Period as compared to those carried out during the Baseline Period. If an Applicant has merged with another institution during the Assessment Period, it must submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the CDFI Fund reserves the right to withhold distribution of a BEA Program Award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, dates of execution, initial disbursement, and final disbursement of the instrument;

(3) Documentation of Qualified Activities that meets the required thresholds and conditions described in § 1806.402(f) and the applicable NOFA;

(4) Information necessary for the CDFI Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications, as described in the applicable NOFA and BEA Program Award application, that the information provided to the CDFI Fund is true and accurate and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant that engaged in Service Activities, or Distressed Community Financing Activities, the Applicant must confirm, by submitting documentation as described in the applicable NOFA and BEA Program application, the Service Activities or Distressed Community Financing Activities were provided to:

(i) Eligible Residents that resided in a Distressed Community, or

(ii) A business located in a Distressed Community.

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community, as described in the applicable NOFA and BEA Program application; and

(8) Any other information requested by the CDFI Fund, or specified by the CDFI Fund in the applicable NOFA or the BEA Program application, in order to document or otherwise assess the validity of information provided by the Applicant to the CDFI Fund.

## Subpart E—Terms and Conditions of Assistance

### § 1806.500 Award Agreement; sanctions.

(a) *General.* After the CDFI Fund selects a Recipient, the CDFI Fund and the Recipient will enter into an Award Agreement. In addition to the requirements of the Uniform Administrative Requirements, the Award Agreement will require that the Recipient:

(1) Must carry out its Qualified Activities in accordance with applicable law, the approved BEA Program application, and all other applicable requirements;

(2) Must comply with such other terms and conditions that the CDFI Fund may establish;

(3) Will not receive any BEA Program Award payment until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements;

(4) Must comply with performance goals that have been established by the CDFI Fund. Such performance goals will include measures that require the Recipient to use its BEA Program Award funds for Qualified Activities; and

(5) Must comply with all data collection and reporting requirements. Each Recipient must submit to the CDFI Fund such information and documentation that will permit the CDFI Fund to review the Recipient's progress in satisfying the terms and conditions of its Award Agreement, including:

(i) *Annual report.* Each Recipient shall submit to the CDFI Fund at least annually and within 90 days after the end of each year of the Recipient's performance period, an annual report that will provide data that, among other things, demonstrates the Recipient's compliance with its performance goals (including a description of any noncompliance), its uses of the BEA Program Award funds, and the impact of the BEA Program and the CDFI industry. Recipients are responsible for the timely and complete submission of the annual report.

(ii) *Financial statement.* A Recipient is not required to submit its financial statement to the CDFI Fund. The CDFI Fund may obtain the necessary information from publicly available sources.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Recipient, the CDFI Fund may terminate, reduce, or recapture the award, bar the Recipient and/or its Affiliates from applying for an award from the CDFI Fund for a period to be decided by the CDFI Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with other CDFI Fund awards.* In the event that an Applicant, Recipient, or its Subsidiary or Affiliate is not in compliance, as determined by the CDFI Fund, with the terms and conditions of any CDFI Fund award, the CDFI Fund may, in its sole discretion, bar said Applicant or Recipient from applying for future BEA Program Awards or withhold payment (either initial or subsequent) of BEA Program Award funds.

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund will provide the Recipient with written notice of the proposed sanction and an opportunity to respond. Nothing in this section, however, will provide a Recipient with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

### § 1806.501 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Recipient must comply with all applicable Federal, State, and local laws, regulations (including but not limited to the Uniform Administrative Requirements, ordinances, and Executive Orders).

### § 1806.502 Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

### § 1806.503 Books of account, records, and government access.

(a) A Recipient shall submit such financial and activity reports, records,

statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the CDFI Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Recipient's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

(b) The Award Agreement provides that the provisions of the Act, this part, and the Award Agreement are enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (b) precludes the CDFI Fund from directly enforcing the Award Agreement as provided for under the terms of the Act.

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that agency. The CDFI Fund will not impose a sanction described in section 1806.500(b) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the Recipient; or

(ii) Impede or interfere with an enforcement action against that Recipient by the Appropriate Federal Banking Agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (c)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (c)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

(d) Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Recipient with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Recipient to any formal or informal hearing or comparable proceeding not otherwise required by law.

**§ 1806.504 Retention of records.**

A Recipient must comply with all record retention requirements as set forth in the Uniform Administrative Requirements.

Dated: April 30, 2015.

**Mary Ann Donovan,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 2015–10433 Filed 5–4–15; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0038; Directorate Identifier 2013–SW–023–AD; Amendment 39–18146; AD 2015–09–01]**

**RIN 2120–AA64**

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

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Airbus Model EC225LP helicopters. This AD requires repetitive visual and tap test inspections of each main rotor blade (blade) leading edge stainless steel protective strip (strip) for a crack, cut, or blind or open debonding (debonding), and taking approved corrective measures. If there is a crack or if there is debonding that exceeds acceptable limits, this AD requires, before further flight, repairing or replacing the blade with an airworthy part. This AD was prompted by suspected water seepage through a crack in the blade strip resulting in significant debonding. The actions of this AD are intended to prevent loss of the blade strip, excessive vibrations induced by blade weight imbalance, and subsequent loss of control of the helicopter.

**DATES:** This AD is effective June 9, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of June 9, 2015.

**ADDRESSES:** For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. It is also available on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0038.

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On January 31, 2014, at 79 FR 5321, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters. The NPRM proposed to require repetitive visual and tap test inspections of each blade strip for a crack, cut, or debonding. If there is a crack or if there is debonding beyond acceptable limits or located outside a specific area, the NPRM proposed to require, before further flight, repairing or replacing the blade with an airworthy part. If there is a cut in the blade root polyurethane protective strip, the NPRM proposed to require tap test inspecting the blade for debonding. The proposed requirements were intended to prevent loss of the blade strip, excessive vibrations induced by blade weight imbalance, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2013–0103, dated May 2, 2013, issued

by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter (now Airbus Helicopters) Model EC225LP helicopters with certain blades installed. EASA advises that an investigation of significant debonding of a blade strip revealed rapidly progressing debonding caused by water seepage through a crack in the blade strip. EASA issued AD 2013–0103 requiring repetitive inspections of the blade strip to correct this condition.

**Comments**

After our NPRM (79 FR 5321, January 31, 2014) was published, we received comments from 2 commenters.

**Request**

Two commenters requested that a helicopter be allowed to operate with a crack in the leading edge blade strip as long as the crack is within the limits prescribed by the manufacturer. The commenters stated that EASA and the manufacturer allow for a helicopter to fly if the blade strip has a crack that is within limits because the blade strip is sacrificial and nonstructural. The commenters state that requiring repairing or replacing the blade strip if there is a crack results in a higher cost and greater out-of-service time for operators without a justifiable or measured increase in safety.

We agree with allowing a crack in the blade strip that is within limits and has been properly sealed. Therefore, we have changed paragraph (e)(5) of the AD to require sealing the crack instead of repairing or replacing the blade if there is a crack within acceptable limits.

**FAA's Determination**

This helicopter has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comments received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design and that air safety and the public interest require adopting the AD requirements as proposed with the change described previously. This change is consistent with the intent of the proposals in the NPRM (79 FR 5321, January 31, 2014) and will not increase the economic burden on any operator nor increase the scope of this AD.

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

Eurocopter issued Emergency Alert Service Bulletin No. 05A010, Revision 2, dated April 22, 2013 (EASB), for the Model EC225LP helicopter and for the non-FAA typed certificated Model EC725AP military helicopter. The EASB specifies a visual check and tapping test of the bonding of the strip on the leading edge of the blades for cracks, cuts, and debonding and taking corrective actions as applicable. Revision 1 to the EASB changed the visual check and the tapping test so that they can be performed without removing the blades. Revision 2 extended the applicability to additional part-numbered blades with a modified blade strip installed. This information is reasonably available at *http://www.regulations.gov* in Docket No. FAA–2014–0038. Or see **ADDRESSES** for other ways to access this service information.

**Costs of Compliance**

We estimate that this AD affects 4 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work hour. We estimate 4 work hours to inspect the helicopter for a total of $340 per helicopter and $1,360 for the U.S. operator fleet per inspection cycle. If necessary, it will take 4 work hours to repair the blade and $600 for required parts for a total of $940 per helicopter. It will take about 5 work hours to replace a blade at a cost of $425 for labor. Parts will cost $315,495 to replace part number (P/N) 332A11–0050–01 and $403,650 to replace P/N 332A11–0055–00, for a total cost of $315,920 and $404,075, respectively.

**Regulatory Findings**

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

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2015–09–01 Airbus Helicopters (Type Certificate previously held by Eurocopter France):** Amendment 39–18146, Docket No. FAA–2014–0038, Directorate Identifier 2013–SW–023–AD.

**(a) Applicability**

This AD applies to Model EC225LP helicopters with a main rotor blade (blade), part number 332A11.0050.00, 332A11.0055.00, 332A11.0050.02, or 332A11.0055.02, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as loss of a blade stainless steel protective strip (strip), which could result in excessive vibrations induced by blade weight imbalance and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective June 9, 2015.

**(d) Compliance**

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

**(e) Required Actions**

Within 15 hours time-in-service (TIS) and thereafter at intervals not to exceed 85 hours TIS, visually and tap test inspect each blade strip for a crack, a cut, or open and blind debonding. For purposes of this AD, open debonding, also known as edge bond separation, occurs when a bonded part becomes unattached (debonded) leaving the surface under it exposed to open air around the periphery of the part. Blind debonding occurs when a bonded part becomes unattached internally yet remains bonded around its entire periphery.

(1) If there is open or blind debonding within acceptable limits and the debonded area is located inside Area D of Figure 1 of Eurocopter Emergency Alert Service Bulletin No. 05A010, Revision 2, dated April 22, 2013 (EASB), no further action is required until the next inspection.

(2) If there is open or blind debonding and the debonded area is located outside Area D of Figure 1 of the EASB, before further flight, repair or replace the blade.

(3) If there is open or blind debonding beyond acceptable limits, before further flight, repair or replace the blade.

(4) If there is a cut in the blade root polyurethane protective strip as depicted in Area A of Figure 2 of the EASB, tap test inspect the area.

(i) If there is no open and blind debonding, at intervals not to exceed 15 hours TIS, tap test inspect the blade strip in the blade root area, in the stainless steel leading edge/neoprene junction area for open or blind debonding.

(ii) If there is open or blind debonding within acceptable limits and the debonded area is located inside Area D of Figure 1 of the EASB, no further action is required until the next inspection.

(iii) If there is open or blind and the debonded area is located outside Area D of Figure 1 of the EASB, before further flight, repair or replace the blade.

(iv) If there is open or blind debonding beyond acceptable limits, before further flight, repair or replace the blade.

(5) If there is a crack within acceptable limits, before further flight, seal the crack. If there is a crack beyond the acceptable limits, before further flight, repair or replace the blade.

**(f) Alternative Methods of Compliance (AMOCs)**

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

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

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2013–0103, dated May 2, 2013. You may view the EASA AD on the Internet at *www.regulations.gov* in Docket No. FAA–2014–0038.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6210 Main Rotor Blades.

**(i) Material Incorporated by Reference**

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

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

(i) Eurocopter Emergency Alert Service Bulletin No. 05A010, Revision 2, dated April 22, 2013.

(ii) Reserved.

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

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

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

Issued in Fort Worth, Texas, on April 16, 2015.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2015–09548 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–1130; Directorate Identifier 2015–CE–008–AD; Amendment 39–18150; AD 2015–09–04]**

**RIN 2120–AA64**

## Airworthiness Directives; DG Flugzeugbau GmbH Gliders

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

**ACTION:** Final rule; request for comments

**SUMMARY:** We are adopting a new airworthiness directive (AD) for DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Kleinmotoren Model 2350 C engine that supersedes AD 2013–22–14 R1. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as engine shaft failure with consequent propeller detachment. We are issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective May 26, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 26, 2015.

We must receive comments on this AD by June 19, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, 71050 Sindelfingen, Germany; telephone: +49 7031 301–0; fax: +49 7031 301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com/com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2015–1130.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1130 or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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:** Jim Rutherford, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: 98160 329–4090; email: *jim.rutherford@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On September 5, 2014, we issued AD 2013–22–14 R1, Amendment 39–17968 (79 FR 54895; September 15, 2014). That AD required actions intended to address an unsafe condition on DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Kleinmotoren Model 2350 C engine and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2013–22–14 R1, another occurrence of engine shaft failure and propeller detachment was reported on a Solo Kleinmotoren Model 2350 C engine that had been modified following Solo Kleinmotoren Service Bulletin 4603–14, dated April 28, 2014.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2015–0052–E, dated March 27, 2015 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence of engine shaft failure and consequent propeller detachment was reported on a Solo 2350 C engine.
>
> This condition, if not corrected, could lead to additional cases of release of the propeller from the engine, possible resulting in damage to the sailplane, or injury to persons on the ground.
>
> To address this unsafe condition, EASA issued Emergency AD 2013–0217–E to prohibit operation of the engine.
>
> After that AD was issued, Solo Kleinmotoren GmbH developed instructions to install a modified excenter axle-pulley assembly, allowing to resume operation of the engine. This optional modification was introduced through EASA AD 2013–0217R1.
>
> Since that AD was issued, another occurrence of engine shaft failure and propeller detachment was reported on a Solo 2350 C engine which had been modified in accordance with Solo Kleinmotoren Service Bulletin (SB) 4603–14.
>
> For reasons described above, this AD supersedes EASA AD 2013–0217R1 and, pending the availability of EASA approved modification instructions, prohibits operation of all Solo 2350 C engines, including those engines which have been modified in accordance with Solo Kleinmotoren SB 4603–14. This AD also requires a one-time inspection of the propeller shaft to detect cracks and the reporting of findings.
>
> This AD is considered to be temporary measure and further AD action will follow.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–116.

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

We reviewed Solo Kleinmotoren GmbH Anleitung zur Inspektion (English translation: Inspection Instruction), Nr. 4603–1, Ausgabe (English translation: dated) March 26, 2015. The service information describes procedures for inspecting the propeller shaft for cracking and reporting the results to the manufacturer. This information is reasonably available at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1130 or see **ADDRESSES** for other ways to access this service information.

**FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the engine shaft with consequent propeller detachment could result in damage to the glider or injury to persons on the ground. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**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–2015–1130; Directorate Identifier 2015–CE–008–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.

**Costs of Compliance**

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it would take about 2 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 the AD on U.S. operators to be $340, or $170 per product.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

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

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

**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 Amendment 39–17968 (79 FR 54895; September 5, 2014), and adding the following new AD:

**2015–09–04 DG Flugzeugbau GmbH:** Amendment 39–18150; Docket No. FAA–2015–1130; Directorate Identifier 2015–CE–008–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective May 26, 2015.

**(b) Affected ADs**

This AD supersedes AD 2013–22–14 R1; Amendment 39–17968 (79 FR 54895; September 5, 2014).

**(c) Applicability**

This AD applies to DG Flugzeugbau GmbH Model DG–1000T gliders, all serial numbers, that are:

(1) Equipped with a Solo Kleinmotoren Model 2350 C engine; and

(2) Certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 72: Engine.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as engine shaft failure with consequent propeller detachment. We are issuing this AD to prevent failure of the engine shaft with consequent propeller detachment that could result in damage to the glider or injury of persons on the ground.

**(f) Actions and Compliance**

Unless already done, do the following actions:

(1) As of November 25, 2013 (the effective date retained from AD 2013–22–14), do not operate the engine unless the engine is modified following instructions that are FAA-approved specifically for this AD. Contact the FAA office identified in paragraph (g)(1) of this AD to get more information about obtaining such instructions.

(2) Modification of an engine following the instructions in Solo Kleinmotoren Service Bulletin 4603–14, dated April 28, 2014, is not an acceptable modification to comply with paragraph (f)(1) of this AD.

(3) As of May 26, 2015 (the effective date of this AD), place a copy of this AD into the Limitations section of the aircraft flight manual (AFM).

(4) Within the next 30 days after May 26, 2015 (the effective date of this AD), do a one-time inspection (magnetic particle or dye penetrant) of the propeller shaft following Solo Kleinmotoren GmbH Anleitung zur Inspektion (English translation: Inspection Instruction), Nr. 4603–1, Ausgabe (English translation: dated) March 26, 2015.

**Note 1 to paragraph (f)(4) of this AD:** This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, we will refer to the Solo Kleinmotoren service information as it appears on the document.

(5) Within the next 30 days after May 26, 2015 (the effective date of this AD), report the results of the inspection required in paragraph (f)(4) of this AD to Solo Kleinmotoren GmbH. Include the serial number of the engine and the operational time since change of the axle in your report. You may find contact information for Solo Kleinmotoren GmbH in paragraph (i)(3) of this AD.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: 98160 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

*(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.

*(3) Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**(h) Related Information**

Refer to MCAI found in European Aviation Safety Agency (EASA) AD No.: 2015–0052–E, dated March 27, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1130.

**(i) Material Incorporated by Reference**

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

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

(i) Solo Kleinmotoren GmbH Anleitung zur Inspektion (English translation: Inspection Instruction), Nr. 4603–1, Ausgabe (English translation: dated) March 26, 2015.

**Note 2 to paragraph (i)(2)(i) of this AD:** This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, we will refer to the Solo Kleinmotoren service information as it appears on the document.

(ii) Reserved.

(3) For service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, 71050 Sindelfingen, Germany; telephone: +49 7031 301–0; fax: +49 7031 301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com/com.*

(4) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov*

by searching for locating Docket No. FAA–2015–1130.

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

Issued in Kansas City, Missouri, on April 22, 2015.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–09928 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31013; Amdt. No. 3639]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective May 5, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 2015.

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

**For Examination**

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

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

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:**

This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

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

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

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on April 10, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 28 MAY 2015**

Haleyville, AL, Posey Field, RNAV (GPS) RWY 36, Orig-B
Franklin, VA, Franklin Muni-John Beverly Rose, VOR RWY 9, Amdt 14C, CANCELED
Franklin, VA, Franklin Muni-John Beverly Rose, VOR/DME RWY 27, Amdt 9F, CANCELED

**Effective 25 JUNE 2015**

Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Amdt 3
Tampa, FL, Tampa Intl, RNAV (GPS) RWY 10, Amdt 2
New York, NY, John F Kennedy Intl, RNAV (GPS) Y RWY 4L, Amdt 2
Cleveland, OH, Cleveland-Hopkins Intl, LDA/DME RWY 6R, Amdt 1C, CANCELED
Cleveland, OH, Cleveland-Hopkins Intl, LDA/DME RWY 24L, Amdt 1C, CANCELED
Dallas, TX, Dallas Love Field, RNAV (RNP) W RWY 13R, Orig-B
Dallas, TX, Dallas Love Field, RNAV (RNP) X RWY 13R, Orig-B
Houston, TX, William P Hobby, ILS OR LOC RWY 4, ILS RWY 4 (SA CAT I), ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 42
Roosevelt, UT, Roosevelt Muni, RNAV (GPS) RWY 25, Orig-B

[FR Doc. 2015–10227 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31014; Amdt. No. 3640]**

### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective May 5, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 2015.

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

**For Examination**

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

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

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

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

**Availability and Summary of Material Incorporated by Reference**

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

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

**The Rule**

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 10, 2015.

**John Duncan,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 28–May–15 | MO | Neosho | Neosho Hugh Robinson | 4/0069 | 03/24/15 | RNAV (GPS) RWY 19, Amdt 1. |
| 28–May–15 | MO | Fredericktown | A Paul Vance Fredericktown Rgnl. | 4/0070 | 03/27/15 | RNAV (GPS) RWY 1, Amdt 1. |
| 28–May–15 | MN | Wheaton | Wheaton Muni | 4/0097 | 03/24/15 | RNAV (GPS) RWY 34, Orig. |
| 28–May–15 | MN | Slayton | Slayton Muni | 4/0110 | 03/24/15 | RNAV (GPS) RWY 17, Orig. |
| 28–May–15 | MO | Joplin | Joplin Rgnl | 4/0113 | 03/25/15 | RNAV (GPS) RWY 31, Amdt 1. |
| 28–May–15 | MN | Faribault | Faribault Muni | 4/0122 | 03/27/15 | RNAV (GPS) RWY 12, Amdt 1. |
| 28–May–15 | MN | Preston | Fillmore County | 4/0148 | 03/27/15 | RNAV (GPS) RWY 11, Orig. |
| 28–May–15 | MN | Preston | Fillmore County | 4/0150 | 03/27/15 | RNAV (GPS) RWY 29, Amdt 1. |
| 28–May–15 | MN | Fergus Falls | Fergus Falls Muni-Einar Mickelson Fld. | 4/0151 | 03/27/15 | RNAV (GPS) RWY 13, Orig. |
| 28–May–15 | MO | Fredericktown | A Paul Vance Fredericktown Rgnl. | 4/0174 | 03/27/15 | RNAV (GPS) RWY 19, Amdt 1. |
| 28–May–15 | MN | Hallock | Hallock Muni | 4/0175 | 03/25/15 | RNAV (GPS) RWY 31, Amdt 1. |
| 28–May–15 | MN | Madison | Lac Qui Parle County | 4/0184 | 03/24/15 | RNAV (GPS) RWY 14, Orig. |
| 28–May–15 | MN | Wheaton | Wheaton Muni | 4/0191 | 03/24/15 | RNAV (GPS) RWY 16, Orig. |
| 28–May–15 | MI | Gladwin | Gladwin Zettel Memorial | 4/0302 | 03/27/15 | RNAV (GPS) RWY 27, Orig. |
| 28–May–15 | MN | Madison | Lac Qui Parle County | 4/0304 | 03/24/15 | RNAV (GPS) RWY 32, Orig. |
| 28–May–15 | MN | Madison | Lac Qui Parle County | 4/0305 | 03/24/15 | NDB RWY 32, Amdt 4. |
| 28–May–15 | MO | Maryville | Northwest Missouri Rgnl | 4/0412 | 03/27/15 | RNAV (GPS) RWY 14, Amdt 1. |
| 28–May–15 | NE | Kearney | Kearney Rgnl | 4/0429 | 03/24/15 | ILS OR LOC RWY 36, Amdt 2. |
| 28–May–15 | MN | Bigfork | Bigfork Muni | 4/0437 | 03/27/15 | RNAV (GPS) RWY 33, Orig-A. |
| 28–May–15 | MI | Gladwin | Gladwin Zettel Memorial | 4/0443 | 03/27/15 | RNAV (GPS) RWY 9, Orig. |
| 28–May–15 | MI | Escanaba | Delta County | 4/0482 | 03/24/15 | LOC/DME BC RWY 27, Amdt 1A. |
| 28–May–15 | MI | Escanaba | Delta County | 4/0483 | 03/24/15 | VOR RWY 27, Amdt 12A. |
| 28–May–15 | MI | Escanaba | Delta County | 4/0485 | 03/24/15 | RNAV (GPS) RWY 36, Orig-A. |
| 28–May–15 | MI | Escanaba | Delta County | 4/0486 | 03/24/15 | RNAV (GPS) RWY 27, Amdt 1A. |
| 28–May–15 | MI | Escanaba | Delta County | 4/0488 | 03/24/15 | VOR RWY 36, Orig-B. |
| 28–May–15 | MN | Hutchinson | Hutchinson Muni-Butler Field | 4/0497 | 03/25/15 | RNAV (GPS) RWY 15, Orig-A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 28–May–15 | ND | Fargo | Hector Intl | 4/0501 | 03/27/15 | RNAV (GPS) RWY 9, Amdt 1. |
| 28–May–15 | MN | Slayton | Slayton Muni | 4/0504 | 03/24/15 | RNAV (GPS) RWY 35, Orig. |
| 28–May–15 | MN | Eveleth | Eveleth-Virginia Muni | 4/0526 | 03/27/15 | RNAV (GPS) RWY 27, Orig. |
| 28–May–15 | MN | Eveleth | Eveleth-Virginia Muni | 4/0528 | 03/27/15 | VOR RWY 27, Amdt 1. |
| 28–May–15 | MN | Faribault | Faribault Muni | 4/0536 | 03/27/15 | RNAV (GPS) RWY 30, Amdt 1. |
| 28–May–15 | MN | Glenwood | Glenwood Muni | 4/0547 | 03/27/15 | RNAV (GPS) RWY 33, Amdt 1. |
| 28–May–15 | MI | Manistique | Schoolcraft County | 4/0606 | 03/25/15 | VOR RWY 28, Amdt 1. |
| 28–May–15 | MI | Jackson | Jackson County-Reynolds Field. | 4/0679 | 03/25/15 | RNAV (GPS) RWY 14, Amdt 1. |
| 28–May–15 | MN | Hallock | Hallock Muni | 4/0686 | 03/25/15 | RNAV (GPS) RWY 13, Orig. |
| 28–May–15 | MI | Manistique | Schoolcraft County | 4/0687 | 03/25/15 | RNAV (GPS) RWY 28, Orig. |
| 28–May–15 | IL | Chicago/West Chicago. | Dupage | 4/0946 | 03/24/15 | RNAV (GPS) RWY 20L, Orig-A. |
| 28–May–15 | ND | Fargo | Hector Intl | 4/0947 | 03/27/15 | RNAV (GPS) RWY 27, Amdt 1. |
| 28–May–15 | MN | Detroit Lakes | Detroit Lakes-Wething Field | 4/0963 | 03/24/15 | VOR RWY 31, Amdt 1. |
| 28–May–15 | IL | Chicago/West Chicago. | Dupage | 4/1051 | 03/24/15 | RNAV (GPS) RWY 2R, Orig-A. |
| 28–May–15 | MI | Jackson | Jackson County-Reynolds Field. | 4/1085 | 03/25/15 | RNAV (GPS) RWY 32, Orig-A. |
| 28–May–15 | PA | Franklin | Venango Rgnl | 5/0851 | 03/27/15 | VOR RWY 21, Amdt 8. |
| 28–May–15 | WI | Prairie Du Chien | Prairie Du Chien Muni | 5/3716 | 03/20/15 | RNAV (GPS) RWY 32, Orig-A. |
| 28–May–15 | WI | Prairie Du Chien | Prairie Du Chien Muni | 5/3717 | 03/20/15 | RNAV (GPS) RWY 14, Orig-A. |
| 28–May–15 | WI | Prairie Du Chien | Prairie Du Chien Muni | 5/3718 | 03/20/15 | RNAV (GPS) RWY 29, Orig-A. |
| 28–May–15 | WI | Prairie Du Chien | Prairie Du Chien Muni | 5/3719 | 03/20/15 | VOR/DME RWY 29, Amdt 8A. |
| 28–May–15 | CA | San Diego/El Cajon. | Gillespie Field | 5/3728 | 03/27/15 | RNAV (GPS) RWY 17, Amdt 2B. |
| 28–May–15 | CA | San Diego/El Cajon. | Gillespie Field | 5/3729 | 03/27/15 | LOC/DME D, Amdt 11. |
| 28–May–15 | WI | Ladysmith | Rusk County | 5/3732 | 03/20/15 | NDB RWY 32, Amdt 3. |
| 28–May–15 | WI | Ladysmith | Rusk County | 5/3733 | 03/20/15 | RNAV (GPS) RWY 32, Orig. |
| 28–May–15 | WI | Ladysmith | Rusk County | 5/3734 | 03/20/15 | RNAV (GPS) RWY 14, Orig. |
| 28–May–15 | WI | Tomahawk | Tomahawk Rgnl | 5/3747 | 03/20/15 | RNAV (GPS) RWY 9, Amdt 2A. |
| 28–May–15 | WI | Tomahawk | Tomahawk Rgnl | 5/3748 | 03/20/15 | RNAV (GPS) RWY 27, Amdt 2. |
| 28–May–15 | WI | Superior | Richard I Bong | 5/3749 | 03/20/15 | RNAV (GPS) RWY 14, Orig. |
| 28–May–15 | WI | Superior | Richard I Bong | 5/3750 | 03/20/15 | RNAV (GPS) RWY 22, Orig. |
| 28–May–15 | WI | Superior | Richard I Bong | 5/3751 | 03/20/15 | RNAV (GPS) RWY 32, Orig. |
| 28–May–15 | WI | Platteville | Platteville Muni | 5/3757 | 03/20/15 | RNAV (GPS) RWY 7, Orig-A. |
| 28–May–15 | WI | Shell Lake | Shell Lake Muni | 5/3761 | 03/20/15 | RNAV (GPS) RWY 32, Orig. |
| 28–May–15 | WI | Shell Lake | Shell Lake Muni | 5/3762 | 03/20/15 | RNAV (GPS) RWY 14, Orig. |
| 28–May–15 | WI | Shell Lake | Shell Lake Muni | 5/3763 | 03/20/15 | VOR/DME RWY 32, Orig. |
| 28–May–15 | WI | Waukesha | Waukesha County | 5/3765 | 03/20/15 | ILS OR LOC RWY 10, Amdt 2. |
| 28–May–15 | WI | Neillsville | Neillsville Muni | 5/3766 | 03/23/15 | NDB RWY 28, Amdt 7. |
| 28–May–15 | WI | Neillsville | Neillsville Muni | 5/3767 | 03/23/15 | RNAV (GPS) RWY 10, Orig. |
| 28–May–15 | WI | Chetek | Chetek Muni-Southworth | 5/3768 | 03/23/15 | RNAV (GPS) RWY 17, Orig-C. |
| 28–May–15 | WI | Chetek | Chetek Muni-Southworth | 5/3769 | 03/23/15 | RNAV (GPS) RWY 35, Orig-B. |
| 28–May–15 | KY | Bowling Green | Bowling Green-Warren County Rgnl. | 5/4171 | 03/24/15 | VOR–A, Orig. |
| 28–May–15 | KY | Bowling Green | Bowling Green-Warren County Rgnl. | 5/4172 | 03/24/15 | RNAV (GPS) RWY 21, Amdt 1. |
| 28–May–15 | KY | Bowling Green | Bowling Green-Warren County Rgnl. | 5/4173 | 03/24/15 | NDB RWY 3, Amdt 2. |
| 28–May–15 | AL | Dothan | Dothan Rgnl | 5/4635 | 03/24/15 | ILS OR LOC RWY 32, Amdt 9. |
| 28–May–15 | AL | Dothan | Dothan Rgnl | 5/4636 | 03/24/15 | VOR RWY 14, Amdt 4. |
| 28–May–15 | AL | Fairhope | H L Sonny Callahan | 5/4660 | 03/24/15 | RNAV (GPS) RWY 1, Amdt 2. |
| 28–May–15 | AL | Fairhope | H L Sonny Callahan | 5/4662 | 03/24/15 | RNAV (GPS) RWY 19, Amdt 2. |
| 28–May–15 | AL | Birmingham | Birmingham-Shuttlesworth Intl. | 5/4663 | 03/24/15 | LOC RWY 18, Amdt 2A. |
| 28–May–15 | AL | Anniston | Anniston Rgnl | 5/4664 | 03/24/15 | NDB RWY 5, Amdt 4B. |
| 28–May–15 | AL | Anniston | Anniston Rgnl | 5/4665 | 03/24/15 | ILS OR LOC RWY 5, Amdt 3B. |
| 28–May–15 | AL | Alexander City | Thomas C Russell Fld | 5/4666 | 03/24/15 | RNAV (GPS) RWY 18, Amdt 1. |
| 28–May–15 | AL | Andalusia/Opp | South Alabama Rgnl At Bill Benton Field. | 5/4668 | 03/24/15 | RNAV (GPS) RWY 29, Amdt 2. |
| 28–May–15 | AL | Andalusia/Opp | South Alabama Rgnl At Bill Benton Field. | 5/4669 | 03/24/15 | COPTER NDB RWY 29, Orig. |
| 28–May–15 | AL | Andalusia/Opp | South Alabama Rgnl At Bill Benton Field. | 5/4670 | 03/24/15 | RNAV (GPS) RWY 11, Amdt 2. |
| 28–May–15 | AL | Ozark | Blackwell Field | 5/4676 | 03/24/15 | VOR RWY 31, Amdt 7. |
| 28–May–15 | AL | Marion | Vaiden Field | 5/4677 | 03/24/15 | RNAV (GPS) RWY 34, Amdt 1. |
| 28–May–15 | AL | Gadsden | Northeast Alabama Rgnl | 5/4765 | 03/24/15 | ILS OR LOC/DME RWY 24, Orig. |
| 28–May–15 | AL | Gadsden | Northeast Alabama Rgnl | 5/4766 | 03/24/15 | RNAV (GPS) RWY 24, Amdt 1. |
| 28–May–15 | AL | Gadsden | Northeast Alabama Rgnl | 5/4767 | 03/24/15 | RNAV (GPS) RWY 6, Amdt 1A. |
| 28–May–15 | AL | Gadsden | Northeast Alabama Rgnl | 5/4768 | 03/24/15 | RNAV (GPS) RWY 18, Amdt 1. |
| 28–May–15 | AL | Gadsden | Northeast Alabama Rgnl | 5/4769 | 03/24/15 | RNAV (GPS) RWY 36, Amdt 1. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 28–May–15 | AL | Bay Minette | Bay Minette Muni | 5/4771 | 03/24/15 | RNAV (GPS) RWY 8, Amdt 1. |
| 28–May–15 | AL | Ozark | Blackwell Field | 5/4772 | 03/24/15 | RNAV (GPS) RWY 31, Orig. |
| 28–May–15 | AL | Ozark | Blackwell Field | 5/4773 | 03/24/15 | RNAV (GPS) RWY 13, Orig. |
| 28–May–15 | AL | Anniston | Anniston Rgnl | 5/4774 | 03/24/15 | RNAV (GPS) RWY 5, Amdt 1A. |
| 28–May–15 | AL | Headland | Headland Muni | 5/4873 | 03/24/15 | RNAV (GPS) RWY 27, Amdt 1. |
| 28–May–15 | AL | Headland | Headland Muni | 5/4874 | 03/24/15 | RNAV (GPS) RWY 9, Amdt 1. |
| 28–May–15 | AL | Evergreen | Middleton Field | 5/4877 | 03/24/15 | RNAV (GPS) RWY 28, Amdt 1. |
| 28–May–15 | AL | Evergreen | Middleton Field | 5/4878 | 03/24/15 | RNAV (GPS) RWY 10, Amdt 1. |
| 28–May–15 | AL | Evergreen | Middleton Field | 5/4879 | 03/24/15 | RNAV (GPS) RWY 1, Amdt 1. |
| 28–May–15 | AL | Russellville | Bill Pugh Field | 5/4880 | 03/24/15 | RNAV (GPS) RWY 20, Orig-A. |
| 28–May–15 | AL | Russellville | Bill Pugh Field | 5/4881 | 03/24/15 | RNAV (GPS) RWY 2, Orig-A. |
| 28–May–15 | AL | Mobile | Mobile Rgnl | 5/4897 | 03/24/15 | RNAV (GPS) RWY 36, Amdt 1. |
| 28–May–15 | AL | Monroeville | Monroe County | 5/4901 | 03/23/15 | RNAV (GPS) RWY 3, Orig-B. |
| 28–May–15 | AL | Monroeville | Monroe County | 5/4902 | 03/23/15 | VOR RWY 3, Amdt 10. |
| 28–May–15 | AL | Monroeville | Monroe County | 5/4903 | 03/23/15 | VOR RWY 21, Amdt 10. |
| 28–May–15 | AL | Montgomery | Montgomery Rgnl (Dannelly Field). | 5/4991 | 03/23/15 | NDB RWY 10, Amdt 19. |
| 28–May–15 | AL | Centre | Centre-Piedmont-Cherokee County Rgnl. | 5/4995 | 03/23/15 | RNAV (GPS) RWY 25, Amdt 1. |
| 28–May–15 | AL | Centre | Centre-Piedmont-Cherokee County Rgnl. | 5/4996 | 03/23/15 | RNAV (GPS) RWY 7, Amdt 1. |
| 28–May–15 | WV | Berkeley Springs | Potomac Airpark | 5/5415 | 03/27/15 | GPS RWY 29, Orig. |
| 28–May–15 | WV | Berkeley Springs | Potomac Airpark | 5/5416 | 03/27/15 | GPS RWY 11, Orig. |
| 28–May–15 | WV | Berkeley Springs | Potomac Airpark | 5/5417 | 03/27/15 | VOR RWY 29, Amdt 6. |
| 28–May–15 | CO | Denver | Centennial | 5/5763 | 03/27/15 | RNAV (GPS) RWY 28, Amdt 1A. |
| 28–May–15 | NY | Montauk | Montauk | 5/5861 | 03/26/15 | RNAV (GPS) RWY 24, Amdt 1A. |
| 28–May–15 | NY | Montauk | Montauk | 5/5862 | 03/26/15 | RNAV (GPS) RWY 6, Orig-A. |
| 28–May–15 | TX | Arlington | Arlington Muni | 5/5863 | 03/25/15 | ILS OR LOC/DME RWY 34, Amdt 2B. |
| 28–May–15 | TX | Arlington | Arlington Muni | 5/5864 | 03/25/15 | RNAV (GPS) RWY 34, Amdt 3B. |
| 28–May–15 | MI | Hastings | Hastings | 5/5865 | 03/23/15 | VOR RWY 12, Orig-F. |
| 28–May–15 | CA | Rio Vista | Rio Vista Muni | 5/6625 | 03/27/15 | RNAV (GPS) RWY 25, Amdt 3B. |
| 28–May–15 | CA | Rio Vista | Rio Vista Muni | 5/6626 | 03/27/15 | VOR/DME–A, Amdt 2. |
| 28–May–15 | HI | Honolulu | Honolulu Intl | 5/6631 | 03/27/15 | ILS Y RWY 4R, Amdt 1A. |
| 28–May–15 | WI | New Lisbon | Mauston-New Lisbon Union | 5/6662 | 03/27/15 | RNAV (GPS) RWY 32, Orig-A. |
| 28–May–15 | TX | Cotulla | Cotulla-La Salle County | 5/7127 | 03/27/15 | RNAV (GPS) RWY 13, Amdt 2. |
| 28–May–15 | TX | Houston | Ellington | 5/7357 | 03/27/15 | TACAN RWY 35L, Orig. |
| 28–May–15 | TX | Houston | Ellington | 5/7358 | 03/27/15 | TACAN RWY 17R, Orig. |
| 28–May–15 | TX | Houston | Ellington | 5/7359 | 03/27/15 | ILS OR LOC RWY 17R, Amdt 6. |
| 28–May–15 | TX | Houston | Ellington | 5/7360 | 03/27/15 | RNAV (GPS) RWY 17R, Amdt 1A. |
| 28–May–15 | TX | Houston | Ellington | 5/7361 | 03/27/15 | RNAV (GPS) RWY 22, Amdt 2A. |
| 28–May–15 | SC | Bamberg | Bamberg County | 5/8196 | 03/30/15 | RNAV (GPS) RWY 5, Orig-A. |
| 28–May–15 | SC | Bamberg | Bamberg County | 5/8197 | 03/30/15 | RNAV (GPS) RWY 23, Orig-A. |
| 28–May–15 | MA | Norwood | Norwood Memorial | 5/8445 | 03/31/15 | LOC RWY 35, Amdt 10B. |
| 28–May–15 | MA | Norwood | Norwood Memorial | 5/8446 | 03/31/15 | RNAV (GPS) RWY 35, Amdt 1B. |
| 28–May–15 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 5/8875 | 03/15/15 | RNAV (GPS) Y RWY 27, Orig. |
| 28–May–15 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 5/8876 | 03/15/15 | ILS OR LOC RWY 27, Amdt 17A. |
| 28–May–15 | NY | East Hampton | East Hampton | 5/8887 | 03/31/15 | VOR–A, Amdt 11. |
| 28–May–15 | PA | Mount Pocono | Pocono Mountains Muni | 5/8894 | 03/30/15 | RNAV (GPS) RWY 31, Amdt 2B. |

[FR Doc. 2015–10235 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2015–0351]**

### Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is canceling the temporary deviation concerning the operating schedule that governs the Oregon State (Lewis and Clark River) Highway Bridge across the Lewis and Clark River, mile 1.0, at Astoria, OR. The deviation needs to be canceled due to contract agreements with the Oregon Department of Transportation (ODOT) and the bridge construction company. Weekend work dates have been changed.

**DATES:** The temporary deviation published on April 28, 2015, at 80 FR 23445, is cancelled as of April 28, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2015–0351] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this cancelation, call or email Steven M. Fischer, Thirteenth Coast Guard District Bridge Program Administrator, telephone 206–220–7282, email *d13-pf-d13bridgesuscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Basis and Purpose

On April 28, 2015, we published a temporary deviation entitled ''Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR'' in the **Federal Register** (80 FR 23445). The temporary deviation concerned the operating schedule of the Oregon State (Lewis and Clark) highway bridge. This deviation allowed the bascule span to remain in the closed-to-navigation position to accommodate bridge maintenance activities on the bridge, and need not open to maritime traffic. This deviation from the operating regulations was authorized under 33 CFR 117.35.

### B. Cancellation

ODOT made a contract agreement after the requested temporary deviation was approved. At the time of the initial request submitted by the ODOT Project Manager, the bridge construction crew was planning to work Monday through Friday. However, on April 10, 2015, ODOT and the construction company changed the working days to Tuesday through Saturday. ODOT noticed the discrepancy after reviewing the approval letter. As a result of this discrepancy, the times listed in the approved temporary deviation are incorrect.

Dated: April 29, 2015.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2015–10430 Filed 5–4–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2014–1075]**

**RIN 1625–AA87**

## Security Zone, U.S. Open Golf Championship, South Puget Sound; University Place, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for the U.S. Open Golf Championship at Chambers Bay Golf Course in South Puget Sound, University Place, WA, from June 14, 2015 through June 22, 2015. This action is necessary to ensure the safety and security of participants, spectators, and event officials at the U.S. Open Golf Championship, and will do so by prohibiting any person or vessel from entering or remaining in the security zone unless authorized by the Captain of the Port or his Designated Representative.

**DATES:** This rule is effective from June 14, 2015 through June 22, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2014–1075]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* and use ''USCG–2014–1075'' as your search term. Click on the link for this rulemaking and follow the instructions on that Web site for viewing documents in the docket. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Ryan Griffin, Waterways Management Division, Coast Guard Sector Puget Sound, telephone (206) 217–6045 or email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Pierce County Sheriff Department requested that the Coast Guard establish a temporary security zone to assist in the security and safety of the 65,000 potential attendees of the U.S Open Golf Championship event, set to take place at Chambers Bay Golf Course in South Puget Sound, University Place, WA, from June 14, 2015 through June 22, 2015. On February 11, 2015, the Coast Guard proposed to establish a temporary security zone in connection with this event by publishing a notice of proposed rulemaking (NPRM) entitled, ''Security Zone, U.S. Open Golf Championship, South Puget Sound; University Place, WA'' in the **Federal Register** (80 FR 7553). The Coast Guard received no comments in response to the NPRM, and received no requests for a public meeting.

### B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

The Chambers Bay Golf Course, located in the city of University Place, WA and the County of Pierce, will be the host site for the U.S. Golf Association 115th Annual U.S. Open Golf Championship from June 15, 2015 through June 21, 2015. This event will have a daily attendance of approximately 65,000 people and receives international press including multiple days of live television coverage. Due to the high number of general public in attendance and press coverage, the U.S. Open Golf Championship qualifies as a significant special event that requires a security zone. Based on past incursions at similar events at Chambers Bay Golf Course, this security zone is necessary for the size detailed in the regulation section below, 24 hours a day, for the duration of the event.

The purpose of this rule is to deter and prevent potential criminal and terrorist activity against the large gathering of people at the highly publicized U.S. Open Golf Championship. This action is necessary to ensure the safety and security of participants, spectators, and event officials at the U.S. Open Golf Championship, and will do so by prohibiting any person or vessel from entering or remaining in the security

zone unless authorized by the Captain of the Port or his Designated Representative.

**C. Discussion of the Temporary Final Rule**

On February 11, 2015, the Coast Guard proposed to establish a temporary security zone in connection with the U.S. Open Golf Championship by publishing an NPRM in the **Federal Register** (80 FR 7553). The Coast Guard received no comments in response to the NPRM. As a result, the Coast Guard is establishing this temporary security zone as proposed in the NPRM without change.

This temporary final rule establishes a temporary security zone on all waters encompassed by the following points: 47°12′50″ N., 122°35′25″ W.; thence southerly to 47°11′14″ N., 122°35′50″ W.; thence easterly to the shoreline at 47°11′14″ N., 122°35′03″ W.; thence northerly along the shoreline to 47°12′49″ N., 122°34′39″ W.; thence westerly back to the point of origin.

Vessels wishing to enter the security zone must request permission for entry by contacting the Joint Harbor Operations Center at (206) 217–6001, or the on-scene patrol craft via VHF–FM Ch 13. If permission for entry is granted, vessels must proceed at a minimum speed for safe navigation.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The rule is not a significant regulatory action because the security zone will be in place for a limited period of time and vessel traffic will be able to transit around the security zone. Maritime traffic may also request permission to transit through the zone from the Captain of the Port (COTP), Puget Sound or a Designated Representative.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the waters covered by the security zone while it is in effect. The rule will not have a significant economic impact on a substantial number of small entities because the temporary security zone would be in place for a limited period of time and maritime traffic will be able to transit around the security zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary security zone near Chambers Bay Golf Course in South Puget Sound, University Place, WA. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T13–281 to read as follows:

**§ 165.T13.281 Security Zone; U.S. Open Golf Championship, South Puget Sound; University Place, WA.**

(a) *Location.* This temporary security zone is established in all waters encompassed by the following points: 47°12′50″ N., 122°35′25″ W.; thence southerly to 47°11′14″ N., 122°35′50″ W.; thence easterly to the shoreline at 47°11′14″ N., 122°35′03″ W.; thence northerly along the shoreline to 47°12′49″ N., 122°34′39″ W.; thence westerly back to the point of origin.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or remain in the security zone created by this section without the permission of the Captain of the Port or his Designated Representative. Designated Representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the security zone created by this section. See 33 CFR part 165, subpart D, for additional information and requirements. Vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operations Center at (206) 217–6001, or the on-scene patrol craft via VHF–FM Ch 13. If permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

(c) *Enforcement period.* This rule will be enforced from 6 a.m. on June 14, 2015, until 11 p.m. on June 22, 2015, unless canceled sooner by the Captain of the Port.

Dated: April 22, 2015.

**M.W. Raymond,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2015–10488 Filed 5–4–15; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 174**

**[EPA–HQ–OPP–2014–0454; FRL–9925–85]**

## Bacillus thuringiensis Cry2Ab2 Protein in Soybean; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* (*B.t.*) Cry2Ab2 protein in or on soybean when the protein is used as a plant-incorporated protectant (PIP) in soybean. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *B.t.* Cry2Ab2 protein in or on soybean.

**DATES:** This regulation is effective May 5, 2015. Objections and requests for hearings must be received on or before July 6, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0454, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0454 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 6, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0454, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background and Statutory Findings

In the **Federal Register** initially on October 24, 2014 (79 FR 63596) (FRL–9916–03) and then again January 28, 2015 (80 FR 4527) (FRL–9921–55), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F8276) by Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. The petition requested an amendment to 40 CFR 174.519 by extending the current exemption from the requirement of a tolerance for residues of *B.t.* Cry2Ab2 protein in corn and cotton to all food commodities. That document referenced a summary of the petition prepared by the petitioner Monsanto Company, which is available in the docket, *http://www.regulations.gov.* A comment was received on the October 24, 2014, notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Based on available data, EPA is amending the existing exemption for residues of *B.t.* Cry2Ab2 protein in corn and cotton to include residues in soybean rather than all food commodities as requested. The reasons for this change are discussed in Unit VII.D.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The acute oral toxicity data demonstrates the lack of mammalian toxicity at high levels of exposure to the pure *B.t.* Cry2Ab2 protein. Further, amino acid sequence comparisons showed no similarities between the *B.t.* Cry2Ab2 protein and known toxic proteins in protein databases. In addition, the *B.t.* Cry2Ab2 protein was shown to be substantially degraded by heat when examined by immunoassay. This instability to heat would also lessen the potential dietary exposure to intact *B.t.* Cry2Ab2 protein in cooked or processed foods. These biochemical features along with the lack of adverse results in the acute oral toxicity test support the conclusion that there is a reasonable certainty no harm from toxicity will result from dietary exposure to residues of the *B.t.* Cry2Ab2 protein in the identified soybean commodities.

Since this PIP is a protein, allergenic potential was also considered.

Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of-evidence approach where the following factors are considered: Source of the trait; amino acid sequence comparison with known allergens; and biochemical properties of the protein, including in vitro digestibility in simulated gastric fluid (SGF) and glycosylation. This approach is consistent with the approach outlined in the Annex to the Codex Alimentarius ''Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.'' The allergenicity assessment for the *B.t.* Cry2Ab2 protein follows:

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of the *B.t.* Cry2Ab2 protein with known allergens showed no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues.

3. *Digestibility.* The *B.t.* Cry2Ab2 protein was rapidly digested in 15 seconds in simulated mammalian gastric fluid containing pepsin.

4. *Glycosylation.* The *B.t.* Cry2AB2 protein expressed in soybean was shown not to be glycosylated.

5. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for the *B.t.* Cry2Ab2 protein to be a food allergen is minimal.

The information on the safety of the pure *B.t.* Cry2Ab2 protein provides adequate justification to address possible exposures in all soybean crops.

## IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other exemptions in effect for the *B.t.* Cry2Ab2 protein residue, and exposure from non-occupational sources. Oral exposure may occur at very low levels from ingestion of corn, cotton and soybean products. With respect to drinking water, since the PIP is integrated into the plant genome and based upon EPA's human health and environmental assessments for *B.t.* Cry2Ab2 protein (Refs. 1 and 2), the Agency expects residues in drinking water to be extremely low or non-existent.

Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces exposure by these routes to negligible. Exposure to infants and children via residential or lawn use is also not expected because the use sites for the *B.t.* Cry2Ab2 protein is agricultural.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Since the *B.t.* Cry2Ab2 protein does not act through a toxic mode of action, nor does the *B.t.* Cry2Ab2 protein appear to produce a toxic metabolite produced by other substances, the protein does not have a common mechanism of toxicity with other substances; therefore, the requirements of section 408(b)(2)(D)(v) do not apply.

## VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the information discussed in Unit III., EPA concludes that there are no threshold effects of concern to infants, children, or adults from exposure to the *B.t.* Cry2Ab2 protein. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Therefore, based on the discussion in Unit III. and the supporting documentation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of the *B.t.* Cry2Ab2 protein in soybean, when it is used as a plant-incorporated protectant. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information.

## VII. Other Considerations

### *A. Endocrine Disruptors*

The pesticidal active ingredient is a protein, derived from a source that is not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectant at this time.

### *B. Analytical Enforcement Methodology*

A standard operating procedure for an enzyme-linked immunosorbent assay for the detection and quantification of the *B.t.* Cry2Ab2 protein in soybean tissue has been submitted.

### *C. Response to Comments*

EPA received one comment that is potentially relevant to this petition. The commenter generally opposed approval of the use of a Monsanto ''bt pip,'' but did not specify any particular PIP or any particular safety concern. As no specific basis for denying the petition was provided, the comment is not being further considered.

### *D. Revisions to Petition for Tolerance*

Monsanto's petition requested an exemption for residues of the *B.t.* Cry2Ab2 protein in or on all food and feed commodities. However, based on the data provided, the Agency can only support a safety finding for residues in or on soybean at this time. Currently, the Agency does not have adequate information for a full range of crops for

an exemption for the *B.t.* Cry2Ab2 protein in or on all food and feed commodities.

### VIII. Conclusions

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the *B.t.* Cry2Ab2 protein in all food and feed commodities of soybean. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed in this unit, no toxicity to mammals has been observed, nor is there any indication of allergenicity potential for the plant-incorporated protectant.

Therefore, an exemption is established for residues of the *B.t.* Cry2Ab2 protein in or on soybean when the protein is used as a PIP in soybean.

### IX. References

1. U.S. EPA. 2014a. Review of Product Characterization and Human Health Data for Plant-Incorporated Protectant *Bacillus thuringiensis* (*Bt*) Cry2Ab2 and Cry1A.105 Insect Control Protein and the Genetic Material Necessary for Its Production in MON 87751 and the Combined-Trait Insect Protected Soybeans in Support for an Experimental Use Permit, Sec. 3 Registration and Exemptions from the Requirement of a Tolerance. Memorandum from J. Facey, Ph.D. through J. Kough, Ph.D. to K. Haymes, Ph.D., dated December 23, 2014.

2. U.S. EPA. 2014b. Environmental Risk Assessment for the FIFRA Section 3 Seed Increase Registration of the Plant-Incorporated Protectant (PIP), *Bacillus thuringiensis* (Bt) Cry1A.105 and Cry2Ab2 Insect Control Proteins and the Genetic Material (PV–GMIR13196) Necessary for Their Production in Event MON 87751 Soybean. Memorandum from I. You, Ph.D. through S. Borges to K. Haymes, Ph.D., dated December 16, 2014.

### X. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 2015.

**Jack E. Housenger,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. § 174.519 is revised to read as follows:

**§ 174.519 Bacillus thuringiensis Cry2Ab2 protein; exemption from the requirement of a tolerance.**

(a) Residues of *Bacillus thuringiensis* Cry2Ab2 protein in or on corn or cotton are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; corn, pop; and cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts.

(b) Residues of *Bacillus thuringiensis* Cry2Ab2 protein in or on soybean are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in the food and feed commodities of soybean.

[FR Doc. 2015–10493 Filed 5–4–15; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[PS Docket No. 09–19; RM–11514 and RM–11531; FCC 15–37]**

### Travelers' Information Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends its rules pertaining to public safety Travelers' Information Stations (TIS), which Public Safety Pool-eligible entities operate to transmit noncommercial, travel-related information over AM band frequencies to motorists on a localized basis. One

current TIS rule requires the filtering of audio frequencies transmitted over TIS. Specifically, the Commission relaxes the rule to require the filtering of audio frequencies above 5 kHz instead of 3 kHz. This rule change will enable TIS operators to improve the audio quality and intelligibility of TIS broadcasts, thus improving their ability to communicate clearly with the traveling public.

**DATES:** Effective June 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** Thomas Eng, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, at (202) 418–0019, TTY (202) 418–7233, or via email at *Thomas.Eng@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order* in PS Docket No. 09–19; RM–11514 and RM–11531; adopted March 25, 2015 and released on March 26, 2015. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities or by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

## Introduction

Commission rules authorize Public Safety Pool-eligible entities to use Travelers' Information Stations (TIS) to transmit noncommercial, travel-related information over AM band frequencies to motorists on a localized basis. § 90.242(b)(8) of the Commission's rules requires the filtering of audio frequencies between 3 and 20 kHz. Based on a comment record indicating that this filtering decreases the audibility of TIS broadcasts in general, and especially at night and over difficult terrain, the Commission adopted a *Further Notice of Proposed Rulemaking* (*FNPRM*) concurrently with the *Report and Order* proposing elimination of the TIS filtering requirement. In comments to the *FNPRM,* the National Association of Broadcasters (NAB) proposed relaxing, but not eliminating, the filtering requirement from 3 kHz to 5 kHz. The Commission sought comment on this proposal. The subsequent record indicates that a relaxed filtering requirement could improve TIS audio quality to match that of AM broadcast stations, while still retaining a sufficient filtering requirement to minimize adjacent channel interference. Accordingly, in this proceeding we adopt a *Second Report and Order* that maintains a filtering requirement but relaxes it from 3 kHz to 5 kHz. We will also do the following: (1) Require use of a new roll-off curve to maintain the required 50 dB attenuation at 20 kHz; (2) allow placement of the filter ahead of the TIS transmitter in addition to current filter placement requirement and; (3) require certification only for newly manufactured equipment that implements these new rules.

## Background

The Commission established TIS in 1977 in order to ''establish an efficient means of communicating certain kinds of information to travelers over low power radio transmitters licensed to Local Government entities.'' The Commission specifically noted that such stations had been used to reduce traffic congestion and to transmit ''road conditions, travel restrictions, and weather forecasts to motorists.'' Further, the Commission anticipated that TIS also would be used to ''transmit travel related emergency messages concerning natural disasters (*e.g.,* forest fires, floods, etc.), traffic accidents and hazards, and related bulletins affecting the immediate welfare of citizens.''

Although the *NPRM* did not raise the issue of removal of the filtering provision of § 90.242(b)(8), numerous commenters supported it in the record. The *FNPRM* thus sought further comment on this issue in order to establish a more complete record. The *NPRM* received eleven comments (three from the American Association of Information Radio Operators (AAIRO)) and four reply comments (two from AAIRO). Because NAB proposed relaxing rather than eliminating this requirement in its comments, and AAIRO expressed accord with this compromise position in its own comments, the Commission sought further comment on this newly raised option in the *Filtering PN.*

## Second Report and Order

We now consider the record in this proceeding with respect the issues of relaxing or eliminating the filtering provision of § 90.242(b)(8), which requires the filtering of TIS audio frequencies above 3 kHz.

As noted, although the *NPRM* did not raise the issue, numerous commenters argued in the docket for removal of the TIS filtering requirement. Commenters contended that this requirement decreases the audibility of TIS broadcasts in general, and especially at night and over difficult terrain. One commenter in particular, Burden, stated that he had conducted: ''An experiment at the site of a TIS facility which had a first adjacent [AM broadcast station] audibly present but outside of its protected contour. I removed the 3 kHz filter opening the transmitted response to that of the 8 kHz program line. The result confirmed the intelligibility of the transmitted signal as considerably improved with no audible interference presented to the reception of the first adjacent.''

Burden continued that: ''AM broadcast bandwidth specified by the NRSC–2 Spectrum Mask adopted by the FCC some time ago to resolve interference issues, limits the audio frequency response of AM broadcast transmission to 10 kHz. Limiting the bandwidth of TIS transmission to the same bandwidth as the NRSC mask should be logical. A recent study into acceptable audio bandwidths conducted by NPR Labs in an AM–DAB study for the NRSC, concluded that limitations to an audio bandwidth less than 7 kHz was not advisable for AM broadcast facilities.''

Because this particular issue was not raised in the *NPRM* but rather was introduced by commenters in the record, the Commission sought further comment in the *FNPRM* on removing the filtering provision, asking whether there is any reason this restriction should not be removed. All commenters to the *FNPRM,* save two, supported elimination of the filtering requirement. In addition, many commenters, while supporting this elimination, opposed a mandate to ''require filter removal for existing licensees.'' According to AAIRO, ''if the FCC were to mandate that all TIS licensees who wish to remove the filters must go through a new type acceptance/recertification, that requirement would present an undue financial burden [and t]he imposition of both the above requirements would likely cause most TIS Services to cease due to expense and logistics.''

The Society of Broadcast Engineers (SBE) and NAB were the only commenters opposing removal of the TIS filtering restrictions. According to SBE ''there is a significant potential for increased interference from this proposal.'' SBE took particular issue with Burden's claim that he ''conducted an experiment removing the '3 kHz filter . . . with no audible interference presented to the reception of the first adjacent,' '' because ''[t]he commenter's

anecdotal experiment lacked any demonstration of technical validity or proper scientific methodology.''

SBE also took issue with Burden's claim that '' 'limitations to an audio bandwidth less than 7 kHz was not advisable for AM broadcast facilities' and 'it only follows that the audio quality of the emergency message needs to be offered with the same intelligibility as that from AM radio broadcast facilities' '' because ''[w]hat these allegations fail to mention was that all the standards and studies cited were relative to AM full power broadcast stations.'' SBE asserts that the findings of those studies ''were not intended to be applied to TIS stations, which are licensed under very different standards and with a different allocation status.''

SBE further alleged that ''many TIS stations fail to adhere to generally accepted modulation standards employed by AM broadcasters. . . . SBE members have observed and reported that many TIS stations grossly over- or undermodulate their carriers resulting in poor audio quality and/or poor listenability. This is a . . . supervening contributor to the poor audio quality that they attribute incorrectly to the audio filters.'' While NAB shared many of SBE's concerns, it also submitted ''that a compromise approach may be workable.'' Specifically, NAB stated that ''a filter capable of filtering audio frequencies above 5 kHz should allow for a TIS signal of sufficiently higher quality, without impeding neighboring AM services.'' NAB noted that ''full-power AM radio stations routinely use 5 kHz filters to address and prevent interference among AM stations, with few significant problems.'' Accordingly, NAB offered ''a proposal to allow TIS operators to use a 5 kHz filter, presuming TIS stations broadcast only voice content, as required under the Commission's rules.''

AAIRO responded that it ''can . . . support the compromise proposed by the National Association of Broadcasters, . . .'' because ''[t]he wider filter bandpass would markedly improve TIS voice transmissions and would also protect adjacent broadcasters should a TIS operator transmit non-voice material without authorization.'' AAIRO further stated that if: A wider bandwidth filter may be substituted in place of the present 3-kHz filter . . . the filter [should] be outboard to the TIS transmitter and immediately ahead of its audio input. The FCC should prescribe the exact formula for the audio filter and require its use by all TIS operations—new or existing—whose 3-kHz filters have been deactivated. AAIRO suggests the use of the same roll-off curve presently used in the 3-kHz filter, as it has proven to be adequate during the 30+ years of the TIS service's existence. The use of an outboard filter will streamline the timeline to improve the service and dramatically lower costs for existing operators who would otherwise be required to purchase new transmitters or have their present transmitters modified and recertified.''

Because this compromise proposal was developed in the *FNPRM* comment record, the Bureau released the *Filtering PN* which not only sought comment on the issue of relaxation versus elimination of the TIS filtering requirement, but also whether, if the relaxation proposal were adopted, (1) revision of the related operational requirements would be required; (2) the rules regarding placement of the filter could be revised; (3) recertification would be required for such changes; and (4) relaxation of the filtering requirement (and the associated operational changes) should be mandatory or at the licensee's discretion. We address each of these issues, below.

**Elimination Versus Relaxation of the TIS Filtering Requirement**

The filtering requirement limits the bandwidth of the TIS signal, thereby reducing the risk of interference to the reception of adjacent channel AM stations. However, the rule also has the effect of distinguishing TIS sonically from other AM stations, so that a motorist tuning her radio manually may know intuitively that she has tuned to a TIS station. Specifically, TIS stations have smaller audio bandwidth due to the 3-kHz filter than AM stations, so the audio fidelity of TIS is lower and less intelligible. Based on the record on this filtering issue that prompted us to adopt the *FNPRM,* and the record we have developed in response to the *FNPRM,* we find that the public interest benefits of this sonic distinction are minor at best, and that the public interest would be better served by allowing TIS to transmit more intelligible audio to ensure that motorists receive and understand travel-related information.

The *Filtering PN* first sought comment on whether the public interest was better served by relaxing the filter requirement from 3 kHz to 5 kHz or eliminating it as proposed in the *FNPRM.* Burden still calls for complete elimination based on his previously discussed experiment. All the other responding commenters support or would accept relaxation of the filtering requirement, although North Plainfield would prefer complete elimination of the requirement.

The record indicates that relaxation of the filtering requirement from 3 kHz to 5 kHz could improve TIS audio quality and intelligibility to match that of commercial AM broadcasting, while still minimizing adjacent channel interference. Even though Burden's experiment purported to demonstrate that a TIS station without a filter caused no audible adjacent channel interference to the reception of a first adjacent AM station outside its protected contour, we note that it was conducted at a single site and contains no information about the call signs, coordinates, power levels, or received signal strengths of the TIS or AM stations. Therefore, Burden's experiment provides us neither a sufficient pool of results nor sufficient data to make a general conclusion that there would be no adjacent channel interference anywhere were we to entirely remove the TIS filtering requirements. Accordingly, in this Report and Order we adopt rules relaxing the minimum filtering requirement for TIS transmitters from 3 kHz to 5 kHz. We note, however, that licensees may continue to employ the 3-kHz requirement at their option.

**Revision of Operational Requirements**

The current TIS rule requires that at audio frequencies between 3 kHz and 20 kHz, the filter ''shall have an attenuation greater than the attenuation at 1 kHz by at least: 60 log10(f/3) decibels, where 'f' is the audio frequency in kHz.'' At audio frequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz. This produces a roll-off curve that starts at 0 dB attenuation for 3 kHz, then increases attenuation to approximately 50 dB at 20 kHz. In its *FNPRM* comments, AAIRO suggested that the Commission should use ''the same roll-off curve presently used in the 3-kHz filter'' for a 5-kHz filter. However, if one slides this curve up in frequency to have 0 dB attenuation at 5 kHz but maintains the same slope, then the curve would attenuate signals only by 36 dB at 20 kHz. Accordingly, the *Filtering PN* sought comment on whether 36 dB attenuation at 20 kHz would be sufficient or whether the roll-off curve for a 5 kHz audio filter in a TIS system should have 50 dB attenuation at 20 kHz, consistent with the existing rule.

The *Filtering PN* also noted that a roll-off curve of 83 log10(f/5) decibels for frequencies between 5 kHz and 20 kHz would have 0 dB attenuation at the 5 kHz starting point, and would achieve

50 dB attenuation at 20 kHz. However, this is a steeper roll-off curve than the formula prescribed in the current rule. Accordingly the *Filtering PN* also sought comment on whether the Commission should impose this attenuation if the Commission decides to relax the filtering requirement from 3 kHz to 5 kHz. It also sought comment on whether affordable audio filters exist in the marketplace that satisfy this roll-off curve; whether equipment manufacturers could retrofit existing filters or economically design, manufacture, and market such filters in the near term; and on the general availability of 5 kHz audio filters in the marketplace, the roll-off curves of specific models, and whether, alternatively, we should impose one of those roll-off curves in our rules.

In its *Filtering PN* comments, AAIRO states that although it ''suggested previously that the same 3-kHz filtering formula could be employed for a 5-kHz filter for convenience of design . . . if an alternate formula would provide superior protection to adjacent frequencies, it should be employed.'' NAB too supports the Commission requiring the proposed new roll-off curve to achieve the required attenuation. No commenter opposed these proposed roll-off requirements for use with a 5-kHz filter. Moreover, these roll-off requirements are in the public interest because they provide similar interference protection to the reception of adjacent channel AM stations as existing 3 kHz filters based on the same 50 dB attenuation at 20 kHz. AAIRO states that ''[s]tand-alone filters that comply with new rules for the TIS service can be built by TIS transmitter manufacturers, some of whom have already committed to stand-alone filter manufacture and to making those filters available to the market when new filtering rules are issued. The cost to manufacture a passive stand-alone filter is nominal.'' We are persuaded that 5 kHz filters will be available for TIS at reasonable cost. Accordingly, we adopt these new operational requirements for 5 kHz filters in TIS systems.

**Revision of the Filter Placement Requirements**

The current rule requires that ''[e]ach transmitter in a Travelers Information Station shall be equipped with an audio low-pass filter [that] shall be installed between the modulation limiter and the modulated stage.'' However, as noted, in response to the *FNPRM,* AAIRO suggested that ''the [replacement] filter [should] be outboard to the TIS transmitter and immediately ahead of its audio input.'' AAIRO further noted that ''[t]he use of an outboard filter will streamline the timeline to improve the service and dramatically lower costs for existing operators who would otherwise be required to purchase new transmitters or have their present transmitters modified and recertified.'' Accordingly, the *Filtering PN* sought comment on the feasibility of AAIRO's suggestion and whether to require such configuration in our rules in the event the Commission were to relax the filtering requirement.

In its *Filtering PN* comments, AAIRO reiterates that the ''least burdensome way for a willing licensee to make a filter change is to merely 'turn off' the existing 3-kHz TIS filter in the transmitter (which can be done by merely removing a single jumper on a circuit board) and to add a stand-alone 5-kHz filter ahead of the transmitter in the audio chain.'' NAB states that the filter should still be installed between the modulation limiter and the modulated stage as required by the current rule. However, NAB also states that it could accept an alternative: audio processors that incorporate what it refers to as 5 kHz ''brick wall'' filtering, so long as those processors are commonly accepted and approved for the commercial AM broadcast service.

The current filter placement is at the last stage in the audio chain before modulation of the signal to radio frequencies (RF). The filter placement required in the rule ensures that any signal distortion introduced by the modulation limiter does not effectively increase the bandwidth of the audio signal before the modulation to RF. Based on AAIRO's description of the filter placement, the filter is integrated onto a circuit board and cannot be replaced by a user. Placing a 5 kHz filter between the modulation limiter and the modulated stage, as NAB requests, would effectively require a circuit board replacement, which is essentially the whole TIS transmitter system. However, NAB's alternative suggestion, an audio processor, would replace the modulation limiter and audio filter and thus would also require a circuit board replacement. The cost for TIS operators to replace a typical TIS transmitter would be $18–23,000 for equipment and installation. While either of NAB's proposals would reduce slightly the likelihood of harmful interference from TIS operations to broadcast stations in the AM band relative to an outboard filter, neither slight improvement would be significant enough to warrant the associated costs that would be imposed on TIS operators. Modulation limiters may have the potential to introduce some distortion into the signal after the signal has passed through an outboard 5 kHz filter, but given that the Commission will have certified all TIS transmitter models on the market for proper operation; that the 5-kHz filter we prescribe has a steeper roll-off curve than current 3-kHz filters, and that AM radio limits the upper modulating frequency to 5 kHz, we believe this likely to be of only minimal concern.

We revise our TIS rules to allow for a placement of the audio filter either ahead of the transmitter or between the modulation limiter and the modulated stage. This allows for either an outboard filter ahead of the transmitter circuit board before the board's modulation limiter, or a filter integrated into the transmitter circuit board in the present position after the modulation limiter. We expect our action will lead to improved audio quality at reasonable cost for TIS operators who wish to take advantage of the new rules and will not increase the potential for harmful interference. We therefore revise our rules to permit TIS operators to retrofit TIS equipment equipped with 3 kHz filters by placing the outboard 5 kHz audio filter at the transmitter audio input, and deactivate the 3 kHz filter, as AAIRO recommends. Similarly, we will allow manufacturers to manufacture, market, and sell already certified TIS systems that have been retrofitted accordingly. Alternatively, manufacturers may design new TIS systems where the 5 kHz audio filter is at the current placement between the modulation limiter and the modulated stage, or a system equipped with an audio processor that performs the filtering with the prescribed roll-off performance. However, to avoid imposing burdens on manufacturers, we do not require any redesigns of TIS equipment. We realize that interested manufacturers may choose the first option out of cost considerations, as AAIRO observed in its comments to the *Filtering PN.* We discuss the FCC equipment certification of these permutations below.

**Certification**

Many *FNPRM* commenters who supported elimination of the filtering requirement also requested that no recertification requirement accompany such change. The *Filtering PN* sought comment on whether audio filter elimination/replacement and AAIRO's foregoing suggestion regarding filter placement would either: (1) Constitute a change to TIS transmitters that requires recertification; (2) constitute a permissive change in certificated equipment that does not require recertification; or (3) be exempt from the

Commission's equipment authorization rules.

No commenter spoke to the question of whether any of the foregoing changes, *i.e.,* raising the minimum frequency for filtering a TIS transmitter from 3 to 5 kHz, the modification of the roll-off curve, and replacing the filter, would thereafter require recertification of the equipment under the Commission's rules. A retrofit to already certified equipment, *i.e.,* the addition of an outboard 5 kHz filter at the audio input of equipment with ''deactivated'' 3 kHz filters, will require a Class II permissive change under § 2.1043(b)(2) of the Commission's rules, because the performance characteristics will be degraded from the time of the initial certification but will still meet the minimum requirements of the applicable rules. In this instance, manufacturers should file a Class II permissive change request with the Commission for each TIS model they seek to have retrofitted, and each permissive change filing should include a list of filters, if more than one to be approved with the system, and clear and concise instructions for TIS operators to perform the retrofit themselves. Grantees should make such instructions available to their customers and other interested TIS operators. Licensees interested in retrofitting existing equipment with 5 kHz filters must verify that their equipment model has received a Class II permissive change grant from the Commission and only use approved filters for the system. Then, such licensees may retrofit the equipment per the manufacturer's instructions without further Commission authorization. Alternatively, if manufacturers design new TIS transmitters that contain 5 kHz audio filters between the modulation limiter and the modulated stage, that is, integrated into the circuit board, this will require a new Commission certification because this would effectively require a new design, which is essentially a whole new TIS transmitter system. Absent a dedicated 5 kHz filter, use of an audio processor to perform the 5 kHz filtering, including a digital audio player as AAIRO mentions, will require Commission certification to operate under § 90.242 to ensure that their output—independent of the input frequency content—satisfies the prescribed roll-off requirements.

**Mandatory Nature of Change to Filtering Requirement**

The *Filtering PN* also sought comment on whether, if the Commission either relaxes or eliminates the TIS filtering requirement, it should also require existing licensees to comply with the relaxed filtering parameters. According to AAIRO, the only commenter on this issue, the ''change to new filtering requirements should be made optional to individual licensees rather than being mandated. Certainly, none are harmed, if a licensee determines that s/he will retain the present 3-kHz filter. Mandating the change for all current TIS operators would present a significant financial burden to governmental entities.'' We find AAIRO's arguments persuasive on this issue. Accordingly, we find that there is in fact no reason to mandate that all TIS licensees replace their 3 kHz filter since, if a licensee does not choose to relax its own TIS transmitter filtering parameters, there would be no change from the present, more stringent TIS filtering requirements. Manufacturers may also continue to manufacture, market, and sell already certified TIS systems, which have the 3 kHz filters ''activated,'' as these systems are in compliance with both the existing filtering rule and the more relaxed rule we adopt today.

**Music Content**

Finally, SBE provided anecdotal reports of musical content over TIS and contends that ''[w]hile most voice content is below 3 KHz, music expands that bandwidth.'' However, AAIRO asserts that ''[n]one of AAIRO's nearly 400 members 'broadcast musical content.' '' NAB argues that music's wider bandwidth ''may not be adequately filtered by a 5 kHz filter and could cause harmful interference to neighboring AM radio services,'' and ''reiterate[s] that relaxing the TIS filtering requirement must be contingent on TIS stations' strict compliance with 47 CFR 90.242(a)(7).'' While we cannot take enforcement action at this time based on the limited evidence before us, we take this opportunity to remind licensees that only voice content is permitted per § 90.242(a)(7) of our rules, and that music content of any kind is not permitted.

**Procedural Matters**

*Regulatory Flexibility Analysis*

As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix C of the Second Report and Order. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

*Paperwork Reduction Act Analysis*

This *Second Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

**Ordering Clauses**

Accordingly, *it is ordered* that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, that this *Second Report and Order is adopted.*

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

*It is further ordered* that the Commission *shall send* a copy of this *Second Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 90**

Communications equipment; Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

■ 2. Section 90.242 is amended by revising paragraph (b)(8) to read as follows:

**§ 90.242 Travelers' information stations.**

* * * * *

(b) * * *

(8) Each transmitter in a Travelers' Information Station shall be equipped with an audio low-pass filter. Such filter shall be installed either at the transmitter's audio input or between the modulation limiter and the modulated stage. At audio frequencies between 5 kHz and 20 kHz this filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

83 $\log_{10}$ (f/5) decibels.

where ''f'' is the audio frequency in kHz.

At audio frequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

* * * * *

[FR Doc. 2015–10471 Filed 5–4–15; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

[Docket No. 150116050–5375–02]

RIN 0648–XD726

### Atlantic Highly Migratory Species; North and South Atlantic 2015 Commercial Swordfish Quotas

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the 2015 fishing season quotas for North and South Atlantic swordfish based upon 2014 quota underharvests and international quota transfers consistent with International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13–02 and 13–03. This final rule applies to commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective on June 4, 2015.

**ADDRESSES:** Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish; the 2007 EA, RIR, and FRFA for South Atlantic swordfish; and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and associated documents—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Andrew Rubin by phone at 301–427–8503 or Steve Durkee by phone at 202–670–6637.

**FOR FURTHER INFORMATION CONTACT:** Andrew Rubin by phone at 301–427–8503, Steve Durkee by phone at 202–670–6637.

**SUPPLEMENTARY INFORMATION:**

#### Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.,* and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) and implements an ICCAT-recommended quota transfer of 18.8 mt dw from the United States to Mauritania. For South Atlantic swordfish, this action maintains the U.S. South Atlantic swordfish quota at 75.2 mt dw (100 mt whole weight (ww)), carries over 75.1 mt dw of 2014 underharvest, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize, consistent with ICCAT Recommendation 13–03. Information regarding the quota calculations can be found below. Additional details regarding the quotas and other actions in this rule and their impacts can be found in the proposed rule (80 FR 8838, February 19, 2015).

*North Atlantic Swordfish Quota*

At the 2013 ICCAT annual meeting, Recommendation 13–02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13–02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits allowable 2014 and any future underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (585.9 mt ww) of underharvest from 2014 to 2015. This final rule adjusts the U.S. baseline quota for the 2015 fishing year to account for the annual quota transfer to Mauritania and the 2014 underharvest.

The 2015 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The preliminary estimate of North Atlantic swordfish underharvest for 2014 is 2,395.6 mt dw (3,186.1 mt ww). Even without including an estimate of dead discards, the estimated underharvest is larger than the maximum carryover cap (440.6 mt dw or 585.9 mt ww). Therefore, as proposed, NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed per Recommendation 13–02. Additionally, this final rule reduces the 2,937.6 mt dw baseline quota by the 18.8 mt dw (25 mt ww) annual quota transfer to Mauritania. These two changes result in an adjusted North Atlantic swordfish quota for the 2015 fishing year of 3,359.4 mt dw (2,937.6 baseline quota + 440.6 underharvest −18.8 transfer to Mauritania = 3,359.4 mt dw or 4467.47 mt ww). From that adjusted quota, 50 mt dw is allocated to the reserve category for in season adjustments and research, and 300 mt dw is allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, per § 635.27(c)(1)(i). This results in an allocation of 3,009.4 mt dw (3,359.4 adjusted quota −50 to the reserve quota—300 mt dw to the incidental quota = 3,009.4 mt dw) for the directed category, which is split equally between two seasons in 2015 (January through June, and July through December) (Table 1).

*South Atlantic Swordfish Quota*

In 2013, ICCAT Recommendation 13–03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13–03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13–03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2014, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2014. The adjusted 2014 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings the previous year. Therefore, 75.1 mt dw of underharvest is available to carry over to 2015. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2015 fishing year.

TABLE 1—2015 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

| | 2014 | 2015 |
|---|---|---|
| North Atlantic Swordfish Quota (mt dw) | | |
| Baseline Quota | 2,937.6 | 2,937.6 |
| International Quota Transfer | (−)18.8 (to Mauritania) | (−)18.8 (to Mauritania) |
| Total Underharvest from Previous Year + | 1,337.4 | 2,395.6 |
| Underharvest Carryover from Previous Year + | (+)734.4 | (+)440.6 |
| Adjusted Quota | 3,653.2 | 3,359.4 |
| Quota Allocation. | | |
| Directed Category | 3,303.2 | 3,009.4 |
| Incidental Category | 300 | 300 |
| Reserve Category | 50 | 50 |
| South Atlantic Swordfish Quota (mt dw) | | |
| Baseline Quota | 75.2 | 75.2 |
| International Quota Transfers * | (−)75.2 | (−)75.2 |
| Total Underharvest from Previous Year + | 75.1 | 75.1 |
| Underharvest Carryover from Previous Year + | 75.1 | 75.1 |
| Adjusted quota | 75.1 | 75.1 |

+ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 underharvest is based on data received from commercial dealers and anglers; it does not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

* Under Recommendation 13–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

*Response to Comments*

During the proposed rule comment period, NMFS received four written comments, three of which were directly related to the proposed rule. NMFS also heard comments during a discussion on the rule held at the HMS Advisory Panel meeting on March 10, 2015. A summary of the relevant comments on the proposed rule are shown below with NMFS' response. One written comment requested the general protection of fish, which is not specifically relevant to this rulemaking. All written comments submitted during the comment period can be found at *http://www.regulations.gov/* by searching for NOAA–NMFS–2015–0023.

*Comment 1:* Close the swordfish fishery because of overfishing.

*Response:* According to the latest ICCAT Standing Committee on Research and Statistics (SCRS) stock assessment (2013), the stock is not overfished and no overfishing is taking place. Since the baseline adjusted quotas established through ICCAT are within the TAC established by the stock assessment, this action is unlikely to lead to overfishing. Therefore, NMFS does not make the change requested by the commenter.

*Comment 2:* NMFS received contrasting comments regarding the underharvest carryover. One commenter said that no underharvest should be carried over into the 2015 quota. Other commenters stated that underharvest carryovers should not be limited to 15 percent of the baseline quota, and further specified that the underharvest carryover does not provide enough flexibility to account for unforeseen environmental and economic fluctuations and only affects the United States since most other countries fully utilize their allocation. That commenter felt the restriction of the carryover of underharvested quota is inconsistent with the Magnuson-Stevens Act and Atlantic Tuna Convention Act (ATCA) by not allowing for optimum yield or providing a reasonable opportunity to harvest U.S. quota.

*Response:* Carrying over underharvest into the following year's quota provides flexibility to adjust to environmental and economic fluctuations. These fluctuations may result in fishermen not catching their full quota in a given year, but the carryover provides the opportunity to benefit from part of that underharvest in the subsequent year.

Currently, the United States does not utilize the entire base quota from ICCAT, thus, the underharvest carryover limit is unlikely to affect domestic access to the resource in the short term. Because the current carryover limit is unlikely to affect domestic access to the resource, NMFS is not changing the current limit as requested by the commenter.

Regarding the concerns that the underharvest carryover limit affects U.S. fishermen's opportunity to harvest the U.S. quota at optimum yield, ICCAT adopted the limited underharvest carryover provision to help ensure that MSY is not exceeded. The Magnuson-Stevens Act requires preventing overfishing while achieving on a continuing basis optimum yield. Optimum yield itself is prescribed based on MSY as reduced by ecological and other factors. The carryover limit is consistent with the MSA and with ATCA, which provides that quotas adopted at ICCAT cannot be increased or decreased. Furthermore, we note that for the past decade, the domestic fishery has neither utilized the entire U.S. quota allocation nor has it harvested it at a level to be impacted by an underharvest carryover limit.

*Comment 3:* While NMFS should implement the current ICCAT swordfish quota recommendations, the next time the swordfish recommendations are negotiated at ICCAT, the United States should change its position. No U.S. quota should be transferred to other countries unless the United States receives something in return since these transfers help develop new fisheries that are not as conservation-minded as U.S. fisheries. Furthermore, landings under the international quota transfers should be credited as U.S. landings.

*Response:* NMFS agrees that it should implement the quota measures in Recommendations 13–02 and 13–03 to comply with ICCAT measures. Under ATCA, the Secretary shall promulgate such regulations as may be necessary

and appropriate to carry out ICCAT recommendations, and the regulations as finalized appropriately carry out ICCAT recommendations regarding the North Atlantic swordfish stock while meeting NMFS's legal obligations and management needs.

In the future, when negotiating swordfish recommendations at ICCAT, the United States will consider the state of the domestic fishery at that time to balance the needs of both U.S. fishermen and the environment.

*Comment 4:* The U.S. fisheries are not harvesting part of its swordfish quota due to domestic regulations such as the time/area closures for pelagic longline gear. NMFS should reopen these areas to fishermen who are using circle hooks and following best practices. NMFS should reinstate the 33 pound minimum size for Atlantic swordfish.

*Response:* This rule addresses quota specifications only; time/area closures and other management measure are beyond the scope of this action.

*Changes From the Proposed Rule*

The final rule contains no changes from the proposed rule, except for minor landings updates based on more recent 2014 landings reports.

**Classification**

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and other applicable law.

This final action is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

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.

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: April 29, 2015.

**Samuel D. Rauch III,**

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

[FR Doc. 2015–10465 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 150316270–5270–01]**

**RIN 0648–XD843**

## Fisheries Off West Coast States; West Coast Salmon Fisheries; 2015 Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** Through this final rule NMFS establishes fishery management measures for the 2015 ocean salmon fisheries off Washington, Oregon, and California and the 2016 salmon seasons opening earlier than May 1, 2016. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 NM) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and inside fisheries (fisheries occurring in state internal waters). This document also announces the availability of an environmental assessment (EA) that analyzes the environmental impacts of implementing the 2015 ocean salmon management measures.

**DATES:** This final rule is effective from 0001 hours Pacific Daylight Time, May 1, 2015, until the effective date of the 2016 management measures, as published in the **Federal Register**.

**ADDRESSES:** Copies of the documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, and are posted on the Pacific Fishery Management Council's (Council's) Web site (*www.pcouncil.org*).

**FOR FURTHER INFORMATION CONTACT:** Peggy Mundy at 206–526–4323, or Heidi Taylor at 562–980–4039.

**SUPPLEMENTARY INFORMATION:**

**Background**

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

The management measures for the 2015 and pre-May 2016 ocean salmon fisheries that are implemented in this final rule were recommended by the Council at its April 10 to 16, 2015, meeting.

**Process Used To Establish 2015 Management Measures**

The Council announced its annual preseason management process for the 2015 ocean salmon fisheries in the **Federal Register** on December 31, 2014 (79 FR 78805), and on the Council's Web site at (*www.pcouncil.org*). NMFS published an additional notice of opportunities to submit public comments on the 2015 ocean salmon fisheries in the **Federal Register** on January 28, 2015 (80 FR 4547). These notices announced the availability of Council documents, the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on 2015 ocean salmon fisheries. The agendas for the March and April Council meetings were published in the **Federal Register** (80 FR 8628, February 18, 2015 and 80 FR 15752, March 25, 2015, respectively) and posted on the Council's Web site prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared four reports for the Council, its advisors, and the public. All four reports were posted on the Council's Web site and otherwise made available to the Council, its

advisors, and the public upon their completion. The first of the reports, ''Review of 2014 Ocean Salmon Fisheries,'' was prepared in February when the scientific information necessary for crafting management measures for the 2015 and pre-May 2016 ocean salmon fisheries first became available. The first report summarizes biological and socio-economic data for the 2014 ocean salmon fisheries and assesses how well the Council's 2014 management objectives were met. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2015 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2015 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2014 regulations and regulatory procedures were applied to the projected 2015 stock abundances. The completion of PRE I is the initial step in evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met in Vancouver, WA from March 6 to 12, 2015, to develop 2015 management alternatives for proposal to the public. The Council proposed three alternatives for commercial and recreational fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to protect weak stocks of coho and Chinook salmon, and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2015 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2015 management alternatives.

Public hearings, sponsored by the Council, to receive testimony on the proposed alternatives were held on March 30, 2015, in Westport, WA and Coos Bay, OR; and on March 31, 2015, in Fort Bragg, CA. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office.

The Council met from April 10 to 16, 2015, in Rohnert Park, CA to adopt its final 2015 salmon management recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2015 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it transmitted the recommended management measures to NMFS, published them in its newsletter, and also posted them on the Council Web site (*www.pcouncil.org*).

**National Environmental Policy Act**

The Council's documents described above (PRE I, PRE II, and PRE III) collectively comprise the EA for this action, providing analysis of environmental and socioeconomic effects under the National Environmental Policy Act. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region Web site (*www.westcoast.fisheries.noaa.gov*).

**Resource Status**

*Stocks of Concern*

The need to meet Endangered Species Act (ESA) consultation requirements and obligations of the Pacific Salmon Treaty (PST) between the U.S. and Canada for several stocks will shape salmon fisheries in 2015, and four stocks will constrain fishing in 2015.

Fisheries south of Cape Falcon, OR are limited in 2015 primarily by the status of ESA-listed Sacramento River winter Chinook salmon (SRWC) and California Coastal Chinook salmon (CCC). Fisheries north of Cape Falcon are limited primarily by the status of ESA-listed Lower Columbia River (LCR) Chinook salmon, and Puget Sound Chinook salmon, and by Queets River coho, which are not ESA-listed. Also limiting on fisheries north of Cape Falcon are Thompson River coho from Canada, which are managed according to the PST. Not limiting in 2015, but worth mentioning is ESA-listed Lower Columbia River natural coho (LCR coho) for which NMFS issued a new biological opinion in 2015. At the start of the preseason planning process for the 2015 management season, NMFS provided a letter to the Council, dated March 3, 2015, summarizing limits to impacts on ESA-listed species for 2015, based on existing biological opinions and 2015 abundance information, as required by the Salmon FMP. The limitations imposed in order to protect these stocks are described below. The alternatives and the Council's recommended management measures for 2015 were designed to avoid exceeding these limitations.

*Sacramento River winter Chinook salmon (SRWC):* In 2010, NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of Council area fisheries on SRWC, ESA-listed as endangered. NMFS completed a biological opinion that includes a reasonable and prudent alternative (RPA) to avoid jeopardizing the continued existence of this evolutionarily significant unit (ESU). The RPA included management-area-specific fishing season openings and closures, and minimum size limits for both commercial and recreational fisheries. It also directed NMFS to develop a second component to the RPA—an abundance-based management (ABM) framework. In 2012, NMFS implemented this ABM framework which supplements the above management restrictions with maximum allowable impact rates that apply when abundance is low, based on the three-year geometric mean spawning escapement of SRWC. Using the methodology specified in the ABM framework, the age-3 impact rate on SRWC in 2015 fisheries south of Point Arena recommended by NMFS would be limited to a maximum of 19.0 percent. Conservation measures for SRWC will constrain 2015 salmon fisheries south of Cape Falcon.

*California Coastal Chinook salmon (CCC):* NMFS last consulted under ESA section 7 regarding the effects of Council area fisheries on CCC in 2005. Klamath River fall Chinook (KRFC) are used as a surrogate to set limits on ocean harvest impacts on CCC. The biological opinion requires that management measures result in a KRFC age-4 ocean harvest rate of no greater than 16 percent. Conservation measures for CCC will constrain 2015 salmon fisheries south of Cape Falcon.

*Lower Columbia River Chinook salmon (LCR Chinook):* In 2012, NMFS consulted under ESA section 7 and issued a biological opinion that applies to fisheries beginning in 2012, concluding that the proposed fisheries, if managed consistent with the terms of the biological opinion, are not likely to jeopardize the continued existence of LCR Chinook salmon. The LCR Chinook salmon ESU is comprised of a spring component, a ''far-north'' migrating bright component, and a component of north migrating tules. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright

populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon, Oregon. Under the 2012 biological opinion, NMFS uses an ABM framework to set annual exploitation rates for LCR tule Chinook salmon below Bonneville Dam. Applying the ABM framework to the 2015 preseason abundance forecast, the LCR tule exploitation rate is limited to a maximum of 41 percent. In 2015, LCR Chinook will not constrain salmon fisheries.

*Lower Columbia River natural coho (LCR coho):* In 2015, NMFS conducted an ESA section 7 consultation and issued a biological opinion regarding the effects of Council fisheries and fisheries in the Columbia River on LCR coho. The opinion analyzed the use of a harvest matrix to manage impacts to LCR coho. Under the matrix the allowable harvest in a given year depends on indicators of marine survival and parental escapement to spawning. In 2015, the marine survival indicator is in the ''high'' category, while parental escapement is in the ''normal'' category. Under these circumstances, ocean salmon fisheries under the Council's jurisdiction in 2015, and commercial and recreational salmon fisheries in the mainstem Columbia River below Bonneville Dam, including select area fisheries (*e.g.,* Youngs Bay), must be managed subject to a total exploitation rate limit on LCR coho not to exceed 23 percent. In 2015, LCR coho will not constrain salmon fisheries.

*Thompson River coho:* Interior Fraser (Thompson River) coho, a Canadian stock, continues to be depressed, remaining in the ''low'' status category under the PST; under these circumstances, the PST and Salmon FMP require a maximum 10.0 percent total U.S. exploitation rate on this stock. Meeting PST and Salmon FMP conservation requirements for Thompson River coho will constrain 2015 salmon fisheries north of Cape Falcon.

*Puget Sound Chinook salmon:* Impacts on threatened Puget Sound Chinook from Council-managed fisheries are addressed through a 2004 biological opinion. Generally, these impacts are quite low and well within the range contemplated in the 2004 opinion. However, because Puget Sound Chinook are also impacted by fisheries in Puget Sound and associated freshwater fisheries (collectively referred to as ''inside'' fisheries), the Council and NMFS consider the impacts of Council-area and inside fisheries on Puget Sound Chinook together. The State of Washington and Indian tribes with treaty rights to fish for salmon in Puget Sound have previously agreed on conservation objectives for each stock of salmon included in the Puget Sound Chinook ESU, and NMFS has determined in biological opinions covering Puget Sound fisheries in recent years that fisheries with impacts that do not exceed these conservation objectives are not likely to jeopardize the continued existence of the ESU. For purposes of determining whether the requirements of the ESA are met for Puget Sound Chinook, the Council and NMFS consider whether the proposed Council-area fisheries, taken together with Puget Sound and freshwater fisheries, will result in exceeding the conservation objectives for each stock within the ESU. The conservation objectives are described in NMFS' March 3, 2015 letter to the Council outlining the ESA requirements for 2015. In 2015, Puget Sound Chinook salmon will constrain salmon fisheries north of Cape Falcon, to provide sufficient escapement to support inside fisheries.

*Queets River coho:* Queets River coho are not ESA-listed, but are important to in-river tribal fisheries on the Washington coast. Queets River coho are forecast to be less abundant in 2015 than in 2014. In 2015, Queets River coho will constrain salmon fisheries north of Cape Falcon, to provide sufficient escapement to support in-river tribal fisheries.

*Annual Catch Limits and Status Determination Criteria*

Annual Catch Limits (ACLs) are set for two Chinook salmon stocks, Sacramento River fall Chinook (SRFC) and KRFC, and one coho stock, Willapa Bay natural coho. The Chinook salmon stocks are indicator stocks for the Central Valley Fall Chinook complex and the Southern Oregon/Northern California Chinook complex, respectively. The Far North Migrating Coastal Chinook complex includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon, Oregon and other fisheries that occur north of the U.S./Canada Border. No ACL is set for these stocks because they are managed according to the PST with Canada. Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced, and are managed consistent with ESA consultations or hatchery goals. Willapa Bay natural coho is the only coho stock for which an ACL is set, as the other coho stocks in the FMP are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for salmon stocks are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. ACLs are set based on the annual abundance projection and a fishing rate reduced to account for scientific uncertainty. The abundance forecasts for 2015 are described in more detail below in the ''Management Measures for 2015 Fisheries'' section of this final rule. For SRFC in 2015, the overfishing limit (OFL) is $S_{OFL}$ = 651,985 (projected abundance) multiplied by $1-F_{MSY}$ $(1-0.78)$ or 143,437 returning spawners. $S_{ABC}$ is 651,985 multiplied by $1-F_{ABC}$ $(1-0.70)$ ($F_{MSY}$ reduced for scientific uncertainty = 0.70) or 195,596. The $S_{ACL}$ is set equal to $S_{ABC}$. For KRFC in 2015, $S_{OFL}$ is 99,102 (abundance projection) multiplied by $1-F_{MSY}$ $(1-0.71)$, or 28,739 returning spawners. $S_{ABC}$ is 99,102 multiplied by $1-F_{ABC}$ $(1-0.68)$ ($F_{MSY}$ reduced for scientific uncertainty = 0.68) or 31,713 returning spawners. $S_{ACL}$ is set equal to $S_{ABC}$. For Willapa Bay natural coho in 2015, the overfishing limit (OFL) is $S_{OFL}$ = 42,884 (projected abundance) multiplied by $1-F_{MSY}$ $(1-0.74)$ or 11,150 returning spawners. $S_{ABC}$ is 42,884 multiplied by $1-F_{ABC}$ $(1-0.71)$ ($F_{MSY}$ reduced for scientific uncertainty = 0.71) or 12,436. $S_{ACL}$ is set equal to $S_{ABC}$.

As explained in more detail above under ''Stocks of Concern,'' fisheries north and south of Cape Falcon, are constrained by impact limits necessary to protect ESA-listed salmon stocks including SRWC, CCC, and Puget Sound coho, as well as Queets River coho which is not ESA-listed, and Canadian Thompson River coho. For 2015, projected abundance of the three stocks with ACLs (SRFC, KRFC, and Willapa Bay natural coho), in combination with the constraints for ESA-listed and non-ESA-listed stocks, are expected to result in escapements greater than required to meet the ACLs for all three stocks with defined ACLs.

**Public Comments**

The Council invited written comments on developing 2015 salmon management measures in their notice announcing public meetings and hearings (79 FR 78805, December 31, 2014). At its March meeting, the Council adopted three alternatives for 2015 salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in

Alternative I to the most restrictive in Alternative III. These alternatives are described in detail in Pre II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council and NMFS. The Council received several written comments directly. The three public hearings were attended by a total of 94 people; 26 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, and processors. Written and oral comments addressed the 2015 management alternatives described in PRE II, and generally expressed preferences for a specific alternative or for particular season structures. All comments were included in the Council's briefing book for their April 2015 meeting and were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 24, 2015. In addition to comments collected at the public hearings and those submitted directly to the Council, several people provided oral comments at the April 2015 Council meeting. NMFS also invited comments to be submitted directly to the Council or to NMFS, via the Federal Rulemaking Portal (*www.regulations.gov*) in a proposed rule (80 FR 4547, January 28, 2015). No comments were submitted via *www.regulations.gov.*

C*omments on alternatives for fisheries north of Cape Falcon.* For fisheries north of Cape Falcon, Alternative I quota levels were favored by two commercial and two recreational fishery commenters at the public hearing in Westport, WA. Some commenters expressed concern about how weak stock management and Puget Sound fisheries impact ocean salmon fisheries.

*Comments on alternatives for fisheries south of Cape Falcon.* Most comments received in writing, at public hearings, and in public comments at the April 2015 Council meeting addressed fisheries south of Cape Falcon and specifically measures proposed to protect SWRC in light of drought and unfavorable ocean conditions. Alternative III in particular included management measures, including closing some fall fisheries south of Cape Falcon, that would reduce the impacts on SWRC below the level required by the reasonable and prudent alternative in NMFS' biological opinion. Most comments early in the process opposed this alternative or expressed preference for other alternatives. Alternative I was supported by six commercial and seven recreational fishery commenters that attended public hearings. Eight commercial fishery commenters at the public hearings supported a modification of Alternative II that was proposed by fishermen's marketing association; one commenter opposed the proposal. Nine commenters at the public hearings opposed the closure of fall fisheries, particularly south of Point Arena to protect SRWC, proposed in Alternative III, while three commenters from the commercial fishery sector expressed concern about the impact on September fisheries on future salmon production due to California's drought and warm ocean conditions. Of written comments, from fishing groups and individuals, most expressed concern over how fisheries management alternatives would address limiting fishery impacts to endangered SRWC, several stated that they did not support closing fall fisheries. Public comments at the April 2015 Council meeting also expressed concern over SRWC, but likely based on new information provided by the California Department of Fish and Wildlife (CDFW) on time and area vulnerability of SRWC to commercial and recreational fisheries, comments received at the meeting expressed support for constraining fall fisheries to limit impacts to SRWC. In particular, some commenters who had previously opposed Alternative III supported the management measures ultimately adopted by the Council in comments provided prior to or at the April Council meeting.

*Comments on incidental halibut retention in the commercial salmon fisheries.* At its March meeting, the Council identified three alternatives for landing limits for incidentally caught halibut that are retained in the salmon troll fishery. Alternative I was favored by one commenter north of Cape Falcon and one commenter south of Cape Falcon.

The Council, including the NMFS representative, took all of these comments into consideration. The Council's final recommendation generally includes aspects of all three alternatives, while taking into account the best available scientific information and ensuring that fisheries are consistent with ESA consultation standards, ACLs, PST obligations, and tribal fishing rights. These management tools assist the Council in meeting impact limits on weak stocks. The Council adopted alternative I for incidental halibut retention, this alternative is consistent with retention limits adopted for 2014 salmon fisheries and April 2015 salmon fisheries (79 FR 24580, May 1, 2014).

**Management Measures for 2015 Fisheries**

The Council-recommended ocean harvest levels and management measures for the 2015 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. The Council's recommended management measures also comply with NMFS ESA consultation standards and guidance, for those listed salmon species that may be affected by Council fisheries. Accordingly, NMFS, through this final rule, approves and implements the Council's recommendations.

North of Cape Falcon, the 2015 management measures for non-Indian commercial troll and recreational fisheries have increased quotas for Chinook salmon and decreased quotas for coho salmon, compared to 2014. This is due primarily to the fact that forecasts for Chinook stocks north of Cape Falcon are generally higher than in 2014, and forecasts for coho are generally lower. Conservation constraints on Chinook salmon are largely unchanged, including the exploitation rate limit for ESA-listed LCR tule Chinook, which remains at 41 percent in 2015. As noted previously, Puget Sound Chinook are somewhat constraining on the 2015 fisheries in order to allow sufficient numbers of fish to reach inside fisheries. Impacts in Alaskan and Canadian fisheries on salmon stocks originating north of Cape Falcon are expected to increase slightly for coho in 2015 compared with 2014. However, there is uncertainty regarding impacts of northern fisheries on Chinook salmon, as the Pacific Salmon Commission's Chinook Technical Committee (CTC) did not reach consensus on adopting a new CTC Chinook model calibration that is used to provide impacts for northern fisheries to the Fishery Regulation Assessment Model (FRAM). To address this uncertainty, the Council relied on the CTC's preliminary calibration, as this is

currently the best available information regarding likely northern fishery impacts. This resulted in slightly lower impacts from northern fisheries than in 2014. With respect to coho, North of Cape Falcon fisheries are limited in 2015 by the need to protect coho salmon from the Thompson River in Canada. ESA consultation standards for threatened LCR coho and Oregon Coast natural coho also apply to these fisheries but these are not limiting in 2015. Washington coastal and Puget Sound Chinook generally migrate to the far north and are not greatly affected by ocean salmon harvests from Cape Falcon, OR, to the U.S.-Canada border. Nevertheless, ocean fisheries are structured, in combination with restricted fisheries inside Puget Sound, in order to meet ESA related conservation objectives for Puget Sound Chinook. Ocean fisheries are also structured to provide for in-river fisheries on Queets River coho. North of Cape Alava, WA, the Council recommended a provision prohibiting retention of chum salmon in the salmon fisheries during August and September to protect ESA listed Hood Canal summer chum. The Council has recommended such a prohibition since 2002 (67 FR 30616, May 7, 2002).

Recreational fisheries south of Cape Falcon will be directed primarily at Chinook salmon, with opportunity for coho limited to the area between Cape Falcon and the Oregon/California Border. The projected abundance of SRFC in 2015 is above the 2014 projection. Under the management measures in this final rule, and including anticipated in-river fishery impacts, spawning escapement for SRFC is projected at 341,017, well above the $S_{ACL}$ for this stock. Projected abundance for KRFC in 2015 is much lower than the very strong projections in 2012 and 2013, but higher than in 2014. Regardless, the commercial fishery that impacts KRFC will be constrained by the CCC consultation standard that limits the forecast KRFC age-4 ocean harvest rate to a maximum of 16 percent. Under the management measures in this final rule, and including anticipated in-river fishery impacts, spawning escapement for KRFC is projected at 40,700, again well above the $S_{ACL}$ for the stock.

As discussed above in ''Stocks of Concern,'' NMFS' 2012 RPA for SRWC, together with projected abundance for 2015, limits Council-area fishery impacts to SRWC to 19.0 percent. In deciding on the recommended management measures, the Council additionally considered information on the impacts of ongoing drought on California salmon stocks, particularly SRWC, including estimated freshwater mortality of 95 percent of the 2014 SRWC brood year juveniles, information related to warm ocean conditions in 2015, information developed by CDFW on time and area vulnerability of SRWC to commercial and recreational fisheries, and public testimony on proposed season structure. Based on this information, the Council adopted management measures that limit age-3 impact rate on SRWC to 17.5 percent. In response to the information presented by CDFW on the time and area vulnerability of SRWC, the final management measures include specific limits on the fishing seasons south of Pigeon Point.

The treaty-Indian commercial troll fishery quota for 2015 is 60,000 Chinook salmon in ocean management areas and Washington State Statistical Area 4B combined. This quota is lower than the 62,500 Chinook salmon quota in 2014, for the same reasons discussed above for the non-tribal fishery. The treaty-Indian commercial troll fisheries include a Chinook-directed fishery in May and June with a quota of 30,000 Chinook salmon, and an all-salmon season beginning July 1 with a 30,000 Chinook salmon sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B, for the July-September period is 42,500 coho, lower than in 2014.

The Council is recommending one new provisions for 2015 fisheries, based on the concurrence of its Enforcement Consultants. Previously, all salmon on board a vessel were required meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 96 hours for that species of salmon. Further, salmon were permitted to be landed in an area that has been closed for a species of salmon more than 96 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. In 2015 the area closure requirements are reduced to from 96 to 48 hours.

**Management Measures for 2016 Fisheries**

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, this action also establishes the 2016 fishing seasons that open earlier than May 1. The Council recommended, and NMFS concurs, that the commercial season off Oregon from Cape Falcon to the Oregon/California border, the commercial season off California from Horse Mountain to Point Arena, the recreational season off Oregon from Cape Falcon to Humbug Mountain, and the recreational season off California from Horse Mountain to the U.S./Mexico border will open in 2016 as indicated in the Season Description section of this document. At the March 2016 meeting, the Council may consider inseason recommendations to adjust the commercial and recreational seasons prior to May 1 in the areas off Oregon and California.

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2015 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard (USCG) Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council and approved and implemented here for 2015 and, as specified, for 2016.

**Section 1. Commercial Management Measures for 2015 Ocean Salmon Fisheries**

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

*A. Season Description*

North of Cape Falcon, OR

—U.S./Canada Border to Cape Falcon

May 1 through earlier of June 30 or 40,200 Chinook, no more than 9,000 of which may be caught in the area between the U.S./Canada border and the Queets River and no more than 15,000 may be caught in the area between Leadbetter Point and Cape Falcon. Seven days per week with a landing and possession limit of 60 Chinook per vessel per trip from the U.S./Canada

border to the Queets River (C.1). All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B). Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying Washington Department of Fish and Wildlife (WDFW) at 360–902–2739 with area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook and halibut catch aboard, and destination. See compliance requirements and gear restrictions and definitions (C.2, C.3). When it is projected that 29,250 Chinook have been landed overall, or 6,750 Chinook have been landed in the area between the U.S./Canada border and the Queets River, or 11,250 Chinook have been landed in the area between Leadbetter Point and Cape Falcon, inseason action modifying the open period to five days per week and adding landing and possession limits will be considered to ensure the guideline is not exceeded. Cape Flattery, Mandatory Yelloweye Rockfish Conservation Area, and Columbia Control Zones closed (C.5). Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify the Oregon Department of Fish and Wildlife (ODFW) within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

July 1 through earlier of September 22 or attainment of the quota of 26,800 Chinook, no more than 11,000 of which may be caught in the area between the U.S./Canada border and the Queets River, or 19,200 marked coho (C.8.d). July 1 through 7, then Friday through Tuesday, July 10 through September 22 with a landing and possession limit of 50 Chinook and 50 coho per vessel per open period (C.1). Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook, coho, and halibut catch aboard, and destination. When it is projected that 19,500 Chinook have been landed overall, or 8,250 Chinook have been landed in the area between the U.S/Canada border and the Queets River, inseason action modifying the open period to five days per week and adding landing and possession limits will be considered to ensure the guideline is not exceeded. No earlier than September 1, if at least 5,000 marked coho remain on the quota, inseason action may be considered to allow non-selective coho retention (C.8). All salmon, except no chum retention north of Cape Alava, Washington in August and September (C.7). Chinook minimum size limit of 28 inches total length (B, C.1). All coho must be marked except as noted above (C.8.d). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Mandatory Yelloweye Rockfish Conservation Area, Cape Flattery and Columbia Control Zones, and beginning August 9, Grays Harbor Control Zone closed (C.5). Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify ODFW within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

April 1 through August 27;

September 2 through September 30 (C.9.a).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their fish in the State of Oregon. See gear restrictions and definitions (C.2, C.3) and Oregon State regulations for a description of special regulations at the mouth of Tillamook Bay.

Beginning September 2, no more than 60 Chinook per vessel per landing week (Thursday through Wednesday).

In 2016, the season will open March 15, all salmon except coho. Chinook minimum size limit of 28 inches total length. Gear restrictions same as in 2015. This opening could be modified following Council review at its March 2016 meeting

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

April 1 through May 31;

June 1 through earlier of June 30, or a 1,800 Chinook quota;

July 1 through earlier of July 31, or a 1,000 Chinook quota;

August 1 through earlier of August 27, or a 500 Chinook quota (C.9.a).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). Prior to June 1, all fish caught in this area must be landed and delivered in the State of Oregon. June 1 through August 27, single daily landing and possession limit of 30 Chinook per vessel per day (C.8.f). Any remaining portion of the June and/or July Chinook quotas may be transferred inseason on an impact neutral basis to the next open quota period. All vessels fishing in this area must land and deliver all fish within this area or Port Orford, within 24 hours of any closure of this fishery, and prior to fishing outside of this area. Oregon State regulations require fishers landing salmon from any quota managed season within this area to notify ODFW within one hour of

delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 252 or sending notification via email to *KMZOR.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

In 2016, the season will open March 15 for all salmon except coho, with a 28 inch Chinook minimum size limit. This opening could be modified following Council review at its March 2016 meeting.

—Oregon/California Border to Humboldt South Jetty (California KMZ)

September 11 through earlier of September 30, or 3,000 Chinook quota (C.9.b). Five days per week, Friday through Tuesday. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). Landing and possession limit of 20 Chinook per vessel per day (C.8.f). All fish caught in this area must be landed within the area and within 24 hours of any closure of the fishery and prior to fishing outside the area (C.10). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed (C.5.e). See California State regulations for additional closures adjacent to the Smith and Klamath Rivers. When the fishery is closed between the Oregon/California border and Humbug Mountain and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival (C.6).

—Humboldt South Jetty to Horse Mountain

Closed.

—Horse Mountain to Point Arena (Fort Bragg)

May 1 through 31;
June 15 through 30;
July 12 through 31;
August 1 through 26;
September 1 through 30 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). All fish must be landed in California. All salmon caught in California prior to September 1 must be landed and offloaded no later than 11:59 p.m., August 30 (C.6). When the California KMZ fishery is open, all fish caught in the area must be landed south of Horse Mountain (C.6). During September, all fish must be landed north of Point Arena (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

In 2016, the season will open April 16 through 30 for all salmon except coho, with a 27-inch Chinook minimum size limit and the same gear restrictions as in 2015. All fish caught in the area must be landed in the area. This opening could be modified following Council review at its March 2016 meeting.

—Point Arena to Pigeon Point (San Francisco)

May 1 through 31;
June 7 through 30;
July 8 through 31;
August 1 through 29;
September 1 through 30 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length prior to September 1, 26 inches thereafter (B, C.1). All fish must be landed in California. All salmon caught in California prior to September 1 must be landed and offloaded no later than 11:59 p.m., August 30 (C.6). During September, all fish must be landed south of Point Arena (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

- Point Reyes to Point San Pedro (Fall Area Target Zone)

October 1 through 2, 5 through 9, and 12 through 15.

All salmon except coho (C.4, C.7). Chinook minimum size limit of 26 inches total length (B, C.1). All fish caught in this area must be landed between Point Arena and Pigeon Point (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

—Pigeon Point to Point Sur (Monterey North)

May 1 through 31;

June 7 through 30;

July 8 through 31;

August 1 through 15 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). All fish must be landed in California. All salmon caught in California prior to September 1 must be landed and offloaded no later than 11:59 p.m., August 30 (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

—Point Sur to U.S./Mexico Border (Monterey South)

May 1 through 31;

June 7 through 30;

July 8 through 31 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). All fish must be landed in California. All salmon caught in California prior to September 1 must be landed and offloaded no later than 11:59 p.m., August 30 (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

*B. Minimum Size (Inches) (See C.1)*

| Area (when open) | Chinook | | Coho | | Pink |
|---|---|---|---|---|---|
| | Total length | Head-off | Total length | Head-off | |
| North of Cape Falcon, OR | 28.0 | 21.5 | 16.0 | 12.0 | None. |
| Cape Falcon to OR/CA Border | 28.0 | 21.5 | — | — | None. |
| OR/CA Border to Humboldt South Jetty | 28.0 | 21.5 | — | — | None. |
| Horse Mountain to Point Arena | 27.0 | 20.5 | — | — | None. |
| Point Arena to Pigeon Point | | | | | |
| Prior to August 30 | 27.0 | 20.5 | — | — | None. |
| September 1 to October 15 | 26.0 | 19.5 | — | — | None. |

| Area (when open) | Chinook | | Coho | | Pink |
|---|---|---|---|---|---|
| | Total length | Head-off | Total length | Head-off | |
| Pigeon Point to U.S./Mexico Border | 27.0 | 20.5 | — | — | None. |

Metric equivalents: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.5 in=52.1 cm, 19.5 in=49.5 cm, 16.0 in=40.6 cm, and 12.0 in=30.5 cm.

*C. Requirements, Definitions, Restrictions, or Exceptions*

C.1. Compliance with Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 48 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 48 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required to report a salmon landing by applicable state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets be kept on board the vessel for 90 days or more after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon, Oregon, to the Oregon/California border: No more than 4 spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

*Trolling defined:* Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

*Troll fishing gear defined:* One or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

*Spread defined:* A single leader connected to an individual lure and/or bait.

*Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90°angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, USCG, CDFW, and Oregon State Patrol at least 24 hours prior to sampling and provide the following information: The vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23′00″ N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N. lat.) and east of 125°05′00″ W. long.

b. Mandatory Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from 48°00.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°16.50′ W. long. to 48°00.00′ N. lat.; 125°16.50′ W. long. and connecting back to 48°00.00′ N. lat.; 125°14.00′ W. long.

c. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124° 07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°55′36″ N. lat., 124°10′51″ W. long.).

d. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and on the south, by 41°26′48″ N. lat. (approximately six nautical miles south of the Klamath River mouth).

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within one hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG.

All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. When halibut are caught and landed incidental to commercial salmon fishing by an IPHC license holder, any person who is required to report the salmon landing by applicable state law must include on the state landing receipt for that landing both the number of halibut landed, and the total dressed, head-on weight of halibut landed, in pounds, as well as the number and species of salmon landed.

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838). Applicants must apply prior to mid-March 2016 for 2016 permits (exact date to be set by the IPHC in early 2016). Incidental harvest is authorized only during April, May, and June of the 2015 troll seasons and after June 30 in 2015 if quota remains and if announced on the NMFS hotline (phone: 1–800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the IPHC's 29,035 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

May 1, 2015, through December 31, 2015, and April 1–30, 2016, license holders may land or possess no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 12 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2015, prior to any 2015 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2016, unless otherwise modified by inseason action at the March 2016 Council meeting.

a. ''C-shaped'' yelloweye rockfish conservation area (YRCA) is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
and connecting back to 48°18′ N. lat.;
125°18′ W. long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline, if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. Chinook remaining from the June and/or July non-Indian commercial troll quotas in the Oregon KMZ may be transferred to the Chinook quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. NMFS may transfer fish between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding the preseason impact expectations on any stocks.

d. At the March 2016 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2015).

e. If retention of unmarked coho is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected impacts on all stocks are not exceeded.

f. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters.

Check state regulations for details.

C.10. For the purposes of California Fish and Game Code, Section 8232.5, the definition of the Klamath Management Zone (KMZ) for the ocean salmon season is the area from Humbug Mountain, Oregon, to Horse Mountain, California.

**Section 2. Recreational Management Measures for 2015 Ocean Salmon Fisheries**

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

*A. Season Description*

North of Cape Falcon, OR

—U.S./Canada Border to Queets River

May 15 through 16, May 22 through 23, and May 30 through June 12 or a coastwide marked Chinook quota of 10,000 (C.5).

Seven days per week. All salmon except coho, two fish per day. All Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point

May 30 through earlier of June 12 or a coastwide marked Chinook quota of 10,000 (C.5)

Seven days per week. All salmon except coho, two fish per day. All Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon

May 30 through earlier of June 12 or a coastwide marked Chinook quota of 10,000 (C.5).

Seven days per week. All salmon except coho, two fish per day. All Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—U.S./Canada Border to Cape Alava (Neah Bay)

June 13 through earlier of September 30 or 14,850 marked coho subarea quota with a subarea guideline of 8,400 Chinook (C.5).

Seven days per week. All salmon except no chum beginning August 1; two fish per day plus two additional pink. All coho must be marked with a healed adipose fin clip (C.1). Beginning August 1, Chinook non-retention east of the Bonilla-Tatoosh line (C.4.a) during Council managed ocean fishery. See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Cape Alava to Queets River (La Push Subarea)

June 13 through earlier of September 30 or 3,610 marked coho subarea quota with a subarea guideline of 2,600 Chinook (C.5).

October 1 through earlier of October 11 or 100 marked coho quota or 100 Chinook quota (C.5) in the area north of 47°50′00″ N. lat. and south of 48°00′00″ N. lat.

Seven days per week. All salmon, two fish per day plus two additional pink. All coho must be marked with a healed adipose fin clip (C.1). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point (Westport Subarea)

June 13 through earlier of September 30 or 52,840 marked coho subarea quota with a subarea guideline of 27,900 Chinook (C.5).

Seven days per week. All salmon; two fish per day, no more than one of which can be a Chinook. All coho must be marked with a healed adipose fin clip (C.1). See gear restrictions and definitions (C.2, C.3). Grays Harbor Control Zone closed beginning August 11 (C.4.b). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 13 through earlier of September 30 or 79,400 marked coho subarea quota with a subarea guideline of 15,000 Chinook (C.5).

Seven days per week. All salmon; two fish per day, no more than one of which can be a Chinook. All coho must be marked with a healed adipose fin clip (C.1). See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4.c). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

March 15 through October 31 (C.6), except as provided below during the all-salmon mark-selective and September non-mark-selective coho fisheries.

Seven days per week. All salmon except coho; two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

- Non-mark-selective coho fishery: September 4 through the earlier of September 30 or a landed catch of 12,500 non-mark-selective coho quota (C.5).

Seven days per week. All salmon, two fish per day (C.5).

The all salmon except coho season reopens the earlier of October 1 or attainment of the coho quota (C.5).

In 2016, the season between Cape Falcon and Humbug Mountain will open March 15 for all salmon except coho, two fish per day (B, C.1, C.2, C.3).

Fishing in the Stonewall Bank yelloweye rockfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 or 206–526–6667 for specific dates) (C.3.b, C.4.d).

—Cape Falcon to Oregon/California Border

All-salmon mark-selective coho fishery: June 27 through earlier of August 9 or a landed catch of 55,000 marked coho.

Seven days per week. All salmon, two fish per day. All retained coho must be marked with a healed adipose fin clip (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3). Any remainder of the mark-selective coho quota will be transferred on an impact neutral basis to the September non-selective coho quota from Cape Falcon to Humbug Mountain (C.5). The all salmon except coho season reopens the earlier of August 10 or attainment of the coho quota.

Fishing in the Stonewall Bank yelloweye rockfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 or 206–526–6667 for specific dates) (C.3.b, C.4.d).

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

May 1 through September 7 (C.6).

Seven days per week. All salmon except coho, except as noted above in the all-salmon mark-selective coho fishery; two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

—Oregon/California Border to Horse Mountain (California KMZ)

May 1 through September 7 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed in August (C.4.e). See California State regulations for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

—Horse Mountain to Point Arena (Fort Bragg)

April 4 through November 8 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2016, season opens April 2 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2015 (C.2, C.3).

—Point Arena to Pigeon Point (San Francisco)

April 4 through October 31 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through April 30, 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2016, season opens April 2 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2015 (C.2, C.3).

—Pigeon Point to Point Sur (Monterey North)

April 4 through September 7 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through May 31, 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2016, season opens April 2 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2015 (C.2, C.3).

—Point Sur to U.S./Mexico Border (Monterey South)

April 4 through July 19 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through May 31, 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2016, season opens April 2 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2015 (C.2, C.3).

California State regulations require all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Code of Regulations Title 14 Section 1.73).

*B. Minimum Size (Total Length in Inches) (See C.1)*

| Area (when open) | Chinook | Coho | Pink |
|---|---|---|---|
| North of Cape Falcon | 24.0 | 16.0 | None. |
| Cape Falcon to Humbug Mountain | 24.0 | 16.0 | None. |
| Humbug Mt. to OR/CA Border | 24.0 | 16.0 | None. |
| OR/CA Border to Horse Mountain | 20.0 | ..... | 20.0. |
| Horse Mountain to Point Arena | 20.0 | ..... | 20.0. |
| Point Arena to Pigeon Point: | | | |
| Through April 30 | 24.0 | ..... | 24.0. |
| After April 30 | 20.0 | ..... | 20.0. |
| Pigeon Point to U.S./Mexico Border: | | | |
| Through May 31 | 24.0 | ..... | 24.0. |
| After May 31 | 20.0 | ..... | 20.0. |

Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, and 16.0in=40.6 cm.

*C. Requirements, Definitions, Restrictions, or Exceptions*

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada Border to Point Conception, California: No more than one rod may be used per angler; and no more than two single point, single shank barbless hooks are required for all fishing gear. [Note: ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.]

b. Horse Mountain, California, to Point Conception, California: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. *Recreational fishing gear defined:* Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line—A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N. lat., 124°44′12″ W. long.) to the buoy adjacent to Duntze Rock (48°24′37″ N. lat., 124°44′37″ W. long.), then in a straight line to Bonilla Point (48°35′39″ N. lat., 124°42′58″ W. long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°55′36″ N. lat., 124°10′51″ W. long.).

c. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy

#4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank yelloweye rockfish conservation area—The area defined by the following coordinates in the order listed:

44°37.46′ N. lat.; 124°24.92′ W. long.;
44°37.46′ N. lat.; 124°23.63′ W. long.;
44°28.71′ N. lat.; 124°21.80′ W. long.;
44°28.71′ N. lat.; 124°24.10′ W. long.;
44°31.42′ N. lat.; 124°25.47′ W. long.;
and connecting back to 44°37.46′ N. lat.; 124°24.92′ W. long.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38″48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked coho. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho.

e. Marked coho remaining from the Cape Falcon to Oregon/California border recreational mark-selective coho quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

**Section 3. Treaty Indian Management Measures for 2015 Ocean Salmon Fisheries**

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

*A. Season Descriptions*

May 1 through the earlier of June 30 or 30,000 Chinook quota. All salmon except coho. If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season (C.5). See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 30,000 preseason Chinook quota (C.5), or 42,599 coho quota. All salmon. See size limit (B) and other restrictions (C).

*B. Minimum Size (Inches)*

| Area (when open) | Chinook | | Coho | | Pink |
|---|---|---|---|---|---|
| | Total | Head-off | Total | Head-off | |
| North of Cape Falcon | 24.0 | 18.0 | 16.0 | 12.0 | None. |

Metric equivalents: 24.0 in=61.0 cm, 18.0 in=45.7 cm, 16.0in=40.6 cm, and 12.0 in=30.5 cm.

*C. Requirements, Restrictions, and Exceptions*

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (All).

MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.).

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of September 15 through October 15 in the same manner as in 2004 through 2014. Fish taken

during this fishery are to be counted against treaty troll quotas established for the 2015 season (estimated harvest during the October ceremonial and subsistence fishery: 20 Chinook; 40 coho).

C.4. Area Closures

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

**Section 4. Halibut Retention**

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On March 17, 2015, NMFS published a final rule (80 FR 13771) to implement the IPHC's recommendations, to announce fishery regulations for U.S. waters off Alaska and fishery regulations for treaty commercial and ceremonial and subsistence fisheries, some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast, and approval of and implementation of the Area 2A Pacific halibut Catch Sharing Plan and the Area 2A management measures for 2015. The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on.

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838). Applicants must apply prior to mid-March 2016 for 2016 permits (exact date to be set by the IPHC in early 2016). Incidental harvest is authorized only during April, May, and June of the 2015 troll seasons and after June 30 in 2015 if quota remains and if announced on the NMFS hotline (phone: 1–800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 29,035 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

May 1, 2015, through December 31, 2015, and April 1–30, 2016, license holders may land or possess no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 12 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2015, prior to any 2015 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2016, unless otherwise modified by inseason action at the March 2016 Council meeting.

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' YRCA (also known as the Salmon Troll YRCA) in order to protect yelloweye rockfish. Coordinates for the Salmon Troll YRCA are defined at 50 CFR 660.70(a) in the North Coast subarea (Washington marine area 3). See Section 1.C.7. in this document for the coordinates.

**Section 5. Geographical Landmarks**

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA 48°23′00″ N. lat.
Cape Alava, WA 48°10′00″ N. lat.
Queets River, WA 47°31′42″ N. lat.
Leadbetter Point, WA 46°38′10″ N. lat.
Cape Falcon, OR 45°46′00″ N. lat.
Florence South Jetty, OR 44°00′54″ N. lat.
Humbug Mountain, OR 42°40′30″ N. lat.
Oregon-California Border 42°00′00″ N. lat.
Humboldt South Jetty, CA 40°45′53″ N. lat.
Horse Mountain, CA 40°05′00″ N. lat.
Point Arena, CA 38°57′30″ N. lat.
Point Reyes, CA 37°59′44″ N. lat.
Point San Pedro, CA 37°35′40″ N. lat.
Pigeon Point, CA 37°11′00″ N. lat.
Point Sur, CA 36°18′00″ N. lat.
Point Conception, CA 34°27′00″ N. lat.

**Section 6. Inseason Notice Procedures**

Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, 1–800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be published in the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

**Classification**

This final rule is necessary for conservation and management of Pacific coast salmon stocks and is consistent with the Magnuson-Stevens Act and other applicable law. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

This final rule is not significant under Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small

portion of the annual catch. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January or February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period culminating with the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval, and implementation of fishing regulations effective on May 1.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the two-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock status. For the 2015 fishing regulations, the current stock status was not available to the Council until February. Because a substantial amount of fishing occurs during May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May are managed under the prior year's measures, as modified by the Council at its March meeting, relatively little harvest occurs during that period (*e.g.,* on average, less than 5 percent of commercial and recreational harvest occurred prior to May 1 during the years 2001 through 2014). Allowing the much more substantial harvest levels normally associated with the May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks, and to provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the need to manage the fishery using the best available scientific information.

If these measures are not in place on May 1, the 2014 management measures will continue to apply in most areas. This would result in excessive impacts to some salmon stocks, including exceeding the Endangered Species Act (ESA) consultation standard for Lower Columbia River natural coho and Oregon Coast natural coho, as well as the exploitation rate limit under the Pacific Salmon Treaty (PST) for Canada's Interior Fraser (Thompson River) coho.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action.

In addition, public comment is received and considered by the Council and NMFS throughout the process of developing these management measures. As described above, the Council takes comment at its March and April meetings, and hears summaries of comments received at public meetings held between the March and April meetings in each of the coastal states. NMFS also invited comments in a notice published prior to the March Council meeting, and considered comments received by the Council through its representative on the Council. Thus, these measures were developed with significant public input.

Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data are not available until February and management measures are not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. Delaying the effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the Magnuson-Stevens Act.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is posting the regulations on its West Coast Region Web site (*http://www.westcoast.fisheries.noaa.gov*). NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this portion of the rule and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

NMFS has current ESA biological opinions that cover fishing under these regulations on all listed salmon species. NMFS reiterated their consultation standards for all ESA listed salmon and steelhead species in their annual Guidance letter to the Council dated March 3, 2015. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The management measures for 2015 are consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. The Council's recommended management measures therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In some cases, the recommended measures are more restrictive than NMFS' ESA requirements.

In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW. The 2015 salmon management measures are consistent with the terms of that biological opinion.

This final rule was developed after meaningful and collaboration with the affected tribes. The tribal representative on the Council made the motion for the regulations that apply to the tribal fisheries.

**Authority:** 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: April 29, 2015.

**Samuel D. Rauch III,**

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

[FR Doc. 2015–10421 Filed 5–1–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**RIN 0648–XD682**

## Fisheries of the Exclusive Economic Zone Off Alaska; Small Vessel Exemptions; License Limitation Program

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

**ACTION:** Notice of Agency decision.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the approval of Amendment 108 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), Amendment 100 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), and Amendment 46 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). These amendments correct text omissions in the BSAI FMP, the GOA FMP, and the Crab FMP. These amendments make the fishery management plan (FMP) texts that establish vessel length limits for small vessels exempted from the license limitation program (LLP) in the Bering Sea and Aleutian Islands Management Area (BSAI) groundfish and king and Tanner crab fisheries, and the Gulf of Alaska (GOA) groundfish fisheries, consistent with the original intent of the LLP, current operations in the fisheries, and Federal regulations. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** The amendment was approved on April 27, 2015.

**ADDRESSES:** Electronic copies of Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, Amendment 46 to the Crab FMP, and the analysis prepared for this action are available from the Alaska Region NMFS Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit proposed amendments to a fishery management plan to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that, upon receiving a fishery management plan amendment, NMFS immediately publish in the **Federal Register** a notice that the amendment is available for public review and comment.

The notice of availability for Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP was published in the **Federal Register** on February 12, 2015 (80 FR 7816), with a 60-day comment period that ended on April 13, 2015. NMFS received no comments on Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP.

NMFS determined that Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP are consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary approved Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP on April 27, 2015. The February 12, 2015, notice of availability contains additional information on this action. No changes to Federal regulations are necessary to implement Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP.

Amendment 108 amends Table ES–2 and Section 3.3.1 of the BSAI FMP; Amendment 100 amends Table ES–2 and Section 3.3.1 of the GOA FMP; and Amendment 46 amends Section 8.1.4.2 of the Crab FMP. Specifically, these FMP amendments add ''or equal to'' to the vessel length limits for small vessels that are exempt from the LLP in the BSAI groundfish and king and Tanner crab fisheries and GOA groundfish fisheries. The amendments have the effect of adding vessels 26 ft (7.9 m) LOA in the GOA and vessels 32 ft (9.8 m) LOA in the BSAI, including BSAI Crab, to the LLP exemption. These additions are necessary for consistency with Federal regulations that exempt from the LLP vessels that do ''not exceed 26 ft (7.9 m) LOA'' in the GOA and vessels that do ''not exceed 32 ft (9.8 m) LOA'' in the BSAI. Additional information can be found in the notice of availability for Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP (80 FR 7816, February 12, 2015) and the analysis prepared for this action (see **ADDRESSES**).

Since the implementation of the LLP by Amendment 39 to the BSAI FMP,

Amendment 41 to the GOA FMP, and Amendment 5 to the Crab FMP, which were implemented by NMFS on October 1, 1998 (63 FR 52642), fisheries in the BSAI and GOA have been conducted according to Federal regulations and not the FMP texts; therefore, approval of Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP does not impact LLP license holders, fishing behavior or fisheries management in the U.S. Exclusive Economic Zone off Alaska. These amendments make the three FMPs consistent with the original intent of the Council and Secretary, current operations in the fisheries, and Federal regulations.

**Response to Comments**

NMFS did not receive any comments on Amendment 108 to the BSAI FMP, Amendment 100 to the GOA FMP, and Amendment 46 to the Crab FMP.

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

Dated: April 29, 2015.

**Samuel D. Rauch III,**

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

[FR Doc. 2015–10413 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 80, No. 86
Tuesday, May 5, 2015

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–1270; Directorate Identifier 2014–NM–222–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes. This proposed AD was prompted by reports of significant fuselage skin damage at certain parts of the dorsal fairing, due to wear from the dorsal fairing. This proposed AD would require repetitive detailed inspections for wear and cracks of the fuselage skin under the dorsal fairing, and related investigative and corrective actions if necessary. This proposed AD would also require repetitive post-repair external surface high frequency eddy current inspections of the blended areas of the skin and detailed inspections of the unrepaired areas, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct fuselage skin damage of the dorsal fairing area, which could result in skin cracking and consequent depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by June 19, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.*You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1270.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1270; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1270; Directorate Identifier 2014–NM–222–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 significant fuselage skin damage at the dorsal fairing forward of station (STA) 2280, due to wear from the dorsal fairing. These two airplanes had accumulated 45,707 and 71,702 total flight hours. The skin damage occurred from inadequate clearance between fuselage crown skin and the lower aft corners of the dorsal fairing. Affected airplanes are limited to those delivered or retrofitted with certain dorsal fairing assemblies. Airplanes with other dorsal fairing configurations are not expected to develop skin wear. This inadequate clearance, if not corrected, could result in skin cracking and consequent depressurization of the airplane.

### Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. This service information describes procedures for repetitive inspections, repair, and modification of the fuselage skin under the dorsal fairing. Refer to this service information for information on the procedures and compliance times. This service information is reasonably available at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1270. Or see **ADDRESSES** for other ways to access this service information.

### FAA's Determination

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

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information identified previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

**Explanation of ''RC'' Steps in Service Information**

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps that are identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

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

**Differences Between This Proposed AD and the Service Information**

Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Tables 4 and 5 in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specify accomplishing the post-repair inspections identified in Part 8 of the service bulletin. Part 8 of the service bulletin allows the option of high frequency eddy current (HFEC) or low frequency eddy current (LFEC) inspections of the blended areas of the skin; however, this proposed AD does not allow the option of an LFEC inspection. This difference has been coordinated with Boeing.

Tables 3, 6, and 7 in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specify post-modification inspections at certain fuselage crown skin locations, which may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 129.109(b)(2)). However, this NPRM does not propose to require those post-modification inspections. This difference has been coordinated with Boeing.

**Costs of Compliance**

We estimate that this proposed AD affects 93 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections | Up to 15 work-hours × $85 per hour = $1,275. | $0 | Up to $1,275 per inspection cycle. | Up to $118,575 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed 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 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–2015–1270; Directorate Identifier 2014–NM–222–AD.

**(a) Comments Due Date**

We must receive comments by June 19, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–100, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by reports of significant fuselage skin damage at the dorsal fairing forward of station (STA) 2280 due to wear from the dorsal fairing. We are issuing this AD to detect and correct fuselage skin damage of the dorsal fairing area, which could result in skin cracking and consequent depressurization of the airplane.

**(f) Compliance**

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

**(g) Inspections and Repair**

At the applicable time specified in tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (j)(1) of this AD, do a detailed inspection of the fuselage skin under the dorsal fairing for wear or cracks, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as required by paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. Repeat the applicable inspections of the fuselage skin thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

**(h) Post-Repair Inspections**

At the applicable time specified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (j)(1) of this AD, do an external surface high frequency eddy current inspection of the blended areas of the skin and a detailed inspection of the unrepaired areas, and do all applicable related investigative and corrective actions, in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as required by paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. Repeat the applicable inspections of the blended areas of the skin thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

**(i) Post-Modification Inspections**

The post-modification inspections specified in tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, are not required by this AD.

**Note 1 to paragraph (i) of this AD:** The post-modification inspections specified in tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, are not required by this AD.

**(j) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specifies a compliance time ''after the Original Issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Although Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specifies to contact Boeing for repair data, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

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

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

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

(4) Except as required by paragraph (j)(2) of this AD: If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

**(l) Related Information**

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

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

Issued in Renton, Washington, on April 27, 2015.

**Michael Kaszycki,**

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

[FR Doc. 2015–10315 Filed 5–4–15; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2015–1266; Directorate Identifier 2014–NM–151–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SR, and 747SP series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fuselage skin lap joints are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive post-modification inspections for cracking of the skin or internal doubler along the edge fastener rows of the modification, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which could result in rapid depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by June 19, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA 2015–1266.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1266; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1266; Directorate Identifier 2014–NM–151–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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

This proposed AD was prompted by an evaluation by the DAH indicating

that certain fuselage skin lap joints are subject to WFD. We are proposing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which could result in rapid depressurization of the airplane.

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

We reviewed Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. This service information describes procedures for inspections for cracks in the skin and doublers along the edge fastener rows of modifications in the fuselage, and repairs. Refer to this service information for information on the procedures and compliance times. This service information is reasonably available at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1266. Or see **ADDRESSES** for other ways to access this service information.

**Related Rulemaking**

AD 2010–10–05, Amendment 39–16284 (75 FR 27424, May 17, 2010) requires, among other things, modification of certain lap joints in fuselage sections 41 and 42. This proposed AD would require repetitive post-modification inspections for cracking of the skin or internal doubler along the edge fastener rows of the modification, and repair if necessary.

**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, except as discussed under ''Difference Between this Proposed AD and the Service Information.''

**Difference Between This Proposed AD and the Service Information**

Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, specifies to contact the manufacturer for instructions on how to repair cracking, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD affects 50 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 |
|---|---|---|---|---|
| Post-modification inspection | 124 work-hours × $85 per hour = $10,540 per inspection cycle.. | $0 | $10,540 per inspection cycle | $527,000 per inspection cycle. |

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

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2014–1266; Directorate Identifier 2014–NM–151–AD.

**(a) Comments Due Date**

We must receive comments by June 19, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fuselage skin lap joints are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which could result in rapid depressurization of the airplane.

**(f) Compliance**

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

**(g) Repetitive Post-Modification Inspections for Airplane Groups 1 Through 3, 7, and 8**

For airplanes identified as Groups 1 through 3, 7, and 8 in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface high frequency eddy current (HFEC) inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(h) Initial Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 Through 11**

For airplanes identified as Groups 4 through 6, and 9 through 11 in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, with external doublers installed as specified in Boeing Service Bulletin 747–53–2272: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do external detailed, low frequency eddy current (LFEC), and HFEC inspections for cracks in the skin and external doubler, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(i) Repetitive Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 through 11**

For airplanes with no crack findings during the inspections required by paragraph (h) of this AD: Do the applicable actions required by paragraphs (i)(1) and (i)(2) of this AD.

(1) For airplanes with less than 15,000 flight cycles since stringer 6 external doublers were installed as specified in Boeing Service Bulletin 747–53–2272: At the applicable intervals specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, in unrepaired areas, repeat the external detailed and LFEC inspections for cracks in the skin, and the external detailed and HFEC inspections for cracks in the external doubler, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

(2) For airplanes with 15,000 or more flight cycles since the stringer 6 external doublers were installed as specified in Boeing Service Bulletin 747–53–2272: At the applicable intervals specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, in unrepaired areas, do external detailed and LFEC inspections for cracks in the skin; and do internal and external detailed and HFEC inspections for cracks in the skin and external doubler; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(j) Repetitive Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 Through 11 With External Doublers**

For airplanes identified as Groups 4 through 6, and 9 through 11 in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, with external doublers installed as specified in Boeing Alert Service Bulletin 747–53A2367: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface HFEC inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification; and do internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(k) Repetitive Post-Modification Inspections for Airplane Groups 12 and 13**

For airplanes identified as Groups 12 and 13 in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface HFEC inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(l) Corrective Actions**

If any cracking is found during any inspection required by this AD: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

**(m) Exception to Boeing Alert Service Bulletin 747–53A2367, Revision 5, Dated July 8, 2014**

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, specifies a compliance time ''after the Revision 5 date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

**(n) Alternative Methods of Compliance (AMOCs)**

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

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

**(o) Related Information**

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the

FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 28, 2015.

**Michael Kaszycki,**

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

[FR Doc. 2015–10316 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 352

**[Docket No. AD12–6–001]**

### Retrospective Analysis of Existing Rules

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of staff memorandum.

**SUMMARY:** In this document, the Commission is seeking public comment on whether the existing regulations concerning the Uniform Systems of Accounts prescribed for oil pipeline companies and hydropower prefiling requirements, and a requirement imposed in 2001 that Western public and non-public utilities offer available real-time electric energy capacity into the markets and post the availability on their Web sites and the WSPP Web site, warrant a formal public review.

**DATES:** Comments are due by May 26, 2015.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

• *Electronic Filing* through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:** Christy Walsh, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–6523, *Christy.Walsh@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** Take notice that the Commission staff is issuing a memorandum seeking public comment on whether the existing regulations concerning the Uniform Systems of Accounts prescribed for oil pipeline companies and hydropower prefiling requirements, and a requirement imposed in 2001 that Western public and non-public utilities offer available real-time electric energy capacity into the markets and post the availability on their Web sites and the WSPP Web site, warrant a formal public review. The memorandum is being issued pursuant to the November 8, 2011 *Plan for Retrospective Analysis of Existing Rules* prepared in response to Executive Order 13579, which requested independent regulatory agencies issue plans for periodic retrospective analysis of their existing regulations.

The Staff Memorandum is being placed in the record in the above-referenced administrative docket. The Staff Memorandum will also be available on the Commission's Web site at *http://www.ferc.gov.*

Comments on the Staff Memorandum should be filed within 30 days of the issuance of this document. The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original of the comment to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings in this docket are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket. For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Questions regarding this document should be directed to: Christy Walsh, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–6523, *Christy.Walsh@ferc.gov.*

Issued: April 23, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015–10310 Filed 5–4–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Part 655

**RIN 1205–AB70**

### Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States; Extension of Comment Period

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Department of Labor (Department) issued a proposed rule in the **Federal Register** of April 15, 2015 [FR Doc. 2015–08505], concerning proposed amendments to its regulations governing certification of the employment of nonimmigrant workers in temporary or seasonal agricultural employment under the H–2A program to codify certain procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in sheepherding, goat herding and production of livestock on the open range. This notice extends the comment period for 15 days, from May 15 to June 1, 2015. Multiple commenters requested additional time to develop their comments concerning the proposed rulemaking. The Department is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

**DATES:** The comment period for the proposed rule published on April 15, 2015 (80 FR 20300) is extended. Interested persons are invited to submit written comments on the proposed rule, identified by RIN 1205–AB70, on or before June 1, 2015

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB70, by any one of the following methods:

• *Federal e-Rulemaking Portal www.regulations.gov.* Follow the Web site instructions for submitting comments.

• *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM

submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method and within the designated comment period. Comments received by means other than those listed above or received after the comment period has closed will not be reviewed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters against including personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration's (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the ETA Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** This notice extends the public comment period established in the **Federal Register** proposed rule of April 15, 2015. In that notice the Department proposed amendments to its regulations governing certification of the employment of nonimmigrant workers in temporary or seasonal agricultural employment under the H–2A program to codify certain procedures for employers seeking to hire foreign temporary agricultural workers for job opportunities in sheepherding, goat herding and production of livestock on the open range. The Department is hereby extending the comment period, which was set to end on May 15, 2015 to June 1, 2015.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** proposed rule of April 15, 2015. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

**Portia Wu,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2015–10464 Filed 5–4–15; 8:45 am]

**BILLING CODE 4510–FP–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2015–0279]**

**RIN 1625–AA00**

## Safety Zone for Fireworks Display, Chesapeake Bay, Prospect Bay; Queen Anne's County, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of Prospect Bay. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located between Hog Island and Kent Island in Queen Anne's County, MD on July 4, 2015. This safety zone is intended to protect the maritime public in a portion of the Prospect Bay.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 4, 2015.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security

FR Federal Register
NPRM Notice of Proposed Rulemaking

**A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0279] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0201) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Regulatory History and Information**

This rulemaking involves a fireworks display that will take place in Queen Anne's County, MD, on July 4, 2015. The launch site for the fireworks display is from a discharge barge located in Prospect Bay. The permanent safety zones listed in the Table to 33 CFR 165.506 do not apply to this event.

**C. Basis and Purpose**

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 33 CFR 1.05–1, and 160.5; Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones. Queen Anne's County, of Centerville, MD, will sponsor a fireworks display launched from a barge located in Prospect Bay, scheduled on July 4, 2015 at approximately 9 p.m. In the event of inclement weather, the fireworks will be rescheduled on July 5, 2015. The Coast Guard believes a safety zone is needed to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

**D. Discussion of Proposed Rule**

For the reasons stated above, the Coast Guard proposes to establish a temporary safety zone. The proposed zone would encompass all waters of Prospect Bay, within a 1,000 feet radius of a fireworks discharge barge in approximate position latitude 39°57′49.8″ N., longitude 076°14′58.5″ W., located between Hog Island and Kent Island in Queen Anne's County, MD. The temporary safety zone would be enforced from 8:30 p.m. through 10 p.m. on July 4, 2015, and, if necessary due to inclement weather, from 8:30 p.m. through 10 p.m. on July 5, 2015.

The effect of this temporary safety zone would be to restrict navigation in the regulated area immediately before, during, and immediately after the fireworks display. Vessels would be allowed to transit the waters of Prospect Bay outside the safety zone.

This rule requires that entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

**E. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866

or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation would restrict access to this area, the effect of this proposed rule will not be significant because: (i) The safety zone will only be in effect from 8:30 p.m. through 10 p.m. on July 4, 2015, and, if necessary due to inclement weather, from 8:30 p.m. through 10 p.m. on July 5, 2015, and (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or transit through or within, or anchor in, the safety zone during the enforcement period. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may negatively impact the safety or other interests of waterway users and near shore activities in the event area. The activity includes fireworks launched from barges near the shoreline that generally rely on the use of navigable waters as a safety buffer to protect the public from fireworks fallouts and premature detonations. This rulemaking is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A

preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0279 to read as follows:

**§ 165.0279 Safety Zone for Fireworks Display, Chesapeake Bay, Prospect Bay; Queen Anne's County, MD.**

(a) *Location.* The following area is a safety zone: All waters of Prospect Bay, within a 1,000 feet radius of a fireworks discharge barge in approximate position latitude 39°57′49.8″ N, longitude 076°14′58.5″ W, located between Hog Island and Kent Island in Queen Anne's County, MD. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0279.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed as directed while within the zone.

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

(c) *Definitions.* As used in this section:

*Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. through 10 p.m. on July 4, 2015, and, if necessary due to inclement weather, from 8:30 p.m. through 10 p.m. on July 5, 2015.

Dated: April 15, 2015.

**M.M. Dean,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Baltimore.*

[FR Doc. 2015–10490 Filed 5–4–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Part 412

### Office of the Secretary

### 45 CFR Part 170

**[CMS–1632–P]**

**RIN–0938–AS41**

## Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Policy Changes and Fiscal Year 2016 Rates; Revisions of Quality Reporting Requirements for Specific Providers, Including Changes Related to the Electronic Health Record Incentive Program

*Correction*

In proposed rule document 2015–09245 beginning on page 24324 in the issue of Thursday, April 30, 2015 make the following correction(s):

• On page 24324, in the second column, in the **DATES** section, ''June 29, 2015'' should read ''June 16, 2015''.

[FR Doc. C1–2015–09245 Filed 5–4–15; 8:45 am]

**BILLING CODE 1505–01–D**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Parts 1206, 1210, 1211, 1216, 1217, 1218, 1220, 1222, 1226, 2556

**RIN 3045–AA36**

### Volunteers in Service to America

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Corporation for National and Community Service (CNCS) proposes new regulations under the Domestic Volunteer Service Act of 1973, as amended, and the National and Community Service Act of 1990, as amended, for the Volunteers in Service to America (VISTA) program, including certain changes to update existing regulations.

**DATES:** To be sure your comments are considered, they must reach CNCS on or before July 6, 2015.

**ADDRESSES:** You may send your comments electronically through the Federal government's one-stop

rulemaking Web site at *www.regulations.gov.* You may also send your comments electronically to *vistaregs@cns.gov. Also, y*ou may mail or deliver your comments to Calvin Dawson, AmeriCorps VISTA, at the Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. Due to continued delays in CNCS's receipt of mail, we strongly encourage comments to be submitted online electronically. You may request this notice in an alternative format for the visually impaired. Members of the public may review copies of all communications received on this rulemaking at CNCS's Washington DC office.

**FOR FURTHER INFORMATION CONTACT:** Calvin Dawson, AmeriCorps VISTA, at the Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525, phone 202–606–6897. The TDD/TTY number is 800–833–3722.

**SUPPLEMENTARY INFORMATION**

## I. Background

The Economic Opportunity Act of 1964 created the Volunteers in Service to America (VISTA) program. The VISTA program, sometimes referred to as the domestic Peace Corps, has operated since the first VISTA volunteers (VISTAs or VISTA members) were placed in service in December 1964.

In 1971, the VISTA program was transferred from the Office of Economic Opportunity to the former Federal agency, ACTION (the Federal Domestic Volunteer Agency). In 1973, Congress enacted the Domestic Volunteer Service Act of 1973 (DVSA), the VISTA program's enabling legislation. The VISTA program continues to retain its purpose, as stated in the DVSA, ''to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling individuals from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals afflicted with such problems.''

In 1994, the Corporation for National and Community Service (CNCS) was established pursuant to the National and Community Service Trust Act of 1993; at this time, the operations of all service programs previously administered by ACTION, including the VISTA program, began to be administered by CNCS. The VISTA program also became known as the AmeriCorps VISTA program, one of three AmeriCorps programs now administered by CNCS. The other two programs were, and continue to be: (1) The AmeriCorps State and National program; and (2) the AmeriCorps National Civilian Community Corps (NCCC). Since 1994, the VISTA program continues to be primarily operated and administered under the DVSA. The other two AmeriCorps programs are operated under the National and Community Service Act of 1990 (NCSA).

In 2009, Congress enacted the Edward M. Kennedy Serve America Act of 2009 (Serve America Act), which contained certain amendments to both the DVSA and the NCSA. With regard to the VISTA program, the Serve America Act amendments largely related to the Segal AmeriCorps Education Award, a type of end-of-service award for which a VISTA member may be eligible upon successful completion of a term of VISTA service.

## II. Scope of Proposed Rule

This proposed rule covers core aspects of the VISTA program: (a) Entities that are sponsors for VISTA projects; and (b) individuals who are applicants, candidates, and VISTAs (including VISTA leaders and VISTA summer associates), serving at project sites. This proposed rule has four purposes.

First, it conforms the existing regulations to the fact that CNCS administers the VISTA program. References in the existing regulations to the former Federal agency, ACTION, and the administrative structure of ACTION are changed to reflect CNCS and its administrative structure.

Second, this proposed rule codifies the VISTA rules in the same location as the rules for CNCS's other programs. The existing VISTA regulations are codified at 45 CFR parts 1206, 1210, 1211, 1216–1220, 1222, and 1226. This proposed rule places the VISTA regulations within the regulations for CNCS and the other CNCS programs at 45 CFR parts 2505–2556.

On a related note, existing program regulations at 45 CFR parts 1206, 1216, 1220, and 1226, currently apply both to the VISTA program, and to CNCS's National Senior Service Corps programs. This proposed rule places existing program regulations, as they apply to the VISTA program, at 45 CFR parts 2505–2556. Existing program regulations as they apply to the National Senior Service Corps programs will remain, at this time, at 45 CFR parts 1206, 1216, 1220, and 1226. To accommodate the relocation of the existing program regulations as applied to the VISTA program, certain technical changes to the existing program regulations, as applied to the National Senior Service Corps programs, are warranted. These technical changes are not substantive, but are necessary to address the removal of references to the VISTA program and to reflect CNCS and its current administrative structure.

Third, this proposed rule addresses regulations on the VISTA program's elements. The existing regulations cover a limited range of topics. This proposed rule covers a wide range of topics, and updates the topics covered under existing regulations, including: VISTA application and termination processes, volunteer grievance procedures, competitive service eligibility, payment of volunteer legal expenses, nondisplacement of workers, VISTA leaders and summer associates, restrictions for VISTAs on certain political activities under the Hatch Act and other federal laws, and participation of program beneficiaries. Subpart A gives general program information: Purpose, basic program design, definitions used in the proposed rule, and waiver. Subpart B sets out requirements for a VISTA sponsor, and for a sponsor to support a VISTA. Subpart C pertains to being a VISTA, and the requirements for applying to become a VISTA. Subpart D provides the service terms, protections, and benefits that apply to a VISTA. Subpart E addresses termination for cause procedures. Subparts F and G, concern, respectively, VISTA projects with summer associates, and VISTA projects with VISTA leaders. Subpart H gives restrictions and prohibitions on certain political activities for all VISTAs, sponsors, and project sites.

Fourth, this proposed rule updates the provisions of the existing regulations. These changes are described here:

As it applies to the VISTA program, 45 CFR part 1206, which deals with project suspension and termination, is moved to 45 CFR part 2556, subpart B with most substantive provisions remaining unchanged. Under the proposed rule the provisions for suspension remain unchanged, except that the provisions for summary suspension are eliminated and the provisions for suspension on notice are retained. This has the effect of giving notice to sponsors for all suspensions. Under the proposed rule the provisions for termination remain unchanged,

except that a second CNCS review has been eliminated. Experience has shown that a lengthy termination review process is not beneficial to VISTAs at the project in question, unduly consumes the sponsor's staff time and other resources, creates uncertainty for project beneficiaries, and exhausts VISTA resources that could be put to use for the benefit of project beneficiaries.

45 CFR part 1210, which deals chiefly with early termination of a VISTA, is moved to 45 CFR part 2556, subpart E and changed to improve the cost-effectiveness of the provisions and increase efficiency of VISTA program functions. The new provisions for early termination remain substantively the same in many respects. However, the early termination for cause process is modified. While the process retains more than sufficient due process in the form of written notification and appeals at two levels, the inclusion of a hearing examiner in that process is removed. Experience has shown that a multi-layered termination process is protracted, unduly burdensome, and incompatible with a service term that can last no more than a year's time. Such a process creates potential harm to the operations of the project and its beneficiaries where the VISTA had been assigned, prolongs uncertainty for the VISTA subject to the process, and inordinately consumes VISTA program resources that could be put to use for the benefit of project beneficiaries.

45 CFR part 1211 on grievance procedures for VISTAs is moved to 45 CFR 2556.345–2556.365 and updated to reflect the use of electronic communication technology and the speed at which it can operate. At sections 2556.345–2556.365, the proposed rule clarifies when a VISTA may present a grievance, what matters are considered grievances, and specific steps for bringing a grievance and appealing a response, while eliminating the inclusion of a grievance examiner in the process. Longstanding experience has shown that CNCS has used its administrative review and oversight to afford complaining parties more than sufficient due process, and has effectively remedied inappropriate conditions leading to grievances, without need of grievance examiner services. When grievance examiner services have been invoked, the time, resources and expense incurred by the VISTA program have substantially outweighed the value provided to the parties involved.

45 CFR part 1216 on non-displacement of employed workers and non-impairment of contracts for service is moved to 45 CFR 2556.150(b) –2556.150(e), and the substantive provisions remain unchanged.

45 CFR part 1217 on leaders is moved to 45 CFR part 2556, subpart G and clarifies primary aspects of the leader position in a project.

45 CFR part 1219 on non-competitive eligibility for VISTAs is moved to 45 CFR 2556.340, and its substantive provisions remain unchanged.

45 CFR part 1220 on payment of legal expenses resulting from service activities is moved to 45 CFR 2556.325–2556.335, and its substantive provisions remain unchanged.

45 CFR part 1222 on participation of project beneficiaries is moved to 45 CFR 2556.120, and its substantive provisions remain unchanged.

45 CFR part 1226 on prohibitions and restrictions on certain political activities is moved to 45 CFR part 2556, subpart H and is revised to complement the current limitations and permitted political activities under the Hatch Act, 5 U.S.C. chapter 73, subchapter III. As provided in the DVSA, VISTAs are subject to the requirements of the Hatch Act because they are considered federal employees for purposes of the Hatch Act, 42 U.S.C. 5055(b)(1).

## III. Effective Date

CNCS intends to make any final rule based on this proposal effective no sooner than 90 days after the final rule is published in the **Federal Register**.

## IV. Regulatory Procedures

*Executive Order 12866*

CNCS has determined that the proposed rule is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

*Regulatory Flexibility Act*

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

*Unfunded Mandates*

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

*Paperwork Reduction Act*

This proposed rule addresses the requirement that entities that wish to apply to be VISTA sponsors complete an application to be a VISTA sponsor that manages at least one VISTA project. Consistent with this requirement is a document: the VISTA program's Project Application (*http://www.nationalservice.gov/programs/americorps/americorps-vista/sponsor-vista-project*). Additionally this proposed rule addresses the requirement that individuals who wish to apply to serve as VISTAs in the federal VISTA program complete an application to serve as a VISTA. This document is called an AmeriCorps Member Application and can be found online at *http://www.nationalservice.gov/programs/americorps/americorps-vista.*

These requirements constitute two sets of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved these information collections for use. The OMB Control Number for the two collections of the Project Application and AmeriCorps Application are 3045–0038 and 3045–0054, respectively.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information displays valid control numbers. This proposed rule's collections of information are contained in 45 CFR 2556.120 and 2556.205 for the Project Application and AmeriCorps Application, respectively.

This information is necessary to ensure that only eligible and qualified entities serve as VISTA sponsors. This information is also necessary to ensure that only eligible and suitable individuals are approved by the VISTA program to serve as VISTAs in the VISTA program.

The likely respondents to these collections of information are entities interested in or seeking to become VISTA sponsors, current VISTA sponsors, and current and prospective VISTAs.

*Executive Order 13132, Federalism*

Executive Order 13132, *Federalism,* prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The proposed rule does not have any Federalism implications, as described above.

**List of Subjects**

*45 CFR Part 1206*

Volunteers.

*45 CFR Part 1210*

Volunteers.

*45 CFR Part 1211*

Volunteers.

*45 CFR Part 1216*

Volunteers.

*45 CFR Part 1217*

Volunteers.

*45 CFR Part 1218*

Volunteers.

*45 CFR Part 1220*

Volunteers.

*45 CFR Part 1222*

Volunteers.

*45 CFR Part 1226*

Volunteers
Elections, Lobbying.

*45 CFR Part 2556*

Volunteers, VISTA program.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service proposes to amend chapters XII and XXV, title 45 of the Code of Federal Regulations as follows:

## PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

■ 1. The authority citation for part 1206 continues to read as follows:

**Authority:** 42 U.S.C. 5052.

■ 2. In § 1206.1–1, revise paragraph (a) to read as follows:

### § 1206.1–1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps grants of assistance provided by the Corporation for National and Community Service pursuant to sections of title II of the Domestic Volunteer Service Act of 1973, Public Law 93–113, 87 Stat. 413 (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

* * * * *

■ 3. Revise § 1206.1–2 to read as follows:

### § 1206.1–2 Application of this part.

This subpart applies to programs authorized under title II of the DVSA.

■ 4. In § 1206.1–3, revise paragraphs (c)–(f) to read as follows:

### § 1206.1–3 Definitions.

* * * * *

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the appropriate Service Center Director and any Corporation for National and Community Service (CNCS) Headquarters or State office official who is authorized to make the grant or assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1–4, the term ''responsible Corporation official'' shall also include a designee of a CNCS official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under title II of the DVSA in the form of grants or contracts involving Federal funds for the administration for which the Director of the National Senior Service Corps programs has responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title II of the DVSA. The term ''recipient'' does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out the development, conduct and administration of part of a project or program assisted under title II of the DVSA.

* * * * *

■ 5. Revise § 1206.2–1 to read as follows:

### § 1206.2–1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance under title II of the DVSA. The procedures in the subpart do not apply to review of applications for sponsors who receive VISTA members under the DVSA.

■ 6. Revise § 1206.2–3 to read as follows:

### § 1206.2–3 Definitions.

As used in this subpart, ''Corporation'', ''CEO'', and ''recipient'' are defined in accordance with § 1206.1–3.

*Financial assistance* and *assistance* include the services of National Senior Service Corps volunteers supported in whole or in part with CNCS funds under the DVSA.

*Program account* includes assistance provided by CNCS to support a particular program activity; for example, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

*Refunding* includes renewal of an application for the assignment of National Senior Service Corps volunteers.

■ 7. In § 1206.2–4, revise paragraph (g) to read as follows:

### § 1206.2–4 Procedures.

* * * * *

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's

authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, CNCS and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

## PART 1210—[REMOVED and RESERVED]

■ 8. Remove and reserve Part 1210.

## PART 1211—[REMOVED and RESERVED]

■ 9. Remove and reserve Part 1211.

## PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NONIMPAIRMENT OF CONTRACTS FOR SERVICE

■ 10. The authority citation for part 1216 is revised to read as follows:

**Authority:** 42 U.S.C. 5044(a).

■ 11. Revise § 1216.1–1 to read as follows:

### § 1216.1–1 Purpose.

This part establishes rules to assure that the services of volunteers in the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP), are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of employed workers or impair existing contracts for service. This part implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113 (the ''Act'').

■ 12. In § 1216.1–2, revise paragraph (a) to read as follows:

### § 1216.1–2 Applicability of this part.

(a) All volunteers in either the Foster Grandparent Program, the Senior Companion Program, or The Retired and Senior Volunteer Program (RSVP), who are assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

* * * * *

## PART 1217—[REMOVED and RESERVED]

■ 13. Remove and reserve Part 1217.

## PART 1218—[REMOVED and RESERVED]

■ 14. Remove and reserve Part 1218.

## PART 1219—[REMOVED and RESERVED]

■ 15. Remove and reserve Part 1219.

## PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

■ 16. The authority citation for part 1220 is revised to read as follows:

**Authority:** 42 U.S.C. 5059.

■ 17. Revise § 1220.1–1 to read as follows:

### § 1220.1–1 Purpose.

This part implements section 419 of the Domestic Volunteer Service Act of 1973, Public Law 93–113 (the ''Act''). This part provides rules to ensure that the Corporation for National and Community Service, which administers the three federal programs, the Foster Grandparent Program (FGP), the Senior Companion Program (SCP), and The Retired and Senior Volunteer Program (RSVP), pays the expenses incurred in judicial and administrative proceedings for the defense of those volunteers serving in those programs. Payment of such expenses by CNCS for those volunteers include payment of counsel fees, court costs, bail or other expenses incidental to the volunteer's defense.

■ 18. In § 1220.2–1, revise paragraph (a)(1) to read as follows:

### § 1220.2–1 Full-time volunteers.

(a)(1) The Corporation for National and Community Service will pay all reasonable expenses for defense of full-time volunteers up to and including the arraignment of Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

* * * * *

■ 19. In § 1220.2–1, revise paragraph (c) to read as follows:

### § 1220.2–1 Full-time volunteers.

* * * * *

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, the Corporation for National and Community Service will not pay for additional private representation for the volunteer.

* * * * *

■ 20. In § 1220.2–2, revise paragraph (a) introductory text and paragraphs (a)(2) and (b) to read as follows:

### § 1220.2–2 Part-time volunteers.

(a) With respect to a part-time volunteer, the Corporation for National and Community Service will reimburse a sponsor for the reasonable expense it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

* * * * *

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under a Corporation for National and Community Service grant project; and

* * * * *

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by the Corporation for National and Community Service may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

■ 21. In § 1220.2–3, revise paragraphs (a), (b) and (d) to read as follows:

### § 1220.2–3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment or bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under §§ 1220.2–1 or 1220.2–2, sponsors shall immediately notify the appropriate Corporation for National and Community Service state office or if the state office cannot be reached, the appropriate Area Manager.

(b) Immediately after notification of the appropriate state office, and with the approval thereof, the sponsor shall advance up to $500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that the Corporation for National and Community Service or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends,

or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers that is not able to provide the $500, the Corporation for National and Community Service state office or Area Manager shall immediately make such sum available to the sponsor.

* * * * *

(d) The General Counsel shall, upon notification by the state office or Area Manager, determine the extent to which the Corporation for National and Community Service will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State offices and Area Managers are not authorized to commit the Corporation for National and Community Service to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided above, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

* * * * *

■ 22. In § 1220.3–1, revise the introductory text and paragraph (a) as follows:

**§ 1220.3–1 Full-time volunteers.**

The Corporation for National and Community Service will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

* * * * *

■ 23. Revise § 1220.3–2 as follows:

**§ 1220.3–2 Part-time volunteers.**

The Corporation for National and Community Service will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under the Corporation for National and Community Service grant; and

(c) The conditions specified in paragraphs (b) and (c) in § 1220.3–1 are met.

■ 24. Revise § 1220.3–3 as follows:

**§ 1220.3–3 Procedure.**

Immediately upon the receipt by a volunteer of any court papers or administrative orders making a party to any proceeding covered under § 1220.3–1 or § 1220.3–2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate Corporation for National and Community Service state office. The procedures referred to in § 1220.2–3, paragraphs (c) through (e), shall thereafter be followed as appropriate.

## PART 1222—[REMOVED and RESERVED]

■ 25. Remove and reserve Part 1222.

## PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

■ 26. The authority citation for part 1226 is revised to read as follows:

**Authority:** 42 U.S.C. 5043.

■ 27. Revise § 1226.1 to read as follows:

**§ 1226.1 Purpose.**

This part implements sections 403(a) and (b) of the Domestic Volunteer Service Act of 1973, Public Law 93–113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or involvement by certain Corporation for National and Community Service programs and volunteers in electoral and lobbying activities. This part implements those provisions of the Act, as they apply to agency programs and volunteers authorized under title II of the Act.

■ 28. Revise § 1226.2 to read as follows:

**§ 1226.2 Scope.**

This part applies to all volunteers serving in a program authorized by title II of the Act, including the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP). This part also applies to employees or sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

■ 29. In § 1226.7, revise the introductory text and paragraph (a) to read as follows:

**§ 1226.7 Scope.**

The provisions in this subpart are applicable to full time volunteers as described in § 1226.3(c), and to such part-time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments; or

* * * * *

■ 30. Remove §§ 1226.10 and 1226.11 and redesignate §§ 1226.12 and 1226.13 as §§ 1226.10 and 1226.11, respectively.

■ 31. Revise § 1226.10 as follows:

**§ 1226.10 Sponsor employees.**

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8(a), (b), (c) and (d) and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by Corporation for National and Community Service funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives Corporation for National and Community Service funds, or could reasonably be perceived by others as acting in such capacity.

■ 32. Add part 2556 to read as follows:

## PART 2556—VOLUNTEERS IN SERVICE TO AMERICA

### Subpart A—General Information

Sec.

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2556.3 Who should read Part 2556?
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## Subpart A—General Information

**Authority:** Secs. 101, 102, and 103, Pub. L. 93–113, as amended; 5 CFR part 734.

### § 2556.1 What is the purpose of the VISTA program?

(a) The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems throughout the United States and certain U.S. territories. To effect this purpose, the VISTA program encourages and enables individuals from all walks of life to join VISTA to perform, on a full-time basis, meaningful and constructive service to assist in the solution of poverty and poverty-related problems and secure opportunities for self-advancement of persons afflicted by such problems.

(b) The VISTA program objectives are to:

(1) Generate private sector resources;

(2) Encourage volunteer service at the local level;

(3) Support efforts by local agencies and community organizations to achieve long-term sustainability of projects; and

(4) Strengthen local agencies and community organizations to carry out the purpose of the VISTA program.

### § 2556.3 Who should read Part 2556?

This Part may be of interest to:

(a) Private nonprofit organizations, public nonprofit organizations, state government agencies, local government agencies, federal agencies, and tribal government agencies who are participating in the VISTA program as sponsors, or who are interested in participating in the VISTA program as sponsors.

(b) Individuals 18 and older who are serving as a VISTA, or who are interested in serving as a VISTA.

### § 2556.5 What definitions apply in Part 2556?

''Act'' or ''DVSA'' means the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113 (42 U.S.C. 4951 *et seq.*).

''Alternative oath or affirmation'' means a pledge of VISTA service taken by an individual who legally resides within a State, but who is not a citizen or national of the United States, upon that individual's enrollment into the VISTA program as a VISTA.

''Applicant for VISTA service'' means an individual who is in the process of completing, or has completed, an application for VISTA service as prescribed by CNCS, but who has been not been approved by CNCS to be a candidate.

''Application for VISTA service'' means the materials prescribed by CNCS

to ascertain information on an individual's eligibility and suitability for VISTA service.

''Area Manager'' means a CNCS official who is head of a designated, regional set, or cluster of CNCS State Offices, or equivalent CNCS official.

''Assistance'' means VISTAs, leaders, or summer associates. ''Assistance'' also means technical assistance or training of VISTAs, leaders, summer associates, candidates, sponsors, or supervisors that are provided from funds appropriated by Congress for the purpose of supporting activities under the DVSA. ''Assistance'' also means grant funds.

''Candidate'', when used in the context of an individual who has applied for VISTA service, means an individual whose application for VISTA service has been approved by CNCS, but who has not taken an oath, alternative oath or affirmation to serve in the VISTA program. Candidates may include those who were enrolled in the VISTA program at a prior time.

''Cost share'' means when an entity, such as a VISTA sponsor, reimburses CNCS part or all of the expenses associated with the operation of a VISTA project, such as the costs for one or more VISTAs, leaders, or summer associates placed in a VISTA project.

''CNCS'' means the Corporation for National and Community Service, established pursuant to section 191 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12651. CNCS is also sometimes referred to as ''the Corporation.''

''Education award'' or ''Segal AmeriCorps Education Award'' means an end-of-service monetary benefit from CNCS's National Service Trust that is directed to designated educational institutions and is awarded to certain qualifying VISTAs who successfully complete an established term of VISTA service.

''Enroll'', ''enrolled'' or ''enrollment'', when used in the context of VISTA service, refers to the status of an individual admitted to serve in the VISTA program. The enrollment period commences when the Oath to serve in the VISTA program is taken by the candidate and ends upon termination from a term of service in the VISTA program. The enrollment period may commence on a date earlier than the first day of a service assignment of an enrolled VISTA member.

''Full-time'', when used in the context of VISTA service means service in which a VISTA, leader, or summer associate remains available for service without regard to regular working hours.

''Leader'', ''a leader'', or ''a VISTA leader'' means a VISTA member who is enrolled for full-time VISTA service, and who is also subject to the terms of Subpart G of this Part.

''Living allowance'' or ''living allowance payment'' means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

''Memorandum of Agreement'' means a written agreement between CNCS and a sponsor regarding the terms of the sponsor's involvement and responsibilities in the VISTA program.

''Nonpartisan election'' means—(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or (2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

''Oath'' means an avowal to VISTA service, taken in accordance with 5 U.S.C. 3331, by an individual who is a U.S. citizen or national. The taking of the Oath effects an individual's enrollment into the VISTA program.

''On-duty'' or ''during service time'' means when a VISTA is either performing VISTA service or scheduled to do so.

''Project'' or ''VISTA project'' means a set of VISTA activities operated and overseen by, and the responsibility of, a sponsor, and assisted under this Part to realize the goals of title I of the DVSA.

''Project applicant'' or ''VISTA project applicant'' means an entity that submits an application to CNCS to operate, oversee, and be responsible for a VISTA project.

''Project application'' or ''VISTA project application'' means the application materials prescribed by CNCS to ascertain information on an applying entity's eligibility and suitability to operate, oversee, and be responsible for, a VISTA project.

''Project director'' or ''VISTA project director'' means a staff person, of legal age, of the sponsor, who has been assigned by the sponsor the overall responsibility for the management of the VISTA project.

''Sponsor'', ''VISTA sponsor'' or ''VISTA project sponsor'' means a public agency or private non-profit organization that receives assistance under title I of the DVSA, and is responsible for operating and overseeing a VISTA project. A public agency may be a federal, state, local or tribal government.

''State'', when used as a noun, means one of the several states in the United States of America, District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''State Program Director'' means a CNCS official who reports to an Area Manager or equivalent CNCS official, and who is the head of a CNCS State Office.

''Stipend'' or ''end-of-service stipend'' means an end-of-service lump-sum monetary benefit from CNCS that is awarded to certain qualifying VISTAs, who successfully complete an established term of VISTA service.

''Subrecipient'' means a public agency or private non-profit organization that enters into an agreement with a VISTA sponsor to receive one or more VISTAs, and to carry out a set of activities, assisted under this Part, to realize the goals of title I of the DVSA. A public agency may be a federal, state, local or tribal government.

''Summer associate'' means a VISTA member who is enrolled for VISTA service, during a period between May 1 and September 15, and who is also subject to the terms of Subpart I of this Part. A summer associate must be available to provide continuous full-time service, without other commitments, for a period of at least eight weeks and a maximum of ten weeks.

''Supervisor'' or ''VISTA Supervisor'' means a staff member, of legal age, of the sponsor or a subrecipient, who has been assigned by the sponsor or the subrecipient, the responsibility for the day-to-day oversight of one or more VISTAs.

''Tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.

''VISTA member'', ''a VISTA'' or ''the VISTA'' means an individual enrolled full-time for VISTA service in the VISTA program, as authorized under title I of the DVSA.

''VISTA program'' means the Federal government program named Volunteers in Service to America and authorized under title I of the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq.*

''VISTA service'' means VISTA service activities performed by a VISTA

member while enrolled in the VISTA program.

**§ 2556.7 Are waivers of the regulations in this Part allowed?**

Upon a determination of good cause, the Chief Executive Officer of CNCS may, subject to statutory limitations, waive any provisions of Part 2556.

## Subpart B—VISTA Sponsors

**Authority:** Secs. 103(a), 103(f), 104(b), 104(e), 105(b), 106, 403(a), 403(b), 403(c), 404(a), 404(b), 404(c), 404(e), 406, 412, 416, and 417, Pub. L. 93–113, as amended; Sec. 192A(g)(10), Pub. L. 101–610, as amended; Presidential Executive Order 13279 (67 FR 77141, Dec. 16, 2002).

**§ 2556.100 Which entities are eligible to apply to become VISTA sponsors?**

The following entities are eligible to apply to become VISTA sponsors, and thereby undertake projects in the U.S. and certain U.S. territories:

(a) Private nonprofit organization.

(b) Public nonprofit organization.

(c) State government or state government agency.

(d) Local government or local government agency.

(e) Tribal government or tribal government agency.

**§ 2556.105 Which entities are prohibited from being VISTA sponsors?**

(a) An entity is prohibited from being a VISTA sponsor or from otherwise receiving VISTA assistance if a principal purpose or activity of the entity includes any of the following:

(1) *Electoral Activities.* Any activity designed to influence the outcome of elections to any public office, such as actively campaigning for or against, or supporting, candidates for public office; raising, soliciting, or collecting funds for candidates for public office; or preparing, distributing, providing funds for campaign literature for candidates, including leaflets, pamphlets, and material designed for the print or electronic media.

(2) *Voter Registration Activities.* Any voter registration activity, such as providing transportation of individuals to voter registration sites; providing assistance to individuals in the process of registering to vote, including determinations of eligibility; or disseminating official voter registration material.

(3) *Transportation to the Polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting, or collecting funds for such activities.

(b) Any organization that, subsequent to the receipt of VISTA assistance, makes as one of its principal purposes or activities any of the activities described in section 2556.105(a) shall be subject to the procedures in sections 2556.125 through 2556.145.

**§ 2556.110 What VISTA assistance is available to a sponsor?**

(a) A sponsor may be approved for one or more VISTA positions.

(b) A sponsor, upon review and approval by CNCS to establish a leader position or positions, and in accordance with criteria set forth at Subpart G of this Part, may be approved for one or more leader positions.

(c) A sponsor, upon approval by CNCS to establish a summer associate position or positions, and in accordance with criteria set forth at Subpart F of this Part, may be approved for one or more summer associate positions.

(d) A sponsor may be eligible to receive certain grant assistance under the terms determined and prescribed by CNCS.

(e) A sponsor may receive training and technical assistance related to carrying out purposes of title I of the DVSA.

**§ 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?**

(a) A sponsor is not required to provide a cash match for any of the assistance listed in § 2556.110.

(b) A sponsor must provide supervision, work space, service-related transportation, and any other materials necessary to operate and complete the VISTA project and support the VISTA.

**§ 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?**

(a) To the maximum extent practicable, the people of the communities to be served by VISTA members shall participate in planning, developing, and implementing programs.

(b) The sponsor shall articulate in its project application how it will engage or continue to engage relevant communities in the development and implementation of programs.

**§ 2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?**

(a) CNCS may deny or reduce VISTA assistance where a denial or reduction is based on:

(1) Legislative requirement;

(2) Availability of funding;

(3) Material failure to comply with applicable term(s) or condition(s) of the DVSA, the regulations in this Part, VISTA program policy, or an applicable Memorandum of Agreement;

(4) Ineffective management of CNCS resources;

(5) Substantial failure to comply with CNCS policy and overall objectives under a contract, or applicable Memorandum of Agreement or grant agreement; or

(6) General policy.

(b) In instances where the basis for denial or reduction of VISTA assistance may also be the basis for the suspension or termination of a VISTA project under this subpart, CNCS shall not be limited to the use of this section to the exclusion of the procedures for suspension or termination in this Subpart.

**§ 2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?**

(a) CNCS shall notify the sponsor in writing, at least 75 calendar days before the anticipated denial or reduction of VISTA assistance,that CNCS proposes to deny or reduce VISTA assistance. CNCS's written notice shall state the reasons for the decision to deny or reduce assistance and shall provide an opportunity period for the sponsor to respond to the merits of the proposed decision. CNCS retains sole authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(b) Where CNCS's notice of proposed decision is based upon a specific charge of the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this Part, VISTA program policy, or an applicable Memorandum of Agreement, the notice shall offer the sponsor an opportunity period to respond in writing to the notice, with any affidavits or other supporting documentation, and to request an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such a hearing officer shall be limited to conducting the hearing and offering recommendations to CNCS. Regardless of whether or not an informal hearing takes place, CNCS shall retain full authority to make the final determination whether the VISTA assistance is denied or reduced, as appropriate.

(c) If the recipient requests an informal hearing, as set forth above in accordance with paragraph (b) of this section, such hearing shall be held at a date specified by CNCS and held at a location convenient to the sponsor.

(d) If CNCS's proposed decision is based, in whole or in part, on a specific charge(s) of a sponsor's material failure to comply with an applicable term(s) or condition(s) of an applicable

Memorandum of Agreement, CNCS shall inform the sponsor in the notice of proposed decision of the opportunity to show cause why VISTA assistance should not be denied or reduced, as appropriate. The notice shall provide specific instructions regarding the sponsor's opportunity to respond in writing to the notice and to request an informal hearing before a mutually agreed-upon impartial hearing officer. Regardless of whether or not such an informal hearing takes place, CNCS shall retain full authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(e) The recipient shall be informed of CNCS's final determination on whether the VISTA assistance at issue shall be denied or reduced, and the basis for the determination.

**§ 2556.135 What is suspension? When may CNCS suspend a VISTA project?**

(a) Suspension is any action by CNCS temporarily suspending or curtailing assistance, in whole or in part, to all or any part of a VISTA project, prior to the time that the project term is concluded. Suspension does not include the denial or reduction of new or additional VISTA assistance.

(b) In an emergency situation for up to 30 consecutive days, CNCS may suspend assistance to a sponsor, in whole or in part, for the sponsor's material failure or threatened material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this Part, VISTA program policy, or an applicable Memorandum of Agreement. Such suspension in an emergency situation shall be pursuant to notice and opportunity to show cause why assistance should not be suspended.

(c) To initiate suspension proceedings, CNCS shall notify the sponsor in writing that CNCS is suspending assistance in whole or in part. The written notice shall contain the following:

(1) The grounds for the suspension and the effective date of the commencement of the suspension;

(2) The sponsor's right to submit written material in response to the suspension to show why the VISTA assistance should not be suspended, or should be reinstated, as appropriate; and

(3) The opportunity to adequately correct the deficiency, or deficiencies, which led to CNCS's notice of suspension.

(d) In deciding whether to continue or lift the suspension, as appropriate, CNCS shall consider any timely material presented in writing, any material presented during the course of any informal meeting, as well as any showing that the sponsor has adequately corrected the deficiency which led to the initiation of suspension.

(e) During the period of suspension of a sponsor, no new expenditures, if applicable, shall be made by the sponsor's VISTA project at issue and no new obligations shall be incurred in connection with the VISTA project at issue except as specifically authorized in writing by CNCS.

(f) CNCS may, in its discretion, modify the terms, conditions, and nature of the suspension or rescind the suspension action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency or deficiencies which led to the suspension and that repetition is not foreseeable.

**§ 2556.140 What is termination? When may CNCS terminate a VISTA project?**

(a) Termination means any action by CNCS permanently terminating or curtailing assistance to all or any part of a sponsor's VISTA project prior to the time that the project term is concluded.

(b) CNCS may terminate assistance to a sponsor in whole or in part for the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this Part, VISTA program policy, or an applicable Memorandum of Agreement.

(c) To initiate termination proceedings, CNCS shall notify the sponsor in writing that CNCS is proposing to terminate assistance in whole or in part. The written notice shall contain the following:

(1) A description of the VISTA assistance proposed for termination, the grounds that warrant such proposed termination, and the proposed date of effective termination;

(2) Instructions regarding the sponsor's opportunity, within 21 calendar days from the date of issuance of the notice, to respond in writing to the merits of the proposed termination and instructions regarding the sponsor's right to request a full and fair hearing before a mutually agreed-upon impartial hearing officer; and

(3) Invitation of voluntary action by the sponsor to adequately correct the deficiency or deficiencies which led to CNCS's notice of proposed termination.

(d) In deciding whether to effect termination of VISTA assistance, CNCS shall consider any relevant, timely material presented in writing; any relevant material presented during the course of any full and fair hearing; as well as, any showing that the sponsor has adequately corrected the deficiency which led to the initiation of termination proceedings.

(e) Regardless of whether or not a full and fair hearing takes place, CNCS shall retain all authority to make the final determination as to whether the termination of VISTA assistance is appropriate.

(f) The sponsor shall be informed of CNCS's final determination on the proposed termination of VISTA assistance, and the basis or bases for the determination.

(g) CNCS may, in its discretion, modify the terms, conditions, and nature of a termination action or rescind a termination action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency which led to the termination, or the initiation of termination proceedings, and that repetition is not threatened.

**§ 2556.145 May CNCS pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this Subpart?**

The procedures established by this Subpart shall not preclude CNCS from pursuing any other remedies authorized by law.

**§ 2556.150 What activities are VISTA members not permitted to perform as part of service?**

(a) A VISTA may not perform any activities in the project application that do not correspond with the purpose of the VISTA program, as described in § 2556.1, or that the Director has otherwise prohibited.

(b) A VISTA may not perform services or duties as a VISTA member that would otherwise be performed by employed workers or other volunteers (not including participants under the DVSA and the National and Community Service Act of 1990, as amended).

(c) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, that supplant the hiring of or result in the displacement of employed workers or other volunteers (not including participants under the DVSA or the National and Community Service Act of 1990, as amended).

(d) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, which impair existing contracts for service.

(e) The requirements of paragraphs 2556.150(b)–(d) of this section do not apply when the sponsor requires the service in order to avoid or relieve suffering threatened by, or resulting

from, a disaster, civil disturbance, terrorism, or war.

(f) A sponsor or project shall not request or receive any compensation from a VISTA; from a beneficiary of VISTA project services; or any other source for services of a VISTA.

**§ 2556.155 May a sponsor manage a VISTA project through a subrecipient?**

(a) A sponsor may carry out a VISTA project through one or more subrecipients that meet the eligibility criteria of § 2556.100.

(b) The sponsor must enter into a subrecipient agreement with each subrecipient. A subrecipient agreement must have at least the following elements:

(1) A project plan to be implemented by the subrecipient;

(2) Records to be kept and reports to be submitted;

(3) Responsibilities of the parties and other program requirements; and

(4) Suspension and termination policies and procedures.

(c) The sponsor retains the responsibility for compliance with a Memorandum of Agreement; the applicable regulations in this Part; and all applicable policies, procedures, and guidance issued by CNCS regarding the VISTA program.

(d) A sponsor shall not request or receive any compensation from a subrecipient for services performed by a VISTA.

(e) A sponsor shall not receive payment from, or on behalf of, the subrecipient for costs of the VISTA assistance, except in two limited circumstances:

(1) For reasonable and actual costs incurred by the sponsor directly related to the subrecipient's participation in a VISTA project; and

(2) For any cost share related to a VISTA placed with the subrecipient in the VISTA project.

**§ 2556.160 What are the sponsor's requirements for cost share projects?**

(a) A sponsor shall enter into a written agreement for cost share as prescribed by CNCS.

(b) A sponsor shall make timely cost share payments as prescribed by CNCS and applicable federal law and regulations.

(c) In addition to other sources of funds, a sponsor may use funds from federal, state, or local government agencies, provided the requirements of those agencies and their programs are met.

(d) Subject to review and approval by CNCS, CNCS may enter into an agreement with another entity to receive and utilize funds to make cost share payments on behalf of the sponsor.

**§ 2556.165 What Fair Labor Standards apply to VISTA sponsors and projects?**

All sponsors and projects that employ laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

**§ 2556.170 What nondiscrimination requirements apply to sponsors?**

(a) An individual with responsibility for the operation of a project that receives CNCS assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or staff member, or on the basis of disability, if the participant or staff member is a qualified individual with a disability.

(b) Any CNCS assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives CNCS assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with CNCS funds. This provision does not apply to the employment (with CNCS assistance) of any staff member of a CNCS-supported project who was employed with the organization operating the project on the date the CNCS assistance was awarded.

(d) Sponsors must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of race, color, national origin, gender, age, religion, or political affiliation. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of disability, if the VISTA is a qualified individual with a disability.

**§ 2556.175 What limitations are VISTA sponsors subject to regarding religious activities?**

(a) A VISTA shall not give religious instruction, conduct worship services or engage in any form of proselytizing as part of his or her duties.

(b) A sponsor or project may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use any CNCS assistance, including the services of any VISTA or VISTA assistance, to support any inherently religious activities, such as worship, religious instruction, or proselytizing, as part of the programs or services assisted by the VISTA program. If a VISTA sponsor or project conducts such inherently religious activities, the activities must be offered separately, in time or location, from the programs or services assisted under this Part by the VISTA program.

## Subpart C—VISTA Members

**Authority:** Secs. 103(b)(3), 103(f), 104(a), 104(b), 104(c), and 404(e), Pub. L. 93–113, as amended.

**§ 2556.200 Who may apply to serve as a VISTA?**

An individual may apply to serve as a VISTA if all the following requirements are met:

(a) The individual is at least eighteen years of age upon taking an oath or affirmation, as appropriate, to enter VISTA service. There is no upper age limit.

(b) The individual is a United States citizen or national, or is legally residing within a state. For eligibility purposes, a lawful permanent resident alien is considered to be an individual who is legally residing within a state.

**§ 2556.205 What commitments and agreements must an individual make to serve in the VISTA program?**

(a) To the maximum extent practicable, the individual must make a full-time commitment to remain available for service without regard to regular working hours, at all times during his or her period of service, except for authorized periods of leave.

(b) To the maximum extent practicable, the individual must make a full-time personal commitment to alleviate poverty and poverty-related problems, and to live among and at the economic level of the low-income people served by the project.

(c) The individual's service cannot be used to satisfy service requirements of parole, probation, or community service prescribed by the criminal justice system.

(d) A VISTA candidate or member agrees to undergo an investigation into his or her criminal history or background as a condition of enrollment, or continued enrollment, in the VISTA program.

#### § 2556.210 Who reviews and approves an application for VISTA service?

CNCS has the final authority to approve or deny VISTA applications for VISTA service.

## Subpart D—Terms, Protections, and Benefits of VISTA Members

**Authority:** Secs. 104(a), 104(b), 104(d), 105, 404(e), 415, and 419 of Pub. L. 93–113, as amended; Sec. 146(c) of Pub. L. 101–610, as amended.

#### § 2556.300 Is a VISTA considered a federal employee? Is a VISTA considered an employee of the sponsor?

(a) Except for the purposes listed here, a VISTA is not considered an employee of the federal government. A VISTA is considered a federal employee only for the following purposes:

(1) Federal Tort Claims Act—28 U.S.C. 1346(b); 28 U.S.C. 2671–2680;

(2) Federal Employees' Compensation Act—5 U.S.C. chapter 81, subchapter 1;

(3) Hatch Act—5 U.S.C. chapter 73, subchapter III;

(4) Internal Revenue Service Code—26 U.S.C. 1 *et seq.;* and

(5) Title II of the Social Security Act—42 U.S.C. 401 *et seq.*

(b) A VISTA is not considered a federal employee for any purposes other than those set forth in paragraph (a) of this section.

(c) A VISTA is not covered by federal or state unemployment compensation related to their enrollment or service in the VISTA program. A VISTA's service is not considered employment for purposes of eligibility for, or receipt of, federal, state, or any other unemployment compensation.

(d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as federal income tax and Social Security.

(e) A VISTA is not, under any circumstances, considered an employee of the sponsor or project to which he or she is assigned to serve. No VISTA is in an employment relationship with the sponsor or project to which he or she is assigned. The sponsor is not authorized to make contributions to any state unemployment compensation fund on a VISTA's behalf.

#### § 2556.305 What is the duration and scope of service for a VISTA?

(a) To serve as a VISTA, an individual makes a full-time commitment for a minimum of one year, without regard to regular working hours.

(b) A VISTA carries out activities in accordance with the purpose of the VISTA program, as described in section 2556.1 of this Part.

(c) To the maximum extent practicable, the VISTA shall live among and at the economic level of the low-income community served by the project, and actively seek opportunities to engage with that low-income community without regard to regular work hours.

(d) A VISTA carries out service activities in conformance with the sponsor's approved project application, including any description of a VISTA assignment as contained in the project application; and, in conformance with the purpose of title I of the DVSA. In any case where there is a conflict between the project application and the DVSA, the DVSA takes precedence.

(e) Under no circumstances may an individual be enrolled to serve as a VISTA beyond five years.

#### § 2556.310 What are the lines of supervision or oversight of a VISTA, a VISTA sponsor and CNCS during a VISTA's term of service?

(a) The VISTA sponsor is responsible for the day-to-day supervision and oversight of the VISTA.

(b) CNCS is responsible for ongoing monitoring and oversight of the VISTA sponsor's project where the VISTA is assigned. CNCS is responsible for selecting the VISTA, assigning the VISTA to a project, removal of a VISTA from a project, and VISTA separation actions such as termination from the VISTA program.

#### § 2556.315 What are terms and conditions for official travel for a VISTA?

(a) CNCS may provide official travel for a VISTA candidate or a VISTA, as appropriate, to attend CNCS-directed activities, such as pre-service training, placement at the project site, in-service training events, and return from the project site to home of record.

(b) CNCS must approve all official travel of a VISTA candidate or a VISTA, including the mode of travel.

(c) CNCS may provide for official emergency travel for a VISTA in case of a natural disaster or the critical illness or death of an immediate family member.

#### § 2556.320 What benefits may a VISTA receive during VISTA service?

(a) A VISTA receives a living allowance computed on a daily rate. Living allowances vary according to the local cost-of-living in the project area where the VISTA is assigned.

(b) Subject to a maximum amount, and at the discretion and upon approval of CNCS, a VISTA may receive payment for settling-in expenses, as determined by CNCS.

(c) Subject to a maximum amount, and at the discretion of CNCS, in the event of an emergency (such as theft, fire loss, or special clothing necessitated by severe climate), a VISTA may receive an emergency expense payment in order to resume VISTA service activities, as determined and approved by CNCS.

(d) Subject to a maximum amount, and at the discretion of CNCS, a VISTA may receive a baggage allowance for the actual costs of transporting personal effects to the project site to which the VISTA is assigned to serve, as determined by CNCS.

(e) To the extent eligible, a VISTA may receive health care through a health benefits program provided by CNCS.

(f) To the extent eligible, a VISTA may receive child care support through a child care program provided by CNCS.

(g) To the extent eligible, a VISTA may elect to receive a Segal AmeriCorps Education Award, and upon successful completion of service, receive that award in an amount prescribed by CNCS, in accordance with the applicable provisions of 45 CFR parts 2526, 2527, and 2528.

(1) A VISTA is eligible to elect to receive a Segal AmeriCorps Education Award if he or she is a citizen, national, or lawful permanent resident alien of the United States.

(2) A VISTA who elects a Segal AmeriCorps Education Award is eligible to request forbearance of a student loan from his or her loan-holder. A VISTA who elects a Segal AmeriCorps Education Award may, upon successful completion of service, be eligible to receive up to 100 percent of the interest accrued on a qualified student loan, consistent with the applicable provisions of 45 CFR 2529.

(3) A VISTA is not eligible to receive more than an amount equal to the

aggregate value of two full-time Segal AmeriCorps Education Awards in his or her lifetime.

(4) Other than for a summer associate, the amount of a Segal AmeriCorps Education Award for the successful completion of a VISTA term of service is equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the fiscal year in which the VISTA has enrolled in the VISTA program.

(h) A VISTA who does not elect to receive a Segal AmeriCorps Education Award, upon successful completion of service, receives an end-of-service stipend in an amount prescribed by CNCS.

(i) In the event that a VISTA does not successfully complete a full term of service, a VISTA shall not receive a pro-rated Segal AmeriCorps Education Award or a pro-rated end-of-service stipend, except in cases where the appropriate State Program Director determines the VISTA did not successfully complete a full term of service because of a compelling, personal circumstance. Examples of a compelling, personal circumstance are: serious medical condition or disability of a VISTA during VISTA service; critical illness or disability of a VISTA's immediate family member (spouse, domestic partner, parent, sibling, child, or guardian) if this event makes completing a term of service unreasonably difficult; or unusual conditions not attributable to the VISTA, such as natural disaster, strike, or premature closing of a project, that make completing a term unreasonably difficult or infeasible.

(j) In the event of a VISTA's death during service, his or her family or others that he or she named as beneficiary in accordance with section 5582 of title 5, United States Code, shall be paid a pro-rated end-of-service stipend for the period during which the VISTA served. If the VISTA had elected to receive the Segal AmeriCorps Education Award for successful completion of a full term of VISTA service, prior to payment to the named beneficiary, CNCS shall convert that election to an end-of-service stipend and pay the VISTA's family, or others that he or she named as beneficiary, a pro-rated end-of-service stipend accordingly.

**§ 2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?**

Under certain circumstances, as set forth below in sections 2556.330 through 2556.335, CNCS may pay reasonable legal defense expenses incurred in judicial or administrative proceedings for the defense of a VISTA serving in the VISTA program. Such covered legal expenses consist of counsel fees, court costs, bail, and other expenses incidental to a VISTA's legal defense.

**§ 2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?**

(a) For the legal defense of a VISTA member who is charged with a criminal offense related to the VISTA member's service, up to and including arraignment in Federal, state, and local criminal proceedings, CNCS may pay actual and reasonable legal expenses. CNCS is not required to pay any expenses for the legal defense of a VISTA member where he or she is charged with a criminal offense arising from alleged activity or action that is unrelated to that VISTA's service.

(b) A VISTA member's service is clearly unrelated to a charged offense:

(1) When the activity or action is alleged to have occurred prior to the VISTA member's VISTA service.

(2) When the VISTA member is not at his or her assigned project location, such as during periods of approved leave, medical leave, emergency leave, or in administrative hold status in the VISTA program.

(3) When the activity or action is alleged to have occurred at or near his or her assigned project, but is clearly not part of, or required by, the VISTA member's service assignment.

(c) For the legal defense, beyond arraignment in Federal, state, and local criminal proceedings, of a VISTA member who is charged with a criminal offense, CNCS may also pay actual and reasonable legal expenses:

(1) When the charged offense against the VISTA member relates exclusively to his or her VISTA assignment or status as a VISTA member;

(2) When the charge offense against the VISTA member arises from an alleged activity or action that is a part of, or required by, the VISTA member's VISTA assignment;

(3) When the VISTA member has not admitted a willful or knowing violation of law; or

(4) When the charged offense against the VISTA member is not a minor offense or misdemeanor, such as a minor vehicle violation.

(d) Notwithstanding the above paragraphs (a)–(c) of this section, there may be situations in which the criminal proceedings at issue arise from a matter that also gives rise to a civil claim under the Federal Tort Claims Act. In such a situation, the U.S. Department of Justice may, on behalf of the United States, agree to defend the VISTA. If the U.S. Department of Justice agrees to defend the VISTA member, unless there is a conflict between the VISTA member's interest and that of the United States, CNCS will not pay for expenses associated with any additional legal representation (such as counsel fees for private counsel) for the VISTA member.

**§ 2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?**

For the legal defense in Federal, state, and local civil judicial and administrative proceedings of a VISTA member, CNCS may also pay actual and reasonable legal expenses, where:

(a) The complaint or charge is against the VISTA, and is directly related to his or her VISTA service and not to his or her personal activities or obligations;

(b) The VISTA has not admitted to willfully or knowingly pursuing a course of conduct that would result in the plaintiff or complainant initiating such a proceeding; and

(c) The judgment sought involves a monetary award that exceeds $1,000.

**§ 2556.340 What is non-competitive eligibility and who is eligible for it?**

(a) Non-competitive eligibility is a status attained by an individual such that the individual is eligible for appointment by a federal agency in the Executive branch, into a civil service position in the federal competitive service, in accordance with 5 CFR 315.605.

(b) An individual who successfully completes at least a year-long term of service as a VISTA, and who has not been terminated for cause from the VISTA program at any time, retains non-competitive eligibility status for one year following the end of the term of service as a VISTA.

(c) In addition to the retention of the one year of non-competitive eligibility status as provided in (b) of this section, an individual's non-competitive eligibility status may extend for two more years to a total of three years if the individual is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the view of the federal agency referenced in part (a) of this section, warrants extension.

**§ 2556.345 Who may present a grievance?**

(a) Under the VISTA program grievance procedure, a grievance may be presented by any individual who is

currently enrolled as a VISTA in the VISTA program or who was enrolled as a VISTA in the VISTA program within the past 30 calendar days.

(b) A VISTA's grievance shall not be construed as reflecting on the VISTA's standing, performance, or desirability as a VISTA.

(c) A VISTA who presents a grievance shall not be subjected to restraint, interference, coercion, discrimination, or reprisal because of presentation of views.

**§ 2556.350 What matters are considered grievances?**

(a) Under the VISTA program grievance procedure, grievances are matters of concern, brought by a VISTA, that arise out of, and directly affect, the VISTA's service situation or that arise out of a violation of a policy, practice, or regulation governing the terms or conditions of the VISTA's service, such that the violation results in the denial or infringement of a right or benefit to the VISTA member.

(b) Matters not within the definition of a grievance as defined above in section (a) are not grievable, and therefore, are excluded from the VISTA program grievance procedure. Though not exhaustive, examples of matters excluded from the VISTA program grievance procedure are:

(1) Those matters related to a sponsor's or project's continuance or discontinuance; the number of VISTAs assigned to a VISTA project; the increases or decreases in the level of support provided to a VISTA project; the suspension or termination of a VISTA project; or the selection or retention of VISTA project staff.

(2) Those matters for which a separate administrative procedure or complaint process is provided, such as early termination for cause, claims of discrimination during service, and federal worker's compensation claims filed for illness or injury sustained in the course of carrying out VISTA activities.

(3) Those matters related to any law, published rule, regulation, policy, or procedure.

(4) Those matters related to housing during a VISTA member's service.

(5) Those matters which are, by law, subject to final administrative review outside CNCS.

(6) Those matters related to actions taken, or not taken, by a VISTA sponsor or project, or CNCS, in compliance with or in order to fulfill the terms of a contract, grant, or other agreement related to the VISTA program.

(7) Those matters related to the internal management of CNCS, unless such matters are shown to specifically and directly affect the VISTA's service situation or terms or conditions of his or her VISTA service.

**§ 2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?**

(a) A VISTA is entitled to review any material in his or her official VISTA file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of materials that may be withheld include references obtained under pledge of confidentiality, official VISTA files of other VISTAs, and privileged intra-agency documents.

(b) A VISTA may review relevant materials in the possession of a sponsor to the extent such materials are disclosable by the sponsor under applicable freedom of information act and privacy laws.

**§ 2556.360 How may a VISTA bring a grievance?**

(a) *Bringing a grievance—Step 1:*—(1) While currently enrolled in the VISTA program, or enrolled in the VISTA program within the past 30 calendar days, a VISTA may bring a grievance to the sponsor or project where he or she is assigned to serve within 15 calendar days that the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. If the grievance arises out of a continuing condition or practice that individually affects a VISTA, while enrolled the VISTA may bring it at any time while he or she is affected by a continuing condition or practice.

(2) A VISTA brings a grievance by presenting it in writing to the executive director, or comparable individual, of the sponsoring organization where the VISTA is assigned, or to the sponsor's representative who is designated to receive grievances from a VISTA.

(3) The sponsor shall review and respond in writing to the VISTA's grievance, within 10 calendar days of receipt of the written grievance. The sponsor may not fail to respond to a complaint raised by a VISTA on the basis that it is not an actual grievance, or that it is excluded from coverage as a grievance, but may, in the written response, dismiss the complaint and refuse to grant the relief requested on either of those grounds.

(4) If the grievance brought by a VISTA involves a matter over which the sponsor has no substantial control or if the sponsor's representative is the supervisor of the VISTA, the VISTA may pass over the procedure set forth above in paragraphs (a)(1)–(a)(3) of this section, and present the grievance in writing directly to the State Program Director, as described below in (b) of this section.

(b) *Bringing a grievance—Step 2:*—(1) If, after a VISTA brings a grievance as set forth above in paragraphs (a)(1) and (a)(2) of this section, the matter is not resolved, he or she may submit the grievance in writing to the appropriate State Program Director. The VISTA must submit the grievance to the State Program Director either:

(i) Within seven calendar days of receipt of the response of the sponsor; or,

(ii) In the event the sponsor has not issued a response to the VISTA within 10 calendar days of receipt of the written grievance, within 17 calendar days.

(2) If the grievance involves a matter over which either the sponsor or project has no substantial control or if the sponsor's representative is the supervisor of the VISTA, as described above in paragraph (a)(4) of this section, the VISTA may pass over the procedure set forth in above in paragraphs (a)(1)–(a)(3) of this section, and submit the grievance in writing directly to the State Program Director. In such a case, the VISTA must submit the grievance to the State Program Director within 15 calendar days of the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event.

(3) Within ten working days of receipt of the grievance, the State Program Director shall respond in writing, regardless of whether or not the matter constitutes a grievance as defined under this grievance procedure, and/or is timely submitted. In the response, the State Program Director may determine that the matter submitted as a grievance is not grievable, is not considered a grievance, or fails to meet the time limit for response. If the State Program Director makes any such determination, he or she may dismiss the complaint, setting forth the reason(s) for the dismissal. In such a case, the State Program Director need not address the complaint on the merits, nor make a determination of the complaint on the merits.

**§ 2556.365 May a VISTA appeal a grievance?**

(a) The VISTA may appeal in writing to the appropriate Area Manager the response of the State Program Director to the grievance, as set forth in § 2556.360(b)(3). To be eligible to appeal a grievance response to the Area Manager, the VISTA must have

exhausted all appropriate actions as set forth in § 2556.360.

(b) A VISTA's grievance appeal must be in writing and contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the VISTA.

(c) The VISTA must submit a grievance appeal to the appropriate Area Manager no later than 10 calendar days after the State Program Director issues his or her response to the grievance.

(d) Certain matters contained in a grievance appeal may be rejected, rather than denied on the merits, by the Area Manager. A grievance appeal may be rejected, in whole or in part, for any of the following reasons:

(1) The grievance appeal was not submitted to the appropriate Area Manager within the time limit specified above in (c) of this section;

(2) The grievance appeal consists of matters not contained within the definition of a grievance, as specified in section § 2556.350(a);

(3) The grievance appeal consists of matters excluded from the VISTA program grievance procedure, as specified in § 2556.350(b); or

(4) The grievance appeal contains matters that are moot, or for which relief has otherwise been granted.

(e) Within 14 calendar days of receipt of the grievance, the appropriate Area Manager shall decide the grievance appeal on the merits, or reject the grievance appeal in whole or in part, or both, as appropriate. The Area Manager shall notify the VISTA in writing of the decision and specify the grounds for the appeal decision. The appeal decision shall include a statement of the basis for the decision and is a final decision of CNCS.

## Subpart E—Termination for Cause Procedures

**Authority:** Secs. 103(b), 103(c), 103(f), and 404(e), Pub. L. 93–113, as amended.

### § 2556.400 What is termination for cause? What are the criteria for termination for cause?

(a) Termination for cause is discharge of a VISTA from the VISTA program due to a deficiency, or deficiencies, in conduct or performance.

(b) CNCS may terminate for cause a VISTA for any of the following reasons:

(1) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(2) Violation of any provision of the Domestic Service Volunteer Act of 1973, as amended, or any CNCS or VISTA program policy, regulation, or instruction;

(3) Failure, refusal, or inability to perform prescribed project duties as outlined in the project plan, assignment description, or as directed by the sponsor to which the VISTA is assigned;

(4) Involvement in activities which substantially interfere with the VISTA's performance of project duties;

(5) Intentional false statement, misrepresentation, omission, fraud, or deception in seeking to obtain selection as a VISTA in the VISTA program;

(6) Any conduct on the part of the VISTA which substantially diminishes his or her effectiveness as a VISTA; or

(7) Unsatisfactory performance of an assignment.

### § 2556.405 Who has sole authority to remove a VISTA from a VISTA project? Who has sole authority to terminate a VISTA from the VISTA program?

(a) CNCS has the sole authority to remove a VISTA from a project where he or she has been assigned.

(b) CNCS has the sole authority to terminate for cause, or otherwise terminate, a VISTA from the VISTA program.

(c) Neither the sponsoring organization nor any of its subrecipients has the authority to remove a VISTA from a project or to terminate a VISTA for cause, or for any other basis, from the VISTA program.

### § 2556.410 May a sponsor request that a VISTA be removed from its project?

(a) The head of a sponsoring organization, or his or her designee, may request that CNCS remove a VISTA assigned to its project. Any such request must be submitted in writing to the appropriate State Program Director and should state the reasons for the request.

(b) The State Program Director may, at his or her discretion, attempt to resolve the situation with the sponsor so that an alternative solution other than removal of the VISTA from the project assignment is reached.

(c) When an alternative solution, as referenced above in 2556.410(b) of this section is not sought, or is not reached within a reasonable time period, the State Program Director shall remove the VISTA from the project.

### § 2556.415 May CNCS remove a VISTA from a project without the sponsor's request for removal?

Of its own accord, CNCS may remove a VISTA from a project assignment without the sponsor's request for removal.

### § 2556.420 What are termination for cause proceedings?

(a) Termination for cause proceedings are initiated by the State Program Director when CNCS removes a VISTA from a project assignment due to an alleged deficiency, or alleged deficiencies, in conduct or performance.

(b) The State Program Director or other CNCS State Office staff, to the extent practicable, communicates the matter with the VISTA who is removed from a VISTA project and the administrative procedures as set forth below in §§ 2556.420(c) through (e) are followed.

(c) The State Program Director shall notify VISTA in writing of CNCS's proposal to terminate for cause. The written proposal to terminate him or her for cause must give the VISTA the reason(s) for the proposed termination, and notify him or her that he or she has 10 calendar days within which to answer in writing the proposal to terminate him or her for cause, and to furnish any accompanying statements or written material. The VISTA must submit any answer to the appropriate State Program Director identified in the written proposal to terminate for cause within the deadline specified in the proposal to terminate for cause.

(d) Within 10 calendar days of the expiration of the VISTA's deadline to answer the proposal to terminate for cause, the appropriate State Program Director shall issue a written decision regarding the proposal to terminate for cause.

(1) If the decision is to terminate the VISTA for cause, the decision shall set forth the reasons for the determination and the effective date of termination (which may be on or after the date of the decision).

(2) If the decision is not to terminate the VISTA for cause, the decision shall indicate that the proposal to terminate for cause is rescinded.

(e) A VISTA who does not submit a timely answer to the appropriate State Program Director, as set forth in paragraph (c) of this section, is not entitled to appeal the decision regarding the proposal to terminate for cause. In such cases, CNCS may terminate the VISTA for cause, on the date identified in the decision, and the termination action is final.

### § 2556.425 May a VISTA appeal his or her termination for cause?

(a) Within 10 calendar days of the appropriate State Program Director's issuance of the decision to terminate the VISTA for cause, as set forth above in § 2556.420(d), the VISTA may appeal the decision to the appropriate Area Manager. The appeal must be in writing and specify the reasons for the VISTA's disagreement with the decision.

(b) CNCS shall not incur any expenses or travel allowances for the VISTA in connection with the preparation or presentation of the appeal.

(c) The VISTA may have access to records as follows:

(1) The VISTA may review any material in the VISTA's official CNCS file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of documents that may be withheld include references obtained under pledge of confidentiality, official files of other program participants, and privileged intra-agency documents.

(2) The VISTA may review relevant records in the possession of a sponsor to the extent such documents are disclosable by the sponsor under applicable freedom of information act and privacy laws.

(d) Within 14 calendar days of receipt of any appeal by the VISTA, the Area Manager or equivalent CNCS official shall issue a written appeal determination. The appeal determination shall indicate the reasons for such an appeal determination. The appeal determination shall be final.

**§ 2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?**

(a) Only a VISTA whose early termination from the VISTA program is for cause, and who has answered the proposal to terminate him or her for cause in a timely manner, as set forth in § 2556.420(c), is entitled to appeal the early termination action, as referenced in § 2556.425. A termination for cause is based on a deficiency, or deficiencies, in the performance or conduct of a VISTA.

(b) The following types of early terminations from the VISTA program are not terminations for cause, and are not entitled to appeal under the early termination appeal procedure set forth in §§ 2556.420 and 2556.425:

(1) Resignation from the VISTA program prior to the issuance of a decision to terminate for cause, as set forth in § 2556.420(d);

(2) Early termination from the VISTA program because a VISTA did not secure a suitable reassignment to another project; and

(3) Medical termination from the VISTA program.

## Subpart F—Summer Associates

**Authority:** Secs. 104(d) and 104(e), Pub. L. 93–113, as amended.

**§ 2556.500 How is a position for a summer associate established in a project?**

(a) From time-to-time, the State Program Director invites sponsors within the state to apply for one or more positions for individuals to serve as summer associates at the sponsor's VISTA project.

(b) Subject to VISTA assistance availability, CNCS approves the establishment of summer associate positions based on the following factors:

(1) The need in the community, as demonstrated by the sponsor, for the performance of project activities by a summer associate(s);

(2) The content and quality of summer associate project plans;

(3) The capacity of the sponsor to implement the summer associate project activities; and

(4) The sponsor's compliance with all applicable parts of the DVSA, VISTA program policy, and the sponsor's Memorandum of Agreement, which incorporates their project application.

**§ 2556.505 How do summer associates differ from other VISTAs?**

Summer associates differ from other VISTAs in the following ways:

(a) Summer associates are not eligible to receive:

(1) Health care through a health benefits program provided by CNCS;

(2) Child care support through a child care program provided by CNCS;

(3) Payment for settling-in expenses; or

(4) Non-competitive eligibility in accordance with 5 CFR 315.605.

(b) Absent extraordinary circumstances, summer associates are not eligible to receive:

(1) Payment for travel expenses incurred for travel to or from the project site to which the summer associate is assigned; or

(2) A baggage allowance for the costs of transporting personal effects to or from the project site to which the summer associate is assigned to serve.

(c) CNCS may discharge a summer associate due to a deficiency, or deficiencies, in conduct or performance. Summer associates are not subject to Subpart E of this Part, or to the grievance procedures provided to VISTAs set forth above in sections 2556.345 through 2556.365.

## Subpart G—VISTA Leaders

**Authority:** Sec. 104(b), Pub. L. 93–113, as amended.

**§ 2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?**

(a) At its discretion, CNCS may approve the establishment of a leader position based on the following factors:

(1) The need for a leader in a project of a substantial size and with multiple VISTAs assigned to serve at that project, or the need for leader for multiple projects located within a contiguous geographic region.

(2) The need for a leader to assist with the communication of VISTA policies and administrative procedures to VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(3) The need for a leader to assist with the professional development of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(4) The need for a leader to assist with the recruitment and preparation for the arrival of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(5) The capacity of the VISTA supervisor to support and guide the leader.

(b) A sponsor may request, in its project application, that CNCS establish a leader position in its project.

**§ 2556.605 Who is eligible to apply to serve as a leader?**

An individual is eligible to apply to serve as a leader if he or she has successfully completed any of the following:

a) At least one year of service as a VISTA;

b) At least one full term of service as a full-time AmeriCorps State and National member;

c) At least one full term of service as a member of the AmeriCorps National Civilian Community Corps (NCCC); or

d) At least one traditional term of service as a Peace Corps Volunteer.

**§ 2556.610 What is the application process to apply to become a leader?**

(a) *Application Package:* An eligible individual must apply in writing to CNCS to become a leader. The sponsor's recommendation and related materials, described below in 2556.610 (b) of this section, must be included with the individual's application to become a leader.

(b) *Sponsor Recommendation:* A sponsor where an individual is seeking to serve as a leader must recommend in writing to CNCS the individual to

become a leader. Included with the recommendation must be an evaluation of the individual's performance while in previous service, a description of specific tasks, responsibilities, qualifications, and other relevant information that justifies the placement of the individual in a leader position, and if appropriate, the establishment of a leader position.

(c) *Selection:* CNCS shall have sole authority to select a leader. The criteria for selection shall include consideration of the individual's application and the sponsor's recommendation described in § 2556.610(b).

**§ 2556.615 Who reviews a leader application? Who approves or disapproves a leader application?**

CNCS reviews the application package for the leader position, considers the recommendation of the sponsor, and approves or disapproves the individual to serve as a leader.

**§ 2556.620 How does a leader differ from other VISTAs?**

The application process to apply to become a leader, as described in § 2556.610, is separate and distinct from the application process to apply to enroll as a VISTA in the VISTA program;

(a) A leader may receive a living allowance computed at a higher daily rate than other VISTAs, as authorized under section 105(a)(1)(B) of the DVSA.

(b) A leader is subject to all the terms and conditions of service described in § 2556.625 of this subpart.

**§ 2556.625 What are terms and conditions of service for a leader?**

Though not exhaustive, terms and conditions of service as a leader include:

(a) A leader makes a full-time commitment to serve as a leader, without regard to regular working hours, for a minimum of one year.

(b) To the maximum extent practicable, a leader shall live among and at the economic level of the low-income community served by the project and actively seek opportunities to engage with that low-income community.

(c) A leader aids the communication of VISTA policies and administrative procedures to VISTAs.

(d) A leader assists with the leadership development of VISTAs.

(e) A leader is a resource in the development and delivery of training for VISTAs.

(f) A leader may assist the sponsor with recruitment and preparation for the arrival of VISTAs.

(g) A leader may advise a supervisor on potential problem areas and needs of VISTAs.

(h) A leader aids VISTAs in the development of effective working relationships and understanding of VISTA program concepts.

(i) A leader may aid the supervisor and sponsor in directing or focusing the VISTA project to best address the community's needs.

(j) A leader may serve as a collector of data for performance measures of the project and the VISTAs.

(k) A leader is prohibited from supervising VISTAs. A leader is also prohibited from handling or managing, on behalf of the project, personnel-related matters affecting VISTAs. Personnel-related matters affecting VISTAs must be managed and handled by the project and in coordination with the appropriate CNCS State Office.

## Subpart H—Restrictions and Prohibitions on Political Activities and Lobbying

**Authority** Secs. 104(a), 403, and 415(b), Pub. L. 93–113, as amended.

**§ 2556.700 Who is covered by this subpart?**

(a) All VISTAs, including leaders and summer associates, are subject to this Subpart.

(b) All employees of VISTA sponsors and projects, whose salaries or other compensation are paid, in whole or in part, with VISTA grant assistance are subject to this Subpart.

(c) All VISTA sponsors and projects are subject to this subpart.

**§ 2556.705 What is prohibited political activity?**

For purposes of the regulations in this subpart, ''prohibited political activity'' means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

**§ 2556.710 What political activities are VISTAs prohibited from engaging in?**

(a) A VISTA may not use his or her official authority or influence to interfere with or affect the result of an election.

(b) A VISTA may not use his or her official authority or influence to coerce any individual to participate in political activity.

(c) A VISTA may not use his or her official VISTA program title while participating in prohibited political activity.

(d) A VISTA may not participate in prohibited political activities in the following circumstances:

(1) While he or she is on duty;

(2) While he or she is wearing an article of clothing, logo, insignia, or other similar item that identifies CNCS, the VISTA program, or one of CNCS's other national service programs;

(3) While he or she is in any room or building occupied in the discharge of VISTA duties by an individual employed by the sponsor; and

(4) While using a vehicle owned or leased by a sponsor or project, or while using a privately-owned vehicle in the discharge of VISTA duties.

**§ 2556.711 What political activities may a VISTA participate in?**

(a) Provided that paragraph (b) of this section is fully adhered to, a VISTA may:

(1) Express his or her opinion privately and publicly on political subjects;

(2) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of similar character;

(3) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and

(4) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as a VISTA, or compromise the neutrality, efficiency, or integrity of CNCS or the VISTA program.

(b) A VISTA may participate in political activities set forth above in paragraph (a) as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with his or her provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.712 May VISTAs participate in political organizations?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Be a member of a political party or other political group and participate in its activities;

(2) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;

(3) Attend and participate fully in the business of nominating caucuses of political parties;

(4) Organize or reorganize a political party organization or political group;

(5) Participate in a political convention, rally, or other political gathering; and

(6) Serve as a delegate, alternate, or proxy to a political party convention.

(b) A VISTA may participate in a political organization as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.713 May VISTAs participate in political campaigns?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth above in § 2556.710, a VISTA may:

(1) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the prohibitions set forth above in § 2556.710;

(2) Initiate or circulate a nominating petition for a candidate for partisan political office;

(3) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(4) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material; and

(5) Address a convention caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office.

(b) A VISTA may participate in a political campaign as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.714 May VISTAs participate in elections?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth above in § 2556.710, a VISTA may:

(1) Register and vote in any election;

(2) Act as recorder, watcher, challenger, or similar officer at polling places;

(3) Serve as an election judge or clerk, or in a similar position; and

(4) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

(5) Participate in voter registration activities.

(b) A VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.715 May a VISTA be a candidate for public office?**

(a) Except as provided in paragraph (c) of this section, no VISTA may run for the nomination to, or as a candidate for election to, partisan political office.

(b) In accordance with the prohibitions set forth in § 2556.710, a VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interference with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) Provided that paragraphs (a) and (b) of this section are adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Run as an independent candidate in a partisan election in designated U.S. municipalities and political subdivisions as set forth at 5 CFR part 733; and

(2) Run as a candidate in a non-partisan election.

**§ 2556.716 May VISTAs participate in political fundraising activities?**

(a) Provided that paragraphs (b)–(d) below of this section are fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election;

(2) Attend a political fundraiser; and

(3) Solicit, accept, or receive uncompensated volunteer services for a political campaign from any individual.

(b) A VISTA may participate in fundraising activities as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) A VISTA may not knowingly:

(1) Personally solicit, accept, or receive a political contribution from another individual;

(2) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(3) Allow his or her perceived or actual affiliation with the VISTA program, or his or her official title as a VISTA, to be used in connection with fundraising activities; or

(4) Solicit, accept, or receive uncompensated individual volunteer services from a subordinate, (*e.g.,* a leader may not solicit, accept or receive a political contribution from a VISTA).

(d) Except for VISTAs who reside in municipalities or political subdivisions designated under 5 CFR part 733, no VISTA may accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

### § 2556.717 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?

(a) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before CNCS or the VISTA program.

(b) A VISTA may not knowingly solicit or discourage the participation of any political activity of any individual who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by or through CNCS or the VISTA program.

### § 2556.718 What restrictions and prohibitions are VISTAs subject to who campaign for a spouse or family member?

A VISTA who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same restrictions and prohibitions as other VISTAs, as set forth in § 2556.713.

### § 2556.719 May VISTAs participate in lawful demonstrations?

In accordance with the prohibitions set forth in § 2556.710, VISTAs may participate in lawful demonstrations, political rallies, and other political meetings, so long as such participation is in conformance with all of the following:

(a) Occurs only while on authorized leave or while otherwise off duty;

(b) Does not include attempting to represent, or representing the views of VISTAs or the VISTA program on any public issue;

(c) Could not be reasonably understood by the community as being identified with the VISTA program, the project, or other elements of VISTA service; and

(d) Does not interfere with the discharge of VISTA duties.

### § 2556.720 May a sponsor approve the participation of a VISTA in a demonstration or other political meeting?

(a) No VISTA sponsor shall approve a VISTA to be involved in planning, initiating, participating in, or otherwise aiding or assisting in any demonstration or other political meeting.

(b) Any VISTA sponsor which, subsequent to the receipt of any CNCS financial assistance, including the assignment of VISTAs, approves the participation of a VISTA in a demonstration or other political meeting, shall be subject to procedures related to the suspension or termination of such assistance, as provided in Subpart B, §§ 2556.135 to 2556.140.

### § 2556.721 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?

Violations by a VISTA of any of the prohibitions or restrictions set forth in this Subpart may warrant termination for cause, in accordance with proceedings set forth at §§ 2556.420, 2556.425, and 2556.430.

### § 2556.722 What are the requirements of VISTA sponsors regarding political activities?

(a) All sponsors are required to:

(1) Understand the restrictions and prohibitions on the political activities of VISTAs, as set forth in this Subpart;

(2) Provide training to VISTAs on all applicable restrictions and prohibitions on political activities, as set forth in this Subpart, and use training materials that are consistent with these restrictions and prohibitions;

(3) Monitor on a continuing basis the activity of VISTAs for compliance with this Subpart; and

(4) Report all violations, or questionable situations, immediately to the appropriate CNCS State Office.

(b) Failure of a sponsor to comply with the requirements of this Subpart, or a violation of the requirements contained in this Subpart by the sponsor or project, sponsor or project's covered employees, agents, or VISTAs, may be deemed to be a material failure to comply with terms or conditions of the VISTA program. In such a case, the sponsor shall be subject to procedures related to the denial or reduction, or suspension or termination, of such assistance, as provided in §§ 2556.125, 2556.130, and 2556.140.

### § 2556.723 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors or projects?

(a) All employees of VISTA sponsors and projects, whose salaries or other compensation are paid, in whole or in part, with VISTA funds are subject to all applicable prohibitions and restrictions described in this Subpart in the following circumstances:

(1) Whenever they are engaged in an activity that is supported by CNCS or VISTA funds or assistance; and

(2) Whenever they identify themselves as acting in their capacity as an official of a VISTA project that receives CNCS or VISTA funds or assistance, or could reasonably be perceived by others as acting in such a capacity.

### § 2556.724 What prohibitions on lobbying activities apply to VISTA sponsors?

(a) No VISTA sponsor shall assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.

(b) No VISTA sponsor shall use any CNCS financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

Dated: April 24, 2015.

**Paul Monteiro,**

*Director, AmeriCorps VISTA.*

[FR Doc. 2015–09998 Filed 5–4–15; 8:45 am]

BILLING CODE 6050–28–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 150211144–5144–01]**

**RIN 0648–BE89**

## Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2015

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes management measures for the 2015 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Comments must be received by 5 p.m. local time, on May 20, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2015–0051, by either of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0051,* Click the ''Comment Now!'' icon, complete the required fields. Enter or attach your comments.

—OR—

*Mail:* Submit written comments to John Bullard, Regional Administrator, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930.

### Instructions

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

**SUPPLEMENTARY INFORMATION:**

### General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3′ N. lat. (the approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

### Recreational Management Measures Background

The Council process for devising recreational management measures to recommend to NMFS for rulemaking is generically described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and posted on the Council's Web site (*www.mafmc.org*) or are available from the Council by request. Therefore, extensive background on the 2015 recreational management measures recommendation process is not repeated in this preamble.

The FMP established monitoring committees for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the monitoring committees to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum fish size, per angler possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board then consider the monitoring committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

In this rule, NMFS proposes management measures for the 2015 summer flounder, scup, and black sea bass recreational fisheries consistent with the recommendations of the Council. All minimum fish sizes discussed are total length measurements of the fish, *i.e.,* the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person per trip.

### Proposed 2015 Recreational Management Measures

NMFS is proposing the following measures that would apply in the

Federal waters of the EEZ. These measures apply to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously established recreational harvest limits for these fisheries (December 30, 2014; 79 FR 78311). For summer flounder, we are proposing the use of state-by-state or regional conservation equivalency measures, which are the status quo measures; for scup, a 9-inch (25.4-cm) minimum fish size, a 50-fish per person possession limit, and an open season of January 1 through December 31; and, for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, and a 15-fish per person possession limit for open seasons of May 15 through September 18 and October 22 through December 31. NMFS may implement more restrictive black sea bass measures, as recommended by the Council (*i.e.,* a 14-inch (35.6-cm) minimum fish size, a 3-fish per person possession limit, and an open season of July 15–September 15), for Federal waters if the Commission is unable to develop and implement state-waters measures that, when paired with the Council's recommended measures, provide the necessary conservation to ensure the 2015 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

*Summer Flounder Recreational Management Measures*

NMFS proposes to implement the Council and Commission's recommendation to use conservation equivalency to manage the 2015 summer flounder recreational fishery. The 2015 recreational harvest limit for summer flounder is 7.38 million lb (3,347 mt). Projected landings for 2014 are approximately 7.33 million lb (3,324 mt), just below the recreational harvest limit for 2015. As a result, the 2015 recreational landings should be maintained relative to 2014 to prevent the recreational harvest limit from being exceeded.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2011; 66 FR 36208), allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize differences in regulations for anglers fishing in adjacent waters.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation that the proposed state or regional measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

The Commission has implemented an addendum to its Summer Flounder FMP (Addendum XXVI) to continue regional conservation equivalency for fishing year 2015. The Commission has adopted the following regions, identical to the regions used in 2014: (1) Massachusetts; (2) Rhode Island; (3) Connecticut, New York, and New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. Each state within a region is required by the Council and Commission FMPs to have identical measures. In order to provide the maximum amount of flexibility and to continue to adequately address the state-by-state differences in fish availability, each state in a region is required to establish fishing seasons of the same length, identical minimum fish sizes, and identical possession limits. The Commission will need to certify that these measures, in combination, are the conservation equivalent of coastwide measures that would be expected to result in the recreational harvest limit being achieved, but not exceeded. More information on this addendum is available from the Commission (*www.asmfc.org*).

Once the states and regions select their final 2015 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures, but is an equal participant along with all the member states in the review process. NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters, and will publish its determination as a final rule in the **Federal Register** to establish the 2015 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register**

announcing a waiver of the permit condition at § 648.4(b).

The 2015 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.8-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2015.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are not approved by the Commission. NMFS proposes the alternative of coastwide measures (18-inch (45.7-cm) minimum size, 4-fish possession limit, May 1–September 30 open fishing season), if conservation equivalency is not approved in the final rule.

*Scup Recreational Management Measures*

NMFS is proposing to implement the Council and Commission's recommended scup recreational management measures for 2015 in Federal waters. The proposed measures for the 2015 scup recreational fishery are: 9-inch (22.9-cm) minimum fish size; 50-fish per person per trip possession limit; and an open season of January 1 through December 31.

The 2015 scup recreational harvest limit is 6.80 million lb (3,084 mt). Estimated 2014 scup recreational landings are 4.46 million lb (2,023 mt); therefore, no reduction in landings is needed. The increase in the possession limit from 30 to 50 fish is intended to promote an increase in recreational scup fishing in order to more fully achieve, but not exceed, the recreational harvest limit.

*Black Sea Bass Recreational Management Measures*

NMFS is proposing to implement the Council's recommended recreational management measures to constrain landings for black sea bass. The 2015 black sea bass recreational harvest limit is 2.33 million lb (1,056 mt). The 2014 projected landings are 3.45 million lb (1,115 mt). This requires a 33-percent reduction in 2015 landings relative to 2014.

Recreational black sea bass catch occurs primarily in state waters in the states of New Jersey through Massachusetts (*i.e.,* the northern region). Since 2011, the management measures in the northern region have been more restrictive than in Federal waters. The northern states, through the Commission process, are expected to implement measures to achieve a 33-percent reduction in landings from each state. This reduction, in combination with the Council's recommendation of maintaining the status quo measures in Federal waters, are intended to achieve, but not exceed, the recreational harvest limit and recreational annual catch limit in 2015. The southern region states (Delaware through Cape Hatteras, North Carolina) are expected to implement state waters measures that are identical to the proposed Federal measures.

In 2012, recreational black sea bass catch exceeded the annual catch limit of 2.52 million lb (1,143 mt) by 129 percent. In 2013, recreational black sea bass catch exceeded the annual catch limit of 2.9 million lb (1,315 mt) by 5 percent. Because the average catch exceeds the average annual catch limit, as described in the regulations, an accountability measure is applicable to the 2015 fishery. An accountability measure was implemented for the 2014 fishing year because of the 2012 overage. The proposed 2015 measures are functionally the same as those implemented last year to comply with the accountability measure (12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and 201-day fishing season). Continuing these regulations preserves the accountability measure that was applied last year; as such, no further accountability measures are necessary for 2015.

We are proposing the Council's recommended Federal waters measures, a 12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and open seasons of May 15–September 21 and October 22–December 31. This proposal is contingent upon the northern region, established under the Commission's Addendum XXV, implementing the required 33-percent reduction in their state regulations. If the northern region's measures do not meet the required reduction, NMFS is proposing the Council's default recommendation of a 14-inch (35.6-cm) minimum size, a 3-fish possession limit, and an open season of July 15–September 15 (*i.e.,* a 63-day fishing season.)

**Additional Regulatory Change**

This rule would also clarify the regulations for summer flounder, scup, and black sea bass to indicate that the the possession limits are per person, per trip. While it is clear in the FMP and subsequent amendments and framework adjustments that the possession limits are intended to apply for the entirety of a fishing trip, the regulations were less specific. This action would correct that oversight.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a supplemental information report. These analyses identified 856 federally permitted charter/party vessels in the Greater Atlantic Region that could be affected by the proposed change. However, only 350 federally permitted charter/party vessels are expected to participate in these fisheries this year. There were 326 unique business entities associated with those 350 vessels, 299 are classified as for-hire businesses, 22 are finfish businesses, and 5 are shellfish businesses. One of the shellfish businesses potentially impacted by this rule is considered a ''large'' shellfish business; all of the other businesses are considered ''small'' by the respective Small Business Administration's size standards. The proposed measure would continue the use of conservation equivalency for summer flounder, moderately increase the possession limit for scup in Federal waters, and implement a minor adjustment to the black sea bass recreational fishing season in Federal waters to account for a previous rulemaking. The proposed action would result in essentially status quo measures for these fisheries in Federal waters. Analysis conducted by the Council indicates that these measures would have a minimal, potentially slightly positive, impact on regulated entities.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 27, 2015.

**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 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Section 648.106, paragraphs (a) and (c) are revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

* * * * *

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

* * * * *

■ 3. Section 648.107, paragraph (a) is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2015 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 4. In § 648.128, paragraphs (a) and (c) are revised to read as follows:

**§ 648.128 Scup possession restrictions.**

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 50 scup in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

* * * * *

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

* * * * *

■ 5. Section 648.145, paragraphs (a) and (c) are revised to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 15 black sea bass in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 15 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

* * * * *

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

* * * * *

■ 6. Section 648.146 is revised to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 21, and October 22 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2015–10434 Filed 5–4–15; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 80, No. 86
Tuesday, May 5, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0076]**

### J.R. Simplot Co.; Availability of Preliminary Plant Pest Risk Assessment and Draft Environmental Assessment for Potato Genetically Engineered for Late Blight Resistance, Low Acrylamide Potential, Reduced Black Spot Bruising, and Lowered Reducing Sugars

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is making available for public comment a preliminary plant pest risk assessment and draft environmental assessment for Innate™ Potato designated as Russet Burbank event W8, which has been genetically engineered for late blight resistance, low acrylamide potential, reduced black spot bruising, and lowered reducing sugars.

**DATES:** We will consider all comments that we receive on or before June 4, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0076.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0076, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents for this petition and any other information we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0076* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents for this petition are also available on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS Petition Number 14–093–01p.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 14–093–01p) from the J.R. Simplot Company (Simplot) of Boise, ID, seeking a determination of nonregulated status of potatoes (*Solanum tuberosum*) designated as Innate™ W8, which have been genetically engineered to express reduced acrylamide potential, low black spot bruise, late blight resistance, and lowered reducing sugars. Acrylamide is a human neurotoxicant and potential carcinogen that may form in potatoes and other starchy foods under certain cooking conditions. The petition states that these potatoes are unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on November 10, 2014 (79 FR 66689–66690, Docket No. APHIS–2014–0076), APHIS announced the availability of the Simplot petition for public comment. APHIS solicited comments on the petition for 60 days ending on January 9, 2015, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. APHIS received 130 comments on the petition; one of these comments included electronic attachments consisting of a consolidated document of many identical or nearly identical letters, for a total of 22,673 comments. Issues raised during the comment period include the contamination of conventional potato production, the potential for disruption of trade due to the presence of unwanted genetically engineered commodities in exports, the need for more research prior to approval of the petition, the potential for negative impacts to plant fitness and the environment, and health concerns. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, the petition, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0076.*

decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its EA, preliminary finding of no significant impact (FONSI), and its plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). For this petition, we are using Approach 2.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA, to provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS has prepared a PPRA and has concluded that Innate™ Potato designated as Russet Burbank event W8, which has been genetically engineered for late blight resistance, low acrylamide potential, reduced black spot bruising, and lowered reducing sugars, is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data submitted by Simplot, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of Innate™ Potato designated as Russet Burbank event W8, or (2) make a determination of nonregulated status of Innate™ Potato designated as Russet Burbank event W8.

The EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments on our draft EA and our PPRA regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 30 days from the date of this notice. Copies of the draft EA and the PPRA, as well as the previously published petition, are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. After reviewing and evaluating the comments on the draft EA and the PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA. Based on the final EA, APHIS will prepare a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). If a FONSI is reached, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of the GE organism and the availability of APHIS' final EA, PPRA, FONSI, and our regulatory determination.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of April 2015.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2015–10450 Filed 5–4–15; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Federal Economic Statistics Advisory Committee Meeting

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee will advise the Directors of the Economics and Statistics Administration's (ESA) two statistical agencies, the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

**DATES:** June 12, 2015. The meeting will begin at approximately 9:00 a.m. and adjourn at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, MD 20746.

**FOR FURTHER INFORMATION CONTACT:** James R. Spletzer, Designated Federal Official, Department of Commerce, U.S. Census Bureau, Research and Methodology Directorate, Room 5K175, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–4069, email: *james.r.spletzer@census.gov.* For TTY callers, please call the Federal Relay Service (FRS) at 1–800–877–8339 and give them the above listed number you would like to call. This service is free and confidential.

**SUPPLEMENTARY INFORMATION:** Members of the FESAC are appointed by the Secretary of Commerce. The Committee

advises the Directors of the BEA, the Census Bureau, and the Commissioner of the Department of Labor's BLS, on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Designated Federal Official named above. If you plan to attend the meeting, please register by Monday, June 1, 2015. You may access the online registration form with the following link: *https://www.regonline.com/fesac_june2015_meeting.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Designated Federal Official as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: April 29, 2015.

**John H. Thompson,**

*Director, Bureau of the Census.*

[FR Doc. 2015–10456 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Proposed Information Collection; Comment Request; Precanvass Operation for the 2017 Commodity Flow Survey

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written comments must be submitted on or before July 6, 2015.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James Hinckley, Census Bureau, Room 6K057–South Building, Washington, DC 20233 (or via the Internet at *james.hinckley@census.gov*).

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau plans to conduct a Precanvass Operation in preparation for the 2017 Commodity Flow Survey to improve the efficiency and accuracy of the sample frame. The Commodity Flow Survey itself will be the subject of a later notice planned for publication in early 2016.

The Commodity Flow Survey, a component of the Economic Census, is the only comprehensive source of multimodal, system-wide data on the volume and pattern of goods movement in the United States. The Commodity Flow Survey is conducted in partnership with the Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

The Commodity Flow Survey data are used by policy makers and transportation planners in various federal, state, and local agencies for accessing the demand for transportation facilities and services, energy use, and safety risk and environmental concerns. Additionally, business owners, private researchers, and analysts use the Commodity Flow Survey data for analyzing trends in the movement of goods, mapping, spatial patterns of commodity and vehicle flows, forecasting demands for the movement of goods, and determining needs for associated infrastructure and equipment.

In conducting the Precanvass, the Census Bureau will select a sample from U.S. manufacturing, mining, and wholesale establishments, enterprise support establishments, electronic shopping, mail-order houses, and publishing establishments. The Precanvass will determine if these establishments are engaged in shipping activities, and if so obtain an estimate of the annual value of those shipments, along with updating address and contact information for the 2017 Commodity Flow Survey. Those establishments that do not engage in shipping activity will be eliminated from the sample frame. Identification and elimination of the non-shippers will significantly improve the efficiency of the sample for the 2017 Commodity Flow Survey. In addition, those establishments excluded from the sample frame will be saved the added burden of receiving a 2017 Commodity Flow Survey questionnaire.

#### II. Method of Collection

The Census Bureau will mail letters to (a) enterprise support establishments in the Census Bureau's Business Register, and (b) the largest establishments in the industries listed in section I that are likely to be included in the 2017 Commodity Flow Survey. The estimated size of the Precanvass is 150,000 establishments. The size is subject to change to meet the goals of the survey, but will be no larger than approximately 150,000 establishments.

The Census Bureau will primarily use electronic data capture methodology, with occasional data capture from facsimile receipts, secured messaging attachments, and telephone call-in responses. Letter mailings and telephone follow-up will be conducted for the nonresponse cases. General information on shipping activity and value of shipments will be collected via check box style questions. Contact information will also be collected and used to improve the mailing and follow-up activities for the 2017 Commodity Flow Survey.

#### III. Data

*OMB Control Number:* 0607–0921.

*Form Number(s):* CFS–0001.

*Type of Review:* Regular submission.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 150,000.

*Estimated Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 12,500.

*Estimated Total Annual Cost to Public:* $0.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., sections 131, 182, 224 and 225; 49 U.S.C., section 111.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015–10468 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### First Responder Network Authority

**[Docket Number: 140821696–5400–03]**

**RIN 0660–XC012**

### Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

**AGENCY:** First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The First Responder Network Authority (''FirstNet'') publishes this *Third Notice* to request public comment on certain proposed interpretations of its enabling legislation that will inform, among other things, consultation, forthcoming requests for proposals, interpretive rules, and network policies. This *Third Notice* responds to comments and further clarifies proposed interpretations related to the definition and scope of the term ''public safety entity'' as used in FirstNet's enabling legislation and as discussed in a previous FirstNet *Notice* published on September 24, 2014. With the benefit of the comments received from this *Third Notice,* FirstNet may proceed to implement these or other interpretations with or without further administrative procedure.

**DATES:** Submit comments on or before June 4, 2015.

**ADDRESSES:** The public is invited to submit written comments to this *Third Notice.* Written comments may be submitted electronically through *www.regulations.gov* or by mail (to the address listed below). Comments received related to this *Notice* will be made a part of the public record and will be posted to *www.regulations.gov* without change. Comments should be machine readable and should not be copy-protected. Comments should include the name of the person or organization filing the comment as well as a page number on each page of the submission. All personally identifiable information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703–648–4167; or *elijah.veenendaal@firstnet.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the ''Act'') established the First Responder Network Authority (''FirstNet'') as an independent authority within the National Telecommunications and Information Administration (''NTIA''). The Act establishes FirstNet's duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (''NPSBN'').[1]

As detailed in our *Notice* entitled ''Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012'' (79 FR 57058, September 24, 2014) (herein ''the *First Notice''*),[2] we preliminary concluded that key issues relating to the responsibilities and opportunities of FirstNet, other federal agencies, States and territories, and state, federal local, and tribal public safety entities, among other stakeholders, turn on interpretation of the Act's terms and provisions.

More specifically, we analyzed the complex definition of the term ''public safety entity'' under the Act.[3] The primary ramification of falling within this definition is that a public safety entity is served by FirstNet directly, rather than as a commercial customer of a secondary user of FirstNet's spectrum. In particular, under our preliminary interpretations of network elements in the *First Notice,* public safety entities would be served by the FirstNet core network, through either a FirstNet radio access network (''RAN'') or the RAN of a State that has chosen to assume responsibility for RAN buildout and operation.[4]

Generally speaking, the Act defines public safety entities by the types of services they provide (*i.e.,* whether they provide public safety services).[5] Those public safety services are further defined by, among other things, the nature of the services (such as the protection of life, health or property), but also the types of specific entities providing the services (such as emergency response providers).[6] The end result is a complex, multi-layered definition of public safety entity.

Our analysis in the *First Notice* included the virtually self-evident preliminary conclusion that the definition of public safety entity includes traditional first responders—police, fire, and EMS.[7] No commenter disagreed with this preliminary conclusion. The Act's definition of public safety entity, however, is expressly not limited to such traditional first responders. Thus, in the *First Notice,* we also analyzed the definition with regard to which entities beyond traditional first responders would qualify as public safety entities.[8]

The Act's public safety entity definition raises three primary interpretive questions regarding non-traditional first responders:

1. Whether an ''entity'' should be defined as a group or authority of a certain minimum size or nature (such as an entire government agency or department) or can an ''entity'' include a sub-group or an individual;

2. Whether and to what extent an ''entity'' that provides public safety services some, but not all the time, can qualify as a public safety entity; and

3. Whether and to what extent an ''entity'' that provides services close or related to, but not identical to

[1] 47 U.S.C. 1426(b).

[2] All responses to the *First Notice* are publically available at *www.regulations.gov.*

[3] 79 FR 57060 (September 24, 2014).

[4] 79 FR 57059.

[5] *See* 47 U.S.C. 1401(26).

[6] *See id.* § 1401(27).

[7] 79 FR 57061 (September 24, 2014).

[8] 79 FR at 57060–2.

traditional public safety services can qualify as a public safety entity.

These questions are not entirely severable from each other given the structure of the public safety entity definition in the Act.

In general, our preliminary interpretations in the *First Notice* permitted a wide variety of entities to qualify as public safety entities.[9] Although our interpretations were met with strong support by the majority of respondents,[10] some comments reflected a concern that we had expanded beyond the appropriate interpretation of the Act to include entities—such as utilities—that should not be given direct access to the network as public safety entities.[11] While we continue to preliminarily conclude that the Act grants FirstNet discretion to consider a broad range of users consistent with FirstNet's mission, given the complexity of the Act's public safety entity definition and its importance to the functioning of the network and FirstNet's financial sustainability under the Act, we, in this *Third Notice,* propose a refined preliminary interpretation and seek additional comments regarding the definition.[12]

## II. Statutory Definition of Public Safety Entity

A ''public safety entity'' is defined in section 6001(26) of the Act as an ''entity that provides public safety services.'' [13] Further, under the Act, the term ''public safety services'':

(A) *Has the meaning* given the term in section 337(f) [of the Communications Act of 1934 [14] (''Communications Act'')]; *and* (B) *includes* services provided by emergency response providers, as that term is defined in [section 2 of the Homeland Security Act of 2002 [15] (''HSA'')].[16]

Section 337(f) of the Communications Act defines ''public safety services'' to mean services:

(A) The sole or principal purpose of which is to protect the safety of life, health or property;

(B) that are provided by (i) State or local government entities, or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.[17]

Under the HSA, ''emergency response providers'' include ''Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.'' [18]

## III. Legal Scope Versus Discretion in Implementing the Definition of Public Safety Entity

In the *First Notice,* we noted that, if we determine it is reasonable and appropriate to do so in support of our mission, we may as a policy matter decide to narrow the scope of users we actually serve relative to those we can legally serve under the definition of public safety entity.[19] Some commenters were troubled by this concept, indicating concern that FirstNet might elevate policy goals above the text and purpose of the Act and that FirstNet must implement the Act as written.[20]

We believe, however, that FirstNet's discretion as to which entities to allow onto the network is contemplated by and important under the framework of the Act. For example, given the finite nature of spectrum resources, the exercise of such discretion is necessary to ensure the proper functioning of the network, in addition to FirstNet's economic self-sustainability for the benefit of public safety. Moreover, such discretion is necessary to give meaning to, among other things, FirstNet's obligation to consult with regional, State, tribal, and local jurisdictions regarding the ''assignment of priority *and selection of* entities seeking access to or use of the [network].'' [21] If FirstNet did not possess this discretion, the stated consultation would be meaningless as FirstNet would simply be required to provide access to and use of the network to any entity that met the public safety entity definition regardless of the views of the consulted-with parties.[22]

Similarly, given the Act's express consultation obligations with respect to FirstNet's assignment of priority to entities using the network—which could effectively give FirstNet the ability to deprioritize entities even if they qualified under the definition—it would appear to make little sense for Congress to have intended a purely mechanical application of the public safety entity definition.[23] Nor does the wording of the Act appear to suggest that FirstNet's consultation obligations are solely with respect to its legal interpretation of the term public safety entity. For example, FirstNet is required to establish wide-ranging network policies, including regarding the ''practices and procedures of the entities operating on and the personnel using'' the network.[24]

Finally, although we preliminarily conclude that FirstNet may have discretion within the bounds of the public safety entity definition, we did not mean to imply in the *First Notice* any intent or legal authority to expand beyond the definition of public safety entity. We merely stated that FirstNet may ''decide to *narrow* the scope of users it actually serves relative to those

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[9] *See* 79 FR at 57060–2.

[10] We note FirstNet's preliminary interpretation that it has statutory discretion to consider a broad range of users including those that offer public safety services that satisfy the Communication Act or Homeland Security Act was strongly supported in responses to the *First Notice. See e.g.,* National Public Safety Telecommunications Council (''NPSTC'') Comments at 6 *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0026*; *see also e.g.,* National Association of State Chief Information Officers (''NASCIO'') Comments at 1 *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0066*; *see also e.g.,* Comments of the State of Florida at 5 *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0013*; *see also e.g.,* Comments of the State of California at 2 *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0037*.

[11] *See* AT&T Service, Inc. (''AT&T''), Comments, at 20, *available at http://www.regulations.gov/#!documentDetail;D=NTIA–2014-0001-0034*; *See also* Association of Public Safety Communications Officials International (''APCO'') Comments, at 4–6 *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0029*.

[12] We also note the definition of public safety entity is a critical component of both (1) the acquisition planning process as it provides key inputs into understanding the resources that will be derived from and available to qualifying public safety entities and (2) the successful implementation of our mission that, among other things, will require the promotion and adoption of the NPSBN by public safety entities.

[13] 47 U.S.C. 1401(26).

[14] *Id.* § 337(f).

[15] 6 U.S.C. 101(6).

[16] 47 U.S.C. 1401(27) (emphasis added).

[17] *Id.*§ 337(f)(1).

[18] 6 U.S.C. 101(6).

[19] 79 FR 57060 (September 24, 2014).

[20] *See* AT&T Comments, at 12, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0034*.

[21] 47 U.S.C. 1426(c)(2)(A)(vi) (emphasis added).

[22] We note that, as is discussed *infra,* the Communications Act prong of the public safety entity definition does provide for governmental entities to designate nongovernmental entities as public safety entities under certain criteria. The consultation obligation of 47 U.S.C. 1426(c)(2)(A)(vi) is not, however, limited to consultations on the selection of ''nongovernmental'' entities, but rather entities in general. Thus, we believe the consultation obligation must apply to all entities and that FirstNet must therefore have discretion with regard to all such entities.

[23] *See* 47 U.S.C. 1426(b)(1); *see also id.* § 1426(c)(2) (describing FirstNet's consultation requirements under the Act).

[24] *Id.* § 1426(c)(1)(E)(ii).

it can legally serve.'' [25] We seek comments on the above interpretations.

## IV. Public Safety Entity Definition Overview

The public safety entity definition is dependent on the definition of public safety services, which is in turn dependent on two separate definitions from statutes outside the Act. Before trying to draw precise boundaries around any of these terms it is helpful to look at the overall definitional structure, particularly how the two extra-Act definitions interact within the definition of public safety services.

The term ''public safety services'':

(A) *Has the meaning* given the term in section 337(f); *and*

(B) *includes* services provided by emergency response providers, as that term is defined in the HSA.[26]

In the *First Notice,* we ultimately interpreted the language of the Act as creating an either-or test. That is, the two prongs (''(A)'' and ''(B)'' above) of the definition create a combined list of services, and a service that appears on list ''(B)'' is a ''public safety service'' independent of those on list ''(A)''.[27] We continue to believe that the ''and (B) includes'' language in the Act necessitates this result. Regardless of whether the word between the two prongs is ''and'' or ''or,'' the preamble combined with the second prong reads: ''The term 'public safety services' . . . includes services provided by emergency response providers. . . .''

Some commenters objected to this formulation, essentially arguing that the addition of the second prong ''(B)'' was merely to clarify the scope of prong ''(A)'' and did not expand it.[28] Other commenters thought that, although prong ''(B)'' did expand ''(A)'', those services included in prong ''(B)'' were of a lesser, more supplementary nature than those in ''(A)'' as a result of the ''has the meaning'' language in ''(A)'' in contrast to the ''includes'' language in ''(B)''.[29]

We continue to preliminarily conclude, however, that the more natural reading of the definition is as we concluded in the *First Notice.* Among other reasons, there are services expressly included in the second prong of the definition that are not included in the first. The HSA definition of public safety services (prong ''(B)'') includes ''Federal . . . personnel, agencies, and authorities.'' [30] The section 337(f) definition of public safety services (prong ''(A)'') includes only ''State or local'' governmental entities.[31] Thus, the HSA definition adds an element—Federal personnel, agencies, and authorities—that is not contained within the section 337(f) definition.

There are other similar additions to the section 337(f) definition provided by the HSA prong, such as ''nongovernmental'' entities that do not require separate authorization and hospital emergency facilities, which would not satisfy the section 337(f) requirement that public safety services ''are not made commercially available to the public by the provider.'' [32] In addition, the ''sole and principle purpose'' requirement of section 337(f), as discussed below, is not included in the HSA prong. Accordingly, if Congress were merely clarifying the definition in the section 337(f) prong, it would not have included an HSA prong that clearly expanded the definition beyond the boundary of the section 337(f) prong.

With regard to supplementing the section 337(f) definition, Congress did not qualitatively characterize services in the second prong other than to say that the definition ''includes'' services in that prong, and thus we cannot find justification for treating them differently or as lesser-included services.[33] That Congress used the phrase ''has the meaning'' with regard to section 337(f) and not with the HSA prong does not sufficiently justify or guide us to such disparate treatment of the services under the HSA prong.

As a result, we preliminarily conclude that the two prongs form a combined list, as discussed above, and seek further comments on this preliminary conclusion.

## V. Requirement To Provide Public Safety Services

A public safety entity is defined in section 6001(26) of the Act as an ''entity that provides public safety services.'' [34] In the *First Notice,* we preliminarily concluded that the Act does not include any express language requiring a minimum amount or frequency of providing such services, but merely requires that an entity provide such services.[35]

An example of where Congress required such a minimum amount of services is contained in the Communications Act prong of the definition of public safety services, where Congress used the phraseology ''a governmental entity *whose primary mission* is the provision of such services.'' [36] If Congress had used this phraseology in the Act—for example, ''public safety entity means an entity whose primary mission is the provision of public safety services''—it would have been clear that the provision of a minimum amount of such services were necessary for an entity to qualify.[37]

This contrast is actually evident entirely within the Communications Act definition of public safety services itself. In describing the entities under section 337(f) of the Communications Act that must be providing a service for it to constitute a public safety service, Congress uses the phrase ''that are provided by . . . State or local government entities.'' In describing the entities that are permitted to authorize a nongovernmental entity to provide such services, however, Congress used the phrase ''a governmental entity *whose primary mission* is the provision of such services.'' [38] Thus, Congress used the ''primary mission'' limitation to impose a higher standard to qualify those entities allowed to authorize nongovernmental entities, but imposed no such standard on the governmental entities that could provide public safety services.[39] No such higher standard was used in the Act with regard to public safety entities.

Some commenters, however, advocated that the public safety entity definition should be read more holistically under the Act, rather than treating each portion of the definition—such as each services prong—as a separate interpretation that flowed up to the next stage.[40] These comments reflect

[25] 79 FR 57060 (September 24, 2014) (emphasis added).

[26] 47 U.S.C. 1401(27) (emphasis added).

[27] 79 FR 57060 (September 24, 2014).

[28] *See* AT&T Comments, at 16–7, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0034.*

[29] *See* APCO Comments, at 6, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0029.*

[30] 6 U.S.C. 101(6).

[31] 47 U.S.C. 337(f)(1).

[32] *See* 6 U.S.C. 101(6); 47 U.S.C. 337(f)(1).

[33] 47 U.S.C. 1401(27).

[34] *Id.* § 1401(26).

[35] *See* 79 FR 57060 (September 24, 2014).

[36] 47 U.S.C. 337(f)(1).

[37] It is generally implicit that if an organization's primary mission is the provision of such services then the organization likely provides a great amount of such services.

[38] 47 U.S.C. 337(f)(1) (emphasis added).

[39] One commenter appears to mistakenly cite the ''primary mission'' limitation as applying to the nongovernmental organizations, rather than the governmental entities that are permitted to authorize nongovernmental organizations as described in 47 U.S.C. 337(f)(1). *See* AT&T Comments, at 16, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0034.*

[40] We note that this does not have to be the case. For example, one entity could provide a service part time that another provides full time. In other words,

Continued

the difficulty in interpreting the public safety entity definition where the entity in question may not provide public safety services all the time or through all its personnel.

For example, in the context of the Communications Act definition of public safety services, we noted in the *First Notice* that the FCC interpreted the provision to qualify services provided by governmental entities, such as city planning or transportation departments, so long as the services being provided had as their sole or principal purpose the protection of life, safety, or property.[41] That is, under the FCC's interpretation of section 337(f), with which we agree, an *entity* that does not always or even most of the time provide services whose sole or principal purpose is the protection of life, safety, or property, may nevertheless provide qualifying ''public safety *services''* when such an entity provides services that meet the sole or principal purpose test.[42] However, unlike the context of the Communications Act definition of public safety services—where services can vary day-to-day or employee-to-employee—FirstNet is faced with the question under the Act as to whether an entity ever qualifies as a public safety entity by virtue of providing a public safety service *in only some instances.* Further, FirstNet must then address the question of whether such entity should always have primary access to or use of the FirstNet network as a result. This question applies regardless of whether the entity in question is an organization or an individual.

In the context of an organization, FirstNet must also determine whether the organization qualifies as a public safety entity *as a whole* where in some or all instances the provision of public safety services is by only some employees or members of the organization. In other words, FirstNet must determine whether public safety entity status should apply to all employees or members of an organization if only some such employees or members provide public safety services.

In the *First Notice,* we preliminarily concluded that as long as an entity provided a non-*de minimis* amount of public safety services, even if it provides other services, it will qualify as a public safety entity under the Act.[43] We also preliminarily concluded that this interpretation resulted in the entity as a whole qualifying as a public safety entity even if only some employees of the entity provided such services.[44] After review of the responses to the *First Notice,* we clarify below our preliminary interpretation of the Act in this regard, and seek further comments.

*1. Whether an Individual or Subgroup of an Organization Ever Qualifies as a Public Safety Entity*

As an initial matter, we restate our preliminary conclusion from the *First Notice* here, for the reasons stated therein and below, that individuals such as volunteer firemen or employees of an organization (in addition to or rather than an organization as a whole) may qualify as public safety entities if they provide or are reasonably likely to provide public safety services. This preliminary interpretation applies whether the individual performs services that qualify under the section 337(f) or the HSA prong of the definition of public safety services.

Under the HSA prong of the definition, ''personnel'' (as contrasted with ''agencies . . . and authorities'') are expressly included as service providers, and thus we believe it is reasonable to conclude that an ''entity'' under the Act performing such services should be interpreted to include individual ''personnel.'' [45] Although an organization could theoretically perform the same services as individual personnel, we believe it is reasonable under the structure and purposes of the Act to include individual personnel such as volunteer firefighters within the term ''entity.'' This interpretation is also supported by the Act's inclusion, via the HSA prong, of ''hospital emergency facilities'' but not hospitals in their entirety as emergency response providers. Congress contemplated that a group of employees smaller than a larger organization can provide public safety services, and thus in the context of the Act constitute public safety entities.

The section 337(f) prong of the public safety services definition speaks only in terms of ''State or local government entities'' or ''non-governmental organizations.'' This raises the question as to whether an individual or group smaller than the whole ''entity'' or ''organization'' can provide qualifying services and thus constitute public safety entities under the Act via the section 337(f) prong. In section 337(f), however, Congress included services provided by entities or organizations whose mission was not ''primar[ily]'' the provision of services the sole or principle purposes of which is the protection of life, health, or property. That is, these entities or organizations by definition may sometimes have other primary missions, but occasionally as a whole or through only some employees provide qualifying services. As a result, we preliminarily conclude that under the section 337(f) prong a public safety entity under the Act can include at least a group of employees smaller than a larger organization.[46] We seek comments on the above interpretations and their collective effect on the definition of public safety entity.

*2. Overall Framework for Determining Public Safety Entities*

As an overall framework for qualifying public safety entities, we first preliminarily conclude that where an organization *as a whole* is charged with providing, and does provide public safety services, the organization qualifies as a public safety entity and all members of the organization can (following consultation and within the discretion discussed in part III of this *Third Notice*) be given access to or use of the network under the Act. This preliminary conclusion is fairly clear under the Act and would apply to traditional first responder organizations, among others.

Next, with respect to organizations that do not meet the above criteria, we preliminarily conclude that those *members* of such an organization that provide or are reasonably likely to provide public safety services for a non-*de minimis* amount of time, qualify as public safety entities under the Act and can (following consultation and within the discretion discussed in part III of

even if section 337(f) of the Communications Act imposed a primary mission requirement on the entity providing a service (which it does not), it is merely defining a service, and some other entity may only provide such a service part time.

[41] *See* Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Fourth Report and Order, 26 FCC Rcd. 10799 (F.C.C. July 21, 2011) (*Fourth Report and Order*).

[42] 79 FR 57061 (September 24, 2014) (stating ''FirstNet gives deference to the conclusions reached by the Commission in its interpretation of section 337(f)(1) and as independent entity owes no such deference) (emphasis added). In response to this preliminary interpretation, one commenter stated that ''FirstNet's reliance on an FCC Order interpreting section 337 is misplaced, and FirstNet certainly need not afford the FCC 'deference' in its interpretation. As an 'independent authority,' FirstNet owes no such deference.'' *See* APCO Comments, at 5, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0029.* However, as an independent authority, we simply agree with FCC interpretation. The FCC interpretation predated the Act and thus Congress is assumed to have been aware of the interpretation and could have limited the Act accordingly if it did not agree with the FCC interpretation.

[43] 79 FR 57060 (September 24, 2014).

[44] 79 FR at 57062.

[45] 6 U.S.C. 101(13) (stating the term means officers and employees).

[46] *See* Fourth Report and Order (discussing parts of organizations using services under the section 337(f) prong).

this *Third Notice*) be given access to or use of the network under the Act. For purposes of this interpretation, we preliminarily conclude that those members of such an organization that materially contribute to or help enable or support the provision of such public safety services—including, for example, dispatchers, technicians, and supervisors—by other members of the organization would also qualify as public safety entities. Interoperable communications with these enabling or support personnel could be critically important to the provision of public safety services by the primary providers in the organization, and thus we believe it is reasonable to include the enabling and support personnel within the definition.

We note that our preliminary interpretations are by necessity made based on the specific language, context and purpose of the Act. We must therefore interpret the definition of public safety entity by reference to the aggregation of services defined both by the section 337 and HSA prongs of the public safety services definition under the Act, rather than just either prong on a stand-alone basis, as may be required by other agencies in different contexts. In this regard, our interpretation as set forth above would apply regardless of whether the services provided qualified as public safety services under the section 337(f) prong or the HSA prong of the definition in the Act. For example, under the section 337(f) prong, those field and operations personnel of a governmental or authorized nongovernmental entity that provide emergency services the sole or principal purpose of which is to protect the safety of life, health or property would qualify as public safety entities, along with any necessary dispatchers etc.[47] Additionally, those same field and operations personnel would also qualify as a public safety entity under the HSA prong because the nature of services being provided in response to such an incident would typically be the type of services performed directly by an emergency response provider or, at minimum, related personnel supporting such a response provider. For example, utility personnel removing dangerous downed electrical wires to permit firefighters to access victims in a car would be deemed public safety entities.

Under this refined preliminary interpretation, however, where an organization *as a whole,* such as a private utility, is not charged with providing public safety services, the entire organization would not necessarily qualify as a public safety entity. The extent to which the individuals or subgroups within the organization providing public safety services would qualify, or whether such individuals or subgroups are always permitted on the network, would be determined within FirstNet policies based on, among other factors, the advantages to the public and public safety of having such individuals always supported by and accessible on the network, the impact on FirstNet's financial sustainability as required by the Act and our consultations under the Act with the FirstNet Public Safety Advisory Committee, local first responders, and local jurisdictions.[48]

We recognize that implementation of the above framework may require certifications or other evidence of eligibility of certain customers or groups within organizations. Customer eligibility requirements for specialized services, including communications services, exist and are managed today in the industry. Nevertheless, in addition to comments regarding the above refined preliminary interpretation itself, we seek comments on the appropriate mechanisms for implementing this interpretation assuming it is ultimately adopted.

## VI. Non-Traditional First Responders as Public Safety Entities

In the *First Notice,* we preliminarily concluded that many types of non-traditional first responders could qualify as public safety entities because they provided public safety services.[49] For example, we generally agreed with the examples of public safety services cited by the FCC in its interpretation of section 337(f) and thus the entities providing those services would, under our preliminary interpretation, qualify as public safety entities.[50] These examples included a range of services, provided by governmental entities, ''the sole or principal purpose of which is to protect the safety of life, health or property,'' including:

1. Entities supporting airport operations when ''ensuring the routine safety of airline passengers, crews, and airport personnel and property in a complex air transportation environment.'' [51]

2. Transportation departments in the design and maintenance of roadways, the installation and maintenance of traffic signals and signs, and other activities that affect the safety of motorists and passengers.[52]

3. Entities protecting the safety of animals, homes, and city infrastructure, particularly in crisis situations.[53]

The FCC's interpretation of section 337(f) predated passage of the Act, and thus Congress is presumed to have knowledge of the interpretation and could have taken steps to modify the definition in the Act in light of the FCC's interpretation, but did not.[54] In the *First Notice,* we sought comment on other entities providing services that would qualify as public safety services under the section 337(f) prong, and received examples such as:

1. Public Transit Agencies and Departments
2. Public Work Departments
3. Public electric and water utilities
4. Health Departments
5. Parks and Recreation Departments [55]

Because both the section 337(f) and HSA prong of the public safety services definition include non-governmental entities in addition to governmental

[47] For a discussion of utilities as public safety entities under the Act, see part VI *infra.*

[48] Some commenters expressed concern that the spectrum and network capacity allocated to public safety under the Act could be diluted in some way because of the inclusion of non-traditional first responders. *See e.g.,* FirstNet Colorado Response to the Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, at 9, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0062;* State of Florida Comments, at 9, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0013.* However, we believe the priority and preemption features of the network will ensure that traditional first responders will always have primary use of the network.

[49] We recognize that separate priority and preemption parameters must be established even among the various entities, including traditional and non-traditional entities, which may qualify as a public safety entity under the Act and be allowed to use the NPSBN. We intend, as discussed in the *First Notice,* in the future and following appropriate consultations, to fully address the priority and preemptive use of and access to the NPSBN among the various user groups.

[50] 79 FR 57061 (2014).

[51] Fourth Order and Report at 10808.

[52] *Id.* at 10808.

[53] *Id.* at 10809.

[54] *See Lorillard, Div. of Loew's Theatres, Inc.* v. *Pons,* 434 U.S. 575, 580–581 (U.S. 1978) (explaining that ''Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. So too, where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute''); *see also Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 414 n. 8 (1975); *NLRB* v. *Gullett Gin Co.,* 340 U.S. 361, 366 (1951); *National Lead Co.* v. *United States,* 252 U.S. 140, 147 (1920).

[55] *See, e.g.,* Illinois Public Safety Broadband Working Group Comments, at 6–9, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0004*; *see also* State of Idaho Comments, at 1–2, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0063*; *see also* Vermont State Wireless Commission Comments, at 1, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0061.*

entities, we also sought comment on such non-governmental entities that would qualify and received similar examples such as:

1. Transportation Authorities
2. Electric and Water Utilities
3. Non-governmental and private, and non-profit and for-profit organizations (*e.g.,* health care institutions, ambulance companies, independent firefighting corporations)
4. Non-government disaster relief and aid organizations (*e.g.,* American Red Cross, Salvation Army)
5. Education Institutions [56]

In all cases, however, as discussed above, FirstNet is obligated to consult with regional, State, tribal, and local jurisdictions regarding the ''selection of entities seeking access to or use of the [network].'' [57] Although the *First Notice* (and this *Third Notice*) contributes to such consultations, FirstNet intends to conduct additional, direct consultations with State points of contact (''SPOCs'') regarding the selection of entities permitted on the network. FirstNet can then exercise the discretion discussed in Part III of this *Notice* in light of such consultations within the outer legal boundaries FirstNet draws around the definition of public safety entity.

We preliminarily conclude, however, that subject to such consultation and in accordance with our above analyses in this *Third Notice,* the personnel or subgroups within a non-governmental organization qualify as public safety entities under the Act to the extent such personnel or subgroups provide public safety services as defined under either the section 337(f) prong or the HSA prong of the public safety services definition. This is merely stating the statutory framework under the Act with the addition of our conclusions above regarding whether personnel or subgroups can qualify as ''entities'' under the Act.

Regarding the section 337(f) prong, personnel, or subgroups of non-governmental organizations, if authorized under the terms of that section, provide qualifying public safety services under the Act if they provide services ''the sole or principal purpose of which is to protect the safety of life, health or property'' and those services are not ''made commercially available to the public.'' We preliminarily conclude, for example, that private utility workers that remove a live electrical wire touching a car at an accident scene is performing a service the principal purpose of which is to protect the safety of life.[58] We also preliminarily conclude that such a service is not one that is typically ''commercially available,'' albeit incident to or as a result of a commercially available service of providing electricity. In the context of the Act, then, these services would qualify as public safety services, and therefor the workers providing such services would qualify as public safety entities as defined in the Act.[59] We seek comments on these preliminary conclusions.

As mentioned, however, under the section 337(f) prong, such a private entity would have to be ''authorized by a governmental entity whose primary mission is the provision of such services'' to qualify as providing public safety services. We preliminarily conclude that in our State and local consultations under the Act regarding the ''entities seeking access to or use of the [network],'' traditional governmental fire, police, and EMS entities, as examples, may authorize non-governmental entity personnel and subgroups, and thus if such personnel or subgroups also meet the criteria described in part V. of this *Third Notice,* they would be public safety entities under the Act.[60] We seek comments on this preliminary conclusion and the appropriate method and duration of such authorizations.

Under the HSA prong, no such authorizations of non-governmental entities are necessary. Thus, if personnel or subgroups of non-governmental organizations qualify under the HSA prong as ''emergency response . . . personnel'' or personnel ''related'' to such emergency response personnel, they would also qualify as public safety entities under the Act. We thus preliminarily conclude, for example, that a private utility worker that removes a live electrical wire touching a car at an accident scene is performing a service typically provided by an emergency response provider, or, at a minimum, by related personnel supporting such a response provider. We also preliminarily conclude that, subject to further consultations mentioned above regarding entities seeking access to the network, non-governmental personnel involved in or supporting such emergency response activities, such as the utility worker described above removing an electrical wire, can legally qualify under the Act as public safety entities. We seek comments on these preliminary conclusions.

## VII. Ex Parte Communications

Any non-public oral presentation to FirstNet regarding the substance of this *Second Notice* will be considered an ex parte presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum with additional information as necessary, or to request that the party making the filing do so, if FirstNet believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex parte communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an ex parte presentation. Federal entities are not subject to these procedures.

Dated: April 27, 2015.

**Jason Karp,**

*Acting Chief Counsel, First Responder Network Authority.*

[FR Doc. 2015–10140 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–TL–P**

[56] *See, e.g.,* State of Washington Interoperability Executive Committee Comments, at 1–2, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0055*; *see also* State of Maine ConnectME Authority Comments, at 2, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0017*; *see also e.g,* State of Oregon Comments, at 2–3, *available at http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0065.*

[57] 47 U.S.C. 1426(c)(2)(A)(vi).

[58] We note that most utilities are non-governmental entities. As such, we anticipate relying heavily on the authorization of personnel from such entities by ''primary mission'' first responders under the section 337(f) prong in determining which personnel should gain access to the network as public safety entities.

[59] We note that the FCC has not independently determined whether utilities provide ''public safety services'' under section 337(f) for purposes of eligibility for direct licensing of spectrum in the 700 MHz public safety band, including the portion of that spectrum designated for public safety narrowband use. FirstNet's interpretation of section 337(f) and its determination with regard to ''public safety entities'' eligible as end users of the network, including utilities, is based on the specific requirements of the Act in their totality and is not intended to modify any interpretation or suggest any future treatment of section 337(f) by the FCC.

[60] *See also* First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd. 152,187–188.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–904]**

### Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') for the period of review (''POR'') April 1, 2013, through March 31, 2014. The Department preliminarily finds that subject merchandise has been sold in the United States at prices below normal value (''NV'') during the POR. The Department invites interested parties to comment on these preliminary results.

**DATES:** *Effective Date:* May 5, 2015.

**FOR FURTHER INFORMATION CONTACT:** Bob Palmer or Frances Veith, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068, or (202) 482–4295, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Scope of the Order

The merchandise subject to the order is certain activated carbon. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00.[1] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

#### Preliminary Determination of No Shipments

Based on an analysis of U.S. Customs and Border Protection (''CBP'') information, and no shipment certifications submitted by Sinoacarbon International Trading Co., Ltd. (''Sinoacarbon''), the Department preliminarily determines that Sinoacarbon had no shipments during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in non-market economy (''NME'') cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to Sinoacarbon, for which it has preliminarily found no shipments, and issue appropriate instructions to CBP based on the final results of the review.[2]

#### Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''). We calculated constructed export prices and export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy (''NME'') within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov/login.aspx* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Preliminary Results of the Review

The Department preliminarily finds that four companies subject to this review did not establish eligibility for a separate rate. As such, we preliminarily determine they are part of the PRC-wide entity.[3] Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews,[4] we did not conduct a review of the PRC-wide entity. Thus, the rate for the-NME entity is not subject to change as a result of this review.

For companies subject to this review which established their eligibility for a separate rate, the Department preliminarily determines that the following weighted-average dumping margins exist for the POR from April 1, 2013, through March 31, 2014:

| Exporter | Weighted-average dumping margin (U.S. dollars per kilogram)[5] |
|---|---|
| Jacobi Carbons AB[6] | 0.53 |
| Datong Juqiang Activated Carbon Co., Ltd | 0.00 |
| Carbon Activated Tianjin Co., Ltd | 0.53 |
| Calgon Carbon (Tianjin) Co., Ltd | 0.53 |
| Datong Municipal Yunguang Activated Carbon Co., Ltd | 0.53 |
| Jilin Bright Future Chemicals Company, Ltd | 0.53 |
| Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd[7] | 0.53 |
| Ningxia Huahui Activated Carbon Co., Ltd | 0.53 |
| Ningxia Mineral and Chemical Limited | 0.53 |
| Shanxi DMD Corporation | 0.53 |
| Shanxi Industry Technology Trading Co., Ltd | 0.53 |
| Shanxi Sincere Industrial Co., Ltd | 0.53 |
| Tancarb Activated Carbon Co., Ltd | 0.53 |
| Tianjin Channel Filters Co., Ltd | 0.53 |
| Tianjin Maijin Industries Co., Ltd | 0.53 |

#### Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

[1] For a complete description of the Scope of the Order, *see* ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China; 2013–14'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado Assistant Secretary for Enforcement and Compliance, issued concurrently with, and hereby adopted by, this notice.

[2] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

[3] Those four companies are Ningxia Guanghua A/C Co., Ltd., Shanghai Astronautical Science Technology Development Corporation, Tangshan Solid Carbon Co., Ltd., and Zhejiang Xingda Activated Carbon Co., Ltd.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[5] In the second administrative review of the *Order,* the Department determined that it would calculate per-unit weighted-average dumping margins and assessment rates for all future reviews.

Continued

Interested parties may submit written comments in the form of case briefs within 30 days of publication of the preliminary results and rebuttal comments in the form of rebuttal briefs within five days after the time limit for filing case briefs.[8] Rebuttal briefs must be limited to issues raised in the case briefs.[9] Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) A list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[11] If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[13] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[14] The Department will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[15] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries that were not reported in the U.S. sales data submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the rate for the PRC-wide entity.[16] Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the rate for the PRC-wide entity.[17]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For each specific company listed in the final results of review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis,* then cash deposit rate will be zero); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in the completed segment of this proceeding for the most recent period, the cash deposit rate will continue to be the

*See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010). *See also Notice of Antidumping Duty Order: Certain Activated Carbon From the People's Republic of China,* 72 FR 20988 (April 27, 2007) (''*Order*'').

[6] In the third administrative review, the Department found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142 (October 31, 2011); *Certain Activated Carbon From the People's Republic of China; 2010–2011; Final Results of Antidumping Duty Administrative Review,* 77 FR 67337, 67338 (November 9, 2012); *Certain Activated Carbon From the People's Republic of China; 2011–2012; Final Results of Antidumping Duty Administrative Review,* 78 FR 70533, 70535 (November 26, 2013); *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163, 70165 (November 25, 2014).

[7] In the first administrative review, the Department found that Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Ningxia Guanghua Activated Carbon Co., Ltd. are a single entity and, because there were no changes to the facts which supported that decision since that determination, we continue to find that these companies are part of a single entity for this administrative review. *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results,* 74 FR 21317 (May 7, 2009), unchanged in *First Administrative Review of Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 57995 (November 10, 2009); and *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2011–2012,* 78 FR 70533 (November 26, 2013) at footnote 33; *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163, 70165 (November 25, 2014).

[8] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* 19 CFR 351.309(d)(2).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* 19 CFR 351.212(b)(1).

[14] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[15] *See* 19 CFR 351.106(c)(2).

[16] *Id.*

[17] *Id.*

existing exporter-specific cash deposit rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 29, 2015.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Preliminary Decision Memorandum**

1. Summary
2. Background
   a. Initiation
   b. Respondent Selection
   c. Questionnaires
   d. Scope of the Order
3. Discussion of the Methodology
   a. Preliminary Determination of No Shipments
   b. Non-Market Economy Country
   c. Separate Rates
   d. Affiliation and Collapsing
   e. Weighted-Average Dumping Margin for Non-Examined Separate Rate Companies
   f. Surrogate Country and Surrogate Value Data
   g. Facts Available for Normal Value
   h. Date of Sale
   i. Comparisons to Normal Value
   j. U.S. Price
   k. Normal Value
   l. Currency Conversion
4. Recommendation

[FR Doc. 2015–10508 Filed 5–4–15; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. 150416372–5372–01]**

## DEPARTMENT OF STATE

## DEPARTMENT OF TRANSPORTATION

### Information on Claims Raised About State-Owned Airlines in Qatar and the UAE

**AGENCY:** International Trade Administration, U.S. Department of Commerce; Transportation Affairs, Bureau for Economic and Business Affairs, U.S. Department of State; Office of Aviation and International Affairs, U.S. Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice announces that the Departments of Commerce, State, and Transportation are interested in obtaining from interested stakeholders information regarding their views on claims that three foreign airlines—Emirates Airline, Etihad Airways, and Qatar Airways—have received and are benefitting from subsidies from their homeland governments that are distorting the global aviation market.

**DATES:** The comment period for this notice is now open and will remain open for the foreseeable future. As explained below, however, anyone interested in providing input to the Departments before they determine what actions should be taken, if any, should submit information as soon as practicable.

**ADDRESSES:** You may submit comments on this document via the Federal e-Rulemaking Portal at *http://www.regulations.gov.* You may submit comments in any (or all) of the three docket numbers open for comment:

- DOT–OST–2015–0082
- DOS–2015–0016
- DOC–2015–0001

**FOR FURTHER INFORMATION CONTACT:** Eugene Alford, Office of Supply Chain, Professional & Business Services, International Trade Administration, U.S. Department of Commerce (Phone: (202) 482–5071 or Email: *Airservices@trade.gov*). Robert Newsome, Transportation Affairs, Bureau for Economic and Business Affairs, U.S. Department of State (Phone: (202) 647–7540 or Email: *newsomerc@state.gov*). Reese Davidson, Office of International Aviation, Office of Aviation and International Affairs, U.S. Department of Transportation (Phone: (202) 366–8161 or Email: *Reese.Davidson@dot.gov*). Claire McKenna, Office of Operations, Office of the General Counsel, U.S. Department of Transportation (Phone: (202) 366–0365 or Email: *Claire.McKenna@dot.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background:* The U.S. Departments of Commerce, State, and Transportation are reviewing claims that three foreign airlines—Emirates Airline, Etihad Airways, and Qatar Airways—have received and are benefitting from subsidies from their respective governments of the United Arab Emirates (UAE) and Qatar that are distorting the global aviation market. The claims, which are asserted in a publicly available report, are of significant interest to stakeholders and all three Federal agencies. The U.S. government takes seriously the concerns raised in the report and is interested in receiving insights and feedback from stakeholders before any decisions are made regarding what action, if any, should be taken. Accordingly, consistent with the Obama Administration's Open Government Initiative and commitment to transparency, public participation, and collaboration, the three Departments are announcing the establishment of an open forum by which any interested stakeholder may submit information regarding their views on this subject and have access to such information submitted by other interested stakeholders.

Any interested person or group may submit information, responses to existing materials, or any other analysis that they might wish to provide the U.S. government on this subject on the *www.regulations.gov* Web site. Each Department will have a corresponding number—listed below—on *www.regulations.gov,* and all submissions will be reviewed jointly by the interagency team.

No provision has been made for submission of confidential material to these dockets. The materials in the docket will not be edited to remove identifying or contact information. The Departments caution against including any information in an electronic submission that one does not want publicly disclosed.

All correspondence on this subject received by the Departments after the issuance of this notice will be considered part of this submission process and will be posted in *www.regulations.gov* for the benefit of the public, unless the submitter has requested and been granted confidential treatment of commercial information by the Departments. To the extent allowed

by law, the Departments will protect trade secrets and confidential commercial or financial information from disclosure, and will follow their established procedures under the Freedom of Information Act, Executive Order 12600, and the relevant Department regulations for handling requests that seek disclosure of confidential business information.

Any stakeholder that has previously submitted letters on this matter to the Departments can also submit such previous correspondence to the *www.regulations.gov* Web site. All material posted will be deemed to be public and freely accessible by any interested person.

The three Departments encourage submissions to be made as soon as practicable, as review of any new material submitted to the joint docket is expected to begin by the end of May, to supplement the U.S. government's ongoing review and evaluation of this matter.

To submit a comment, please visit *www.regulations.gov* and enter one of the below docket numbers in the search field:

- DOT–OST–2015–0082
- DOS–2015–0016
- DOC–2015–0001

Dated: April 27, 2015.

**Ted Dean,**

*Deputy Assistant Secretary for Services, Department of Commerce.*

Dated: April 27, 2015.

**Thomas Engle,**

*Deputy Assistant Secretary for Transportation Affairs, Department of State.*

Dated: April 29, 2015.

**Brandon M. Belford,**

*Deputy Assistant Secretary for Aviation and International Affairs, Department of Transportation.*

[FR Doc. 2015–10425 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD928**

### Northeast Regional Stock Assessment Workshop

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS and the Northeast Regional Stock Assessment Workshop (SAW) will convene the 60th SAW Stock Assessment Review Committee for the purpose of reviewing stock assessments of scup and the bluefish. The Northeast Regional SAW is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore US waters of the northwest Atlantic. Assessments are prepared by SAW working groups and reviewed by an independent panel of stock assessment experts called the Stock Assessment Review Committee, or SARC. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

**DATES:** The public portion of the Stock Assessment Review Committee Meeting will be held from June 2 through June 5, 2015. The meeting will commence on June 2, 2015 at 10 a.m. Eastern Daylight Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

**ADDRESSES:** The meeting will be held in the S.H. Clark Conference Room in the Aquarium Building of the National Marine Fisheries Service, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543.

**FOR FURTHER INFORMATION CONTACT:** Sheena Steiner, 508–495–2177; email: *sheena.steiner@noaa.gov;* or, James Weinberg, 508–495–2352; email: *james.weinberg@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please visit the NEFSC Web site at *http://www.nefsc.noaa.gov/.* For additional information about the SARC meeting and the stock assessment review of scup and bluefish, please visit the NMFS/NEFSC SAW Web site at: *http://www.nefsc.noaa.gov/saw/.*

**Daily Meeting Agenda—SAW/SARC 60 Benchmark Stock Assessments for Scup and Bluefish**

*Tuesday, June 2*

10–10:30 a.m. Welcome, James Weinberg, SAW Chair
Introductions, Cynthia Jones, SARC Chair
10:30 a.m.–3:30 p.m. Scup Assessment Presentation, Mark Terceiro
3:45–5:45 p.m. Scup SARC Discussion, Cynthia Jones
5:45–6 p.m. Public Comments

*Wednesday, June 3*

8:30 a.m.–12:30 p.m. Bluefish Assessment Presentation, Tony Wood
1:30–3:30 p.m. Bluefish SARC Discussion, Cynthia Jones
3:30–3:45 p.m. Public Comments
4–6 p.m. Revisit Scup Discussion, Cynthia Jones

*Thursday, June 4*

8:30–10:30 a.m. Revisit Bluefish Discussion, Cynthia Jones
10:45 a.m.–12:15 p.m. Review/Edit Scup Assessment Summary Report, Cynthia Jones
3–6 p.m. Review/Edit Bluefish Assessment Summary Report, Cynthia Jones

*Friday, June 5*

9 a.m.–5 p.m. SARC Report Writing, Team

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Special requests should be directed to Sheena Steiner at the NEFSC, 508–495–2177, at least 5 days prior to the meeting date.

Dated: April 29, 2015.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015–10435 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before July 6, 2015.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be

directed to Anik Clemens, (727) 551–5611 or *anik.clemens@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for revision of a currently approved information collection.

The collection consists of vessel and dealer permits that are part of the National Marine Fisheries Service (NMFS) program to manage fisheries in the Southeast Region. The fisheries in the Southeast Region are managed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801) and regulations at 50 CFR part 622, 50 CFR part 635 and 50 CFR part 300. NMFS issues permits to fishing vessels and dealers in order to collect information necessary to comply with domestic and international fisheries obligations, secure compliance with regulations, and disseminate necessary information.

This revision would amend the ''Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ)'' to add the collection of an International Maritime Organization/Lloyd's Registry (IMO/LR) number to the permit application for commercial HMS vessels ≥ 20 meters (65' 7'') in length that are obtaining or renewing a HMS limited access permit, including the Atlantic tuna longline, shark incidental, shark directed, swordfish incidental, swordfish directed, and swordfish handgear permits. The International Commission for the Conservation of Atlantic Tunas (ICCAT) approved a recommendation (13–13) for Contracting Parties to require commercial vessels ≥ 20 meters (65′ 7″) in length to obtain an IMO/LR number from IHS/Fairplay by no later than January 1, 2016. Permit applications that do not contain the required supporting documents will be considered incomplete.

This revision would also change the Report for the Deposit or Harvest of Aquacultured Live Rock by adding language to the instructions, specifically, ''If not originally approved, then provide a new sample of rock,'' adding the USCG documentation number or state registration number for the primary vessel the permit is used on, changing the wording in the instructions for the box describing the deposited material to include the ''type and specific geographic origin'' of the material, and adding a yes/no check box for whether a sample of the deposit material has been provided to NMFS.

**II. Method of Collection**

The requirement for commercial HMS vessels to obtain an IMO/LR number is accomplished by accessing a secure Internet automated system supported by IHS/Fairplay (*http://www.imonumbers.lrfairplay.com/*). Applicants may fill out and submit an application electronically. This automated system is available on a 7 day/24 hour basis, and the IMO/LR number is available at no additional charge to the permit holder. The Report for the Deposit or Harvest of Aquacultured Live Rock can be obtained online at the Southeast Region's Web site (*http://sero.nmfs.noaa.gov/permits/permits.htm*). This Web site allows the public to obtain a copy of this form, complete it electronically, download it, and print it out.

The Southeast Region's Web site also includes other forms under this collection, including the vessel permit application and the dealer permit application, which can be downloaded and completed electronically, and printed. There is also an option now to complete a vessel permit application online and submit it online, for certain fisheries. All other permitting requirements are currently still paper forms.

**III. Data**

*OMB Control Number:* 0648–0205.

*Form Number:* None.

*Type of Review:* Regular submission (revision of a currently approved collection).

*Affected Public:* Businesses or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 13,664.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 6,172.

*Estimated Total Annual Cost to Public:* $539,949.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2015–10458 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD926**

### International Pacific Halibut Commission Appointments

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

**ACTION:** Notice; call for nominations.

**SUMMARY:** In January 2013, NOAA Fisheries publicly solicited nominations for two presidential appointments to serve as U.S. Commissioners to the International Pacific Halibut Commission (IPHC). This multi-step nomination process provided for extensive participation by stakeholders in the Pacific halibut fishery and resulted in the appointment of two highly qualified individuals to serve in this important position. U.S. Commissioners to the IPHC Commission are appointed for a term not to exceed 2 years, but are eligible for reappointment. In order to ensure that the views of relevant stakeholders and others with an on-going interest in the Pacific halibut fishery are adequately reflected, NOAA is again soliciting nominations for two individuals to serve as U.S. Commissioners to the IPHC. Nominations are open to all qualified individuals and may include current Commissioners.

**DATES:** Nominations must be received by June 4, 2015. A list of nominees will be published on the NMFS Alaska Regional Office Web site (*http://www.alaskafisheries.noaa.gov/*) by June 9, 2015. Public comments relating to this list of nominees will be accepted until by July 9, 2015.

**ADDRESSES:** Nominations for U.S. Commissioners to the IPHC may be made in writing to Mr. Patrick E. Moran, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service, at 1315 East-West

Highway, Silver Spring, MD 20910. Nominations may also be sent via fax (301–713–2313) or email (*IPHC2015nominations@noaa.gov*). Please send all public comments via email to *IPHC2015comments@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Patrick E. Moran, (301) 427–8370.

**SUPPLEMENTARY INFORMATION:**

**Background**

The IPHC is a bilateral regional fishery management organization established pursuant to the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention). The Convention was signed at Ottawa, Ontario, on March 2, 1953, and was amended by a Protocol Amending the Convention signed at Washington, DC, on March 29, 1979. The Convention's central objective is to develop the stocks of Pacific halibut in waters off the west coasts of Canada and the United States to levels that will permit the optimum yield from the Pacific halibut fishery and to maintain the stocks at those levels. The IPHC fulfills this objective in part by recommending Pacific halibut fishery conservation and management measures for approval by the United States and Canada. Pursuant to the Northern Pacific Halibut Act of 1982, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, conservation and management measures recommended by the IPHC. 16 U.S.C. 773b. Measures accepted by the Secretary of State are adopted as binding regulations governing fishing for Pacific halibut in Convention waters of the United States. 16 U.S.C. 773c(b)(1). More information on the IPHC can be found at *http://www.iphc.int.*

Section 773a of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773a) requires that the United States be represented on the IPHC by three U.S. Commissioners. U.S. Commissioners are appointed for a term not to exceed 2 years, but are eligible for reappointment. Of the Commissioners:

(1) One must be an official of the National Oceanic and Atmospheric Administration; and

(2) Two must be knowledgeable or experienced concerning the Northern Pacific halibut fishery; of these, one must be a resident of Alaska and the other shall be a nonresident of Alaska. Of the three commissioners described in paragraphs (1) and (2), one must also be a voting member of the North Pacific Fishery Management Council.

(3) Commissioners who are not Federal employees are not considered to be Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 *et seq.* of title 5 and section 2671 *et seq.* of title 28.

In their official IPHC duties, Commissioners represent the interests of the United States and all of its stakeholders in the Pacific halibut fishery. These duties require a modest amount of travel (typically two or three trips per year lasting less than a week), and travel expenses are paid by the U.S. Department of State. Commissioners receive no compensation for their services.

**Nomination Process**

NOAA Fisheries is currently accepting nominations for two U.S. Commissioners for the IPHC who are not officials of NOAA. Successful nominees will be considered for appointment by the President and (pending Presidential action) interim designation by the Department of State. Nomination packages should provide details of an individual's knowledge and experience in the Pacific halibut fishery. Examples of such knowledge and/or experience could include (but are not limited to) such activities as: Participation in commercial, tribal, Community Development Quota (CDQ) and/or sport and charterboat halibut fishing operations; participation in halibut processing operations; and participation in Pacific halibut management activities.

Nomination packages should document an individual's qualifications and state of residence. Self-nominations are acceptable, and current and former IPHC Commissioners are eligible for reappointment. Résumés, curriculum vitae, and/or letters of recommendation are useful but not required. Nomination packages will be evaluated on a case-by-case basis by officials in NOAA and the Department of Commerce who are familiar with the duties and responsibilities of IPHC Commissioners; evaluations will consider the aggregate of an individual's prior experience and knowledge of the Pacific halibut fishery, residency requirements, and any letters of recommendation provided. Nominees will be notified of their status (including rejection or approval) and any need for further information once the nomination process is complete.

Dated: April 29, 2015.

**John Henderschedt,**

*Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2015–10507 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Market Risk Advisory Committee

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) announces that on June 2, 2015, from 10:00 a.m. to 1:30 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting at the CFTC's Washington, DC, headquarters. The MRAC will discuss issues related to: (1) The appropriate industry response to current and potential cybersecurity threats; and (2) the concentration of Futures Commission Merchants, and its effect on, and other factors currently affecting, market liquidity.

**DATES:** The meeting will be held on June 2, 2015, from 10:00 a.m. to 1:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 16, 2015.

**ADDRESSES:** The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted by mail to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary, or by electronic mail to: *secretary@cftc.gov.* Please use the title ''Market Risk Advisory Committee'' in any written statement you submit. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC Web site, *www.cftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Petal Walker, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5794.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or

international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

*Domestic Toll Free:* 1–866–844–9416.

*International Toll and Toll Free:* Will be posted on the CFTC's Web site, *http://www.cftc.gov,* on the page for the meeting, under Related Documents.

*Pass Code/Pin Code:* CFTC.

After the meeting, a transcript of the meeting will be published through a link on the CFTC's Web site, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's Web site. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2).

Dated: April 30, 2015.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2015–10448 Filed 5–4–15; 8:45 am]

**BILLING CODE 6351–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9927–26–Region 5]**

### Public Meeting of the Great Lakes Advisory Board

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

**ACTION:** Notice of meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) announces a public meeting of the Great Lakes Advisory Board (Board). The purpose of this meeting is to discuss the Great Lakes Restoration Initiative (GLRI) covering FY15–19 and other relevant matters.

**DATES:** The meeting will be held on Tuesday, May 19, 2015 from 10 a.m. to 3 p.m. Central Time, 11 a.m. to 4 p.m. Eastern Time. An opportunity will be provided to the public to comment.

**ADDRESSES:** The meeting will be held at the U.S. Army Corps of Engineers Offices at 230 S. Clark St., 16th Floor, Fort Dearborn and Lake Michigan Conference Rooms, Chicago, Illinois. Meeting attendees must use the visitor's entrance located at 230 S. Clark St. For security reasons, attendees must provide their full name at least three working days in advance by contacting Rita Cestaric at *cestaric.rita@epa.gov* or Taylor Fiscus at *fiscus.taylor@epa.gov.* Attendees must be pre-registered for the meeting as only registered attendees will be permitted to enter the building. All attendees must show a valid photo ID to enter the building. For those unable to attend in person, this meeting will also be available telephonically. The teleconference number is (877) 744–6030 and the conference ID number is 28629925.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *cestaric.rita@epa.gov.* General information on the GLRI and the Board can be found at *http://glri.us/public.html.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 16 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, educational institutions, and as technical experts.

*Availability of Meeting Materials:* The agenda and other materials in support of the meeting will be available at *http://glri.us/advisory/index.html.*

*Procedures for Providing Public Input:* Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the DFO directly.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by May 15, 2015 to be placed on the list of public speakers for the meeting.

*Written Statements:* Written statements must be received by May 15, 2015 so that the information may be made available to the Board for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 20, 2015.

**Cameron Davis,**

*Senior Advisor to the Administrator.*

[FR Doc. 2015–10489 Filed 5–4–15; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS15–02]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of Meeting.

*Description:* In accordance with section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

*Date:* May 13, 2015.

*Time:* 10:30 a.m.

*Status:* Open.

**Reports**

Chairman
Executive Director
ASC Advisory Committee Recommendations
Delegated State Compliance Reviews
Financial Report

**Action and Discussion Items**

January 14, 2015 Open Session Minutes
AMC Registry Fees
Bulletin 2015–01—State Registration and Supervision of AMCs 2014 ASC Annual Report

**How To Attend and Observe an ASC Meeting**

If you plan to attend the meeting in person, we ask that you notify the

Federal Reserve Board via email at *appraisal-questions@frb.gov,* requesting a return meeting registration email. The Federal Reserve Law Enforcement Unit will then send an email message with a web link where you may provide your date of birth and social security number through their encrypted system. You may register until close of business May 8, 2015. You will also be asked to provide identifying information, including a valid government-issued photo ID, before being admitted to the meeting. Alternatively, you can contact Kevin Wilson at 202–452–2362 for other registration options. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: April 29, 2015.

**James R. Park,**

*Executive Director.*

[FR Doc. 2015–10467 Filed 5–4–15; 8:45 am]

**BILLING CODE 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 applications will also 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 May 29, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ambank Company, Inc.,* Sioux Center, Iowa; to acquire 100 percent of the voting shares of Alton Bancorporation, and thereby indirectly acquire voting shares of Community Bank, both in Alton, Iowa.

Board of Governors of the Federal Reserve System, April 30, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015–10442 Filed 5–4–15; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (''Commission'' or ''FTC'').

**ACTION:** Notice.

**SUMMARY:** The FTC plans to conduct a study to examine consumer perception of class action notices. This is the first of two notices required under the Paperwork Reduction Act (''PRA'') seeking public comments on proposed research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

**DATES:** Comments must be received on or before July 6, 2015.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/classactionnoticepra* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Class Action Notice Consumer Perception Study, Project No. P024210'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/classactionnoticepra* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Class Action Notice Consumer Perception Study, Project No. P024210'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Robin Moore, Attorney, 202–326–2167, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Commission's Class Action Fairness Project strives to ensure that class action settlements in consumer protection and competition matters provide appropriate benefits to consumers and that class action counsel or defendants are not inappropriately benefitting at the expense of class members. As part of this program, the FTC monitors class actions and files amicus briefs or intervenes in appropriate cases; [1] coordinates with state, federal, and private groups to advise them and to seek suggestions on matters that merit FTC attention; and monitors the progress of legislation and class action rule changes.

#### II. The FTC's Proposed Study

*A. Study Description*

To further these goals, the FTC plans to conduct an Internet-based consumer research study to explore consumer perceptions of class action notices, including whether consumers understand the options provided in the notices and the implications of such options. The proposed Study will gauge consumer comprehension of the options conveyed by the notice and the implications of each option for the respondent. Specifically, using a treatment-effect methodology, the study will examine whether respondents receiving class action notices

[1] *See e.g.,* FTC's Mem. of Law as Amicus Curiae, *Nwabueze* v. *AT&T, Inc.,* 3:09–cv–1529 (N.D. Cal. Aug. 30, 2013), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/nwabueze-v.att-inc./130830nwabuezeamicus.pdf;* FTC's Mem. of Law as Amicus Curiae, *White* v. *EDebitPay, LLC,* 2:11–cv–06738 (C.D. Cal. Aug. 9, 2013), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/anita-white-et-al.v.edebitpay-l.l.c.et-al.no.211-cv-06738-cbm-ffm-c.d.cal-august-9-2013/130809edebitpayamicusbrief.pdf;* Mot. of FTC for Leave to File Brief as Amicus Curiae, *Moore* v. *Verizon Commc'ns, Inc.,* 4:09–cv–08123 (N.D. Cal. Aug. 17, 2012), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/moore-v.verizon-communications-inc./120817mooreverizonamicusbrief.pdf.*

understand the process and implications for opting out of a settlement, the process for participating in the settlement, and the implications of doing nothing. Notices used in the study may derive from notices sent to class members in various nationwide class action settlements. We plan to use the study results, along with other information such as public comments, to guide the FTC's Class Action Fairness Project.

Having considered the costs and benefits of various data collection methods, the FTC staff has concluded that an Internet panel with nationwide coverage will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the FTC proposes to collect responses from a broad spectrum of the U.S. adult population. Participants will be drawn from an Internet panel maintained by a commercial firm that operates the panel. All participation will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they will provide useful insights into consumer understanding of the claims being considered.

*B. PRA Burden Analysis*

Staff estimates that respondents will require, on average, 20 minutes to complete the questionnaire. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 38 hours, cumulatively (100 respondents × 23 minutes each). Once the pretest is completed, the FTC plans to seek information from up to 8,000 respondents for approximately 20 minutes each. Thus, respondents will cumulatively take approximately 2,700 hours. The cost per respondent should be negligible. Participation will not require start up, capital, or labor expenditures.

**III. Request for Comment**

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.[2] As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the reporting requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 6, 2015. Write ''Class Action Notice Consumer Perception Study, Project No. P024210'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually-identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively-sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/classactionnoticepra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Class Action Notice Consumer Perception Study, Project No. P024210'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 6, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015–10424 Filed 5–4–15; 8:45 am]

**BILLING CODE 6750–01–P**

[2] 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (''Commission'' or ''FTC'').

**ACTION:** Notice.

**SUMMARY:** The FTC plans to conduct a study to examine the factors influencing consumers' decisions to participate in a class action settlement, opt out of a class action settlement, or object to the settlement. This is the first of two notices required under the Paperwork Reduction Act (''PRA'') seeking public comments on proposed research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

**DATES:** Comments must be received on or before July 6, 2015.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/decidingfactorsstudypra* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Class Action Deciding Factors Study, Project No. P024210'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/decidingfactorsstudypra* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Class Action Deciding Factors Study, Project No. P024210'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J),Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Robin Moore, Attorney, 202–326–2167, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission's Class Action Fairness Project strives to ensure that class action settlements in consumer protection and competition matters provide appropriate benefits to consumers and that class action counsel or defendants are not inappropriately benefitting at the expense of class members. As part of this program, the FTC monitors class actions and files amicus briefs or intervenes in appropriate cases;[1] coordinates with state, federal, and private groups to advise them and to seek suggestions on matters that merit FTC attention; and monitors the progress of legislation and class action rule changes.

## II. The FTC's Proposed Study

### *A. Study Description*

To further these goals, the FTC plans to conduct a consumer research study to determine what factors influence a consumer's decision to participate in a class action settlement, opt out of a class action settlement, or object to the settlement. Specifically, the study will examine whether consumers' comprehension of their options, the amount consumers expect to receive from the settlement, or the complexity of the settlement process impacts their decision to participate in a settlement. To conduct the study, FTC staff will directly contact consumers who have received class action notices. We plan to use the results, along with other information such as public comments, to guide the FTC's Class Action Fairness Project.

Having considered the costs and benefits of various data collection methods, the FTC staff has concluded that directly contacting recipients of nationwide class action notices will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the FTC proposes to collect responses from a broad spectrum of the U.S. adult population. Participants will be drawn from information provided by settlement administrators who have administered nationwide class actions. All participation will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they will provide useful insights into consumer understanding of the claims being considered.

### *B. PRA Burden Analysis*

Staff estimates that respondents will require, on average, 20 minutes to complete the questionnaire. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 38 hours, cumulatively (100 respondents × 23 minutes each). Once the pretest is completed, the FTC plans to seek information from up to 8,000 respondents for approximately 20 minutes each. Thus, respondents will cumulatively take approximately 2,700 hours. The cost per respondent should be negligible. Participation will not require start up, capital, or labor expenditures.

## III. Request for Comment

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.[2] As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the reporting requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 6, 2015. Write ''Class Action Deciding Factors Study, Project No. P024210'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social

[1] *See e.g.,* FTC's Mem. of Law as Amicus Curiae, *Nwabueze* v. *AT&T, Inc.,* 3:09–cv–1529 (N.D. Cal. Aug. 30, 2013), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/nwabueze-v.att-inc./130830nwabuezeamicus.pdf;* FTC's Mem. of Law as Amicus Curiae, *White* v. *EDebitPay, LLC,* 2:11–cv–06738 (C.D. Cal. Aug. 9, 2013), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/anita-white-et-al.v.edebitpay-l.l.c.et-al.no.211-cv-06738-cbm-ffm-c.d.cal-august-9-2013/130809edebitpayamicusbrief.pdf;* Mot. of FTC for Leave to File Brief as Amicus Curiae, *Moore* v. *Verizon Commc'ns, Inc.,* 4:09–cv–08123 (N.D. Cal. Aug. 17, 2012), available at *https://www.ftc.gov/sites/default/files/documents/amicus_briefs/moore-v.verizon-communications-inc./120817mooreverizonamicusbrief.pdf.*

[2] 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually-identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively-sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/decidingfactorsstudypra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Class Action Deciding Factors Study, Project No. P024210'' on your comment and on the envelope and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Room CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 6, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015–10419 Filed 5–4–15; 8:45 am]

**BILLING CODE 6750–01–P**

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## GENERAL SERVICES ADMINISTRATION

**[Notice–CSE–2015–01; Docket No. 2015–0002; Sequence No. 9]**

### Notice of the General Services Administration's Labor-Management Relations Council Meeting

**AGENCY:** Office of Human Resources Management (OHRM), General Services Administration (GSA).

**ACTION:** Notice of meetings.

**SUMMARY:** The General Services Administration's Labor-Management Relations Council (GLMRC), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S. C., App., and Executive Order 13522, plans to hold two meetings that are open to the public.

**DATES:** The meetings will be held on Tuesday, May 19, 2015, from 9:30 a.m. to 4:30 p.m., and Wednesday, May 20, 2015, 1:00 p.m. to 4:30 p.m., eastern standard time.

**ADDRESSES:** The meetings will be held in the General Services Administration's Conference Center, 1800 F Street NW., Washington, DC 20405. This site is accessible to individuals with disabilities. Please refer to the GLMRC Web site on *gsa.gov* for the most up-to-date meeting agenda, and access information including changes in meeting rooms, times, or dates.

**FOR FURTHER INFORMATION CONTACT:** Ms. Temple L. Wilson, GLMRC Designated Federal Officer (DFO), OHRM, General Services Administration, at telephone 202–969–7110, or email at *gmlrc@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The GLMRC is an advisory body composed of representatives of the Federal employee unions representing GSA employees and senior GSA officials. The GLMRC was established consistent with Executive Order 13522, entitled, ''Creating Labor-Management Forums to Improve Delivery of Government Services;'' which instructs Federal agencies to establish department- or agency-level labor-management forums to help identify problems and propose solutions to better serve the public and Federal agency missions. The GLMRC is tri-chaired by GSA's Chief Human Capitol Officer, together with two senior union officials from each of the two Federal employees' unions representing GSA employees.

The GLMRC works toward promoting cooperative and productive relationships between labor and management, providing an opportunity for employees through their union representatives to engage in pre-decisional involvement in all workplace matters to the fullest extent practicable, and to advise the GSA administrator on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The May 19, 2015 and May 20, 2015 meetings will establish GLMRC's priorities for 2015. The GLMRC will also discuss workforce planning and employee training and development.

The meetings are open to the public. In order to gain entry into the Federal building where the meeting is being held, public attendees who are Federal employees should bring their Federal employee identification cards, and members of the general public should bring their driver's license or other government-issued identification.

#### Public Comments

The public is invited to submit written comments for the meetings until 5:00 p.m. eastern time on Monday, May 18, 2015, by either of the following methods: *Electronic or Paper Statements:* Submit electronic statements to Ms. Temple Wilson, Designated Federal Officer, at *temple.wilson@gsa.gov;* or send paper statements in triplicate to Ms. Wilson at 1800 F Street NW., Suite 7003A, Washington, DC 20405. In general, public comments will be posted on the GLMRC Web site. All comments, including attachments and other supporting materials received, are part

of the public record and subject to public disclosure.

Any comments submitted in connection with the GLMRC meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

Dated: April 30, 2015.

**Wade Hannum,**

*Office of Human Resources Management, OHRM Director, Office of HR Strategy and Services, Center for Talent Engagement (COE4), General Services Administration.*

[FR Doc. 2015–10454 Filed 5–4–15; 8:45 am]

**BILLING CODE 6820–34–P**

## GULF COAST ECOSYSTEM RESTORATION COUNCIL

**[Docket No. 105XX2015–1111–03]**

## National Environmental Policy Act Implementing Procedures and Categorical Exclusions

**AGENCY:** Gulf Coast Ecosystem Restoration Council.

**ACTION:** Issuance of final procedures.

**SUMMARY:** The Gulf Coast Ecosystem Restoration Council (Council) is hereby issuing final procedures for implementing the National Environmental Policy Act (NEPA). These procedures include categorical exclusions (CEs) of actions the Council has determined do not individually or cumulatively have a significant effect on the human environment and, thus, are categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA.

**DATES:** *Effective Date:* June 4, 2015.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 6, 2012, the President signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (''RESTORE Act'' or ''Act'') into law. The Act establishes a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). Eighty percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* Oil Spill will be deposited into the Trust Fund. Under terms described in the Act, amounts in the Trust Fund will be available for projects and programs that restore and protect the environment and economy of the Gulf Coast region.

The Act is focused on the Gulf Coast region and has five components. The Direct Component, administered by the Department of the Treasury, sets aside 35 percent of the penalties paid into the Trust Fund for eligible activities proposed by the five Gulf Coast states—Alabama, Florida, Louisiana, Mississippi, and Texas—including local governments within Florida and Louisiana. The Council-Selected Restoration Component sets aside 30 percent of the penalties, plus half of all interest earned on Trust Fund investments, to be managed by a new independent entity in the Federal government called the Gulf Coast Ecosystem Restoration Council (Council). The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast states. One of the Federal members, the Secretary of Commerce, currently serves as Chairperson of the Council. The Council will direct Council-Selected Restoration Component funds to projects and programs for the restoration of the Gulf Coast region, pursuant to an Initial Comprehensive Plan that has been developed by the Council. Under the Spill Impact Component, the Gulf Coast states can use an additional 30 percent of penalties in the Trust Fund for eligible activities pursuant to plans developed by the states and approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on Trust Fund investments, will be divided equally between the final two components, a National Oceanic and Atmospheric Administration RESTORE Act Science Program and a Department of the Treasury administered Centers of Excellence Research Grants Program.

### II. These Procedures

These procedures establish the Council's policy and procedures to ensure compliance with NEPA and Council on Environmental Quality (CEQ) regulations for implementing NEPA. Each Federal agency is required to develop NEPA procedures as a supplement to the CEQ regulations. The Council's major responsibilities are set out in greater detail in the RESTORE Act, and responsibilities relative to the administration of the Council-Selected Restoration Component are further described below. The Council continues to deliberate policies and procedures relative to implementation of the Spill Impact Component. Information on such matters will be available at a later date.

The below NEPA procedures are applicable to Council actions. Activities funded pursuant to any component of the Act may also be subject to an environmental review under NEPA in instances where there is a separate Federal action. For example, a restoration project funded under the Direct Component would be subject to NEPA if it required a permit to fill wetlands pursuant to Section 404 of the Clean Water Act.

*Council-Selected Restoration Component*

The Act provides 30 percent of penalties deposited into the Trust Fund to the Council, plus one-half of the interest earned on Trust Fund investments, to carry out a Comprehensive Plan. In August 2013, the Council issued the Initial Comprehensive Plan for Restoring the Gulf Coast's ecosystem and economy. This Initial Comprehensive Plan provides a framework to implement a coordinated region-wide restoration effort to restore, protect, and revitalize the Gulf Coast. The Initial Comprehensive Plan was accompanied by a Programmatic Environmental Assessment.

Pursuant to the Act, the Council will develop a ''Funded Priority List'' (or FPL) of projects and programs to be carried out to advance the goals and objectives set forth in the Initial Comprehensive Plan, subject to available funding. The Council will periodically update the Initial Comprehensive Plan and the FPL, in accordance with the Act.

The FPL and subsequent updates will consist of a list of projects and programs which the Council intends to fund for planning, technical assistance, or implementation purposes. The Council anticipates that once the full amount ultimately to be paid into the Trust Fund is known, future amendments to the FPL will include significantly larger projects and project lists that reflect the full amount available to be spent for restoration activities. A Council commitment to fund implementation of a project or program in the FPL is a Federal action which requires the appropriate level of NEPA review. Examples of NEPA compliance include preparation of new NEPA documentation, adoption of existing NEPA documentation, or application of a CE, as warranted. The FPL may commit planning and technical assistance funds for activities such as engineering, design, and environmental compliance for projects and programs. According to the Initial Comprehensive Plan, a Council commitment of planning or technical assistance funds for a project or program in an FPL does not necessarily guarantee that the Council will subsequently fund implementation

of the project or program. Should the Council subsequently decide to fund implementation of the particular project or program, it will ensure the appropriate level of NEPA compliance prior to making its decision.

In developing and updating the FPL, the Council will seek to ensure that the projects and programs contained therein reflect a comprehensive approach for Gulf restoration, consistent with the Act and the Initial Comprehensive Plan. To that end, the Council will build upon existing restoration plans and strategies, engage the public, ensure the FPL is based on sound science, and assess the cumulative environmental impacts of projects and programs contained in the FPL, as appropriate.

There has been extensive Gulf coast restoration planning conducted at Federal, state, and local levels. This includes the Gulf Coast Ecosystem Restoration Task Force Strategy (Task Force Strategy), as well as state-level efforts, such as the Louisiana Comprehensive Master Plan for a Sustainable Coast and the Mississippi Coastal Improvement Program (MsCIP). In addition, watershed-level planning efforts have been conducted by Gulf-based National Estuary Programs and other stakeholder groups. The Council intends to build upon these planning efforts in developing the initial FPL and subsequent updates.

The Council will engage the public in the development of the FPL and subsequent updates. Public engagement conducted by the Council members prior to development of the draft FPL will be considered in the Council's project review and selection process. The public will also have an opportunity to review and comment on the draft FPL. Where applicable, the NEPA processes for specific projects and programs in the FPL will also provide opportunities for public input. The public would have the opportunity to provide input during the scoping of EISs as well as an opportunity to review and comment on draft EISs. Under some circumstances, as detailed in the NEPA procedures, the public would also have an opportunity to review and comment on draft EAs.

Independent scientific review of the projects and programs nominated for inclusion in the FPL will help ensure that all funded activities are based on the best available science. In some cases, projects and programs nominated for inclusion in the FPL may be derived from existing restoration plans, which have already undergone independent scientific review. In such cases, the Council's independent scientific review process would complement the scientific foundation established within the respective planning process.

The Council will ensure that the evaluations of projects and programs in the initial FPL and subsequent updates effectively assess potential cumulative impacts in accordance with NEPA, which requires a Federal agency to consider the incremental environmental impacts of the proposed action when combined with relevant past, present, and reasonably foreseeable future actions. The cumulative impact assessments will generally be tailored to the area of influence of the given activity. For example, a project with a large area of influence (such as a river diversion) would have a commensurately broader assessment of cumulative effects, while one with a limited area of influence (such as a small vegetative planting project) would have a more limited assessment of potential cumulative effects. To the extent appropriate, the assessment of cumulative impacts will draw upon existing information in relevant ongoing and completed NEPA documents, including the Initial Comprehensive Plan Programmatic EA, the *Deepwater Horizon* Natural Resources Damage Assessment Early Restoration Programmatic EIS, the Louisiana Coastal Area Ecosystem Restoration Plan Programmatic EIS, the MsCIP Programmatic EIS, and others. Among other potential benefits, effective cumulative impact assessments can help ensure that Council decisions regarding specific restoration projects are informed with a broader understanding of the relationship between such projects and other restoration activities, whether supported by the RESTORE Act or another funding source.

**III. Response to Public Comments and Other Changes to Procedures**

On January 16, 2015, the Council published draft NEPA procedures in the **Federal Register** for a 30-day public review and comment period (80 FR 2381). The Council received one comment letter, representing the combined comments of five organizations, on the draft NEPA procedures. The recommendations contained in that comment letter are summarized below, along with the Council's responses to the recommendations.

The commenter recommended the Council ensure that the alternatives analysis for projects and programs is robust and complete. The Council agrees that the analysis of alternatives is an essential component of the NEPA process. Consistent with CEQ regulations, the Council will ensure the rigor of the alternatives analysis for a project or program that requires evaluation in an EA or EIS is appropriate relative to the scope and magnitude of the activity being considered. As this is a policy-level recommendation, no change was made to the procedures in response to this comment.

The commenter recommended that the applicability and appropriateness of Council use of a member CE should be included in decision documents that are publically available. In response, the Council will inform the public when it uses a member CE in association with the approval of funding for a project or program under the Council-Selected Restoration Component. The Council will provide the public with the specific CE being used, along with the Council's findings regarding the review of potential extraordinary circumstances. Subsection 4(f) of the procedures has been modified to clarify that such information will be made available to the public on the Council's Web site.

The commenter recommended that the Council provide a list of member agencies' potentially applicable CEs on the Council's Web site or provide links to the federal agency Web sites where those CEs can be found. In response, the Council will provide and endeavor to maintain links to member agencies' CEs on its Web site. It should be noted, however, that the potential applicability of a member CE to a Council action would be determined on a case-by-case basis. By providing links to the member agencies' CEs, the Council is not necessarily indicating its intent to use any of the subject CEs. That is a determination that would be made based on the specific details of the activity to which the CE might be applied. No change was made to the procedures in response to this comment.

The commenter recommended that the Council change the word ''may'' to ''must'' in Section 15(b). The Council will advise each recipient of Council-Selected Restoration Component funds of the recipient's obligations to address any and all environmental laws that might be applicable to implementation of a given project or program but that are not necessarily applicable to the Council's approval of funding for the activity. As discussed in the procedures, the Council will also endeavor to concurrently address all environmental requirements applicable to a proposed project or program, to the extent feasible and appropriate. However, there may be instances where it would be appropriate for the Council to issue a Record of Decision that approves funding for a project or program pending completion

of all permits and approvals. For this reason, the Council has chosen to retain the discretion provided in the original language for this section.

The commenter recommended that the Council's NEPA procedures include a sunset provision (*e.g.,* five years) for the use of existing NEPA documents. The commenter also recommended that the Council develop specific criteria indicating environmental, ecological or other conditions that would trigger the development of a new EA or EIS. The Council agrees that a critical test when adopting or otherwise using a NEPA document that was not recently completed is determining whether the information contained therein is adequate and consistent with the requirements established in NEPA and the CEQ regulations. To that end, the procedures state that, in cases where the Council adopts a NEPA document, the supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects. The Council will apply this test to all NEPA documents it considers adopting. However, the Council will not set an expiration date on NEPA documents, as the age of a NEPA document does not necessarily dictate whether the information contained therein satisfies NEPA. Establishing an expiration date for NEPA documents might eliminate otherwise adequate NEPA documents from potential Council use. No change was made to the procedures in response to this comment.

The commenter recommended that the Council consider establishing an interagency co-located team for reviewing and preparing NEPA documents. The Council agrees that the use of interagency teams in the preparation and review of NEPA documents and other compliance information can result in greater efficiency and more robust information. Being comprised of a number of regulatory agencies, the Council is well-positioned to conduct such interagency work. Indeed, the Council has an interagency team that works on a range of issues pertaining to NEPA and environmental compliance. Going forward, the Council intends to consider whether establishing a co-located interagency team would be an appropriate use of resources relative to the potential benefits it could provide. Such resource decisions are in large part contingent upon the ultimate amount of funding the Council will administer, a number that is not currently known. As this is a policy level recommendation, no change was made to the procedures in response to this comment.

The commenter recommended that the Council establish a system to share relevant information and data with Council members and applicants preparing NEPA documents. The commenter also recommended that the Council apply lessons learned from prior NEPA coordination and share best practices with applicants and document preparers. In response, the Council agrees that sharing relevant information, data, and lessons-learned with project sponsors and within the Council membership could help ensure efficient and effective NEPA processes. This is one of the roles of the interagency team referenced above. The Council will continue to conduct such activities, while also looking for other ways to effectively share information to improve environmental compliance outcomes. As this is a policy level recommendation, no change was made to the procedures in response to this comment.

In addition to the modification discussed above, the Council has also made the following minor changes to the procedures to increase clarity and consistency. In Section 9 paragraph (b)(7), the Council added language indicating that copies of final EISs will also be provided to Federal agencies and other parties who commented substantively on the draft EIS. This change ensures consistency with similar language provided in Section 12 paragraph (c)(12) of the procedures. Also, Section 4 paragraph (h) has been revised to omit a reference to functional equivalence because it is not anticipated to be exercised with respect to the Council's activities. Finally, technical corrections were made to Section 4 paragraph (b), Section 5 paragraphs (b) and (c), and Section 13 paragraph (h)(8) to ensure consistency and compliance with NEPA, the CEQ Regulations, and a recent Executive Order.

## IV. Classification

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

As an independent Federal entity that is composed of, in part, six Federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to these procedures.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the Council to consider whether a document would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. These NEPA procedures apply to Council actions and applicants for funding under the Council-Selected Restoration Component of the Act. These applicants are limited by the Act to the Federal and state members of the Council. Therefore, the Council hereby certifies that these procedures would not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, the Council must have approval from the Office of Management and Budget (OMB) before collecting information from the public (such as forms, general questionnaires, surveys, instructions, and other types of collections). According to these NEPA procedures, applicants for funding under the Council-Selected Restoration Component could be required to prepare and submit NEPA documentation to the Council prior to a decision on whether to fund a given activity. These applicants would be limited to the Federal and state members of the Council and NEPA submissions would be unique to each individual project or program selected for inclusion in the FPL. These procedures would not lead to the collection of information. On this basis, the Council has determined that these procedures would not create any new information collection requirements for the public.

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

Executive Order 13175 requires the Council to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the

Federal government and Indian tribes. These NEPA procedures apply to the Council and its members, insofar as such members choose to apply for funding under the Council-Selected Restoration Component of the Act. Among other policies, these NEPA procedures establish Council policy regarding coordination and consultation with tribal governments in NEPA processes conducted under the Council-Selected Restoration Component, where applicable. These NEPA procedures do not in any way alter the right of tribal governments to engage in NEPA processes conducted by the Council. These NEPA procedures are intended to foster effective communication with tribal governments in that regard. The Council has therefore determined that these NEPA procedures would not have tribal implications as the term is used pursuant to Executive Order 13175.

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

Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations. The Council's NEPA procedures specifically call for the consideration of potential environmental justice issues in the development of Environmental Impact Statements, and reference the need to address Executive Order 12898, where applicable. The Council has therefore determined that these NEPA procedures do not raise any environmental justice concerns.

*National Environmental Policy Act*

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. *Sierra Club* v. *Bosworth,* 510 F.3d 1016, 1025–26 (9th Cir. 2007); *Heartwood, Inc.* v. *U.S. Forest Service,* 230 F.3d 947, 954–55 (7th Cir. 2000). Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

## GULF COAST ECOSYSTEM RESTORATION COUNCIL'S PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

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### Sec. 1. Purpose.

This document establishes the Gulf Coast Ecosystem Restoration Council's (Council) policy and procedures (Procedures) to ensure compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations 40 CFR parts 1500 through 1508 implementing the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347. These Procedures also address compliance with other related statutes and directives. More specifically, these Procedures implement the CEQ NEPA regulations requirement that agencies adopt supplemental NEPA procedures.

### Sec. 2. Authority.

NEPA and its implementing regulations establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, described as ''action-forcing'' in the CEQ regulations, to further the goals of NEPA. These major provisions include requirements to use a systematic, interdisciplinary approach to planning and decision-making (section 102(2)(A)) and develop methods and procedures to ensure appropriate consideration of environmental values (section 102(2)(B)). Section 102(2)(C) requires preparation of a detailed statement for major Federal actions significantly affecting the quality of the human environment that analyzes the impact of and alternatives to the action.

*Policy.* It is the Council's policy to:

(a) Comply with NEPA and other environmental laws, regulations, policies, and Executive Orders applicable to Council actions;

(b) Seek and develop partnerships and cooperative arrangements with other Federal, tribal, state, and local governments early in the NEPA process to help ensure efficient regulatory review of Council actions;

(c) Ensure that applicable NEPA compliance and its documentation includes public involvement appropriate to the action being proposed and its potential impacts;

(d) Interpret and administer Federal laws, regulations, Executive Orders, and policies in accordance with the policies set forth pursuant to NEPA, to the fullest extent possible;

(e) Consider the potential environmental impacts of Council actions as early in the planning process as possible; and

(f) Consult, coordinate with, and consider policies, procedures, and activities of other Federal agencies, as well as tribal, state, and local governments.

*Applicability.* These Procedures are intended to supplement CEQ's NEPA regulations, which also apply to proposed actions by the Council and are incorporated herein by reference.

Depending on the nature of the proposed action and its potential impacts on the human environment, Council actions may be categorically excluded (CE) from additional NEPA review by the Council, or require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). An EA results in a Finding of No Significant Impact (FONSI) or a decision to prepare an EIS.

The Council need not prepare an EA prior to an EIS; rather, if the Council believes the proposed action may significantly affect the quality of the human environment, it may proceed directly to preparation of an EIS. An applicant for funding may assist the Council, either by preparing the appropriate level of environmental analysis or hiring an environmental consultant to do so, as appropriate, for proposed actions. These Procedures will apply to the fullest extent practicable to proposed Council actions and environmental documents begun but not completed before these Procedures take effect. They do not apply, however, to decisions made and draft or final environmental documents completed prior to the date on which these Procedures take effect.

**Sec. 3. Definitions and Acronyms.**

The definitions contained within CEQ's regulation at 40 CFR part 1508 apply to these Procedures. Additional and expanded definitions and acronyms are as follows:

(a) ''Council'' means the Gulf Coast Ecosystem Restoration Council.

(b) ''Council Action'' is an action taken by the Council potentially subject to NEPA. Council Actions may be wholly or partially funded by the Council. Council Actions include but are not limited to awarding grants, contracts, purchases, leases, construction, research activities, rulemakings, and amendment or revision of a Comprehensive Plan.

(c) ''CE'' means Categorical Exclusion.

(d) ''CEQ'' means the Council on Environmental Quality.

(e) ''EA'' means an Environmental Assessment.

(f) ''EIS'' means an Environmental Impact Statement.

(g) ''EPA'' means the U.S. Environmental Protection Agency.

(h) ''Executive Director'' means the Executive Director of the Gulf Coast Ecosystem Restoration Council.

(i) ''FONSI'' means a Finding of No Significant Impact.

(j) ''NEPA Documents'' are any of the following:

(1) Documentation associated with use of a CE;

(2) Environmental Assessment;

(3) Finding of No Significant Impact;

(4) Notice of Intent (NOI) to Prepare an EIS;

(5) Draft, Final, or Supplemental Environmental Impact Statement;

(6) Record of Decision; and

(7) NOI to Adopt an EA or EIS.

(k) ''Project Sponsor'' or ''Applicant'' is the entity that seeks Council Action to fund a project or program.

(l) ''Record of Decision'' or ''ROD'', in cases requiring an EIS, is the decision and public document based on the EIS (*see* 40 CFR 1505.2).

(m) ''Responsible Official'' is the person delegated authority by the Council to make recommendations to the Council (or the Council's designated decision-maker) regarding compliance with NEPA and in some cases to implement decisions pertaining to NEPA (as described in these Procedures or in the Council's Standard Operating Procedures).

**Sec. 4. Actions Covered.**

(a) *General Rule.* The requirements of sections 5 through 15 of these Procedures apply to Council Actions that are determined to be Federal actions in accordance with this section.

(b) *Federal Actions.* For purposes of these Procedures, a Federal action is any Council Action that is potentially subject to the Federal control and responsibility of the Council. As described in the CEQ regulations, the term ''major'' does not have a meaning independent of the term ''significantly'' (*see* 40 CFR 1508.18).

(c) *Actions Categorically Excluded.* The Council has determined that certain categories of actions are eligible to use a CE for compliance with NEPA, as they do not have a significant impact individually or cumulatively on the quality of the human environment. A proposal is categorically excluded if the Council determines the following:

(1) The proposed action fits within a class of actions that is listed below;

(2) There are no extraordinary circumstances indicating the action may have a significant effect (*see* subsection (e) below); and

(3) The proposal has not been segmented to meet the definition of a CE.

(d) The following categories of Council Actions are categorically excluded from further NEPA review in an EA or EIS:

(1) *Administrative and Routine Office Activities:*

i. Administrative procurements (*e.g.,* for general supplies) and contracts for personnel services.

ii. Routine fiscal and administrative activities involving personnel (*e.g.,* recruiting, hiring, detailing, processing, paying, supervising, and recordkeeping).

iii. Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts, conducted in accordance with applicable procurement regulations, Executive Orders, and policies.

iv. Routine administrative office functions (*e.g.,* recordkeeping; inspecting, examining, and auditing papers, books, and records; processing correspondence; developing and approving budgets; responding to requests for information).

v. Routine activities and operations conducted in an existing structure that are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any.

vi. Council meetings, hearings, site visits, technical assistance, public affairs activities, and/or training in classrooms, meeting rooms, other facilities, or via the Internet.

(2) *Regulation, Monitoring, and Oversight of RESTORE Act Activities:*

i. Promulgation or publication of regulations, procedures, manuals, and guidance documents that are of an administrative, financial, legal, technical, or procedural nature.

ii. Internal orders and procedures that need not be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552.

iii. Preparation of studies, reports, or investigations that do not propose a policy, plan, program, or action.

(3) *Council Activities for Planning, Research or Design Activities (Documentation Required*):

i. Funding or procurements for activities which do not involve or lead directly to ground-disturbing activities which may have significant effects individually or cumulatively, and do not commit the Council or its applicants to a particular course of action affecting the environment, such as grants to prepare environmental documents, planning, technical assistance, engineering and design activities, or certain research. Use of this CE will be documented following the procedures described in subsection 4(f).

(4) *Council Funded Activities that Fall Under a CE of a Federal Council Member (Documentation Required*):

i. Any environmental restoration, conservation, or protection activity that falls within a CE established by a Federal agency Council member, provided no extraordinary circumstances preclude the use of the CE and the Federal agency that established the CE is involved in the Council action. A Federal agency Council member is involved in the Council action when that Federal agency advises the Council that use of

the CE would be appropriate for the specific action under consideration by the Council. Use of this CE will be documented following the procedures described in subsection 4(f).

(e) *Extraordinary Circumstances.* Some Council Actions that would normally be categorically excluded from further NEPA review in an EA or EIS may not qualify for a CE because extraordinary circumstances exist (*see* 40 CFR 1508.4). The Responsible Official, in cooperation with the applicant as appropriate, will conduct a review to determine if there are extraordinary circumstances. Such extraordinary circumstances are:

(1) A reasonable likelihood of substantial controversy regarding the potential environmental impacts of the proposed action.

(2) Tribal concerns with actions that impact tribal lands or resources.

(3) A reasonable likelihood of adversely affecting environmentally sensitive resources. Environmentally sensitive resources include but are not limited to:

i. Species that are federally listed or proposed for listing as threatened or endangered, or their proposed or designated critical habitats; and

ii. Properties listed or eligible for listing on the National Register of Historic Places.

(4) A reasonable likelihood of impacts that are highly uncertain or involve unknown risks or if there is a substantial scientific controversy over the effects.

(5) A reasonable likelihood of air pollution at levels of concern or otherwise requiring a formal conformity determination under the Clean Air Act.

(6) A reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (*see* Executive Order 12898).

(7) A reasonable likelihood of contributing to the introduction or spread of noxious weeds or non-native invasive species or actions that may promote the introduction, or spread of such species (*see* Federal Noxious Weed Control Act and Executive Order 13112).

(8) A reasonable likelihood of a release of petroleum, oils, or lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302 (Designation, Reportable Quantities, and Notification); or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention regulation.

The mere existence of any of the circumstances described above will not necessarily trigger preparation of an EA or EIS. The determination that an extraordinary circumstance exists and an EA or EIS is needed will be based on the potential significance of the proposed action's effects on the environment. If it is not clear whether a CE is appropriate, the Responsible Official, after consulting with the Council, may require preparation of an EA.

(f) *Documented Categorical Exclusion.* The purpose of CEs is to reduce paperwork and streamline the project implementation process. The NEPA does not require the Council to document actions that qualify for a CE and do not involve extraordinary circumstances (*see* 40 CFR 1500.4(p)). When the Responsible Official chooses to document use of a CE in addition to those identified in subsection 4(d)(3) and 4(d)(4), the documentation should include:

(1) A description of the proposed action.

(2) The CE relied upon, including the information or process used to determine that no extraordinary circumstances are present.

(3) A determination by the Responsible Official that the CE applies.

The Council will post documented CEs on its Web site. The Council, however, generally will not publicly post documentation supporting a CE for activities occurring on:

(1) Private lands; or

(2) Other lands under consideration by the Council for a project if the release of such information could lead to impacts to sensitive lands.

(g) *Emergency Actions/Alternate Arrangements:* In the event of an emergency situation, the Council may need to take an action to prevent or reduce the risk to the environment or public health or safety that may affect the quality of human environment without having the time to evaluate those impacts under NEPA. In some cases, the emergency action may be covered by an existing NEPA analysis or a CE, while in other cases, it may not.

(1) In cases where the Responsible Official, in consultation with the Council, determines that an EIS is appropriate, the Council will consult with CEQ about alternative arrangements for complying with NEPA in accordance with 40 CFR 1506.11.

(2) In cases where the Responsible Official determines that an environmental assessment is appropriate, the Responsible Official shall consult with the Council to establish alternative arrangements for the environmental assessment. Any such alternative arrangement for an EA must be documented and a copy provided to CEQ.

(h) *Actions Exempt from the Requirements of NEPA.* Certain Council Actions may be covered by a statutory exemption under existing law. The Council will document its use of such an exemption pursuant to applicable requirements.

**Sec. 5. Timing.**

(a) *General.* The potential environmental effects of a proposed Council Action will be considered at the earliest practicable time along with appropriate scientific, technical, and economic studies. Coordination with appropriate federal, state, tribal, and local authorities and, to the extent appropriate and described in these Procedures, the public meetings, should begin at the earliest practicable time. As a general matter, the project planning process should include all environmental permit evaluation and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner. Applicants or consultants should complete these tasks at the earliest possible time during project planning to ensure full consideration of all environmental resources and facilitate the Council's NEPA process.

(b) *Applications for Funding.* The Applicant may be responsible for preparation of the appropriate level of proposed NEPA analysis for the Council. An EA, EIS, or CE determination, as appropriate, will be completed prior to the final decision by the Council to fund a proposed project or program and should accompany the application for funding the proposed project through the decision-making process.

(c) *Council Initiated Actions.* The appropriate NEPA review will be completed prior to a decision by the Council to implement an action that would have impacts on the environment and should accompany the proposal through the decision-making process.

**Sec. 6. Coordinating NEPA on Joint Actions.**

Interagency coordination and collaboration can help ensure efficient and effective NEPA processes. To that end, the Council will serve as a Joint Lead, Lead Agency, or Cooperating Agency as appropriate for the

preparation of NEPA documents relevant to its activities. Subsections (a) through (c) below describe the circumstances in which the Council may serve as Joint Lead, Lead Agency, or Cooperating Agency, along with the general roles and responsibilities associated with each. In general, the Council will either be the Lead or Joint Lead Agency on all Council-initiated actions subject to NEPA.

(a) *Joint Actions.* Where one or more Federal agencies, together with the Council propose or are involved in the same action; are involved in a group of actions directly related because of functional interdependence or geographical proximity; or are involved in a single program, the Responsible Official for the Council should seek to join all such agencies in performing a joint NEPA analysis and, where appropriate, other necessary environmental documentation.

(b) *Lead Agency.*

(1) The Council will follow CEQ's regulation regarding designation of a Lead Agency when multiple Federal agencies are involved (40 CFR 1501.5). The Lead Agency should consult with the other participating agencies to ensure that the joint action makes the best use of the participating agencies' areas of jurisdiction and special expertise, that the views of participating agencies are considered in the course of the NEPA process, and that the compliance requirements of all participating agencies are met.

(2) When another Federal agency is the Lead Agency, the Council may act as either a Co-Lead Agency or a Cooperating Agency (as detailed in subsection (c) below), as appropriate.

(c) *Cooperating Agency.* When another Federal agency is a Lead Agency for the preparation of a NEPA review (*i.e.,* CE, EA, EIS) for a proposed activity, the Council may be a Cooperating Agency. When the Council is a Cooperating Agency on a joint action, the Responsible Official will perform the functions stated in 40 CFR 1501.6(b) and review the work of the Lead Agency to ensure that its work product will satisfy the requirements of the Council under these Procedures. After acting as a Cooperating Agency, the Council may adopt the NEPA document prepared by the Lead Agency, consistent with 40 CFR 1506.3. The Council will comply with the review and approval responsibilities contained in these Procedures prior to signing any final NEPA decision document.

**Sec. 7. Applicants for Funding.**

(a) *General.* The Council may require an applicant for funding to prepare the requisite draft NEPA analysis of the proposed project and to submit that analysis with the application. The Council may also require an applicant to prepare and submit environmental information in the form of a proposed EIS, proposed EA, or proposed documentation supporting the application of a CE. This could include, for example, a proposed draft EIS, proposed draft EA, proposed final EIS, or proposed final EA, pending Council adoption/approval. Documentation supporting application of a CE will normally be limited to a description of the proposed activity, the CE relied upon, and the information or process used to determine there are no extraordinary circumstances. The Council may require the applicant to act as a Joint Lead Agency, depending on whether the applicant is a Federal agency. Where appropriate, the Council will cooperate with state and local agencies to conduct joint processes, including joint environmental assessments and joint environmental impact statements, provided such cooperation is fully consistent with 40 CFR 1506.2.

(b) *Information Required.* When an applicant is required to submit environmental documentation for a proposed project or program, the Responsible Official, where appropriate, will specify the types and extent of information required, consistent with the CEQ regulations, these Procedures and any other applicable laws, regulations, Executive Orders, or policies. The Responsible Official will work with applicants early in the process, as appropriate, to assist in the development of information responsive to sections 10 through 13 of these Procedures. The project planning process should include all environmental permitting and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner.

(c) *Limits on Actions by the Applicant.* The Responsible Official will inform an applicant that the applicant may not take any action within the Council's jurisdiction that would have an adverse environmental impact or limit the choice of reasonable alternatives, prior to completion of the environmental review process by the Council (*see* 40 CFR 1506.1).

(d) *Council Responsibility.* The Council is responsible for its own compliance with Federal environmental laws, regulations, Executive Orders, and policies. As appropriate, the Responsible Official will solicit comments from interested parties on the environmental consequences of any application.

The Responsible Official will independently evaluate and prepare a recommendation to the Council regarding whether an applicant's environmental documentation satisfies the requirements of the CEQ regulations and these Procedures. In conducting this review, the Responsible Official will seek the advice of the Council Members and/or subject matter experts, as appropriate. Upon approval by the Council, the documentation will be considered to have been prepared by the Council for purposes of sections 9 through 15 of these Procedures.

**Sec. 8. Consultants.**

(a) *General.* The Council or applicants to the Council for funding may use consultants in the performance of NEPA analysis and the preparation of other environmental documents. The Responsible Official must approve the use of a selected consultant before the consultant begins performing analyses or preparing environmental documents related to Council-funded proposals. The Responsible Official will review any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures.

(b) *Conflicts of Interest (40 CFR 1506.5(c)).* The Responsible Official will exercise care in selecting consultants and reviewing their work to ensure that their analysis is complete and objective. Consultants will execute a disclosure statement prepared by the Responsible Official, certifying that they have no financial or other interest in the outcome of the project.

(c) *Council Responsibility (40 CFR 1506.5).* The Council is responsible for its own compliance with Federal environmental laws, regulations, policies and Executive Orders, and cannot delegate this responsibility to consultants. The Responsible Official will independently evaluate any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures. The Responsible Official will seek the advice of subject matter experts and/or Council members, as appropriate.

**Sec. 9. Public and Tribal Involvement for Environmental Impact Statements.**

(a) *Policy.* Public involvement is encouraged in the environmental analysis and review of a proposed Council Action.

(b) *Procedures.* After determining that a draft EIS should be prepared, the Lead or Co-Lead agency will implement the following procedures, at a minimum, to engage affected members of the public and solicit public input:

(1) Develop a list of interested parties, including Federal, regional, state, and local authorities, tribes, environmental groups, individuals, businesses, and community organizations, as applicable.

(2) Publish an NOI in the **Federal Register**, and initiate scoping in accordance with 40 CFR 1501.7 and 1508.22, and notify directly those officials, agencies, organizations, tribes and individuals with particular interest in the proposal. The Council shall engage in Nation-to-Nation consultation, as required.

(3) Hold public scoping meetings as appropriate to the action.

(4) Circulate the draft EIS for comment to interested parties.

(5) Publicize the availability of the draft EIS by press release, advertisement in local newspapers of general circulation, or other suitable means such as posting the draft EIS on the Council's Web site. As appropriate, the Council will also circulate the draft EIS and supporting documents to public depositories, such as libraries. The EPA will publish a notice of availability in the **Federal Register** which will determine the appropriate duration of the public review and comment period.

(6) If necessary or desirable, using the criteria in 40 CFR 1506.6(c), hold a public meeting or public hearing on the draft EIS. If a public hearing is held, the draft EIS should be made available at least 15 days prior to the hearing.

(7) Consider and respond to all substantive comments in the final EIS and provide copies of the final EIS to all who request a copy, and to Federal agencies and other parties who commented substantively on the draft EIS.

(c) *List of Contacts.* Interested persons may obtain information on the Council's environmental process and on the status of EIS's issued by the Council from the Responsible Official. The Council will provide contact information on the Council's Web site and in other public notices.

**Sec. 10. Environmental Assessment.**

(a) *Policy.* The Responsible Official should perform, participate in, or coordinate, as appropriate, the process of considering the environmental impacts of a proposed Council Action at the earliest practical time in the planning process. To the fullest extent possible, steps to comply with all environmental laws, regulations, policies and Executive Orders, as well as the requirements of the RESTORE Act, will be undertaken concurrently.

(b) *Scope.* An EA should contain a brief discussion of the proposed action; the purpose and need for the proposed action; an appropriate range of reasonable alternatives to the proposed action, including a no action alternative; an evaluation of the environmental impacts of the proposed action and any identified alternatives; a list of the agencies and persons consulted; a list of alternatives eliminated from further analysis with an explanation of why they were eliminated; a list of all applicable Federal environmental laws and requirements; and mitigation measures needed to reduce environmental impacts to below the level of significance (if applicable). The scope of environmental impacts considered in the EA should include both beneficial and adverse impacts; direct, indirect, and cumulative impacts; impacts of both long- and short-term duration; as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

The level of detail and depth of impact analysis should be limited to documenting the potential impacts of the proposed action and whether the proposed action would result in any significant adverse environmental impacts. The EA should contain objective analyses to support its environmental impact conclusions.

(c) *Using Existing Environmental Analyses Prepared Pursuant to NEPA and the CEQ Regulations.*

(1) When available, the Responsible Official, or applicant if applicable, should use existing NEPA analyses for assessing the impacts of a proposed action and reasonable alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.

(2) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official, or applicant if applicable, should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

(3) An existing environmental analysis prepared pursuant to NEPA and the CEQ regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.

(4) The Responsible Official, or applicant if applicable, should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous environmental analyses to avoid redundancy and unnecessary paperwork.

(d) *Public Coordination on the EA/FONSI.*

(1) Normally a draft FONSI need not be coordinated in advance outside the Council prior to its issuance. Copies of approved FONSIs will be available to the public, government agencies, or Congress upon request at any time.

(2) The Council will post final EAs and approved FONSIs on its Web site.

(3) To the extent appropriate and practicable, the Council may provide the public with an opportunity to review and comment on draft EAs. When the proposed action is, or is closely similar to, one which normally requires an EIS as identified in Section 12 of these Procedures, or when the nature of the proposed action is one without precedent, the Council will make a draft EA available to the public for review for a period of not less than 30 days before the final determination is made by the Council. The Council will consider any and all comments received prior to making a final decision regarding the associated FONSI.

(e) *Level of Analysis.* The EA process should assess each impact identified as relevant to the proposed action or alternatives. The level of analysis of each impact should be guided by the following factors:

(1) The likelihood of the potential effects;

(2) The magnitude of the potential effects; and

(3) Whether any adverse effects on the environment may be significant, even if on balance the proposed project may be beneficial.

(f) *Determination Based on the EA.* On the basis of the EA, the Responsible Official will determine whether the proposed action has a potentially significant impact on the human environment and will make a recommendation to the Council as to whether an EIS is needed. Based on the Council's decision, the Responsible Official will take action in accordance with subsection (1) through (3) below, as applicable:

(1) If the Council decides that the proposed action will not have a significant impact on the human environment, the Responsible Official will prepare a draft FONSI in accordance with Section 11 of these Procedures.

(2) If the Council decides that the proposed action has a potentially significant impact, the Responsible Official will prepare an NOI to prepare an EIS, and begin the scoping process (40 CFR 1501.7).

(3) If the proposed action will occur in a wetland or in a 100-year floodplain, the Council will ensure an opportunity for public comment on a draft of the EA. If such a situation is present, the EA also will follow Section 13(h)(6) or (8) of these Procedures, as applicable.

**Sec. 11. Finding of No Significant Impact.**

(a) *General.* A FONSI, as determined in accordance with Section 10 of these Procedures, is prepared for all Council Actions for which an EIS is not required and a CE does not apply.

(b) *Decision-making on the Proposed Action.* The Council may not commit itself or its resources to an action requiring an EA (but not an EIS) until a FONSI has been approved in accordance with this Section.

(c) *Staff Responsibilities.*

(1) When required, the Responsible Official will prepare a draft FONSI, which will include the EA, or a summary of it, and note any other related environmental documents.

(2) After complying with subsection (c)(1) of this Section, the Responsible Official will present the finding to the Council, which will approve the FONSI or decide an EIS will be prepared. The Council will authorize the Executive Director to sign FONSIs on behalf of the Council.

(d) *Representations of Mitigation.* There may be situations in which the Council relies on the implementation of certain measures to mitigate the significance of the proposed action's environmental impacts and bases its FONSI on the implementation of such measures. Under such situations, the Council will ensure that the mitigation measures are implemented. Where applicable, the Council will work with the applicant to include appropriate mitigation measures as a grant condition or as a contract provision. *See,* CEQ's Memorandum, ''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact.''

(e) *Changes and Supplements.* If, prior to taking a final Council Action for which a FONSI was prepared, a significant change is made that would alter environmental impacts, or if significant new information becomes available regarding the environmental impacts, the Responsible Official, or applicant if applicable, will reevaluate the EA to determine whether supplementation is necessary. If the EA is not sufficient, the Responsible Official, or applicant if applicable, will supplement the existing EA or prepare a new EA to determine whether the changes or new information indicate the action may have a significant impact. If, because of the change or new information, the proposed action may have a significant impact, the Responsible Official, after consulting with the Council, will issue an NOI to prepare an EIS and begin the scoping process.

(f) *Contents of a FONSI (40 CFR 1508.13).* A FONSI may include the EA or it may incorporate the EA by reference, in accordance with CEQ's regulations. The FONSI may be combined with a Council decision-making document or it may be limited to determining that an EIS is not required. A FONSI should contain at least the following:

(1) Identification of the document as a FONSI;

(2) Identification of the Council;

(3) The title of the action;

(4) The preparer(s) of the document (*i.e.,* a list of those persons or organizations assisting in the preparation of the document);

(5) The month and year of preparation of the document;

(6) The name, title, address, and phone number of the person in the Council who should be contacted to supply further information about the document;

(7) A brief description of the proposed action;

(8) A brief description of, or reference to the page/section in the EA that discusses, the alternatives considered;

(9) A brief discussion of, or reference to the page/section in the EA that discusses, the environmental effects of the proposed action;

(10) Documentation of compliance with Sections 13(h)(6) and (8) of these Procedures, if the proposed action will occur in a wetland or in a 100-year floodplain;

(11) Reference to the page/section in the EA that provides the list of all Federal permits, licenses, and any other approvals or consultations which must be obtained in order to proceed with the proposal;

(12) A discussion of mitigation measures and environmental commitments that will be implemented, if applicable;

(13) A conclusion that the preferred alternative, and where appropriate any other reasonable alternative(s), has no potentially significant impact; and

(14) The Executive Director's signature indicating the approval of the Council as detailed in subsection (c) of this Section.

**Sec. 12. Environmental Impact Statement.**

(a) *General.* The Council will prepare an EIS for Council Actions with potentially significantly impacts, as determined in accordance with Section 10 of these Procedures.

(b) *Decision-making on the Proposed Action.* The Council may seek a waiver from the EPA of the time limit requirements of 40 CFR 1506.10 for compelling reasons of national policy.

(c) *Staff Responsibilities and Timing.*

(1) The Council, or applicant if applicable, should begin the process for preparation of an EIS as soon as it determines, or the EA performed in accordance with Section 10 of these Procedures discloses, that the proposed action has potentially significantly environmental impacts.

(2) If the Council is the Lead Agency or Joint Lead, the Responsible Official will issue an NOI and undertake the scoping process identified in 40 CFR 1501.7 as soon as the Council decides to prepare an EIS.

(3) In preparing a draft EIS, the Responsible Official, or applicant if applicable, will consider any scoping comments, develop the relevant analysis, and engage in applicable coordination in accordance with CEQ's regulations and Section 13 of these Procedures.

(4) The Responsible Official will submit the proposed draft EIS to the Council.

(5) A draft EIS may be formally released outside the Council only after approval by the Council.

(6) The Responsible Official will direct electronic distribution of the draft EIS as follows: EPA; all interested Council regional and state offices; all Federal agencies that have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action; tribal, state, and local government authorities; to the extent practicable and appropriate, public libraries in the area to be affected by the proposed action; and all other interested parties identified during the preparation of the draft EIS that have requested a copy. Hard copies will be made available upon request. Public notice will be designed to reach potentially

interested or affected individuals, governments, and organizations. In addition, the draft EIS will be made available on the Council's Web site concurrently with the public comment period.

(7) The draft EIS will be made available for public and agency comment for at least 45 days from the date when EPA publishes its Notice of Availability (NOA) in the **Federal Register**. The time period for comments on the draft EIS will be specified in a prominent place in the NOA and on the coversheet of the draft EIS. Public comments must be provided to the person designated in the public notice.

(8) Where a public hearing is to be held on the draft EIS, as determined in accordance with Section 9(b)(6) of these Procedures, the draft EIS will be made available to the public at least 15 days prior to the hearing (*see* 40 CFR 1506.6).

(9) The Responsible Official will consider substantive comments received on the draft EIS. If a final EIS is not submitted to the Council for approval within three years from the date of the draft EIS circulation, the Responsible Official or applicant, as appropriate, will prepare a written reevaluation of the draft to determine whether the draft EIS warrants supplementation due to changed circumstances or new information. If so, a supplement to the draft EIS or a new draft EIS will be prepared and circulated as required by subsections (1) through (9) of this subsection. If the draft EIS does not warrant supplementation, the Responsible Official will prepare the final EIS.

(10) The Responsible Official will submit the final EIS and draft ROD to the Council for a decision (*see* Section 15 of these Procedures).

(11) The ROD will become final upon signature of the Executive Director. The Council will delegate authority for signature of RODs to the Executive Director, provided such RODs are first approved by the Council.

(12) The Responsible Official will direct electronic distribution of the final EIS and ROD as follows: EPA; all interested Council regional and state offices; state, tribal, and local authorities; to the extent practicable, public libraries in the area affected by the proposed action; Federal agencies and other parties who commented substantively on the draft EIS; and all agencies, organizations, or individuals that have requested a copy. Hard copies will be provided upon request. The final EIS and ROD will be posted on the Council's Web site and notice will go out to interested parties who have asked to receive notice.

(13) If major steps toward implementation of the proposed action have not commenced, or a major decision point for actions implemented in stages has not occurred, within three years from the date of publication of the final EIS, the Responsible Official will prepare a written evaluation of whether the final EIS warrants supplementation. The Responsible Official will submit this evaluation to the Council.

(d) *Changes and Supplements.* Where a draft or final EIS has been prepared for a proposed Council Action, and substantial changes to the proposal are made or significant new circumstances or information comes to light that is relevant to environmental concerns and bears on the proposed action or its impacts, the Responsible Official, or applicant if appropriate, will prepare a supplement to the original draft or final EIS. Such a supplement will be processed in accordance with subsections (3) through (13) of subsection (c) of this Section. The Responsible Official will determine whether, and to what extent, any portion of the proposed action is unaffected by the planning change or new information. Where appropriate, Council decision-making on portions of the proposed action having utility independent of the affected portion may go forward regardless of the concurrent processing of the supplement, so long as the EIS and ROD are completed for those actions having independent utility and the NOI for the supplemental NEPA analysis and documentation articulates the basis for determining independent utility.

(e) *Representations of Mitigation.* Where a final EIS has represented that certain measures will be taken to mitigate the adverse environmental impacts of an action, the Council will include the mitigation measures, and any appropriate monitoring wherever appropriate, as a condition of funding or, where appropriate, contract provisions. If necessary, the Council may take steps to enforce implementation of such mitigation measures.

(f) *Contents of an EIS.* The contents of both a draft and final EIS are detailed in the CEQ regulations and Section 13 of these Procedures. Recognizing that CEQ regulations allow the combination of NEPA documents with other agency documents and that the Council may find it practical to do so, format and page limitations on EIS's should follow those set out in 40 CFR 1502.7 and 1502.10, to the extent practicable. An EIS should avoid extraneous data and discussion. The text of an EIS should be written in plain language, comprehensible to a lay person. Technical materials should be placed into appendices, produced as stand-alone reports available on the Council's Web site, or made available in hard copy by request. Graphics and drawings, maps, and photographs may be used as necessary to clarify the proposal and its alternatives. The sources of all data used in an EIS will be noted or referenced in the EIS.

Previous NEPA analyses should be used, where available, to ensure efficient preparation of an EIS. As appropriate, previous NEPA analyses can be tiered to, incorporated by reference, or may be adopted into the document consistent with CEQ's regulations and the process detailed above in subsection 10(c). *See* 40 CFR 1502.20, 1502.21, and 1508.28.

**Sec. 13. Contents of an Environmental Impact Statement.**

To the fullest extent possible, the Responsible Official, Lead Agency, or applicant, will concurrently draft the EIS while seeking compliance with other applicable environmental requirements.

In addition to the requirements of 40 CFR 1502.10 through 1502.18, and subject to the general provisions of Section 12 of these Procedures, an EIS should contain the following:

(a) Identification of the Council.

(b) The Responsible Official who prepared or oversaw preparation of the document.

(c) The month and year the document was prepared.

(d) In a draft EIS, the name, title, and address of the person in the Council to whom comments on the document should be addressed, and the date by which comments must be received to be considered. Typically this will be the Responsible Official.

(e) A list of those persons, organizations, or agencies assisting the Council in the preparation of the document.

(f) In a final EIS, a list of all agencies, organizations, or persons from whom comments were received on the draft EIS.

(g) A short, introductory description of the environment likely to be affected by the proposed action, including a list of all states, counties, and local areas likely to be affected.

(h) Consistent with the description provided in 40 CFR 1502.16, an analysis of the environmental consequences of the proposed action. The following areas should be considered in the environmental analysis, although their discussion—and the extent of that

discussion—in the EIS is dependent on their relevance:

(1) Air quality. There should be an assessment of the consistency of the proposal and alternatives with Federal and state plans for the attainment and maintenance of air quality standards.

(2) Water quality. There should be an assessment of the consistency of the alternatives with Federal and state standards concerning drinking water, storm sewer drainage, sedimentation control, and non-point source discharges such as runoff from construction operations. The need for any permits under sections 402 and 404 of the Clean Water Act (33 U.S.C. 1342 and 1344) and Section 10 of the Rivers and Harbors Act should also be assessed.

(3) Noise. The alternatives should be assessed with respect to applicable Federal, state, and local noise standards.

(4) Solid waste disposal. The alternatives should be assessed with respect to state and local standards for sanitary landfill and solid waste disposal.

(5) Natural ecological systems. The EIS should assess both short-term (*e.g.,* construction period) and long-term impacts of the alternatives on wildlife, vegetation, and ecological processes in the affected environment.

(6) Wetlands. In accordance with Executive Order 11990, the EIS should determine whether any of the alternatives will be located in a wetland area. If the proposed action is located in a wetland area, the final EIS should document a determination by the Responsible Official that there is no practicable alternative to such location, and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(7) Protected species. If applicable, the EIS will discuss the impacts of the alternatives on species that are listed or proposed for listing as threatened or endangered under the Endangered Species Act, or the proposed or designated critical habitats for such species; protected species under the Marine Mammal Protection Act; and birds protected under the Migratory Bird Treaty Act. In such cases, the EIS should discuss any consultation or coordination, as appropriate, with the appropriate Federal agency.

(8) Flood hazard evaluation and floodplain management. Under E.O. 11988, as amended by E.O. 13690, Federal agencies proposing activities in a 100-year floodplain are directed to consider alternatives to avoid adverse effects and incompatible development in the floodplain. If no practicable alternatives exist to siting an action in the floodplain, the EIS should discuss how the action will be designed to minimize potential harm to or within the floodplain.

(9) Coastal zone management. If applicable, the EIS should discuss to what extent the alternatives are consistent with approved coastal zone management programs in affected states, as required by section 307(c)(2) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(2).

(10) Essential Fish Habitat (EFH). If applicable, the EIS will identify any EFH that could be impacted by the alternatives. Actions that could have the potential to affect EFH require consultation with the National Oceanic and Atmospheric Administration under the Magnuson-Stevens Act to evaluate potential impacts to designated EFH and minimize these impacts. The final EIS should document these consultations.

(11) Use of natural resources other than energy, such as water, minerals, or timber.

(12) Aesthetic environment and scenic resources. The EIS should identify any significant aesthetic changes likely to occur in the natural landscape and in the developed environment.

(13) Land use. The EIS should assess the impacts of each alternative on local land use controls and comprehensive regional planning, as well as on development within the affected environment, including, where applicable, other proposed federal actions in the area.

(14) Socioeconomic environment. The EIS should assess the number and kinds of available jobs likely to be affected by the alternatives. For each alternative considered, the EIS should also discuss the potential for community disruption or cohesion, the possibility of demographic shifts, and impacts on local government services and revenues.

(15) Public health and public safety. The EIS should assess potential environmental impacts relevant to public health and safety. For example, the EIS should assess the transportation or use of any hazardous materials that may be involved in the alternatives, and the level of protection afforded residents of the affected environment from construction period and long-term operations associated with the alternatives.

(16) Recreation areas and opportunities. The EIS should assess the impacts of the alternatives on recreational activities, including impacts on non-site-specific activities, such as hiking and bicycling, and impacts on non-activity-specific sites such as those designated ''open space.''

(17) Environmental Justice. The EIS should address environmental justice considerations as required by Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.''

(18) Sites of historical, archeological, architectural, or cultural significance. In accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), and its implementing regulations, 36 CFR part 800, the EIS should identify all properties included in or eligible for inclusion in the National Register of Historic Places that may be affected by the preferred alternative and other reasonable alternatives. The EIS also should include documentation of the status of consultation with the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). The EIS should discuss the criteria of adverse effect on historic properties (36 CFR 800.5) with regard to each alternative. The final EIS should include documentation of the status of consultation with the appropriate SHPO(s) or THPO(s). In the event that the Responsible Official, in consultation with the SHPO or THPO, finds that a proposed action will have an adverse effect on such a site, the final EIS also should include documentation of the status of subsequent consultation with the Advisory Council on Historic Preservation.

(19) Climate Change. The EIS should estimate the greenhouse gas emissions associated with the alternatives, as appropriate, and consider mitigation measures. The EIS should also consider the effects that climate change may have on the proposed alternatives, and consider adaptation alternatives, where appropriate.

(20) Hazardous, radioactive, and toxic waste. The EIS should assess the consistency of the alternatives with Federal and state requirements concerning hazardous, radioactive, and toxic waste management in the program or project area.

(i) A description of the impacts of the alternatives and a detailed description of mitigation measures available or planned to avoid, minimize, rectify, reduce over time, or compensate each adverse impact, if not included in the alternatives. Impacts and mitigation measures should be identified in a table as long-term and/or short-term as applicable. This part of the EIS should also include a summary of any irreversible or irretrievable

commitments of resources that would be likely to result from the alternatives.

(j) A brief discussion of the relationship between local short-term uses of the environment affected by the alternatives, and the maintenance and enhancement of long-term productivity.

(k) A compilation of all applicable Federal, state, and tribal permits, licenses, and approvals which are required before the proposed action may commence. The final EIS should document compliance with the requirements of all applicable Federal environmental laws, regulations, Executive Orders, and policies. If compliance is not possible by the time of final EIS issuance, the final EIS should discuss the status of compliance and should specify that all applicable environmental compliance requirements must be addressed prior to project implementation.

(l) The final EIS should provide a synopsis or compilation of substantive comments received on the draft EIS, whether made in writing or orally at a public hearing, and responses to comments. The response to those comments should be consistent with the procedures set forth in CEQ's regulations (40 CFR 1503.4). Comments may be collected and summarized, except for comments by other Federal agencies which should be provided in total and where otherwise required by Federal law or regulation. Before the EIS is put into final form, every effort should be made to resolve significant issues with the Federal or state agencies administering Federal laws. The final EIS will describe such issues, consultations and efforts to resolve such issues, and provide an explanation of why any remaining issues have not been resolved.

**Sec. 14. Programmatic Environmental Review.**

(a) A programmatic NEPA analysis is used to assess the environmental impacts of a proposed action that is broad in reach; analysis of subsequent actions that fall within the program may be tiered to such analyses, as described in the CEQ regulations (40 CFR 1502.20 and 1508.28). A programmatic analysis may be used for proposed policies, plans, and programs that address a given geographic area, common environmental impacts to a class of actions, or activities that are not location-specific.

(b) Programmatic NEPA analyses may take the form of a programmatic environmental assessment or environmental impact statement.

(c) Programmatic NEPA analyses may be used when there are limitations on available information or uncertainty regarding the timing, location, and environmental impacts of subsequent implementing actions.

(d) A programmatic NEPA analysis may also provide the basis for decisions regarding proposed projects prior to the Council's consideration of the impacts for specific projects (*e.g.,* applicable mitigation measures, identifying alternatives). This analysis can also programmatically address potential cumulative and indirect effects. This provides an opportunity to tier the consideration of the subsequent action to the programmatic analysis, avoiding duplicative efforts.

(e) The document should identify program-level alternatives and assess the broad program-wide environmental impacts. To the extent information is available, it should also identify the reasonable alternatives to and potential impacts of project-specific Council Actions within the program, and the impacts on resources.

(f) Where a programmatic environmental document has been prepared, the Responsible Official may examine each project-level action encompassed by the programmatic document to determine whether the project-level action has been sufficiently analyzed in the programmatic document to determine whether and what additional analysis is appropriate.

(g) For any project-level action, the Council, or project applicant, will prepare additional environmental documentation as required by these Procedures, unless the documentation prepared for the programmatic action satisfies the requirements of these Procedures. Project-level documentation should reference and summarize the programmatic document and limit the discussion to the unique alternatives to, impacts of, and mitigation for the project.

(h) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a ''finding of no new significant impact.''

**Sec. 15. Record of Decision.**

(a) *General.* The Responsible Official will prepare a draft ROD when the Council is prepared to make a final decision on the proposed action. The timing of the agency's decision will follow the requirements of 40 CFR 1506.10. The draft ROD may be processed concurrently with the final EIS. If the draft ROD is processed subsequently, it will follow the same approval process as a final EIS.

(b) *Contents.* The ROD will include a description of the proposed action and the environmental information specified in 40 CFR 1505.2. A ROD may be conditioned upon the approval of permits, licenses, and/or approvals that were not complete prior to issuance of the ROD.

(c) *Changes.* If the Council wishes to take an action not identified as the preferred alternative in the final EIS, or proposes to make substantial changes to the findings discussed in a draft ROD, the Council will revise the ROD and process it internally in the same manner as EIS approval, in accordance with Section 12(c) of these Procedures.

**Will D. Spoon,**

*Program Analyst, Gulf Coast Ecosystem Restoration Council.*

[FR Doc. 2015–10439 Filed 5–4–15; 8:45 am]

**BILLING CODE 6560–58–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–15–003, Evaluating Structural, Economic, Environmental, or Policy Primary Prevention Strategies for Intimate Partner Violence and Sexual Violence.

*Times and Dates:* 12:00 p.m.–5:00 p.m., EDT, June 4, 2015 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Evaluating Structural, Economic, Environmental, or Policy Primary Prevention Strategies for Intimate Partner Violence and Sexual Violence'', CE–15–003.

*Contact Person for More Information:* Gwendolyn Cattledge, Ph.D., M.S.E.H., Scientific Review Officer, CDC, 4770 Buford Hwy. NE., Mailstop E63, Atlanta, Georgia 30341–3724, Telephone: 770–488–4655.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices Pertaining to announcements of meetings and other committee Management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015–10416 Filed 5–4–15; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Special Interest Project (SIP) 15–006, Building Local Community Health Leadership for Action on Preventing Chronic Disease.

Time and Date: 10:00 a.m.–6:00 p.m., EDT, May 28, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Building Local Community Health Leadership for Action on Preventing Chronic Disease'', SIP 15–006.

Contact Person for More Information: Brenda Colley Gilbert, Ph.D., M.S.P.H., Director, Extramural Research Program Operations and Services, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–6295, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015–10417 Filed 5–4–15; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–15–004, Evaluating Innovative and Promising Strategies to prevent Suicide among Middle-Aged Men.

*Time and Date:* 12:00 p.m.–5:00 p.m., EDT, June 2, 2015 (CLOSED).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Evaluating Innovative and Promising Strategies to prevent Suicide among Middle-Aged Men'', CE–15–004.

*Contact Person for More Information:* Gwendolyn Cattledge, Ph.D., M.S.E.H., Scientific Review Officer, CDC, 4770 Buford Hwy. NE., Mailstop E63, Atlanta, Georgia 30341–3724, Telephone: (770) 488–4655.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015–10415 Filed 5–4–15; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number CDC–2015–0026; NIOSH 248–B]**

### World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Time and Date:* 10:00 a.m.–4:45 p.m., June 4, 2015 (All times are Eastern Daylight Savings Time).

*Place:* Jacob J. Javits Federal Building, 26 Federal Plaza, New York, New York 10278. This meeting is also available by teleconference. The USA toll-free, dial-in number is 1–888–810–6754, and when prompted enter passcode—1908415. To view the web conference, enter the following web address in your web browser: *https://odniosh.adobeconnect.com/wtcstacjune4/.*

*Public Comment Time and Date:* 1:30 p.m.–2:00 p.m., June 4, 2015.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below by May 29, 2015. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come, first served basis. Written comments will also be accepted from those unable to attend the public session.

*Status:* Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 100 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

*Background:* The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. 300mm–300mm–61.

*Purpose:* The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the Administrator of the World Trade Center (WTC) Health Program regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions, as well as providing consultation on research to the Administrator of the World Trade Center Health Program. Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the Administrator of the World Trade Center Health Program. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks (''survivors''). Certain specific activities of the Administrator of the World Trade Center Health Program are reserved to the Secretary, HHS, to delegate at her discretion; other duties of the Administrator of the World Trade Center Health Program not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under section 300mm–1(a) is delegated to the Director of NIOSH in his role as Administrator of the World Trade Center Health Program. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was reissued on May 12, 2013, and will expire on May 12, 2015. The charter renewal is currently in process.

*Matters for Discussion:* The agenda for the Advisory Committee meeting includes a review of the World Trade Center Health Program's (WTCHP) structure and function, activities, member services, and communications. An overview of the WTC health research, the WTC Registry, and lessons learned in addressing WTC-related mental health issues will also be presented. The Advisory Committee will deliberate on specific questions related to: (1) Addressing the need for research on developmental or health effects in children; (2) developing robust and appropriate comparison groups to improve the validity and interpretability of WTC research; (3) improving benefits counseling and psychosocial support for members serviced by the National Provider Network; and (4) reviewing the WTCHP's ''Research-to-Care'' model.

The agenda is subject to change as priorities dictate.

To view the notice, visit *http://www.regulations.gov* and enter CDC–2015–0026 in the search field and click ''Search.''

*Public Comment Sign-up and Submissions to the Docket:* To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

*Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226.

*Email: nioshdocket@cdc.gov.*

*Telephone:* (513) 533–8611.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted through *http://www.regulations.gov* by May 29, 2015. Efforts will be made to provide the two-page written comments received by the deadline below to the committee members before the meeting. Comments in excess of two pages will be made publicly available at *http://www.regulations.gov.* To view background information and previous submissions go to NIOSH docket *http://www.cdc.gov/niosh/docket/archive/docket248.html and http://www.cdc.gov/niosh/docket/archive/docket248-A.html.*

*Policy on Redaction of Committee Meeting Transcripts (Public Comment):* Transcripts will be prepared and posted to *http://www.regulations.gov* within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (*e.g.,* medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and, if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

*Contact Person for More Information:* Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 2400 Century Parkway NE., Mail Stop E–20, Atlanta, Georgia 30345, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015–10418 Filed 5–4–15; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, (BSC) National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Times and Dates:* 8:30 a.m.–5:00 p.m., EDT, June 3, 2015; 8:30 a.m.–11:45 a.m., EDT, June 4, 2015.

*Place:* CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

*Purpose:* The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

*Matters for Discussion:* The agenda items for the BSC Meeting will include NCEH/ATSDR Office of the Director updates; CDC/ATSDR Activities on Household Air Pollution and Cleaner Cookstoves; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; At the Intersection of Public Health and Health Care: CDC's National Asthma Control Program; Environmental Health Services: Vessel Sanitation Program, Model Aquatic Health Code; Geospatial Research, Analysis, and Services Program; NCEH/ATSDR Emergency Management Activities; Environmental Health Tracking Program; Advances in

Laboratory Methods—Molecular Newborn Screening Tests; and updates from the National Institute for Environmental Health Services, National Institute for Occupational Safety and Health, U.S. Department of Energy and the U.S. Environmental Protection Agency.

Agenda items are subject to change as priorities dictate.

*Supplemental Information:* The public comment period is scheduled on Wednesday, June 3, 2015 from 2:45 p.m. until 3:00 p.m., and on Thursday, June 4, 2015 from 11:00 a.m. until 11:15 a.m.

*Contact Person for More Information:* Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; Telephone 770/488–0575 or 770/488–0577, Fax: 770/488–3377; Email: *smalcom@cdc.gov.* The deadline for notification of attendance is May 27, 2015.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015–10414 Filed 5–4–15; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Final Priorities; National Institute on Disability, Independent Living, and Rehabilitation Research—Disability and Rehabilitation Research Projects Program

**AGENCY:** Administration for Community Living, Department of Health and Human Services.

**ACTION:** Final priority.

CFDA Numbers: 84.133A–5 and 84.133A–6.

**SUMMARY:** The Administrator of the Administration for Community Living announces priorities for the Disability and Rehabilitation Research Projects (DRRPS) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, we announce two priorities for DRRPs on (1) Center on Knowledge Translation for Employment Research (84.133A–5) and (2) Projects for Translating Disability and Rehabilitation Research into Practice (84.133A–6). The Administrator of the Administration for Community Living may use these priorities for competitions in fiscal year (FY) 2015 and later years. We take this action to focus research attention on an area of national need. We intend for these priorities to contribute to improved outcomes for people with disabilities through improved uptake of research-based knowledge.

**DATES:** *Effective Date:* These priorities are effective June 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

**Disability and Rehabilitation Research Projects**

The purpose of NIDILRR's DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most significant disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

**Program Authority:** 29 U.S. C. 762(g) and 764(b)(2).

*Applicable Program Regulations:* 34 CFR part 350.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on March 13, 2015 (80 FR 13378). That notice contained background information and our reasons for proposing the particular priorities.

There are no differences between the proposed priorities and these final priorities.

*Public Comment:* In response to our invitation in the notice of proposed priorities, one party submitted comments on the proposed priorities.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

**Center on Knowledge Translation for Employment Research (Priority 1)**

We received no comments on this priority.

**Projects for Translating Disability and Rehabilitation Research Into Practice (Priority 2)**

*Comment:* One commenter asked whether NIDILRR intends the grants to be made under this priority to support the translation and use of development-based outputs, as well as research-based knowledge and products. This commenter stated that if NIDILRR does intend to support the translation and use of development-based outputs, we should consistently include such language throughout the priority.

*Discussion:* We do not agree with the commenter that there is a solid and clear distinction between research-based and development-based outputs. NIDILRR program regulations define ''development'' in terms of its basis in research. CFR 350.16 defines development as the use of ''knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and

processes.'' The purpose of this priority, as stated in the notice of proposed priority, is to support the translation of research-based findings or products of past or present NIDILRR-funded grants into use or adoption by their stakeholders. Applicants may propose to translate and promote the use of findings or products of any past or present NIDILRR grantee, including those engaged in research or development activities, as long as the products of those grants are based on research.

*Changes:* None.

**Final Priorities**

*Priority 1—Center on Knowledge Translation for Employment Research*

The Administrator of the Administration for Community Living proposes a priority for a Disability and Rehabilitation Research Project to serve as the Center on Knowledge Translation for Employment Research (Center). The purpose of the proposed Center on KT for Employment Research is to promote the use of employment research findings to improve practices and policies that support improved employment outcomes of individuals with disabilities. The center will achieve this purpose by (1) working with employment-focused NIDILRR grantees to identify research findings that can be used to improve employment outcomes for individuals with disabilities, (2) identifying areas in which stakeholders' needs for research-based knowledge are most pressing, and (3) investigating and promoting effective strategies to increase the appropriate use of the best available research-based knowledge in the field.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Increased understanding of processes and practices that will lead to successful knowledge translation in the field of employment for individuals with disabilities;

(b) Increased adoption and use of relevant research findings funded by NIDILRR and other entities, to improve employment of individuals with disabilities; and

(c) Increased capacity of NIDILRR's employment-focused grantees to plan and engage in knowledge translation activities.

The Center must contribute to these outcomes by conducting rigorous research, development, technical assistance, dissemination, and utilization activities to increase successful knowledge translation of employment research to improve employment of individuals with disabilities. In planning and conducting all activities, the Center must partner with relevant stakeholders such as employment-focused researchers, individual with disabilities, consumer organizations, employers, State and Federal agencies, and others as appropriate.

*Priority 2—Projects for Translating Disability and Rehabilitation Research Into Practice*

The Administrator of the Administration for Community Living proposes a priority for Disability and Rehabilitation Research Projects (DRRP). These DRRP grants will serve as Projects for Translating Disability and Rehabilitation Research into Practice. The purpose of these projects is to support the translation of research findings or products of past or present NIDILRR-funded grants into use or adoption by their stakeholders. Under this priority, grantees must successfully move NIDILRR-sponsored research-based findings or products into actual use or adoption in real-life contexts. Grantees under this priority must also document and disseminate the knowledge translation methods that they used to facilitate the adoption or use of findings or products by stakeholders.

Each knowledge translation grant under this priority must be conducted in partnership with relevant stakeholders. These stakeholders must be actively engaged in the planning, implementation, and evaluation of all knowledge translation grant activities. Grantees under this priority must contribute to the following outcomes:

(1) Use or adoption of NIDILRR-sponsored findings or products by relevant stakeholders;

(2) Changes in policy, practice, or systems that are intended to improve the lives of individuals with disabilities as a result of the use or adoption of NIDILRR-sponsored findings or products; and

(3) Increased understanding of promising practices for knowledge translation in disability, independent living, and rehabilitation research.

Grantees under this priority must contribute to these outcomes by—

(a) Identifying research-based findings or products from a NIDILRR-funded grant or grants that are ready for use or adoption in real-world settings, as well as the context or setting in which they will be used or adopted;

(b) Identifying or developing, and then implementing a knowledge translation plan to facilitate the use or adoption of findings or products in (a) by key stakeholders; and

(c) Identifying measures to evaluate the success of the uses or adoptions achieved under (b).

*Types of Priorities*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (45 CFR 75).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (45 CFR 75); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (45 CFR 75).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (45 CFR 75).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register.**

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 29, 2015.

**John Tschida,**

*Director, National Institute on Disability, Independent Living, and Rehabilitation Research.*

[FR Doc. 2015–10475 Filed 5–4–15; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Applications for New Awards; National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)—DRRP—Knowledge Translation for Employment Research and Projects for Translating Disability and Rehabilitation Research Into Practice

**AGENCY:** Administration for Community Living, Department of Health and Human Services.

**ACTION:** Notice.

*Overview Information:*

National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)—Disability and Rehabilitation Research Projects (DRRPs)—Knowledge Translation for Employment Research (84.133A–5) and Projects for Translating Disability and Rehabilitation Research into Practice (84.133A–6)

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133A–5 and 84.133A–6.

**Note:** This notice invites applications for separate competitions. For funding and other key information for each of these competitions, see the chart in the *Award Information* section of this notice.

**DATES:** *Applications Available:* May 5, 2015.

**Note:** On July 22, 2014, President Obama signed the Workforce Innovation Opportunity Act (WIOA). WIOA was effective immediately. One provision of WIOA transferred the National Institute on Disability and Rehabilitation Research (NIDRR) from the Department of Education to the Administration for Community Living (ACL) in the Department of Health and Human Services. In addition, NIDRR's name was changed to the Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). For FY 2015, all NIDILRR priority notices will be published as ACL notices, and ACL will make all NIDILRR awards. During this transition period, however, NIDILRR will continue to review grant applications using Department of Education tools. NIDILRR will post previously-approved application kits to grants.gov, and NIDILRR applications submitted to grants.gov will be forwarded to the Department of Education's G–5 system for peer review. We are using Department of Education application kits and peer review systems during this transition year in order to provide for a smooth and orderly process for our applicants.

*Date of Pre-Application Meeting:* May 26, 2015.

*Deadline for Notice of Intent to Apply:* June 9, 2015.

*Deadline for Transmittal of Applications:* July 6, 2015.

**Full Text of Announcement**

*I. Funding Opportunity Description*

*Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities to develop methods, procedures, and rehabilitation technology. The Program's activities are designed to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are under NIDILRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. Additionally information on DRRPs can be found at: *http://www2.ed.gov/programs/drrp/index.html.*

*Priorities:* There are three priorities for the grant competition announced in this notice. Two priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**. One priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472).

*Absolute Priorities:* For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 45 CFR part 75 we consider only applications that meet these program priorities.

These priorities are:

Priority 1: Center on Knowledge Translation for Employment Research

Priority 2: Projects for Translating Disability and Rehabilitation Research Into Practice

**Note:** The full text of these priorities is included in the notice of final priorities and definitions published in the **Federal Register** on March 13, 2015 (78 FR 13378) and in the application package for these competitions.

Priority 3—General DRRP Requirements

**Note:** The full text of this priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472) and in the application package for these competitions.

**Program Authority:** 29 U.S.C. 764(a).

*Applicable Regulations:* (a) The Department of Health and Human Services General Administrative Regulations in 45 CFR part 75 (b) Audit Requirements for Federal Awards in 45 CFR part 75 Subpart F; (c) 45 CFR part 75 Non-procurement Debarment and Suspension; (d) 45 CFR part 75 Requirement for Drug-Free Workplace (Financial Assistance); (e) The regulations for this program in 34 CFR part 350; (f) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program published in the **Federal Register** on April 28, 2006 (71 FR 25472); and (g) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $950,000.

*Maximum Award:* See chart.

*Estimated Number of Awards:* See chart.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* See chart.

| CFDA No. and name | Applications available | Deadline for transmittal of applications | Estimated available funds | Maximum award amount (per year) [1 2 3] | Estimated number of awards | Project period (months) |
|---|---|---|---|---|---|---|
| 84.133A–5, Center on Knowledge Translation for Employment Research. | May 5, 2015 | July 6, 2015 | $500,000 | $500,000 | 1 | 60 |
| 84.133A–6, Projects for Translating Disability and Rehabilitation Research into Practice. | May 5, 2015 | July 6, 2015 | 450,000 | 150,000 | 3 | 60 |

[1] Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 and any subsequent year from the list of unfunded applicants from these competitions.

[2] We will reject any application that proposes a budget exceeding the Maximum Amount. The Administrator of the Administration for Community Living may change the maximum amount through a notice published in the **Federal Register**.

[3] The maximum award amount includes both direct and indirect costs.

## III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing for this program is required by 34 CFR 350.62(a). NIDILRR requires that grantees provide cost sharing in the amount of at least 1% of Federal funds.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package for these competitions via grants.gov, or by contacting Marlene Spencer: U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.gov*.

If you request an application from Marlene Spencer, be sure to identify this competition as follows: CFDA number 84.133A–5 and 84.133A–6.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application packages for the competitions announced in this notice.

*Notice of Intent to Apply:* Due to the open nature of the DRRP priorities announced here, and to assist with the selection of reviewers for this competition, NIDILRR is requesting all potential applicants submit a letter of intent (LOI). The submission is not mandatory, and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its proposed activities at a sufficient level of detail to allow NIDILRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is not a prerequisite for eligibility to submit an application.

NIDILRR will accept the LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by June 9, 2015. The LOI must be sent to: Marlene Spencer, U.S. Department of Health and Human Services, 550 12th Street SW., Room 5133, PCP, Washington, DC 20202; or by email to: *Marlene.Spencer@acl.hhs.gov*.

For further information regarding the LOI submission process, contact Marlene Spencer at (202) 245–7532.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, and captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

**Note:** Please submit an appendix that lists every collaborating organization and individual named in the application, including staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

*Applications Available:* May 5, 2015.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDILRR staff. The pre-application meeting will be held on May 26, 2015. Interested parties may participate in this meeting by conference call with NIDILRR staff from the Administration for Community Living between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDILRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact

the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Deadline for Notice of Intent to Apply:* June 9, 2015.

*Deadline for Transmittal of Applications:* July 6, 2015.

Applications for grants under these competitions must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Health and Human Services, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under the program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under Knowledge Translation for Employment Research and Projects for Translating Disability and Rehabilitation Research into Practice, CFDA Number 84.133A–5 and 84.133A–6, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Knowledge Translation for Employment Research and Projects for Translating Disability and Rehabilitation Research into Practice DRRP competition at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors,

including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5; and 84.133A–6), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Administrator of the Administration for Community Living of the U.S. Department of Health and Human Services.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*Note for Mail of Paper Applications:* If you mail your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Final award decisions will be made by the Administrator, ACL. In making these decisions, the Administrator will take into consideration: Ranking of the review panel; reviews for programmatic and grants management compliance; the reasonableness of the estimated cost to the government considering the available funding and anticipated results; and the likelihood that the proposed project will result in the benefits expected. Under Section 75.205, item (3) history of performance is an item that is reviewed.

In addition, in making a competitive grant award, the Administrator of the Administration for Community Living also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Health and Human Services 45 CFR part 75.

3. *Special Conditions:* Under 45 CFR part 75 the Administrator of the Administration for Community Living may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 45 CFR part 75, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we send you a Notice of Award (NOA); or we may send you an email containing a link to access an electronic version of your NOA. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the NOA. The NOA also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 45 CFR part 75 should you receive funding under the competition. This does not apply if you have an exception under 45 CFR part 75.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Administrator of the Administration for Community Living. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Administrator of the Administration for Community Living under 45 CFR part 75. All NIDILRR grantees will submit their annual and final reports through NIDILRR's online reporting system and as designated in the terms and conditions of your NOA. The Administrator of the Administration for Community Living may also require more frequent performance reports under 45 CFR part 75. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) FFATA and FSRS Reporting

The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Subaward Reporting System (*http://www.FSRS.gov*) for all sub-awards and sub-contracts issued for $25,000 or more as well as addressing executive compensation for both grantee and sub-award organizations.

For further guidance please see the following link: *http://www.acl.gov/Funding_Opportunities/Grantee_Info/FFATA.aspx*

If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information. Annual and Final Performance reports will be submitted through NIDILRR's online Performance System and as designated in the terms and conditions of your NOA. At the end of your project period, you must submit a final performance report, including financial information.

**Note:** NIDILRR will provide information by letter to successful grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDILRR assesses the quality of its funded projects through a review of grantee performance and accomplishments. Each year, NIDILRR examines a portion of its grantees to determine:

- The number of products (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDILRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDILRR-funded research and development activities in refereed journals.
- The percentage of new NIDILRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDILRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

5. *Continuation Awards:* In making a continuation award, the Administrator of the Administration for Community Living may consider, under 45 CFR part 75, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Administrator also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department. Continuation funding is also subject to availability of funds.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Marlene Spencer, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700.

Telephone: (202) 245–7532 or by email: *marlene.spencer@acl.hhs.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**VIII. Other Information**

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 29, 2015.

**John Tschida,**

*Director, National Institute on Disability, Independent Living, and Rehabilitation Research.*

[FR Doc. 2015–10474 Filed 5–4–15; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission of Childhood Vaccines; Request for Nominations for Voting Members

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill six vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

**DATES:** The agency must receive nominations on or before June 4, 2015.

**ADDRESSES:** All nominations are to be submitted to the Director, Division of Injury Compensation Programs, Healthcare Systems Bureau (HSB), HRSA, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annie Herzog, Principal Staff Liaison, Division of Injury Compensation Programs, HSB, HRSA, at (301) 443–6634 or email: *aherzog@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa-19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for six voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 of the Act regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying federal, state, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b) of the Act; advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of the Vaccine Information Statements; and recommending to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: (1) Three health professionals, who are not employees of the United States Government and who have expertise in the health care of children, and the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians; (2) three members from the general public, of whom at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and (3) three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for six voting members of the ACCV representing: (1) Two health professionals, who have expertise in the health care of children and the epidemiology, etiology, and prevention of childhood diseases, of whom at least one shall be a pediatrician; (2) two members of the general public, of whom at least one shall be a legal representative (parent or guardian) of a child who has suffered a vaccine-related injury or death; and (3) two attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. Nominees will be invited to serve a 3-year term beginning January 1, 2016, and ending December 31, 2018.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with a view to ensuring that the ACCV includes the areas of subject matter expertise noted above. Based on a recommendation made by the ACCV, the Secretary will consider having a health professional with expertise in obstetrics as the second member of the general public. Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV.

ACCV members are appointed as Special Government Employees. As such, they are covered by the federal ethics rules, including the criminal conflict of interest statutes governing executive branch employees. For example, an ACCV member may be prohibited from discussions about making changes to the Vaccine Injury Table and Vaccine Information Statements for the Hepatitis B vaccine if he/she or his/her spouse owns stock valued above a certain amount in companies which manufacture this vaccine, affecting their own pecuniary

interests including interests imputed to them. To evaluate possible conflicts of interest, potential candidates will be asked to fill out the Confidential Financial Disclosure Report, OGE Form 450, to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations made by the ACCV.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills the individual possesses that would benefit the workings of the ACCV), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

The Department of Health and Human Services (HHS) strives to ensure that the membership of the HHS Federal Advisory Committee is fairly balanced in terms of points of view presented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS Federal Advisory Committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015–10381 Filed 5–4–15; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation of Nominations for Appointment to the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria; Amendment

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice; amendment.

**SUMMARY:** A notice was published in the **Federal Register** on Monday, March 30, 2015 (*80 FR 16684*), to solicit nominations of individuals who are interested in being considered for appointment to the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The nomination period is scheduled to end close of business on April 29, 2015. The notice is being amended to extend the solicitation period for two weeks to allow more time for interested individuals to submit nominations.

**DATES:** The solicitation period has been extended. All nominations are due to be submitted on or before May 13, 2015.

**ADDRESSES:** All nominations should be sent to: Bruce Gellin, M.D., M.P.H., Deputy Assistant Secretary for Health; Office of the Assistant Secretary for Health; Department of Health and Human Services; 200 Independence Avenue SW., Room 715H; Washington, DC 20201. Nomination materials, including attachments, also may be submitted electronically to *CARB@hhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Bruce Gellin, M.D., M.P.H., Deputy Assistant Secretary for Health; Office of the Assistant Secretary for Health; Department of Health and Human Services; Telephone: (202) 260–6638; Fax: (202) 690–4631; Email address: *CARB@hhs.gov.* The Advisory Council charter may be accessed online at *http://www.hhs.gov/ash/carb.* The charter includes detailed information about the Advisory Council's purpose, function, and structure.

Dated: April 29, 2015.

**Sylvia M. Burwell,**

*Secretary of Health and Human Services.*

[FR Doc. 2015–10443 Filed 5–4–15; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Environmental Health Sciences Council.

*Date:* June 2–3, 2015.

*Open:* June 02, 2015, 8:30 a.m. to 3:30 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* June 03, 2015, 8:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Gwen W. Collman, Ph.D., Interim Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/about/boards/naehsc/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 28, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–10391 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Date:* June 10, 2015.

*Closed:* 9:15 a.m. to 10:45 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

*Open:* 11:00 a.m. to 4:00 p.m.

*Agenda:* Presentations and other business of the Council.

*Place:* National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: April 29, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–10389 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

A portion of 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:* Council of Councils.

*Open:* June 19, 2015.

*Time:* 8:15 a.m. to 11:15 a.m.

*Agenda:* Call to Order and Introductions; Announcements and Updates; Update on Common Fund Programs; Summary and Update of the March 28 ABRF/NIH, Core Meeting; Office of Dietary Supplements—Research Overview and Strategic Planning; and Perspectives from NIGMS.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C-Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Closed:* June 19, 2015.

*Time:* 11:45 a.m. to 1:15 p.m.

*Agenda:* Review of grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C-Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Open:* June 19, 2015.

*Time:* 1:15 p.m. to 3:45 p.m.

*Agenda:* Genotype-Tissue Expression-Scientific Presentation and Discussion; Summary of ORIPs Division of Comparative Medicine Workshop Held on April 7–8, 2015:—One Health; Update on DPCPSI Portfolio Analysis Activities; and Closing Remarks.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C-Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov.* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 28, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–10390 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NICHD.

*Date:* June 5, 2015.

*Open:* 8:00 a.m. to 11:45 a.m.

*Agenda:* A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research, talks by various intramural scientists, and proposed organizational change.

*Place:* National Institutes of Health, Building 31A, Conference Room 2A48, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 11:45 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31A, Conference Room 2A48, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Constantine A. Stratakis, MD, D(med) Sci, Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, Building 31A, Room 2A46, 31 Center Drive, Bethesda, MD 20892, 301–594–5984, *stratakc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://dir.nichd.nih.gov/dirweb/home.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 29, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–10388 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* June 16, 2015.

*Open:* 8:30 a.m. to 12:30 p.m.

*Agenda:* Discussion of Program Policies.

*Place:* National Institutes of Health, Building 31, 6th Floor, C Wing, Conference Room #6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 6th Floor, C Wing, Conference Room #6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Laura K. Moen, Ph.D. Director, Division of Extramural Research Activities, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 29, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–10407 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; The Study of the Center for Global Health's (CGH) Workshops (NCI)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 8, 2014, Vol. 79, page 26437 and allowed 60-days for public comment. One public comment was received on May 12, 2014. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Sudha Sivaram, Program Director, Center for Global Health, National Cancer Institute, 9609 Medical Center Dr., RM 3W528, Rockville MD, 20850 or call non-toll-free number 240–276–5804 or Email your request, including your address to: *sudha.sivaram@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The Study of the Center for Global Health's (CGH) Workshops (NCI), 0925—NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* This submission is a request for OMB to approve The Study of the Center for Global Health's (CGH) Workshops for three years. This information collection is to collect stakeholder feedback from past workshops and future workshops, to assess the effectiveness of CGH workshops, which seek to assess the abilities of other countries to implement national cancer control programs, inform content and improve delivery of future workshops, and to systematically assess CGH's contribution. The workshops to be studied are the Symposiums on Global Cancer Research, Workshops in Cancer Control Planning and Implementation, the Summer Curriculum in Cancer Prevention, Women's Cancer Program Summit, and Regional Grant Writing and Peer Review Workshops. While these workshops differ in content and delivery style, their underlying goals are the same; they intend to initiate and enhance cancer control efforts, increase capacity for cancer research, foster new partnerships, and create research and cancer control networks. The proposed study requests information about the outcomes of each of these workshops including (1) new cancer research partnerships and networks (2) cancer control partnerships and networks, (3) effects on cancer research, and (4) effect on cancer control planning and implementation efforts. Information will be collected in two phases where Phase 1 will collect information from attendees of past workshops (1998–2015) and phase two will collect information from attendees of future workshops over the next three years. This information will allow CGH to assess the effectiveness of its workshops in order to inform future programming and funding decisions. The surveys will enable CGH to better understand the impact the workshops have had on their partnerships and networks, research, and cancer control planning and implementation efforts.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 805.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents per year | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hours |
|---|---|---|---|---|---|
| Chief Executives, Medical Scientists, Health Educators, Family/General Practitioners, Registered Nurses, Medical and Health Services Managers. | Phase 1: Symposium on Global Cancer Research. | 500 | 1 | 20/60 | 167 |
| | Phase 2: Symposium on Global Cancer Research. | 250 | 1 | 20/60 | 83 |
| | Phase 1: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants. | 70 | 1 | 20/60 | 23 |
| | Phase 2: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants. | 70 | 1 | 20/60 | 23 |
| | Phase 1: Workshop in Cancer Control Planning and Implementation for Ministry of Health. | 70 | 1 | 20/60 | 23 |
| | Phase 2: Workshop in Cancer Control Planning and Implementation for Ministry of Health. | 70 | 1 | 20/60 | 23 |
| | Phase 1: Summer Curriculum in Cancer Prevention. | 500 | 1 | 30/60 | 250 |
| | Phase 2: Summer Curriculum in Cancer Prevention. | 27 | 1 | 30/60 | 14 |
| | Phase 1: Women's Cancer Program Summit. | 140 | 1 | 20/60 | 47 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents per year | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hours |
|---|---|---|---|---|---|
| | Phase 2: Women's Cancer Program Summit. | 140 | 1 | 20/60 | 47 |
| | Phase 1: Regional Grant Writing and Peer Review Workshop. | 150 | 1 | 30/60 | 75 |
| | Phase 2: Regional Grant Writing and Peer Review Workshop. | 60 | 1 | 30/60 | 30 |

Dated: April 27, 2015.

**Karla Bailey,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 2015–10394 Filed 5–4–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet via web conference on June 11–12, 2015, from 10:00 a.m. to 3:30 p.m. E.D.T. The DTAB will convene in both open and closed sessions on these two days.

The Board will meet in closed session on June 11, 2015, from 10:00 a.m. to 3:30 p.m., to discuss the proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

On June 12, 2015, from 10:00 a.m. to 3:30 p.m., the meeting will be open to the public. The meeting will include updates on the previously announced DTAB recommendations, the public comments to the request for information on hair, DTAB's process for evaluating the scientific supportability of alternate specimens for federal workplace drug testing programs, HHS approval of entities that certify medical review officers, and the federal custody and control form. The meeting also will include drug testing updates from the Department of Transportation, the Nuclear Regulatory Commission, the Department of Defense, and the Federal Drug-Free Workplace Programs.

The public is invited to attend via web conference. Due to the limited call-in capacity, registration is requested. Public comments are welcome. To obtain the web conference call-in numbers and access codes, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees Web site at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the CSAP DTAB Designated Federal Official, Dr. Janine Denis Cook (see contact information below).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees Web site, *http://www.samhsa.gov/about-us/advisory-councils/drug-testing-advisory-board-dtab,* or by contacting Dr. Cook.

*Committee Name:* Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention Drug Testing Advisory Board.

*Dates/Time/Type:* June 11, 2015, from 10:00 a.m. to 3:30 p.m. E.D.T.: CLOSED, June 12, 2015, from 10:00 a.m. to 3:30 p.m. E.D.T.: OPEN.

*Place:* SAMHSA Building, 1 Choke Cherry Road, Rockville, Maryland 20850.

*Contact:* Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 7–1043, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Fax:* 240–276–2610, *Email: janine.cook@samhsa.hhs.gov*.

**Janine Denis Cook,**

*Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 2015–10473 Filed 5–4–15; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2015–0013]**

### Meeting: Homeland Security Advisory Council

**AGENCY:** The Office of Intergovernmental Affairs, DHS.

**ACTION:** Notice of partially closed Federal Advisory Committee meeting.

**SUMMARY:** The Homeland Security Advisory Council (HSAC) will meet in person on May 21, 2015. Members of the public may participate in person. The meeting will be partially closed to the public.

**DATES:** The HSAC will meet Thursday, May 21, 2015, from 11:00 a.m. to 5:15 p.m. EDT. The meeting will be open to the public from 1:45 p.m. to 4:00 p.m. EDT. Please note that the meeting may close early if the Council has completed its business. The portion from 11:00 a.m. to 1:30 p.m. EDT and 4:15 p.m. to 5:15 p.m. EDT will be closed to the public.

**ADDRESSES:** The meeting will be held at the Woodrow Wilson International Center for Scholars (''Wilson Center''), located at 1300 Pennsylvania Avenue NW., Washington, DC 20004. All visitors will be processed through the lobby of the Wilson Center. Written public comments prior to the meeting must be received by 5:00 p.m. EDT on May 15, 2015, and must be identified by Docket No. DHS–2015–0013. Written

public comments after the meeting must be identified by Docket No. DHS–2015–0013 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2015–0013 in the subject line of the message.
- *Fax:* (202) 282–9207
- *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW., Washington, DC 20528.

*Instructions:* All submissions received must include the phrases ''Department of Homeland Security'' and ''DHS–2015–0013''. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov,* search ''DHS–2015–0013,'' ''Open Docket Folder'' and provide your comments.

**FOR FURTHER INFORMATION CONTACT:** Mike Miron at *HSAC@hq.dhs.gov* or at (202) 447–3135.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. App.) requires each FACA committee meeting to be open to the public.

The HSAC provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security (DHS) on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, state and local government, the private sector, and academia.

The HSAC will meet in open session between 1:45 p.m. and 4:00 p.m. EDT. The HSAC will receive observations and remarks from DHS senior leadership, and swear in new HSAC members. Members will receive reports from the following HSAC subcommittees: the DHS Employee Task Force, the Foreign Fighter Task Force, the DHS Grant Review Task Force, and the Customs and Border Protection Integrity Advisory Panel.

The HSAC will meet in closed session between 11:00 a.m. and 1:30 p.m. as well as 4:15 p.m. and 5:15 p.m. EDT to receive sensitive operational information from senior DHS leadership. This information regards threats to our homeland, specifically operational updates on the Transportation Security Administration's (TSA) aviation security program, cyber security and the current threat environment.

*Basis for Partial-Closure:* In accordance with Section 10(d) of the Federal Advisory Committee Act (FACA), this meeting has been determined to require partial-closure. The disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The HSAC will receive closed session briefings from DHS officials on the Transportation Security Administration's (TSA) aviation security program, and operational updates on cyber security and the current threat environment. This will include lessons learned and enhanced security measures associated with operations and management. These briefings will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7)(E) and 552b(c)(9)(B). Public disclosure of this information would provide terrorists and other adversaries with guidelines to thwart the Department's strategic initiatives. Under 5 U.S.C. 552b(c)(9)(B), disclosure of these techniques and procedures could frustrate the successful implementation of protective measures designed to keep our country safe. In addition, Under 5 U.S.C. 552b(c)(7)(E), disclosure of that information could reveal investigative techniques and procedures not generally available to the public, allowing terrorists and those with interests against the United States to circumvent the law.

*Participation:* Members of the public will have until 5 p.m. EDT on Friday, May 15, 2015 to register to attend the HSAC meeting on May 21, 2015. Due to limited availability of seating, admittance will be on a first-come first-served basis. Participants interested in attending the meeting can contact Mike Miron at *HSAC@dhs.gov* or (202) 447–3135. You are required to provide your full legal name, date of birth, and company/agency affiliation. The public may access the facility via public transportation or use the public parking garages located near the Wilson Center. Wilson Center directions can be found at: *http://wilsoncenter.org/directions.* Members of the public will meet at 1:30 p.m. EDT at the Wilson Center's main entrance for sign in and escorting to the public meeting room. Late arrivals after 2:00 p.m. EDT will not be permitted access to the facility.

*Facility Access:* You are required to present a valid original government issued ID; State Driver's License or Non-Driver's Identification Card, U.S. Government Common Access Card (CAC), Military Identification Card or Person Identification Verification Card; U.S. Passport or Passport Card, Foreign Passport; U.S. Border Crossing Card, Permanent Resident Card or Alien Registration Card; or Native American Tribal Document.

*Identification of Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at *HSAC@dhs.gov* as soon as possible.

Dated: April 29, 2015.

**Sarah E. Morgenthau,**

*Executive Director, Homeland Security Advisory Council, DHS.*

[FR Doc. 2015–10498 Filed 5–4–15; 8:45 am]

**BILLING CODE 9110–9M–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5833–N–01]**

### Notice of Proposed Information Collection; Comment Request: Certification and Funding of State and Local Fair Housing Enforcement Agencies

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* July 6, 2015.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this

number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Certification and Funding of State and Local Fair Housing Enforcement Agencies.

*OMB Approval Number:* 2529–0005.

*Type of Request:* Extension of currently approved collection.

*Form Number:* N/A.

*Description of the need for the information and proposed use:*

*A. Request for Substantial Equivalence*

For a state or local law to be certified as ''substantially equivalent'' and therefore be eligible to participate in the Fair Housing Assistance Program (FHAP), the Assistant Secretary for Fair Housing and Equal Opportunity must determine that the state or local law provides substantive rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act (the Act).

State and local fair housing enforcement agencies that are seeking certification in accordance with Section 810(f) of the Act submit a request to the Assistant Secretary for Fair Housing and Equal Opportunity. The request must be supported by the text of the jurisdiction's fair housing law, the law creating and empowering the agency, all laws referenced in the jurisdiction's fair housing law, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

*B. Information Related to Agency Performance*

Once agencies are deemed substantially equivalent and are participating in the FHAP, HUD collects sufficient information to monitor agency performance in accordance with 24 CFR 115.206, which sets forth the performance standards for agencies participating in the FHAP. These standards are meant to ensure that the state or local law, both ''on its face'' and ''in operation,'' provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act. In addition, HUD collects sufficient information to monitor agency compliance with 24 CFR 115.307 and 24 CFR 115.308, which set forth requirements for FHAP participation and reporting and record keeping requirements including, but not limited to, the requirement that FHAP agencies use HUD's official complaint data information system, and input complaint processing information into that system in a timely manner.

*Respondents:* State and local government agencies participating in the Fair Housing Assistance Program as well State and local government agencies applying to participate in the FHAP.

*Frequency/Burden:* The Department estimates that *requests* for substantial equivalence will have the following reporting burdens:

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 5 | | 6 | | 15 | | 450 |

The Department estimates that reporting *information related to agency performance* will have the following reporting burdens:

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 88 | | 33 | | 20 | | 58,080 |

*Total Estimated Burden Hours:* 58,530.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 29, 2015.

**Joseph A. Pelletier,**

*Director, Fair Housing Assistance Division, Office of Fair Housing and Equal Opportunity.*

[FR Doc. 2015–10502 Filed 5–4–15; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2015–N070; FXES11120100000–156–FF01E00000]**

## Draft Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit for the Northern Spotted Owl and Marbled Murrelet; City of Everett, Snohomish County, Washington

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received, from the City of Everett (Everett), an application for an enhancement of survival permit for the federally threatened northern spotted owl and marbled murrelet under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft safe harbor agreement (SHA) and implementing agreement (IA) between Everett and the Service addressing habitat conservation and forest management, including timber harvest on lands within Everett's municipal watershed in Snohomish County, Washington. We invite comments from all interested parties on the application, including the draft SHA, draft IA, and a draft environmental action statement (EAS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA).

**DATES:** To ensure consideration, written comments must be received from interested parties by June 4, 2015.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Everett Draft SHA.

- *Internet:* Documents may be viewed and downloaded on the Internet at *http://www.fws.gov/wafwo/.*
- *Email: wfwocomments@fws.gov.* Include ''Everett Draft SHA'' in the subject line of the message.
- *U.S. Mail:* Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.
- *In-Person Drop-off, Viewing, or Pickup:* Call 360–753–9440 to make an appointment (necessary for viewing or pickup only) during regular business hours at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.

**FOR FURTHER INFORMATION CONTACT:** Mark Ostwald, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone 360–753–9564. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA (16 U.S.C. 1531 *et seq.*). SHAs, and the subsequent enhancement of survival permits that are issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. These assurances allow the property owner to alter or modify the enrolled property back to agreed-upon pre-permit baseline conditions at the end of the term of the permit, even if such alteration or modification results in the incidental take of a listed species. The baseline conditions must reflect the known biological and habitat characteristics that support existing levels of use of the property by species covered in the SHA. SHA assurances depend on the property owner complying with obligations in the SHA and the terms and conditions of the permit. The SHA's net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered listed species. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit as long as that take does not modify the agreed-upon net conservation benefit to the species. Application requirements and issuance criteria for enhancement of survival permits for SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c). The Service's Safe Harbor Policy (64 FR 32717, June 17, 1999) and the Safe Harbor Regulations (68 FR 53320, September 10, 2003; and 69 FR 24084, May 3, 2004) are available at *http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html.*

The Service has received from Everett an application for an enhancement of survival permit under the ESA to authorize incidental take of the federally threatened northern spotted owl (*Strix occidentalis caurina*) and the marbled murrelet (*Brachyamphus marmoratus*). The permit application includes a draft SHA and IA between Everett and the Service. The SHA addresses habitat conservation and forest management, including timber harvest, on Everett's Lake Chaplain Tract (LCT) located within Everett's municipal watershed in Snohomish County, Washington. The total area of the LCT is approximately 3,729 acres, of which 715 acres is comprised of non-forested areas. The non-forested areas include Lake Chaplain, portions of the Sultan River, non-forested wetlands, water filtration facilities, and rights-of-way. Approximately half of the forest stands in the LCT are older than 80 years. Activities covered under the SHA are timber management and drinking water production. Everett's management objective for the SHA is to enhance and maintain habitat for marbled murrelets and northern spotted owls while continuing to generate revenue from forest management operations.

There is one known marbled murrelet–occupied site on the LCT. The LCT is within a marbled murrelet detection area as defined by WAC 222–16–101. No federally designated marbled murrelet critical habitat occurs on the LCT; however, approximately 80 percent of the LCT perimeter is adjacent to properties that are designated critical habitat for the marbled murrelet. There are no known northern spotted owl site centers on the LCT; however, recent surveys have not been conducted in all areas of suitable habitat. The LCT is situated between two northern spotted owl special emphasis areas designated by Washington Forest Practices Rules. The nearest federally designated northern spotted owl critical habitat is approximately 8 miles northeast of the LCT.

Everett is simultaneously applying to the Washington State Department of Natural Resources (WDNR) for a Cooperative Habitat Enhancement Agreement (CHEA) under the Washington State Forest Practice Rules (WAC 222–16–105). The SHA and CHEA are one document that serves the requirements of both the Service and the WDNR. The applicant worked closely with the Service, the Washington Department of Fish and Wildlife, and the WDNR to develop the SHA and CHEA.

**Proposed Action**

The Service proposes to enter into the SHA and IA and to issue an enhancement of survival permit to Everett for incidental take of the northern spotted owl and the marbled murrelet caused by covered activities, if permit issuance criteria are met. Both the SHA and the permit would have a term of 50 years.

Due to the overlap of suitable habitat characteristics for marbled murrelets and northern spotted owls and the nature of the LCT forest stands, the SHA's baseline is unified for both covered species. The baseline totals about 447 acres and consists of 4 separate large blocks of the highest quality forest habitat for the covered species on the LCT. The baseline represents the areas on the LCT that are most likely to be occupied by the covered species currently and during the term of the SHA.

The conservation benefits for the marbled murrelet and the northern spotted owl under the SHA are expected to be realized through implementation of the following management actions: Reconfiguration of the special set asides (SSAs), enhancement of riparian buffers, an increase in special management areas (SMAs), longer harvest rotations, and enhanced protection of occupied sites. The SSAs are old-growth management areas and permanent mixed hardwood and conifer forests, which will not be harvested during the term of the agreement. Under the draft SHA, most of the original old-growth management areas and some of the permanent mixed forests on the LCT were reconfigured into the baseline blocks. Those not included in the baseline remain as SSAs, except for 56 acres that will be harvested to offset the addition of formerly harvestable areas to the baseline. The enhanced riparian buffers under this SHA will result in more trees within the buffer zones than would be required under the standard Washington State Forest Practice Rules, and there will be 32 more acres of SMAs, including green tree areas, unstable slopes, and forested wetlands. Regeneration harvest rotations will average 60 years, compared to the industry standard of 45 years. Additional management actions under the proposed SHA to benefit the northern spotted owl are enhanced snag and downed wood retention measures, plus planting and thinning to encourage understory plants that support northern spotted owl prey species.

Under the proposed SHA, Everett will not be required to survey for marbled murrelets or northern spotted owls; however, if Everett becomes aware of the presence of an occupied site, the draft SHA identifies specific measures to avoid disturbance of the site and to protect the habitat. Occupancy by the marbled murrelet and the northern spotted owl is most likely to occur within the baseline blocks, SSAs, and riparian buffers where suitable marbled murrelet and northern spotted owl habitat will continue to improve or develop over time because harvest is deferred during the term of the proposed permit in these areas. In these areas, deferring harvest would already protect the habitat associated with an occupied site; however, depending on the exact location of a site, it may need to be protected from noise and other human disturbance as described in the draft SHA. Each year, if marbled murrelet or northern spotted owl occupancy occurs outside of the deferred-harvest areas, then core areas for one occupied site for each covered species will be protected from harvest and disturbance for at least 5 years.

Incidental take of the covered species in the form of harassment from noise or visual disturbance may occur during the term of the permit from forest management activities. Incidental take in the form of direct mortality or harm from altering occupied sites is not likely because occupancy is most likely going to occur in the deferred-harvest areas. Direct mortality or harm of the covered species could occur in the unlikely event that areas not deferred from harvest become occupied prior to harvesting. All forms of incidental take of the covered species could occur from timber harvesting activities in the SSAs, SMAs, or riparian areas in association with a return to the identified agreed-upon baseline habitat conditions. However, if similar Washington State Forest Practices Rules are in effect at the time, some of these areas may continue to be retained under those rules.

The net conservation benefits for both covered species are expected to be realized through the reconfiguration and retention of four large blocks of habitat designated as the baseline condition for the proposed SHA. The reconfiguration should enhance future nesting potential for both marbled murrelets and dispersing northern spotted owls, especially as the habitat continues to improve in quality over the term of the SHA. An increase in the quantity and distribution of SMAs will benefit the covered species by providing additional buffers adjacent to suitable nesting habitat in deferred-harvest areas. If occupancy by covered species occurs outside of deferred-harvest areas, the minimum protection period for an occupied site is increased by 2.5 years for the marbled murrelet and 5 years for the northern spotted owl compared to standard Washington State Forest Practices Rules. All of these habitat improvements are expected to increase the number and distribution of marbled murrelets and northern spotted owls on the LCT compared to what would likely occur under standard forest practices.

**National Environmental Policy Act Compliance**

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). We have made a preliminary determination that the proposed SHA, IA, and permit issuance are eligible for categorical exclusion under the NEPA. The basis for our preliminary determination is contained in an EAS, which is available for public review (see **ADDRESSES**).

**Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party via this notice on our proposed Federal action. In particular, we request information and comments regarding:

(1) Whether the implementation of the proposed SHA and IA would provide a net conservation benefit to the covered species;

(2) Other conservation measures that would lead to a net-conservation benefit for the covered species;

(3) The length of the proposed term of the enhancement of survival permit;

(4) The direct, indirect, and cumulative effects that implementation of the SHA and IA could have on the human environment;

(5) Other plans, projects, or information that might be relevant to evaluating the effects of this proposed action; and

(6) Information regarding the adequacy of the proposed SHA and IA pursuant to the requirement for permits at 50 CFR parts 13 and 17.

**Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally

identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we used in preparing the draft EAS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

**Next Steps**

We will evaluate the draft SHA, associated documents, and any public comments we receive to determine whether the permit application and the EAS meet the requirements of section 10(a) of the ESA and NEPA, respectively, and their respective implementing regulations. We will also evaluate whether issuance of an enhancement of survival permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation on the proposed permit action. If we determine that all requirements are met, we will sign the proposed SHA and IA, and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the applicant, Everett, for incidental take of the northern spotted owl and the marbled murrelet caused by covered activities in accordance with the terms of the permit, SHA, and IA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

**Authority**

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: April 14, 2015.

**Richard Hannan,**

*Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.*

[FR Doc. 2015–10466 Filed 5–4–15; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO956000 L14400000.BJ0000]**

### Notice of Filing of Plats of Survey; Colorado.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of survey; Colorado.

**SUMMARY:** The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

**DATES:** Unless there are protests of this action, the filing of the plats described in this notice will happen on June 4, 2015.

**ADDRESSES:** BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

**FOR FURTHER INFORMATION CONTACT:** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The plat and field notes of the dependent resurvey and survey in Township 46 North, Range 12 East, New Mexico Principal Meridian, Colorado, were accepted on March 18, 2015.

The plat incorporating the field notes of the corrective dependent resurvey in Township 1 South, Range 78 West, Sixth Principal Meridian, Colorado, was accepted on March 20, 2015.

The plat and field notes of the metes-and-bounds survey in partially surveyed Township 41 North, Range 9 West, New Mexico Principal Meridian, Colorado, were accepted on April 9, 2015.

The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 50 North, Range 14 West, New Mexico Principal Meridian, Colorado, were accepted on April 15, 2015.

**Randy Bloom,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 2015–10463 Filed 5–4–15; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO956000 L14400000.BJ0000]**

### Notice of Filing of Plats of Survey; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey; Colorado

**SUMMARY:** The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the survey plats listed below. The plats will be available for viewing at *http://www.glorecords.blm.gov.*

**DATES:** The plats described in this notice were filed on April 17, 2015.

**ADDRESSES:** BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

**FOR FURTHER INFORMATION CONTACT:** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The supplemental plat of section 20 in Township 13 South, Range 90 West, Sixth Principal Meridian, Colorado, was accepted on April 16, 2015, and filed on April 17, 2015.

The supplemental plat of sections 25, 35, and 36 in Township 13 South, Range 90 West, Sixth Principal Meridian, Colorado, was accepted on April 16, 2015, and filed on April 17, 2015.

**Randy Bloom,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 2015–10462 Filed 5–4–15; 8:45 am]

**BILLING CODE 4310–JB–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–055; Investigation No. 337–TA–087; Investigation No. 337–TA–105; Investigation No. 337–TA–112; Investigation No. 337–TA–287; Investigation No. 337–TA–295]**

### Certain Novelty Glasses; Certain Coin-Operated Audio Visual Games and Components Thereof; Certain Coin-Operated Audio Visual Games and Components Thereof (Viz., Rally-X and Pac-Man); Certain Cube Puzzles; Certain Strip Lights; Certain Novelty Teleidoscopes; Notice of Commission Determination To Rescind Three Exclusion Orders and To Modify Three Exclusion Orders

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to rescind the exclusion orders issued in the following investigations: *Certain Novelty Glasses,* Inv. No. 337–TA–055, Exclusion Order (July 11, 1979); *Certain Strip Lights,* Inv. No. 337–TA–287, Exclusion Order (September 28, 1989) (''the 287 investigation''); and *Certain Novelty Teleidoscopes,* Inv. No. 337–TA–295, Exclusion Order (April 11, 1990) (''the 295 investigation''). The Commission has also modified the exclusion orders issued in the following investigations: *Certain Coin-Operated Audio Visual Games and Components Thereof,* Inv. No. 337–TA–087, Exclusion Order (June 25, 1981) (''the 087 investigation''); *Certain Coin-Operated Audio Visual Games and Components Thereof* (*Viz.,* Rally-X and PAC MAN), Inv. No. 337–TA–105, Exclusion Order (January 15, 1982) (''the 105 investigation''); and *Certain Cube Puzzles,* Inv. No. 337–TA–112 (''the 112 investigation'').

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. 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 at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* 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:** U.S. Customs and Border Protection (''CBP'') notified the Commission that the six above-identified exclusion orders may be candidates for rescission based on changed conditions of fact or law. Each of the above-identified exclusion orders issued over twenty (20) years ago and each resulted from a Commission investigation alleging a violation of section 337 based on at least trademark or trade dress infringement. CBP's preliminary investigation indicated that the trademarks or trade dress at issue in the exclusion orders were no longer used in commerce or that complainant had stopped making required compliance filings. *See* EDIS Document Nos. 542137–42.

On October 22, 2014, the Commission issued a notice requesting submissions from the public, including the owners of the intellectual property (*e.g.,* trademarks or trade dress) at issue, on whether these exclusion orders should be rescinded based on changed conditions of fact or law, or the public interest, pursuant to 19 CFR § 210.76. 79 *FR* 64214 (Oct. 28, 2014). The Commission received submissions from the owners of the intellectual property at issue in the 087, 105, and 112 investigations showing continued use of the subject intellectual property. The Commission did not receive any submission from the owner of the intellectual property at issue in the 287 investigation. The owner of the intellectual property at issue in the 295 investigation stated that the subject intellectual property of the exclusion order was no longer used in commerce. The owner of the intellectual property at issue in the 055 investigation stated that it no longer wants the remedy of the exclusion order. The Commission received no other submissions.

Based on the foregoing, the Commission has determined that the lack of a showing of continued use of the intellectual property at issue in the 287 and 295 investigations, and the lack of an interest in continuing the remedy in the 055 investigation constitute ''changed conditions of fact or law, or the public interest'' sufficient to justify rescission of the exclusion orders issued in those investigations pursuant to 19 CFR § 210.76(a)(1). The Commission has therefore rescinded those exclusion orders.

Also pursuant to Commission rule 210.76(a)(1), the Commission has modified the exclusion orders issued in *Certain Coin-Operated Audio Visual Games and Components Thereof,* Inv. No. 337–TA–087; *Certain Coin-Operated Audio Visual Games and Components Thereof* (*Viz.,* Rally-X and PAC MAN), Inv. No. 337–TA–105; and *Certain Cube Puzzles,* Inv. No. 337–TA–112 to require that complainant report to the Commission, on a semi-annual basis, whether complainant is continuing to use the subject intellectual property in commerce.

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 Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015–10420 Filed 5–4–15; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1140–0050]**

### Agency Information Collection Activities: Proposed eCollection eComments Requested; Identification Markings Placed on Firearms

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** 80 FR 10514, on February 26, 2015, allowing for a 60 day comment period.

**DATES:** The purpose of this notice is to allow for an additional 30 days for public comment until June 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions

or additional information, please contact Helen Koppe at *fipb-informationcollection@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or send email to *OIRA_submission@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection 1140–0050**

(1) *Type of Information Collection:* Extension of an existing collection.

(2) *Title of the Form/Collection:* Identification Markings Placed on Firearms.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number:* None.

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit.

*Other:* None.

*Abstract:* Each licensed firearms manufacturer or licensed firearms importer must legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. Also, ATF requires minimum height and depth requirements for identification markings placed on firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 11,214 respondents will take 1 minute to transport, load, mark, and unload firearm in machinery.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 92,326 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: April 30, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015–10457 Filed 5–4–15; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 28, 2015, the Department of Justice filed a complaint and lodged a Consent Decree with the United States District Court for the Northern District of California pertaining to the cement manufacturing and limestone mining facility (''Facility'') in Cupertino, California owned by Hanson Permanente Cement, Incorporated (''Hanson'') and operated by Lehigh Southwest Cement Company (''Lehigh''). The complaint and proposed Consent Decree were filed contemporaneously in the matter of *United States of America and People of the State of California by and through the California Regional Water Quality Control Board, San Francisco Bay Region* v. *Lehigh Southwest Cement Company and Hanson Permanente Cement, Incorporated,* Civil Action No. 5:15–cv–01896 (N.D. Cal.).

The Consent Decree resolves claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, and related state law claims, arising from releases of selenium, mercury, hexavalent chromium, nickel, thallium, and other pollutants from the Facility to Permanente Creek. The Consent Decree provides that Lehigh and Hanson will pay a civil penalty of $2,550,000 to the United States and the State of California (with the United States and the State of California each receiving half of the civil penalty payment), and will install treatment for the pollutants described above in order to come into compliance with the Clean Water Act.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and People of the State of California by and through the California Regional Water Quality Control Board, San Francisco Bay Region* v. *Lehigh Southwest Cement Company and Hanson Permanente Cement, Incorporated,* D.J. Ref. No. 90–5–1–1–10741. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.00 (25 cents per page reproduction cost) for the Consent Decree, payable to the United States Treasury.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2015–10383 Filed 5–4–15; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 29, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Massachusetts

in the lawsuit entitled *United States* v. *City of Lawrence, Massachusetts,* Civil Action No. 1:15–cv–11743–RGS.

In the Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant City of Lawrence (''the City'') violated the Clean Water Act (''CWA''), 33 U.S.C. 1251, *et seq.,* and applicable regulations relating to the City's failure to comply with its National Pollution Discharge System and small municipal separate storm sewer system permits owned and operated by the City. The Consent Decree requires the City to undertake various measures to study and correct the problems causing the permit violations in order to achieve compliance with the CWA and applicable regulations.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of Lawrence,* D.J. Ref. No. 90–5–1–1–11060. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14.50 (25 cents per page reproduction cost), not including Appendices, payable to the United States Treasury.

**Maureen M. Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 2015–10436 Filed 5–4–15; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–NEW]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection; Perceptions of Safety and Police-Community Relations

**AGENCY:** Community Oriented Policing Services (COPS) Office, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 9750, February 24, 2015, allowing for a 60-day comment period.

**DATES:** Comments are encouraged and will be accepted for an additional 30 days until June 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly J. Brummett, Program Specialist, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (202–353–9769). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* New Collection; Perceptions of Safety and Police-Community Relations.

2. *The Title of the Form/Collection:* Survey of Resident Perceptions of Safety and Policing & Survey of Officer Perceptions of Policing and Department/Organization.

3. *The agency form number:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The affected public who will be asked to respond to the surveys include:

- Community residents of the CRI–TA site over the age of 18;
- Sworn and non-sworn police officers; and

The information collected through the two respective surveys is to establish a baseline to measure the impact of technical assistance given to Collaborative Reform Initiative (CRI) sites to advance community police and improve community confidence in the police. The four technical assistance providers (The Police Foundation, the Center for Naval Analyses (CNA), Institute of Intergovernmental Research (IIR), and Hillard Heintze) or one or more survey administration organizations will utilize each of the two surveys at one point in time for two different populations. The surveys will be administered prior to the application of technical assistance (or shortly thereafter) to establish a baseline of public and police perception of safety, community policing, and police-community relations. The data collected will cover one point in time in 2015 to establish this baseline. The survey results will not be used to draw conclusions that can be applied to the entire nation, but rather only for sites COPS chooses to provide technical assistance, so a nationally representative sample is not recommended. However, the surveys can be used in any municipality or region in the United States. To enhance site sustainability, the surveys will serve as tools for CRI sites (and future COPS community policing sites) to monitor their own

change efforts and progress over time. Sites will be encouraged to administer the same survey tools at varying time intervals in order to compare pre- and post-technical assistance perceptions. The sites can infer the impact of technical assistance as well as their own capacity to sustain change. The community resident survey should over-represent those who have or likely have had contact with the police in that locality, determined by arrest rates by zip code or neighborhood delineation, race, and ethnicity. The police survey will be disseminated to all sworn and non-sworn officers. The detainee survey shall be comprised of a convenience sample of those who have had recent contact with the police in that locality.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated one to five percent of members of each community will take part in the Survey of Resident Perceptions of Safety and Policing. The COPS Office estimates 50 sites over the approval period of this collection. Based on previous use of the survey at the Program in Criminal Justice Policy and Management at the John F. Kennedy School of Government at Harvard University (PCJ), the estimated range of completion for respondents is expected to be between 10 minutes to 15 minutes for completion. An estimated 15% of police officers of each agency will take part in the Survey of Officer Perceptions of Policing and Department/Organization. The COPS Office estimates 50 sites over the approval period of this collection. Based on previous use of the survey by the PCJ, the estimated range of completion for respondents is expected to be between 15 minutes and 20 minutes. Of the detainees offered the opportunity to participate, an estimated 20–25% of detainees will agree to participate in the Survey of Detainee Perceptions of Policing. Based on previous use of the survey the PCJ, the estimated range of completion for detainee respondents is expected to be between five minutes and 10 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* Surveys will be disseminated to respective CRI sites pre-technical assistance to gather baseline data. For the approval timeframe of this collection, the COPS Office estimates that it will administer the survey to 50 community and agency sites: The COPS Office estimates that it will administer 400 community member and 100 officer surveys per site:

- 400 surveys × 50 sites (20,000 surveys) × 20 minutes = 6,667 hours.
- 100 surveys × 50 sites (5,000 surveys) × 20 minutes = 1,667 hours.

The total estimated burden associated with this collection is 8,334 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: April 29, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015–10396 Filed 5–4–15; 8:45 am]

**BILLING CODE 4410–AT–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of certain CHANGES in the scheduling of two meetings for the transaction of National Science Board business, as noted below. The original notice was published in the **Federal Register** on April 30, 2015 (80 FR 24287).

*Webcast Information:* The link is now available.

Public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/150505* and follow the instructions.

*Plenary Board Meeting:* The speaker has been identified.

**Open Session: 11:05–11:25 a.m.**

- Presentation by the recipient of the NSB 2015 Vannevar Bush Award, Dr. James Duderstadt.

*Plenary Board Meeting:* An action has been added to the closed session.

**Closed Session: 8:30–10:30 a.m.**

- Awards and Agreements/CPP action items, including RCRV, NOAO, NRAO, Gemini Observatory, and NHMFL.

*Updates:* The link to the NSB's Web page for updates has been changed. Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.*

*Agency Contact:* Jennie Moehlmann, *jmoehlma@nsf.gov.*

*Public Affairs Contact:* Nadine Lymn, *nlymn@nsf.gov.*

**Ann Bushmiller,**

*Senior Counsel to the National Science Board.*

[FR Doc. 2015–10633 Filed 5–1–15; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2015–0092]**

### Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of five amendment requests. The amendment requests are for Kewaunee Power Station; Millstone Power Station, Units 2 and 3; North Anna Power Station, Units 1 and 2; Surry Power Station, Units 1 and 2; Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 2 and 3; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Oyster Creek Nuclear Generating Station; Peach Bottom Atomic Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Three Mile Island Nuclear Station, Unit 1; Davis-Besse Nuclear Power Station, Unit 1; Browns Ferry Nuclear Plant, Unit 3; and Browns Ferry Nuclear Plant, Units 1, 2, and 3. The NRC proposes to determine that each amendment request involves no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** Comments must be filed by June 4, 2015. A request for a hearing must be filed by July 6, 2015. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is

necessary to respond to this notice must request document access by May 15, 2015.

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

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0092. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

**FOR FURTHER INFORMATION CONTACT:** Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2015–0092 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0092.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

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

### *B. Submitting Comments*

Please include Docket ID NRC–2015–0092, facility name, unit number(s), application date, and subject in your comment submission.

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

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

## II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

## III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. The NRC's regulations are accessible

electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the

document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. Publicly-available documents created or received at the NRC are accessible online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

*Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Units 2 and 3, New London County, Connecticut*

*Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia*

*Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia*

*Date of amendment request:* November 17, 2014. A publicly-available version is in ADAMS under Accession No. ML14329A313.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Cyber Security Plan (CSP), Milestone 8 (MS8), full implementation date as set forth in the CSP Implementation Schedule for the following plants: Kewaunee Power Station; Millstone Power Station, Units 2 and 3; North Anna Power Station, Units 1 and 2; and Surry Power Station, Units 1 and 2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The amendment proposes a change to the CSP Milestone 8 full implementation date as set forth in the CSP implementation schedule. The revision of the full implementation date for the CSP does not involve modifications to any safety-related structures, systems or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The revision of the CSP implementation schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A revision to the CSP implementation schedule does not require any plant modifications. The proposed revision to the CSP implementation schedule does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Revision of the CSP implementation schedule does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure

modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed revision to the CSP implementation schedule does not alter the way any safety-related SSC functions and does not alter the way the plant is operated. The CSP provides assurance that safety-related SSCs are protected from cyber attacks. The proposed revision to the CSP implementation schedule does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed revision to the CSP implementation schedule has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed revision to the CSP implementation schedule would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, Virginia 23219.

*NRC Branch Chief:* Robert Pascarelli.

*Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland*

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York*

*Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* August 29, 2014. A publicly-available version is in ADAMS under Accession No. ML14241A526.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment requests NRC approval of a change to the Cyber Security Plan (CSP), Milestone 8 (MS8), full implementation date as set forth in the CSP Implementation Schedule as approved by the NRC in letters dated August 19, 2011 (ADAMS Accession No. ML11152A037), and October 24, 2013 (ADAMS Accession No. ML13295A467).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Exelon Generation Company, LLC (EGC) has evaluated whether or not a significant hazards consideration is involved with the proposed amendments by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the Cyber Security Plan (CSP) Milestone 8 (MS8) full implementation date as set forth in the CSP Implementation Schedule and associated regulatory commitments. The revision of the MS8 implementation date for the CSP does not involve modifications to any safety-related structures, systems, or components (SSCs). The revision of the CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The amendment proposes a change to the CSP MS8 full implementation date as set forth in the CSP Implementation Schedule and associated regulatory commitments. The revision of the MS8 full implementation date for the CSP does not involve modifications to any safety-related SSCs. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The amendment proposes a change to the CSP MS8 full implementation date as set forth in the CSP Implementation Schedule and associated regulatory commitments. The revision of the MS8 full implementation date for the CSP does not involve modifications to any safety-related SSCs. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, EGC concludes that the proposed amendment(s) does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

*Attorney for licensee:* Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, Illinois 60555.

*NRC Branch Chief:* Travis L. Tate.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

*Date of amendment request:* March 12, 2015. A publicly-available version is in ADAMS under Accession No. ML15072A052.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment requests revision of the operating license to extend the completion date for full implementation of the Davis-Besse Nuclear Power Station Cyber Security Plan from July 1, 2016, until the end of December 2017.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment extends the completion date for milestone 8 of the Cyber Security Plan (CSP) implementation schedule. Revising the full implementation date for the CSP does not involve modifications to any safety related structures, systems, or components (SSCs). The implementation schedule provides a timeline for fully implementing the CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat; thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber-attacks. The revision of the CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, tested, or inspected.

As the proposed change does not directly impact SSCs, and milestones 1 through 7 provide significant protection against cyber-attacks, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce a new mode of plant operation or involve a physical modification to the plant. New equipment is not installed with the proposed amendment, nor does the proposed amendment cause existing equipment to be operated in a new or different manner. The change to cyber security implementation plan milestone 8 is administrative in nature and relies on the significant protection against cyber-attacks that has been gained through the implementation of CSP milestones 1 through 7. Since the proposed amendment does not involve a change to the plant design or operation, no new system interactions are created by this change. The proposed changes do not result in any new failure modes, and thus cannot initiate an accident different from those previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect the performance of any structures, systems or components as described in the design basis analyses. The change to milestone 8 of the cyber security implementation plan is administrative in nature. The proposed change does not introduce a new mode of plant operation or involve a physical modification to the plant. The proposed amendment does not introduce changes to limits established in the accident analysis. Since there is no impact to any SSCs, or any maintenance or operational practice, there is also no reduction in any margin of safety.

As the proposed change does not directly impact SSCs, and milestones 1 through 7 provide significant protection against cyber-attacks, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, Ohio 44308.

*NRC Branch Chief:* Travis L. Tate.

Tennessee Valley Authority (TVA), Docket No. 50–296, Browns Ferry Nuclear Plant (BFN), Unit 3, Limestone County, Alabama

*Date of amendment request:* January 27, 2015. A publicly-available version is in ADAMS under Accession No. ML15040A698.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Technical Specifications (TSs) for Limiting Condition for Operation (LCO) 3.4.9, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits.'' The TVA submitted this license amendment request to satisfy a commitment to prepare and submit revised BFN, Unit 3, P/T limits prior to the start of the period of extended operation, as discussed in ''Browns Ferry Nuclear Plant (BFN)—Units 1, 2, and 3—Application for Renewed Operating Licenses,'' dated December 31, 2003 (ADAMS Accession No. ML040060359).

Specifically, the proposed change affects the current sets of TS Figures 3.4.9–1, ''Pressure/Temperature Limits for Mechanical Heat up, Cooldown following Shutdown, and Reactor Critical Operations,'' and 3.4.9–2, ''Pressure/Temperature Limits for Reactor In-Service Leak and Hydrostatic Testing.'' The proposed change replaces the current set valid up to 20 effective full power years (EFPYs) with a new set valid up to 38 EFPYs, and replaces the current set valid up to 28 EFPYs with a new set valid up to 54 EFPYs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes are to accept operating parameters that have been approved in previous license amendments. The changes to P/T limit curves were developed based on NRC-approved methodologies. The proposed changes deal exclusively with the reactor vessel P/T limit curves, which define the permissible regions for operation and testing. Failure of the reactor vessel is not considered as a design basis accident. Through the design conservatisms used to calculate the P/T limit curves, reactor vessel failure has a low probability of occurrence and is not considered in the safety analyses. The proposed changes adjust the reference temperature for the limiting material to account for irradiation effects and provide the same level of protection as previously evaluated and approved.

The adjusted reference temperature calculations were performed in accordance with the requirements of 10 CFR 50 Appendix G, using the guidance contained in Regulatory Guide 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' to reflect use of the operating limits to no more than 54 Effective Full Power Years (EFPY). These changes do not alter or prevent the operation of equipment required to mitigate any accident analyzed in the BFN Final Safety Analysis Report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are accepted operating parameters that have been approved in previous license amendments. The changes to the P/T limit curves were developed based on NRC-approved methodologies. The proposed changes to the reactor vessel P/T limit curves do not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system, and no new system interactions are introduced by this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are accepted operating parameters that have been approved in previous license amendments. The changes to P/T curves were developed based on NRC-approved methodologies. The proposed curves conform to the guidance contained in Regulatory Guide 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' and maintain the safety margins specified in 10 CFR 50 Appendix G.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., WT 6A–K, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Shana R. Helton.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

*Date of amendment request:* December 11, 2014. A publicly-available version is in ADAMS under Accession No. ML14363A158.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise Section 2.1.1, ''Reactor Core SLs [Safety Limits],'' of the Technical Specifications (TSs) for all three units, to lower the value of the reactor steam dome pressure safety limit from the current 785 pounds per square inch gauge (psig) to 585 psig. The proposed lowering of this safety limit will effectively expand the validity range for the units' critical power correlations and the calculation of the minimum critical power ratio. Specifically, the revised value of 585 psig is consistent with the lower range of the critical power correlations currently in use at the units. The revised value will also adequately bound a pressure regulator failure open transient event. No hardware, design, or operational change is involved with this proposed amendment.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff performed its own analysis, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the safety limit in TS Section 2.1.1 will continue to support the validity of the existing critical power correlations applied at the units. The proposed TS revision involves no change to the operation of any system or component during normal, accident, or transient operating conditions. The proposed amendment does not involve any modification to plant hardware, design, or operation.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed reduction in the reactor dome pressure safety limit from 785 psig to 585 psig is an administrative change and does not involve changes to the plant hardware or its operating characteristics. As a result, no new failure modes are being introduced.

Therefore, the proposed amendment does not introduce a new or different kind of accident from those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of plant structures, systems, and components, and through the parameters for safe operation and setpoints of equipment relied upon to respond to transients and design basis accidents. The proposed change in reactor dome pressure does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. The change does not alter the behavior of the plant equipment, which remains unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, determines that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., WT 6A–K, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Shana R. Helton.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

*Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin*

*Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Units 2 and 3, New London County, Connecticut*

*Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia*

*Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia*

*Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland*

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York*

*Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama*

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 21st day of April, 2015.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

**Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding**

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2015–09761 Filed 5–4–15; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74842; File No. SR–NYSEArca–2014–89]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1 and 2, To List and Trade Shares of Eight PIMCO Exchange-Traded Funds

April 29, 2015.

### I. Introduction

On August 15, 2014, NYSE Arca, Inc. (''NYSEArca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the following eight PIMCO exchange-traded funds, pursuant to NYSE Arca Equities Rule 8.600: PIMCO StocksPLUS® Absolute Return Exchange-Traded Fund (''StocksPLUS AR Fund''), PIMCO Small Cap StocksPLUS® AR Strategy Exchange-Traded Fund (''Small Cap StocksPLUS AR Fund''), PIMCO Fundamental IndexPLUS® AR Exchange-Traded Fund (''Fundamental IndexPLUS Fund''), PIMCO Small Company Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''Small Company Fundamental IndexPLUS Fund''), PIMCO EM Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''EM Fundamental IndexPLUS Fund''), PIMCO International Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''International Fundamental IndexPLUS Fund''), PIMCO EM StocksPLUS® AR Strategy Exchange-Traded Fund (''EM StocksPLUS Fund''), and PIMCO International StocksPLUS® AR Strategy Exchange-Traded Fund (Unhedged) (''International StocksPLUS Fund'') (each a ''Fund'' and collectively the ''Funds''). The proposed rule change was published for comment in the **Federal Register** on September 3, 2014.[3] The Commission received no comments on the proposal. On October 15, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72937 (Aug. 27, 2014), 79 FR 52385).

[4] 15 U.S.C. 78s(b)(2).

proceedings to determine whether to disapprove the proposed rule change.[5] On December 1, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On December 23, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which entirely replaced and superseded its proposal as originally filed.[7] On March 2, 2015, the Commission designated a longer period for Commission action.[8] On April 20, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.[9] The Commission is publishing this notice to solicit comments on Amendments Nos. 1 and 2 from interested persons, and is approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

## II. Description of Proposed Rule Change

### *A. In General*

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by PIMCO ETF Trust (''Trust''),[10] a registered open-end management investment company. Pacific Investment Management Company LLC will be the investment adviser for the Funds (the ''Adviser'').[11] Research Affiliates, LLC will be the sub-adviser with respect to the Fundamental IndexPLUS Fund, Small Company Fundamental IndexPLUS Fund, EM Fundamental IndexPLUS Fund, and the International Fundamental IndexPLUS Fund (the ''Sub-Adviser''). PIMCO Investments LLC will serve as the distributor for the Funds. State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds.

### *B. The Exchange's Description of the Funds*

The Exchange has made the following representations and statements in describing the Funds and its investment strategies, including other portfolio holdings and investment restrictions.[12]

#### 1. Principal Investments of Funds

Each Fund will seek total return that exceeds the total return of its equity securities index benchmark, and under normal circumstances would seek to achieve its investment objective by investing in derivatives overlying its benchmark and a portfolio of Fixed Income Instruments (defined below), which would be managed using an absolute return approach. Typically, the Funds would use derivative instruments as a substitute for taking a position in the underlying asset[13] or as part of a strategy designed to reduce exposure to other risks. The Funds may also use derivative instruments to enhance returns.

''Fixed Income Instruments'' are: Securities issued or guaranteed by the U.S. Government, its agencies, or government-sponsored enterprises (''U.S. Government Securities''); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; structured notes, including hybrid or ''indexed'' securities, and event-linked bonds;[14] bank capital and trust preferred securities; loan participations and assignments;[15] delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies, and government-sponsored enterprises; and obligations of international agencies or supranational entities. Derivative instruments may include the following: Forwards; exchange-traded and over-

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[5] *See* Securities Exchange Act Release No. 73364, 79 FR 62988 (Oct. 21, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated December 2, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 73706, 79 FR 72223 (Dec. 5, 2014) (''Order Instituting Proceedings''). In the Order Instituting Proceedings, the Commission noted, among other things that questions remained as to whether the Exchange's proposal is consistent with the requirement of Section (6)(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

[7] In Amendment No. 1, the Exchange: (1) Clarified the definition of Fixed Income Instruments; (2) clarified that the types of securities and instruments specified as permitted investments may be economically tied to foreign countries; (3) clarified that the types of securities specified as permitted investments may be denominated in foreign currencies; (4) clarified that the Funds may invest in OTC foreign currency options contracts; (5) eliminated the ability of the Funds to enter into any series of purchase and sale contracts; (6) modified the proposal to exclude from the Funds' permitted investments variable and floating rate securities and floaters and inverse floaters that are not Fixed Income Instruments, as defined in the proposal; (7) modified the proposal to provide that a Fund may invest up to 20% of its total assets in (a) trade claims, (b) junior bank loans, (c) exchange-traded and OTC-traded structured products, and (d) privately placed and unregistered securities (except that no limit will apply to privately placed and unregistered securities that satisfy the listing requirements in the Exchange's Rule 5.2(j)(3), Commentary .02(a)(6)); and (8) clarified that each Fund may invest up to 20% of its total assets in senior bank loans.

[8] *See* Securities Exchange Act Release No. 74407, 80 FR 12228 (Mar. 6, 2015). The Commission designated May 1, 2015 as the date by which it would either approve or disapprove the proposed rule change.

[9] In Amendment No. 2, the Exchange provided more information about the Funds' use of derivatives, specifying that each Fund may employ derivatives as part of a strategy intended to provide total notional exposure that exceeds the value of the Fund's net assets. Additionally, the Exchange noted that each Fund will segregate assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's board and in accordance with the 1940 Act.

[10] The Trust is registered under the 1940 Act. According to the Exchange, on January 27, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (File Nos. 333–155395 and 811–22250) (''Registration Statements''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (File No. 812–13571) (Nov. 10, 2009).

[11] The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer. The Exchange further represents that the Adviser will implement a ''fire wall'' with respect to that broker-dealer affiliate regarding access to information concerning the composition of and changes to the Funds' portfolios. The Exchange further represents that the Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In addition, according to the Exchange, in the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, the Adviser or any new adviser or Sub-Adviser or new sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and changes to the Funds' portfolios, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolios.

[12] Additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in Amendment No. 1 and the Registration Statements, as applicable. *See* Amendment No. 1, *supra* note 7 and Registration Statements, *supra* note 10.

[13] Derivatives may be purchased with a small fraction of the assets that would be needed to purchase the benchmark index securities directly, and the remainder of the Funds' assets may be invested in Fixed Income Instruments. Although the Funds generally will not invest directly in benchmark index component stocks, the Funds may invest in stocks and exchange-traded funds.

[14] Such investments will constitute only up to 20% of a Fund's total assets.

[15] Such investments will constitute only up to 20% of a Fund's total assets.

the-counter (''OTC'') options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and OTC options on swap agreements.[16]

2. Other Investments of the Funds

While each of the Funds, under normal circumstances,[17] will invest in investments as described above, the Funds may also invest in other certain investments as described below.

The Funds may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries. The Funds may invest in securities denominated in foreign (non-U.S.) currencies and in U.S. dollar-denominated securities of foreign (non-U.S.) issuers, subject to applicable limitations set forth in the proposed rule change. With respect to the Funds' absolute return investments, each Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Funds' absolute return investments, each Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.

Each of the Funds may also engage in foreign currency transactions on a spot (cash) basis or forward basis, and each of the Funds may invest in foreign currency futures contracts and options contracts. The Funds may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Funds will engage in such transactions at any given time or from time to time.

The Funds may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

3. Additional Investment Limits of the Funds

Each of the Funds may invest up to 10% of its total assets in preferred stocks, convertible securities, and other equity-related securities. Each Fund may invest up to 20% of its total assets in: (i) Trade claims; (ii) junior bank loans; (iii) exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes; and (iv) privately placed and unregistered securities. This 20% limitation, however, does not apply to privately placed and unregistered securities that comply with the generic fixed income initial listing requirements in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(6).[18]

Each Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Each Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings.

Each Fund may invest up to 20% of its total assets in ''high yield securities'' or unrated securities determined by PIMCO to be of comparable quality (except that within this limitation, the Fund may invest in mortgage-related securities rated below B).

Each Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies or U.S. government sponsored instrumentalities. Each Fund may invest up to 20% of its total assets in senior bank loans.

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV'') as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every fifteen seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[23] On a daily basis, the Funds will disclose for each portfolio holding, as applicable to the type of holding, the following information on the Funds' Web site: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security or other asset or instrument underlying the holding,[24] if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for each of the Funds' Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via National Securities Clearing Corporation. The NAV of each of the Funds will be

[16] All investment guidelines and limitations will apply to a Fund's aggregate investment exposure to a particular type of investment that is the subject of the guideline or limitation, whether that exposure is obtained through direct holdings or through derivative instruments.

[17] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[18] NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 provides for listing on the Exchange pursuant to Rule 19b–4(e) under the Act of a series of Units with an underlying index or portfolio of Fixed Income Securities meeting specified criteria. Units meeting these criteria can be listed and traded on the Exchange without Commission approval of each individual product pursuant to Section 19(b)(2) of the Act.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] The Exchange understands that several major market data vendors display or make widely available PIV taken from CTA or other data feeds.

[24] Derivatives that reference or allow delivery of more than one asset, such as U.S. Treasury futures, will name the underlying asset generically.

determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the Exchange is open for business.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day and closing prices of equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded-funds, and other equity-related securities, as well as any options (including options on futures) and futures, will be available from the exchange on which those securities and instruments are traded. U.S. exchange-traded options quotation and last sale information is available via the Options Price Reporting Authority. Intra-day and closing price information for Fixed Income Instruments will be available from major market data vendors. In addition, price information for debt securities and other financial instruments, forwards, OTC options, swaps, money market instruments, trade claims, privately placed and unregistered securities, bank loans, and structured products held by each Fund will be available through major market data vendors. Price information regarding other investment company securities will be available from on-line information services and from the Web site for the applicable investment company security. The Trust's Web site will include a form of the prospectus for each of the Funds and additional data relating to NAV and other applicable quantitative information for the Funds.

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[25] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Commission notes that the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of each Fund's portfolio. In addition, the Exchange states that the Adviser is affiliated with a broker-dealer and that the Adviser will implement a fire wall with respect to that broker-dealer affiliate regarding access to information concerning the composition of and changes to the Funds' portfolios.[26] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[27] The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and of federal securities laws applicable to trading on the Exchange. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Commission notes that the Shares and the Funds must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange. The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, equity securities, futures and options on futures with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded options, equity securities, futures and options on futures from these markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, equity securities, futures and options on futures from ISG member markets or markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) With respect to its exchange-traded equity securities investments, the Funds will invest not more than 10% of its net assets in equity securities that trade in markets that are neither members of the ISG nor parties to a comprehensive surveillance sharing agreement with the Exchange. To the extent that any of the Funds invest in futures contracts or exchange-traded options, not more than 10% of such investments will be in futures contracts or exchange-traded options whose principal trading market is neither a member of ISG nor a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an

[25] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of the Funds; or (2) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.

[26] *See supra* note 7. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[27] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[28] as provided by NYSE Arca Equities Rule 5.3.

(7) Each of the Funds may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).

(8) A minimum of 100,000 Shares for each of the Funds will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments Nos. 1 and 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Solicitation of Comments on Amendments Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments Nos. 1 and 2 are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–89 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–89 and should be submitted on or before May 26, 2015.

## V. Accelerated Approval of Proposed Rule Change as Modified by Amendments Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of the amendments in the **Federal Register**. Amendment No. 1 modifies the proposed rule change by, among other things, limiting each Fund's investments trade claims, junior bank loans, exchange-traded and OTC-traded structured products, and certain privately placed and unregistered securities. Additionally, Amendment No. 2 modifies the propose rule change by expanding the description of the Funds' use of derivatives. The Commission believes that these changes should facilitate arbitrage opportunities, which may result in narrower spreads between the market prices of the Shares and the intraday values of the Funds' portfolios. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[30] to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change as modified by Amendments Nos. 1 and 2 (SR–NYSEArca–2014–89) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10412 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 17 CFR 240.10A–3.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74830; File No. SR–DTC–2015–003]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Acknowledgment of End-of-Day Net-Net Settlement Balances by Settling Banks

April 29, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, notice is hereby given that on April 15, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of proposed revisions to the DTC Settlement Service Guide (''Guide'') to provide that any Settling Bank that does not timely acknowledge its end-of-day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

net-net settlement balance [3] or notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, would be deemed to have acknowledged its end-of-day net-net settlement balance.[4] DTC would also make other changes to the Guide as set forth below.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to propose a rule change to mitigate a risk to DTC in settlement relating to a Settling Bank's failure to take the action required to: (i) Acknowledge its end-of-day net-net settlement balance, or (ii) notify DTC of a refusal to settle for any Participant for which it is the designated Settling Bank, by the Acknowledgment Cutoff Time (as defined below).

Background

The DTC end-of-day net settlement structure depends upon the use of Settling Banks.[5] Each Participant must designate a Settling Bank to settle on its behalf. Any Participant that is a bank may settle for itself.[6] A Settling Bank that settles for other Participants must acknowledge its end-of-day net-net settlement balance for the group of Participants for which it settles, or notify DTC if it refuses to settle for any Participant for which it is the designated Settling Bank, by the later of 4:15 p.m. [sic] and the time that is 30 minutes after Settling Bank end-of-day net-net settlement balances are first made available by DTC (''Acknowledgment Cutoff Time'').[7] Therefore, DTC expects by the Acknowledgment Cutoff Time that each Settling Bank that settles for other Participants will affirmatively acknowledge its end-of-day net-net settlement balance, or notify DTC if it refuses to settle on behalf of one or more Participants for which it is the designated Settling Bank. If the Settling Bank notifies DTC that it refuses to settle for a Participant, DTC will recalculate the Settling Bank's net-net settlement balance by excluding the net settlement balance of the Participant for which the Settling Bank refused to settle and DTC will advise the Settling Bank accordingly.[8] The Settling Bank must then immediately respond to DTC to acknowledge its revised net-net settlement balance (''Adjusted Balance'') and may not refuse to settle for any other Participant on that day. After the Acknowledgment Cutoff Time and any adjustments, DTC will prepare a file to be submitted to the Federal Reserve's National Settlement Service (''NSS'') reflecting the net debits or credits from and to all Settling Banks. DTC then utilizes NSS to transmit to the Federal Reserve Bank of New York the file to debit or credit the Settling Banks' Fed accounts.

DTC needs certainty to complete settlement. If the Settling Bank does not respond to DTC with either an acknowledgment of its end-of-day net-net settlement balance or notification of a refusal to settle for a Participant for which it is the designated Settling Bank, this introduces uncertainty with respect to timely completion of settlement.

Proposal

To promote settlement certainty, DTC is proposing to treat a Settling Bank that fails to timely provide its acknowledgement of its end-of-day net-net settlement balance or notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, as having acknowledged its end-of-day net-net settlement balance for the purpose of settlement processing. DTC proposes to modify the Guide to provide that a Settling Bank that: (i) Fails to affirmatively acknowledge its end-of-day net-net settlement balance, or (ii) does not notify DTC of its refusal to settle on behalf of a Participant or Participants for which it is the designated Settling Bank, by the Acknowledgement Cutoff Time would be deemed to have acknowledged its end-of-day net-net settlement balance. The Settling Bank's balance would then in the ordinary course of settlement processing, be debited from or credited to its designated Fed Account through the NSS process. Likewise, DTC proposes that the Guide provide that a Settling Bank that fails to immediately upon receipt acknowledge its Adjusted Balance, if any, would be deemed to have acknowledged its Adjusted Balance and the Adjusted Balance would then in the ordinary course of settlement processing, be debited from or credited to its designated Fed Account through the NSS process.

DTC maintains flexibility to allow for a Settling Bank to request extra time if the Settling Bank has a problem relating to its connectivity with DTC or another good faith reason that it cannot affirmatively acknowledge or refuse, so long as the Settling Bank notifies DTC accordingly at or before the Acknowledgement Cutoff Time, or, in the case of an Adjusted Balance, it notifies DTC immediately where it is unable to affirmatively acknowledge. In this regard, the Guide would be updated to clarify that the Settling Bank is required to notify DTC of its request via a dedicated DTC Settlement phone ''hotline'' prior to the Acknowledgment Cutoff Time. As it does today, DTC would attempt to contact the Settling Bank if it does not receive a response in the form of: (i) An acknowledgment or refusal prior to the Acknowledgment Cutoff Time, or (ii) as applicable, an immediate acknowledgment of an Adjusted Balance.[9] In addition, the Guide would be updated to clarify that each Settling Bank must ensure that it maintains accurate contact details with DTC so that DTC may contact the Settling Bank regarding settlement issues. Settling Banks must update any contact details by contacting their DTC Relationship Manager.

Additionally, DTC would revise the Guide to: (i) Clarify that a Settling Bank that settles only for itself is not required

[3] The end-of-day net-net settlement balance for each Settling Bank reflects: (i) A net credit amount due to the Settling Bank from DTC, (ii) a net debit amount due from the Settling Bank to DTC, or (iii) a zero balance so that no payment is due to or from the Settling Bank. In accordance with the timeframes set forth in the Guide, DTC's end-of-day funds settlement process begins with the posting by DTC of ''final settlement figures'' at approximately 3:45 p.m. [sic] each Business Day unless extended.

[4] Terms not otherwise defined herein have the meaning set forth in the DTC Rules (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[5] Please see the Guide at pp. 17–18, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf* for an overview of the end-of-day net settlement process.

[6] *See* Rule 9(B).

[7] A Settling Bank that settles only for itself is not required to provide an acknowledgement. No Settling Bank, whether it settles for only itself or for others, may refuse to settle its own net settlement balance.

[8] No Participant has the right to refuse to settle its net settlement balance. Any Participant for which its designated Settling Bank has refused to settle on its behalf remains obligated to DTC for the payment of any net debit balance and must make another arrangement to timely pay that amount by Fedwire.

[9] DTC uses the most recent contact information provided by the Settling Bank to its DTC Relationship Manager for this purpose.

to acknowledge its net settlement balance; (ii) state that the existing flat fee charged for a Settling Bank's failure to timely settle its balance would additionally apply to a Settling Bank's failure to: (A) Affirmatively acknowledge its net-net settlement balance, or (B) notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, by the Acknowledgment Cutoff Time; (iii) clarify the fees chargeable to a Participant for a failure to settle; (iv) delete references to a Settling Bank's failure to timely settle its settlement balance from being referred to as a ''failure to settle'' and remove references to related procedures as being ''failure-to-settle'' procedures, as this use of the terminology could be confused with an individual Participant's failure to meet its settlement obligation; (v) clarify Settling Bank and settlement processing timeframes as set forth in the Guide; (vi) consolidate text, as applicable, for consistency and to eliminate duplication; (vii) apply initial capitalization as appropriate for the terms ''Participant'' and ''Settling Bank'' where they are used as defined terms; and (viii) remove references to Participant Terminal System (PTS) functions, which are no longer used for this service.

Implementation

The effective date of the proposed rule change would be announced via a DTC Important Notice.

2. Statutory Basis

The proposed rule change would reduce delays in the settlement process by allowing DTC to collect net debits and release net credits within scheduled timeframes despite the failure of a Settling Bank to affirmatively acknowledge its end-of-day net-net settlement balance or notify DTC of its refusal to settle for a Participant for which it is the designated Settling Bank on a timely basis. Therefore, the proposed rule change is consistent with the provisions of section 17A(b)(3)(F) [10] of the Act, which requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions.

*(B) Clearing Agency's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

[10] 15 U.S.C. 78q–1(b)(3)(F).

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2015–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2015–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–003 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10400 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74839; File No. SR–NYSEArca–2015–23]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of ALPS Enhanced Put Write Strategy ETF under NYSE Arca Equities Rule 8.600

April 29, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 15, 2015, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade the shares of the following under NYSE Arca Equities Rule 8.600: ALPS Enhanced Put Write Strategy ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange: [4] ALPS Enhanced Put Write Strategy ETF (''Fund''). The Shares will be offered by ALPS ETF Trust (''Trust''). The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission on behalf of the Fund.[5]

ALPS Advisors, Inc. is the investment adviser (''Adviser'') to the Fund. Rich Investment Solutions, LLC is the investment sub-adviser (''Sub-Adviser'') to the Fund. ALPS Fund Services, Inc. (''ALPS Fund Services'') serves as the Trust's administrator. The Bank of New York Mellon also serves as custodian (''Custodian'') and transfer agent (''Transfer Agent'') for the Fund. ALPS Portfolio Solutions Distributor, Inc. is the distributor (''Distributor'') of the Fund's Shares.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or Sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

ALPS Enhanced Put Write Strategy ETF

According to the Registration Statement, the investment objective of the Fund is to seek total return, with an emphasis on income as the source of that total return. The Fund will seek to achieve its investment objective by selling listed one-month put options on the SPDR® S&P 500® ETF Trust (''SPY''). SPY is an exchange-traded fund (''ETF'') that seeks to provide investment results that, before expenses, correspond generally to the price and yield performance of the S&P 500® Index (''SPX'' or ''Index''). SPY holds a portfolio of the common stocks that are included in the SPX, with the weight of each stock in its portfolio substantially corresponding to the weight of such stock in the SPX. The Fund may also sell listed one-month put options directly on the SPX under certain circumstances (such as if such options have more liquidity and narrower spreads than options on SPY). SPY shares are listed on the Exchange and traded on national securities exchanges. SPX options are traded on the Chicago Board Options Exchange (''CBOE''). Options on SPY are traded on national securities exchanges.

Each listed put option sold by the Fund will be an ''American-style'' option (*i.e.,* an option which can be exercised at the strike price at any time prior to its expiration). As the seller of a listed put option, the Fund will incur an obligation to buy SPY underlying the option from the purchaser of the option at the option's strike price, upon

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On January 6, 2015, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812–13884) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

exercise by the option purchaser. If a listed put option sold by the Fund is exercised prior to expiration, the Fund will buy the SPY underlying the option at the time of exercise and at the strike price, and will hold SPY until the market close on expiration.[7]

The option premiums and cash (in respect of orders to create Shares in large aggregations known as ''Creation Units,'' as further described below) received by the Fund will be invested in an actively-managed portfolio of investment grade debt securities (the ''Collateral Portfolio'') at least equal in value to the Fund's maximum liability under its written options (*i.e.,* the strike price of each option). Investment grade debt securities are those rated ''Baa'' equivalent or higher by a nationally recognized statistical rating organization (''NRSROs''), or are unrated securities that the Sub-Adviser believes are of comparable quality. Such investment grade debt securities will include Treasury bills (short-term U.S. government debt securities), corporate bonds, commercial paper, mortgage-backed securities (securities backed by a group of mortgages) (''MBS''), asset-backed securities (securities backed by loans, leases or other receivables other than mortgages) (''ABS'') and notes issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (''Ginnie Mae''), the Federal Housing Administration (''FHA''), the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''). It is expected that the average duration of such securities will not exceed six months and the maximum maturity of any single security will not exceed one year.

Under normal market conditions,[8] substantially all of the Fund's net assets will be invested in options on SPY or SPX, or in the Collateral Portfolio.

The Fund may invest up to 20% of its net assets in non-agency MBS and ABS in the aggregate.

The Fund may seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of ''to-be-announced'' or ''TBA transactions.'' ''TBA'' refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions. TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA transaction, the buyer and seller decide on general trade parameters, such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to settlement date. The Fund will enter into TBA transactions only with established counterparties (such as major broker-dealers) and the Sub-Adviser will monitor the creditworthiness of such counterparties.[9]

According to the Registration Statement, every month, the options sold by the Fund will be settled by delivery at expiration or expire with no value and new option positions will be established while the Fund sells any units of SPY it owns as a result of such settlements or of the Fund's prior option positions having been exercised.[10] This monthly cycle likely will cause the Fund to have frequent and substantial turnover in its option positions. If the Fund receives additional inflows (and issues more Shares in ''Creation Unit'' size during a one-month period [11]), the Fund will sell additional listed put options, which will be exercised or expire at the end of such one-month period. Conversely, if the Fund redeems Shares in Creation Unit size during a monthly period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

With respect to no more than 20% of the Fund's assets, the Fund may engage in certain opportunistic ''put spread'' and ''call spread'' strategies. Specifically, when the Sub-Adviser believes the SPX (and thus SPY) will rise or not decline in value, the Fund may engage in ''put spreads'' whereby the Fund will buy back certain of the written put options which are out of the money (*i.e.,* the strike price of the put option is lower than the market price of the underlying SPY) prior to expiration in order to sell new put options which are less out of the money. Similarly, the Fund may buy back certain of its written put options prior to expiration in order to sell new longer-dated options that will remain open past the one-month period of the original option. Conversely, when the Sub-Adviser believes the SPX will decline in value, the Fund may engage in ''call spreads'' whereby the Fund will sell call options which are in-the-money (*i.e.,* the strike price of the call option is lower than the market price of the underlying SPY) and buy back less in-the-money call options. The Sub-Adviser may employ a variant of this call spread strategy whereby the Fund buys more calls than it sells (as long as the Fund receives a net premium on such transactions). This may enable the Fund to perform better when the SPX (and thus SPY) experiences gains well above the strike price of the calls bought by the Fund. However, even if the Fund engages in such call spreads, a declining SPX (and thus SPY) will significantly detract from Fund performance (given the Fund's principal strategy of selling put options on SPY) as illustrated in the example below, which is included in the Registration Statement.

Roll Date Transactions—At each roll date, any settlement loss from the expiring puts will be financed by the Fund's portfolio of investment grade debt securities (the ''Collateral Portfolio'') and a new batch of at-the-money puts will be sold. The revenue from their sale will be added to the Fund's Collateral Portfolio. The Fund's total cash available will be reinvested daily in the Fund's Collateral Portfolio.

Number of Puts Sold—The number of puts sold will be chosen to ensure full collateralization. This means that at the expiration of the puts, the total value of the Collateral Portfolio must be equal to the maximum possible loss from final settlement of the put options.

Example: SPY trades at $50 per share at the start of the one month period, and a listed put ''American style'' option with a term of one month was sold by

[7] The Fund may also sell put options on the SPX directly under certain circumstances (such as if such options have more liquidity and narrower spreads than options on SPY) resulting in lower transaction costs than options on SPY. The puts are struck at-the-money (*i.e.,* with a strike price that is equal to the market price of the underlying SPY) and are typically sold on a monthly basis, usually on the 3rd Friday of the month (the ''roll date'').

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity or options markets or the financial markets generally; events or circumstances causing a disruption in market liquidity or orderly markets; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] The Fund intends to invest cash pending settlement of any TBA transactions in money market instruments, repurchase agreements, commercial paper (including asset-backed commercial paper) or other high-quality, liquid short-term instruments, which may include money market funds affiliated with the Adviser or Sub-Adviser.

[10] The Fund may hold U.S. exchange-listed equity securities, generally shares of SPY, for temporary periods upon settlement or exercise of the options sold by the Fund.

[11] *See* ''Creation and Redemption of Shares'', *infra.*

the Fund with a strike price of $50.00 per Share for a premium of $0.50 per Share:

Trading at or above the strike price: If at all times during the one month period prior to expiration, SPY trades at or above the strike price of $50.00, then the option would expire worthless and the Fund's value would reflect the retention of the $0.50 per share premium. The Fund's value thus would be increased by $0.50 per share on the SPY option position.

Trading below the strike price: If at any time during the one month period prior to expiration, SPY trades at or below $49.99, then the option buyer would have the right, but not the obligation, to exercise the option. The Fund's value would change as if the Fund had been put (*i.e.,* would buy) SPY at the strike price of $50.00 and sell SPY immediately at the closing price of $49.99 (or whatever lower price at which the option is exercised). As a result, the Fund's value would be reduced by $2.00 per Share if, for example, the exercise price was $48 per Share. However, the Fund's value would also reflect the retention of the $0.50 per Share premium, so the net loss to the Fund's value would be $1.50 per Share on the SPY option position.

Non-Principal Investments

While, under normal market conditions, substantially all of the Fund's net assets will be invested in options on SPY or SPX, or in the Collateral Portfolio, the Fund may invest its remaining assets in other securities and financial instruments, as described below. The Fund may invest its remaining assets in any one or more of the following instruments: Money market instruments (as described below), in addition to those in which the Fund invests as part of the Collateral Portfolio, and including repurchase agreements or other funds which invest exclusively in money market instruments; convertible securities; structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index); forward foreign currency exchange contracts; swaps; over-the-counter (''OTC'') options on SPY or on the S&P 500 Index; and futures contracts and options on futures contracts, as described further below. Swaps, options and futures contracts may be used by the Fund in seeking to achieve its investment objective, and in managing cash flows. The Fund may also invest in money market instruments or other short-term fixed income instruments as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; [12] (ii) negotiable certificates of deposit (''CDs''), fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions; [13] (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements; [14] and (v) money market mutual funds.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may invest in the securities of other investment companies (including money market funds), subject to applicable restrictions under the 1940 Act.

The Fund may utilize U.S. exchange-traded futures contracts on the S&P 500 Index and U.S. exchange-traded options on futures contracts on the S&P 500 Index.

The Fund may utilize such options on futures contracts as a hedge against changes in value of its portfolio securities, or in anticipation of the purchase of securities, and may enter into closing transactions with respect to such options to terminate existing positions.

The Fund may enter into swap agreements based on the S&P 500 Index.

The Fund may invest in investment grade debt obligations traded in the U.S. Such debt obligations include, among others, bonds, notes, debentures and variable rate demand notes. In choosing corporate debt securities on behalf of the Fund, the Sub-Adviser may consider (i) general economic and financial conditions; and (ii) the specific issuer's (a) business and management, (b) cash flow, (c) earnings coverage of interest and dividends, (d) ability to operate under adverse economic conditions, (e) fair market value of assets, and (f) other considerations deemed appropriate.

The Fund may invest up to 100% of its total assets in debt securities that are rated investment grade by an NRSROs [sic], or are unrated securities that the Sub-Adviser believes are of comparable quality.

The Fund may invest in securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument.

The Fund may use delayed delivery transactions as an investment technique. Delayed delivery transactions, also referred to as forward commitments, involve commitments by the Fund to dealers or issuers to acquire or sell securities at a specified future date beyond the customary settlement for such securities. These commitments may fix the payment price and interest rate to be received or paid on the investment. The Fund may purchase securities on a delayed delivery basis to the extent that it can anticipate having available cash on the settlement date. Delayed delivery agreements will not be used as a speculative or leverage technique.

The Fund may purchase when-issued securities.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities.

Investment Restrictions

The Fund may hold up to an aggregate of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-

[12] Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes and bonds issued by the U.S. Treasury, as well as ''stripped'' or ''zero coupon'' U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

[13] CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[14] Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (i) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

Adviser.[15] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[16]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code.[17]

The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.[18]

Net Asset Value

The net asset value (''NAV'') per Share of the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management and administration fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV per Share will be calculated by the Custodian and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m., Eastern time) (''NYSE Close'') on each day that such exchange is open.

In computing the Fund's NAV, the Fund's securities holdings traded on a national securities exchange (including listed put options sold by the Fund and any exchange-traded equity securities held by the Fund) will be valued based on their last sale price. Price information on listed securities will be taken from the exchange where the security is primarily traded. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Trust's Board.

Non-exchange traded investment company securities will be priced at NAV.

The Fund's debt securities will be valued at market value. Market value generally means a valuation (i) obtained from an exchange, a pricing service or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service or a major market maker (or dealer), or (iii) based on amortized cost. The Fund's debt securities will be thus valued by reference to a combination of transactions and quotations for the same or other securities believed to be comparable in quality, coupon, maturity, type of issue, call provisions, trading characteristics and other features deemed to be relevant. To the extent the Fund's debt securities are valued based on price quotations or other equivalent indications of value provided by a third-party pricing service, any such third-party pricing service may use a variety of methodologies to value some or all of the Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by the Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. Short-term fixed income securities having a remaining maturity of 60 days or less will generally be valued at amortized cost. The Fund's listed put options, as well as exchange-traded equity securities held by the Fund, will be valued at the last reported sale price on the principal exchange on which such securities are traded, as of the close of regular trading on NYSE Arca on the day the securities are being valued or, if there are no sales, at the mean of the most recent bid and asked prices. Other derivatives will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close. With respect to specific derivatives, and [sic] forward rates from major market data vendors will generally be determined as of the NYSE Close; futures will generally be valued at the settlement price of the relevant exchange; index swaps will be valued at the publicly available index price; index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available; OTC and exchange-traded equity options will generally be valued on the basis of quotes of quotes received from a quotation reporting system, established market makers, or pricing services or'for [sic] exchange-traded options, at the settlement price of the applicable exchange. Money market instruments (other than debt securities noted above), structured notes, repurchase

[15] Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A under the Securities Act. This rule permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act. The Sub-Adviser, under supervision of the Board, will consider whether securities purchased under Rule 144A are illiquid and thus subject to the Fund's restriction on illiquid assets. Determination of whether a Rule 144A security is liquid or not is a question of fact. In making this determination, the Sub-Adviser will consider the trading markets for the specific security taking into account the unregistered nature of a Rule 144A security. In addition, the Sub-Adviser could consider the (i) frequency of trades and quotes; (ii) number of dealers and potential purchasers; (iii) dealer undertakings to make a market; and (iv) nature of the security and of market place trades (for example, the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer). The Sub-Adviser will also monitor the liquidity of Rule 144A securities, and if, as a result of changed conditions, the Sub-Adviser determines that a Rule 144A security is no longer liquid, the Sub-Adviser will review the Fund's holdings of illiquid securities to determine what, if any, action is required to assure that the Fund complies with its restriction on investment of illiquid securities.

[16] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933 (15 U.S.C. 77a).

[17] 26 U.S.C. 851 *et seq.*

[18] Investments in derivative instruments by the Fund will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with transactions in derivatives, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures that will established by the Trust's Board of Trustees (''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures will be adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund's Shares to be more volatile than if they had not been leveraged.

agreements, reverse repurchase agreements and variable or floating rate securities will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Securities for which market quotations are not readily available, including Rule 144A securities, will be valued by a method that the Trust's Board believes accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event.

Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only in ''Creation Unit Aggregations'' of 50,000 Shares each on a continuous basis through the Distributor, without a sales load, at its NAV next determined after receipt, on any business day, of an order in proper form.

Creation Units of the Fund generally will be sold for cash only, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus a transaction fee.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business on the NYSE Arca (currently 9:30 a.m., Eastern time), the amount of the Deposit Cash to be deposited in exchange for a Creation Unit Aggregation of the Fund.

To be eligible to place orders with the Distributor and to create a Creation Unit Aggregation of the Fund, an entity must be a Depositary Trust Company (''DTC'') Participant that has executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units (''Participant Agreement''). A DTC Participant that has executed a Participant Agreement is referred to as an ''Authorized Participant.''

All orders to create Creation Unit Aggregations must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (''Closing Time'') (ordinarily 4:00 p.m., Eastern time) in each case on the date such order is placed in order for creation of Creation Unit Aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The date on which an order to create Creation Unit Aggregations is placed is referred to as the ''Transmittal Date.'' Orders must be transmitted by an Authorized Participant by telephone or other transmission method acceptable to the Distributor pursuant to procedures set forth in the ''Participant Agreement''.

Authorized Participants will be required to pay a fixed creation transaction fee payable regardless of the number of creations made each day.

Fund Shares may be redeemed only in Creation Unit size at the NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations.

With respect to the Fund, the Custodian, through the NSCC, will make available prior to the opening of business on NYSE Arca on each business day, the amount of cash that will be paid (subject to possible amendment or correction) in respect of redemption requests received in proper form on that day (the ''Redemption Cash'').

The redemption proceeds for a Creation Unit generally consist of the Redemption Cash—as announced on the business day of the request for redemption received in proper form—less a redemption transaction fee.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

Orders to redeem Creation Units must be delivered through a DTC Participant that has executed the Participant Agreement. An order to redeem Creation Units is deemed received by the Trust on the Transmittal Date if (i) such order is received by the Transfer Agent not later than 4:00 p.m., Eastern time on such Transmittal Date; (ii) such order is accompanied or followed by the requisite number of Shares of the Fund, which delivery must be made through DTC to the Custodian no later than 11:00 a.m., Eastern time (for the Fund Shares), on the next business day immediately following such Transmittal Date (the ''DTC Cut-Off-Time'') and 2:00 p.m., Eastern time for any cash component, if any owed to the Fund; and (iii) all other procedures set forth in the Participant Agreement are properly followed. After the Trust has deemed an order for redemption received, the Trust will initiate procedures to transfer the requisite Redemption Cash which is expected to be delivered within three business days.

Intraday Indicative Value

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value (''IIV''), which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session. The IIV should not be viewed as a ''real-time'' update of NAV because the IIV will be calculated by an independent third party calculator and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV will be calculated during the Exchange's Core Trading Session by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities and other assets held in the Fund's portfolio, minus the estimated amount of liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. In determining the estimated value for each of the component securities and other assets, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Availability of Information

The Fund's Web site (*www.alpsfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[19] and a calculation of the premium and discount of the Bid/Ask

[19] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange (9:30 a.m. to 4:00 p.m., Eastern time), the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[20]

The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's shareholder reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-listed equities (including SPY) will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the Exchange. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding debt securities; money market instruments; convertible securities; structured notes; forward foreign currency exchange contracts; swaps; repurchase agreements; reverse repurchase agreements; US government securities; MBS and ABS; mortgage pass-throughs; variable or floating interest rate securities; when-issued securities; delayed delivery securities; and zero-coupon securities also will be available from major market data vendors. Price information for non-exchange-traded investment company securities will be available from major market data vendors and from the Web site of the applicable investment company.

In addition, the IIV will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[21] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[22] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

If the IIV, Index value or the value of the Index components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [23] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares

[20] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[22] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[23] 17 CFR 240.10A–3.

during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[25] All futures contracts (and options on futures) and listed options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading of Shares in the Fund, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (4) how information regarding the IIV, the Disclosed Portfolio and the Index value will be disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[26] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA and the Exchange, as applicable, may each obtain information via ISG from other exchanges that are members of ISG, and in the case of the Exchange, from other market or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance. The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the NYSE is open, and that the NAV will be made available to all market participants at the same time. In addition, a large amount of publicly available information will be publicly available

[24] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[26] 15 U.S.C. 78f(b)(5).

regarding the Fund and the Shares, thereby promoting market transparency.

Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in the Shares in the Core Session on the Exchange, the Fund will disclose on its Web site the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotations and last sale information will be available via the CTA high-speed line. Quotation and last sale information for the Shares will be available via the CTA high-speed line, and from the Exchange. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding debt securities; money market instruments; convertible securities; structured notes; forward foreign currency exchange contracts; swaps; US government securities; MBS and ABS; mortgage pass-throughs; variable or floating interest rate securities; when-issued securities; delayed delivery securities; zero-coupon securities; repurchase agreements; reverse repurchase agreements; and pay-in-kind securities also will be available from major market data vendors.

In addition, the IIV will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Fund's portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts with other market and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–23 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–23 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10406 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74832; File No. SR–ISE–2015–16]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 502

April 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to amend Rule 502 to allow the listing of options overlying Exchange-Traded Fund Shares (''ETFs'') that are listed pursuant to generic listing standards on equities exchanges for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 502 to allow the listing of options overlying ETFs that are listed pursuant to generic listing standards on equities exchanges for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance sharing agreement (''comprehensive surveillance agreement'' or ''CSSA'') is not required.[3] This proposal will enable the Exchange to list and trade options on ETFs without a CSSA provided that the ETF is listed on an equities exchange pursuant to the generic listings standards that do not require a CSSA pursuant to Rule 19b–4(e)[4] of the Exchange Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[5] In other words, the proposal will amend the listing standards to allow the Exchange to list and trade options on ETFs based on international or global indexes to a similar degree that they are allowed to be listed on several equities exchanges.[6]

Exchange-Traded Funds

The Exchange allows for the listing and trading of options on ETFs. Rule 502(h)(B)(1)–(3) provide the listings standards for options on ETFs with non-U.S. component securities, such as ETFs based on international or global indexes. Rule 502(h)(B)(1) requires that any non-U.S. component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.[7] Rule 502(h)(B)(2) requires that component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index.[8] Rule 502(h)(B)(3) requires that component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.[9]

Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b–4(e)[10] of the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. exchanges.[11] In

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See e.g.,* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e).

[5] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] *See* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii). *See* also Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (SR–Amex–2006–78); 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–NASDAQ–2006–050); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86).

[7] *See* Rule 502(h)(B)(1).

[8] *See* Rule 502(h)(B)(2).

[9] *See* Rule 502(h)(B)(3).

[10] 17 CFR 240.19b–4(e).

[11] *See* Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. See also

general, the criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.[12]

In approving ETFs for equities exchange trading, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and SRO rules that govern their trading. The Exchange believes that allowing the listing of options overlying ETFs that are listed pursuant to the generic listing standards on equities exchanges for ETFs based on international and global indexes and applying Rule 19b–4(e)[13] should fulfill the intended objective of that Rule by allowing options on those ETFs that have satisfied the generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rule has the potential to reduce the time frame for bringing options on ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the generic listing standards under Rule 19b–4(e)[14] would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),[15] requesting Commission approval to list and trade options on a particular ETF.

Requirements for Listing and Trading Options Overlying ETFs Based on International and Global Indexes

Options on ETFs listed pursuant to these generic standards for international and global indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to options on ETFs and would be covered under the Exchange's surveillance program for options on ETFs.

Pursuant to the proposed rule, the Exchange may list and trade options on an ETF without a CSSA provided that the ETF is listed pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. The Exchange believes that these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio.

The Exchange believes that this proposed listing standard for options on ETFs is reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements,[16] will result in options overlying ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that allowing the Exchange to list options overlying ETFs that are listed on equities exchanges pursuant to generic standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA is not required, will result in options overlying ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in options overlying ETFs based on international or global indexes could become a surrogate for trading in unregistered securities.

The Exchange believes that ETFs based on international and global indexes that have been listed pursuant to the generic standards are sufficiently broad-based enough as to make options overlying such ETFs not susceptible instruments for manipulation. The Exchange believes that the threat of manipulation is sufficiently mitigated for underlying ETFs that have been listed on equities exchanges pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required and for the overlying options, that the Exchange does not see the need for CSSA to be in place before listing and trading options on such ETFs. The Exchange notes that its proposal does not replace the need for a CSSA as provided in the current rule. The provisions of the current rule, including the need for a CSSA, remain materially unchanged in the proposed rule and will continue to apply to options on ETFs that are not listed on an equities exchange pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. Instead, the proposed rule adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rules have the potential to reduce the time frame for bringing options on ETFs to market, thereby reducing the burdens on issuers and other market participants. The Exchange also believes enabling the listing and trading of options on ETFs pursuant to this new listing standard will benefit investors by providing them with valuable risk management tools. The Exchange notes that its proposal does not replace the need for a CSSA as provided in the current rule. The provisions of the current rule, including the need for a comprehensive surveillance sharing agreement, remain materially unchanged in the proposed rule and will continue to apply to options on ETFs that are not listed on an equities exchange pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. Instead, the proposed rule adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange in a manner that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

[12] *See, e.g.,* Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes).

[13] 17 CFR 240.19b–4(e).

[14] 17 CFR 240.19b–4(e).

[15] 15 U.S.C. 78s(b)(2).

[16] All of the other listing criteria under the Exchange's rules will continue to apply to any options listed pursuant to the proposed rule change.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b) [sic].

cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive change that is substantially similar to recent rule changes filed by the MIAX Options Exchange (''MIAX'') and NASDAQ OMX PHLX, LLC (''Phlx'').[19] Furthermore, the Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on ETFs, and by providing them with valuable risk management tools. Specifically, the Exchange believes that market participants on the Exchange would benefit from the introduction and availability of options on ETFs in a manner that is similar to equities exchanges and will provide investors with a venue on which to trade options on these products. For all the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay will permit the Exchange to list and trade certain ETF options on the same basis as other options markets.[24] The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2015–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2015–16, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10402 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[19] *See* Securities Exchange Act Release Nos. 74509 (March 13, 2015), 80 FR 14425 (March 19, 2015) (SR–MIAX–2015–04); 74553 (March 20, 2015), 80 FR 16072 (March 26, 2015) (SR–Phlx–2015–27).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See* Securities Exchange Act Release Nos. 74509 and 74553, *supra* note 19.

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74837; File No. SR–NYSE–2015–19]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15 To Reflect That Exchange Systems Will Not Publish Order Imbalance Information on the Initial Public Offering of a Security

April 29, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2015, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 15 to reflect that Exchange systems will not publish Order Imbalance Information on the initial public offering (''IPO'') of a security. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 15 to reflect that Exchange systems will not publish Order Imbalance Information if a security is an IPO.

Rule 15(c) currently provides that Exchange systems may make available, from time to time and as the Exchange shall determine, Order Imbalance Information [4] prior to the opening of a security on the Exchange. Rule 15(c)(2)(i) provides that Order Imbalance Information will use the last reported sale price in the security on the Exchange as the reference price to indicate the number of shares required to open the security with an equal number of shares on the buy side and sell side of the market. For circumstances when there is no last reported sale in a security on the Exchange, *i.e.,* IPOs or transferred securities, Rule 15(c)(2)(ii)(D) and (E) specify a different reference price, which for IPOs is the offering price.

To reduce confusion regarding pricing of an IPO, the Exchange proposes to discontinue publishing Order Imbalance Information if a security is an IPO. The Exchange believes that the Order Imbalance Information currently published for IPOs may not be the most accurate indication of the state of the market for individual IPO securities. In calculating Order Imbalance Information for IPOs, Exchange systems do not have access to interest represented in the crowd by Floor brokers, *i.e.,* orally bid or offered at the point of sale on the trading Floor, which in the case of IPOs can represent significant interest. Similarly, Exchange systems do not have access to DMM interest. In the case of IPOs, both types of interest play an important role in determining the initial opening price, which can fluctuate significantly during the price discovery process leading up to the opening transaction. The Exchange believes it is therefore appropriate to discontinue publishing Order Imbalance Information for a security that is an IPO.

The Exchange notes that indications as required pursuant to Rules 15(a) and/or 123D(1), if applicable,[5] would still be published, if warranted. Because the DMM, who does have knowledge of Floor-based trading interest for an IPO, is responsible for publishing indications pursuant to Rules 15(a) and/or 123D(1), the Exchange believes that such indications represent a truer state of the market for an IPO. The Exchange believes that discontinuing Order Imbalance Information would reduce any confusion in the market if there is a difference between the Order Imbalance Information and pricing information that may be published

[4] Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening transaction of the security in Exchange systems, *i.e.,* electronic interest, including Floor broker electronic interest, entered into Exchange systems prior to the opening. Order Imbalance Information is disseminated on the Exchange's proprietary data feeds. *See* Rule 15(c)(1). As discussed below, during IPOs there is significant non-electronic pre-opening interest in the form of oral orders by Floor brokers that would not be captured by the Exchange's order imbalance feed.

[5] Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the ''applicable price change'' specified in the Rule (representing a numerical or percentage change from the security's closing price per share or, in the case of an IPO, the security's offering price), the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (a ''Rule 15 Indication''), which is represents a range of where a security may open. The Rule 15 Indication is a one-time snapshot that is published on the Exchange's proprietary data feeds prior to the scheduled 9:30 a.m. opening time. A Rule 15 Indication includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. In contrast, because Exchange systems would not have access to orally-represented interest in the trading crowd, Rule 15 Indications published by the Exchange would not reflect Floor broker orally-represented crowd interest. For this reason, DMM-entered Rule 15 Indications have priority over Exchange-generated Rule 15 Indications and therefore if a DMM issues a Rule 15 Indication, the Exchange would not publish a Rule 15 Indication in that security. *See* Exchange Act Release No. 34–73352 (October 15, 2014), 79 FR 63005, 63006 (October 21, 2014). Rule 123D(1) requires the dissemination of one or more indications in connection with any delayed opening where a security has not opened or been quoted by 10 a.m. In addition, Rule 123D(1) provides that dissemination of one or more indication is mandatory for an opening which will result in a ''significant'' price change from the previous close. For securities priced under $10, such indications are mandatory if the price change is one dollar of more; for securities between $10 and $99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over $100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price. The Rule provides specific guidelines for both the number of indications and length of time between indications. The DMM is responsible for publishing the Rule 123D mandatory indication and when determining the price range for the indication, takes into consideration Floor broker interest that has been orally entered and what, at a given time, the DMM anticipates the dealer participation in the opening transaction would be. All indications pursuant to Rule 123D require the supervision and approval of a Floor Official and are published to the Consolidated Tape.

pursuant to a Rule 15(a) or Rule 123D(1) indication.

To effectuate this change, the Exchange proposes to delete the rule text in subpart (D) of Rule 15(c)(2)(ii), which requires the Exchange to use the IPO price as the reference price for automated Order Imbalance Information, and renumber current Rule 15(c)(2)(ii)(E) as new Rule 15(c)(2)(ii)(D). No other changes to the Exchange's rules are necessary.

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that discontinuing publishing Order Imbalance Information for a security that is an IPO would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating a source of information that may not accurately reflect the market for such securities, and which may differ from indications published by the DMM pursuant to either Rule 15(a) or Rule 123D(1), as may be applicable. The Exchange further believes that discontinuing publishing such information would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather improve the current process of providing pre-market information to customers and the investing public about a security that is an IPO.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2015–19 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–19 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10404 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74838; File No. SR–NYSEMKT–2015–33]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15—Equities To Reflect That Exchange Systems Will Not Publish Order Imbalance Information on the Initial Public Offering of a Security

April 29, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2015, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 15—Equities to reflect that Exchange systems will not publish Order Imbalance Information on the initial public offering (''IPO'') of a security. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 15—Equities (''Rule 15'') to reflect that Exchange systems will not publish Order Imbalance Information if a security is an IPO.

Rule 15(c) currently provides that Exchange systems may make available, from time to time and as the Exchange shall determine, Order Imbalance Information [4] prior to the opening of a security on the Exchange. Rule 15(c)(2)(i) provides that Order Imbalance Information will use the last reported sale price in the security on the Exchange as the reference price to indicate the number of shares required to open the security with an equal number of shares on the buy side and sell side of the market. For circumstances when there is no last reported sale in a security on the Exchange, *i.e.,* IPOs or transferred securities, Rule 15(c)(2)(ii)(D) and (E) specify a different reference price, which for IPOs is the offering price.

To reduce confusion regarding pricing of an IPO, the Exchange proposes to discontinue publishing Order Imbalance Information if a security is an IPO. The Exchange believes that the Order Imbalance Information currently published for IPOs may not be the most accurate indication of the state of the market for individual IPO securities. In calculating Order Imbalance Information for IPOs, Exchange systems do not have access to interest represented in the crowd by Floor brokers, *i.e.,* orally bid or offered at the point of sale on the trading Floor, which in the case of IPOs can represent significant interest. Similarly, Exchange systems do not have access to DMM interest. In the case of IPOs, both types of interest play an important role in determining the initial opening price, which can fluctuate significantly during the price discovery process leading up to the opening transaction. The Exchange believes it is therefore appropriate to discontinue publishing Order Imbalance Information for a security that is an IPO.

The Exchange notes that indications as required pursuant to Rules 15(a) and/or 123D(1)—Equities, if applicable,[5] would still be published, if warranted. Because the DMM, who does have knowledge of Floor-based trading interest for an IPO, is responsible for publishing indications pursuant to Rules 15(a) and/or 123D(1)—Equities, the Exchange believes that such indications represent a truer state of the market for an IPO. The Exchange believes that discontinuing Order Imbalance Information would reduce any confusion in the market if there is a difference between the Order

[4] Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening transaction of the security in Exchange systems, *i.e.,* electronic interest, including Floor broker electronic interest, entered into Exchange systems prior to the opening. Order Imbalance Information is disseminated on the Exchange's proprietary data feeds. *See* Rule 15(c)(1). As discussed below, during IPOs there is significant non-electronic pre-opening interest in the form of oral orders by Floor brokers that would not be captured by the Exchange's order imbalance feed.

[5] Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the ''applicable price change'' specified in the Rule (representing a numerical or percentage change from the security's closing price per share or, in the case of an IPO, the security's offering price), the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (a ''Rule 15 Indication''), which is represents a range of where a security may open. The Rule 15 Indication is a one-time snapshot that is published on the Exchange's proprietary data feeds prior to the scheduled 9:30 a.m. opening time. A Rule 15 Indication includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. In contrast, because Exchange systems would not have access to orally-represented interest in the trading crowd, Rule 15 Indications published by the Exchange would not reflect Floor broker orally-represented crowd interest For this reason, DMM-entered Rule 15 Indications have priority over Exchange-generated Rule 15 Indications and therefore if a DMM issues a Rule 15 Indication, the Exchange would not publish a Rule 15 Indication in that security. *See* Exchange Act Release No. 34–73351 (October 15, 2014), 79 FR 62991, 62991 (October 21, 2014). Rule 123D(1)—Equities requires the dissemination of one or more indications in connection with any delayed opening where a security has not opened or been quoted by 10 a.m. In addition, Rule 123D(1)—Equities provides that dissemination of one or more indication is mandatory for an opening which will result in a ''significant'' price change from the previous close. For securities priced under $10, such indications are mandatory if the price change is one dollar of more; for securities between $10 and $99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over $100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price. The Rule provides specific guidelines for both the number of indications and length of time between indications. The DMM is responsible for publishing the Rule 123D—Equities mandatory indication and when determining the price range for the indication, takes into consideration Floor broker interest that has been orally entered and what, at a given time, the DMM anticipates the dealer participation in the opening transaction would be. All indications pursuant to Rule 123D—Equities require the supervision and approval of a Floor Official and are published to the Consolidated Tape.

Imbalance Information and pricing information that may be published pursuant to a Rule 15(a) or Rule 123D(1)—Equities indication.

To effectuate this change, the Exchange proposes to delete the rule text in subpart (D) of Rule 15(c)(2)(ii), which requires the Exchange to use the IPO offering price as the reference price for automated Order Imbalance Information, and renumber current Rule 15(c)(2)(ii)(E) as new Rule 15(c)(2)(ii)(D). No other changes to the Exchange's rules are necessary.

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that discontinuing publishing Order Imbalance Information for a security that is an IPO would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating a source of information that may not accurately reflect the market for such securities, and which may differ from indications published by the DMM pursuant to either Rule 15(a) or Rule 123D(1)—Equities, as may be applicable. The Exchange further believes that discontinuing publishing such information would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather improve the current process of providing pre-market information to customers and the investing public about a security that is an IPO.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–33 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10405 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:* Rule 15c2–8; SEC File No. 270–421, OMB Control No. 3235–0481.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–8 (17 CFR 240.15c2–8). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–8 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires broker-dealers to deliver preliminary and/or final prospectuses to certain people under certain circumstances. In connection with securities offerings generally, including initial public offerings (IPOs), the rule requires broker-dealers to take reasonable steps to distribute copies of the preliminary or final prospectus to anyone who makes a written request, as well as any broker-dealer who is expected to solicit purchases of the security and who makes a request. In connection with IPOs, the rule requires a broker-dealer to send a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale (generally, this means any person who is expected to actually purchase the security in the offering) at least 48 hours prior to the sending of such confirmation. This requirement is sometimes referred to as the ''48 hour rule.''

Additionally, managing underwriters are required to take reasonable steps to ensure that all broker-dealers participating in the distribution of or trading in the security have sufficient copies of the preliminary or final prospectus, as requested by them, to enable such broker-dealer to satisfy their respective prospectus delivery obligations pursuant to Rule 15c2–8, as well as Section 5 of the Securities Act of 1933.

Rule 15c2–8 implicitly requires that broker-dealers collect information, as such collection facilitates compliance with the rule. There is no requirement to submit collected information to the Commission. In order to comply with the rule, broker-dealers participating in a securities offering must keep accurate records of persons who have indicated interest in an IPO or requested a prospectus, so that they know to whom they must send a prospectus.

The Commission estimates that the time broker-dealers will spend complying with the collection of information required by the rule is 11,900 hours for equity IPOs and 86,460 hours for other offerings. The Commission estimates that the total annualized cost burden (copying and postage costs) is $23,800,000 for IPOs and $3,458,400 for other offerings.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 29, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10397 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74829; File No. SR–NASDAQ–2015–042]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 7015(b) and (g) to Modify Port Fees

April 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 7015(b) and (g) to modify the port fees charged to members and non-members for ports used to enter orders into Nasdaq systems, in connection with the use of the FIX and OUCH trading telecommunication protocols.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**7015. Access Services**

(a) No change.

(b) Financial Information Exchange (FIX).

| Ports | Price |
|---|---|
| FIX Trading Port ..... | $5*75*[50]/port/month. |
| FIX Port for Services Other than Trading. | $500/port/month. |

(c)–(f) No change.

(g) Other Port Fees.

Remote Multi-cast ITCH Wave Ports.

| Description | Installation fee | Recurring monthly fee |
|---|---|---|
| MITCH Wave Port at Secaucus, NJ ..... | $2,500 | $7,500 |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

| Description | Installation fee | Recurring monthly fee |
|---|---|---|
| MITCH Wave Port at Weehawken, NJ | 2,500 | 7,500 |
| MITCH Wave Port at Mahwah, NJ | 5,000 | 12,500 |

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

• $5*75*[50] per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1,000 per month for software-based TotalView-ITCH or $2,500 per month for combined software- and hardware-based TotalView-ITCH, and TCP ITCH data feed pairs, for which the fee is $750 per month.

• An additional $200 per month for each port used for entering orders or quotes over the Internet.

• An additional $600 per month for each port used for market data delivery over the Internet.

Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of $5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of $5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription.

(h)–(i) No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is proposing to amend Nasdaq Rule 7015(b) and (g) to modify the monthly fee it charges for ports used to enter orders in the Nasdaq Market Center for the trading of equities, in connection with the use of FIX and OUCH trading telecommunication protocols.

The enhanced ports will use field-programmable gate array (''FPGA'') technology, which is a hardware-based delivery mechanism and an upgrade to the existing software and software-and-hardware based mechanisms. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency. In other words, the upgrade to FPGA will improve the predictability of the telecommunications ports and thereby add value to the user experience.

The Exchange is offering new technology and pricing in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. The costs associated with the hardware-based delivery system cover creating, shipping, installing and maintaining the new equipment and codebase. From a messaging perspective, the data content and sequencing on the new hardware version of the OUCH ports will be the same as on the legacy software-based versions of NASDAQ ports that are being replaced.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(5) of the Act[4] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange continuously strives to offer members state of the art technology to enhance their trading experience and thereby enhance the national market system. Incremental enhancements such as the advent of FPGA technology has helped make the U.S. markets the deepest, most liquid markets in the world.

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fees are reasonable in that they are based on the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for the FPGA enhancement for member firms. In addition, the FPGA enhancements will provide value to members far exceeding the incremental costs imposed. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees apply equally to all users of the FPGA-enhanced ports. Moreover, the fees apply in direct proportion to the number of ports used by each member.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ believes that the proposed rule change is pro-competitive in that the enhancements improve the competitiveness of the NASDAQ Market Center and the overall quality of the national market system. If, as NASDAQ believes, the FPGA enhancement provides NASDAQ a competitive advantage, other exchanges will quickly respond by enhancing their own markets in the same way. Such innovation and imitation is the very essence of the competition the Exchange Act is designed to promote.[6]

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] The Chicago Mercantile Exchange is already using FPGA technology in order entry ports for the trading of futures. *See https://www.cmegroup.com/globex/files/NewiLinkArchitecture2014.pdf.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–042 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–042, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10399 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, May 7, 2015 at 12 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 30, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10538 Filed 5–1–15; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request Copies Available From:* U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*New Information Collection:*

Contract Standard for Contractor Workforce Inclusion; SEC File No. S7–02–15, OMB Control No. 3235–XXXX.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the Commission) has submitted to the Office of Management and Budget a request to approve the collection of information discussed below.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) provided that certain agencies, including the Commission, establish an Office of Minority and Women Inclusion (OMWI).[1] Section 342(c)(2) of the Dodd-Frank Act requires the OMWI Director to include in the Commission's procedures for evaluating contract proposals and hiring service providers a written statement that the contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

In addition, section 342(c)(3)(A) requires the OMWI Director to establish standards and procedures for determining whether an agency contractor or subcontractor ''has failed to make a good faith effort to include minorities and women'' in its workforce. Section 342(c)(3)(B)(i) provides that if the OMWI Director

[1] 12 U.S.C. 5452.

determines that a contractor has failed to make good faith efforts, the Director shall recommend to the agency administrator that the contract be terminated. Upon receipt of such a recommendation, section 342(c)(3)(B)(ii) provides that the agency administrator may terminate the contract, make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor, or take other appropriate action.

The Commission developed a Contract Standard for Contractor Workforce Inclusion (Contract Standard) to implement the requirements of section 342(c) of the Dodd-Frank Act. The Contract Standard, which will be included in the Commission's solicitations and resulting contracts for services with a dollar value of $100,000 or more, contains a ''collection of information'' within the meaning of the Paperwork Reduction Act. The Contract Standard requires that a Commission contractor provide documentation, upon request from the OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities in its workforce and, as applicable, to demonstrate its covered subcontractors have made such good faith efforts. The documentation requested may include, but is not limited to: (1) The total number of employees in the contractor's workforce, and the number of employees by race, ethnicity, gender, and job title or EEO–1 job category (*e.g.,* EEO–1 Report(s)); (2) a list of covered subcontract awards under the contract that includes the dollar amount of each subcontract, date of award, and the subcontractor's race, ethnicity, and/or gender ownership status; (3) the contractor's plan to ensure the fair inclusion of minorities and women in its workforce, including outreach efforts; and (4) for each covered subcontractor, the information requested in items 1 and 3 above. The OMWI Director will consider the information submitted in evaluating whether the contractor or subcontractor has complied with its obligations under the Contract Standard.

The information collection would be mandatory. The Commission estimates that 170 contractors [2] would be subject to the Contract Standard. Approximately 120 of these contractors have 50 or more employees, while about 50 contractors have fewer than 50 employees. For the estimated 120 contractors that have 50 or more employees, the Commission estimates that the information collection under the Contract Standard would impose no new recordkeeping burdens. Such contractors are generally subject to recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act [3] and Executive Order 11246 (''EO 11246'').[4] Contractors that have 50 or more employees (and a contract or subcontract of $50,000 or more) are required to maintain records on the race, ethnicity, gender, and EEO–1 job category of each employee under Department of Labor regulations implementing EO 11246.[5] The regulations implementing EO 11246 also require contractors that have 50 or more employees (and a contract or subcontract of $50,000 or more) to develop and maintain a written program, which describes the policies, practices, and procedures that the contractor uses to ensure that applicants and employees receive equal opportunities for employment and advancement.[6] In lieu of developing a separate workforce inclusion plan, a contractor would be permitted to submit its existing written program prescribed by the EO 11246 regulations as part of the documentation that demonstrates the contractor's good faith efforts to ensure the fair inclusion of minorities and women in its workforce. Thus, approximately 120 contractors are already required to maintain the information that may be requested under the Contract Standard.

The estimated 50 contractors that employ fewer than 50 employees are required under the regulations implementing EO 11246 to maintain records showing the race, ethnicity and gender of each employee. The Commission believes that these contractors also keep job title information during the normal course of business. However, contractors that have fewer than 50 employees may not have the written program prescribed by the EO 11246 regulations or similar plan that could be submitted as part of the documentation to demonstrate their good faith efforts to ensure the fair inclusion of minorities and women in their workforces. Accordingly, contractors with fewer than 50 employees may have to create a plan to ensure workforce inclusion of minorities and women.

In order to estimate the burden on contractors associated with creating a workforce inclusion plan, the Commission considered the burden estimates for developing the written programs required under the regulations implementing EO 11246.[7] As there is no regulatory blueprint for a workforce inclusion plan, and contractors creating a workforce inclusion plan are not required to perform the same types of analyses required for the written programs prescribed by the EO 11246 regulations, the Commission believes that to develop a workforce inclusion plan contractors with fewer than 50 employees would require approximately a third of the hours that contractors of similar size spend on developing the written programs required under the EO 11246 regulations. Accordingly, the Commission estimates that contractors would spend about 24 hours of employee resources to develop a workforce inclusion plan. The one-time implementation burden annualized would be 400 hours. After the initial development, the Commission estimates that each contractor with fewer than 50 employees would spend approximately 10 hours each year updating and maintaining its workforce inclusion plan. The Commission estimates that the annualized recurring recordkeeping burden associated with the information collection would be 350 hours. Thus, the Commission estimates that the annual recordkeeping burden for such contractors would total 750 hours.

The Contract Standard also requires contractors to maintain information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who would have an obligation to keep workforce demographic data and maintain workforce inclusion plans because the substance of the Contract Standard would be included in their subcontracts. Based on data describing recent Commission subcontractor activity, the Commission believes that very few subcontractors will have subcontracts

[2] Unless otherwise specified, the term ''contractors'' refers to contractors and subcontractors.

[3] 42 U.S.C. 2000e, *et seq.*

[4] Executive Order 11246, 30 FR 12,319 (Sept. 24, 1965).

[5] *See* 41 CFR 60–1.7.

[6] *See* 41 CFR part 60–2.

[7] According to the Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply Service, OMB Control No. 1250–003 (''Supporting Statement''), it takes approximately 73 burden hours for contractors with 1–100 employees to develop the initial written program required under the regulations implementing EO 11246. We understand the quantitative analyses prescribed by the Executive Order regulations at 41 CFR part 60–2 are a time-consuming aspect of the written program development. As there is no requirement to perform these types of quantitative analyses in connection with a workforce inclusion plan under the proposed Contract Standard, we believe the workforce inclusion plan will take substantially fewer hours to develop. The Supporting Statement is available at reginfo.gov.

under Commission service contracts with a dollar value of $100,000 or more.[8] These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, the Commission believes that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

With respect to the reporting burden, the Commission estimates that it would take all contractors on average approximately one hour to retrieve and submit to the OMWI Director the documentation specified in the Contract Standard. The Commission expects to request documentation from up to 100 contractors each year and therefore the Commission estimates the total annual reporting burden would be 100 hours.

The estimated annualized cost to contractors for the recordkeeping and reporting burden hours resulting from the information collection requirement under the Contract Standard is based on Bureau of Labor Statistics data in the publication ''Employer Costs for Employee Compensation'' (2014), which lists total compensation for management, professional, and related occupations as $55 per hour and administrative support as $25.[9] With respect to the recordkeeping burden for developing, updating, and maintaining the workforce inclusion plan, the Commission estimates that 75 percent of the burden hours would be management, professional, and related occupations and 25 percent would be administrative support. The Commission estimates that the annualized cost related to the burden hours for the initial development of a workforce inclusion plan is $19,000, and that the annualized cost for the recurring recordkeeping burden is $16,625. Thus, the Commission estimates that the annualized recordkeeping cost related to compliance with the Contract Standard is $35,625 (50 contractors x $712.50 per contractor).

As for the reporting burden, the Commission estimates that 75 percent of the burden hours for retrieving and submitting documentation to the OMWI Director would be administrative support and 25 percent would be professional, management, and related occupations. The Commission estimates that the annual reporting cost related to compliance with the Contract Standard is $3250 (100 responses each year × $32.50 per response).[10]

On February 13, 2015, the Commission published for public comment a notice of the proposed Contract Standard, which also included the notice required under the Paperwork Reduction Act and allowed the public 60 days to submit comments.[11] The Commission received no comments on the proposed information collection.

Written comments continue to be invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Please direct general comments to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: April 29, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10398 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[8] A search of subcontract awards on the usaspending.gov Web site showed that four subcontractors in FY 2012 and three subcontractors in FY 2013 had subcontracts of $100K or more. *See* data on subcontract awards available at *http://usaspending.gov.*

[9] For purposes of these calculations, the average salaries of $54.95 and $24.76 have been rounded up.

[10] The estimates of average burden hours and associated costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a survey or study of the paperwork burdens and costs associated with the proposed information collection.

[11] *See* Contract Standard for Contractor Workforce Inclusion and Request for Public Comment Release No. 34–74239 (February 10, 2015), 80 FR 8119 (February 13, 2015).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74833; File No. SR–Phlx–2015–36]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Phlx Permit Fee, Order Entry Port Fee, Clearing Trade Interface Port Fee, and Active Specialized Quote Feed Port Fee

April 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Phlx Pricing Schedule (''Pricing Schedule'') at Section VI pertaining to the Phlx Permit Fee and at Section VII pertaining to the Order Entry Port Fee, the Clearing Trade Interface (''CTI'') Port Fee, and the Active Specialized Quote Feed (''SQF'') Port Fee.[3] The Exchange also proposes technical changes to the language of the Pricing Schedule.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References in the proposal are to the Exchange's Pricing Schedule, unless otherwise noted.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Exchange's Pricing Schedule at Section VI pertaining to the Phlx Permit Fee and at Section VII pertaining to the Order Entry Port Fee, the CTI Port Fee, and the Active SQF Port Fee. The Exchange also proposes technical changes to the language of the Pricing Schedule. The proposed changes are discussed below.

Phlx Permit Fee—Section VI A. of the Pricing Schedule

The Exchange currently has a Permit Fee for Phlx members, which is $2,150 for Specialists [4] and Market Makers [5] and $2,150 for Floor Brokers [6] per month. The Exchange proposes to increase the Permit Fee for Specialist and Market Makers, as well as for Floor Brokers, to $2,300.[7]

Phlx Permit Fees for all other member and member organizations are currently $4,000 in a given month, unless the member or member organization or member organizations under Common Ownership [8] executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be $2,150 for that month. Commensurate with the increased Permit Fees for Specialists, Market Makers, and Floor Brokers, the Exchange proposes to increase to $2,300 the Permit Fee for all other Common Ownership members or member organizations that execute a large number of options on the Exchange.[9]

The Exchange is seeking to recoup costs incurred from the membership administration function while continuing to encourage bringing options liquidity to the Exchange.

Order Entry Port Fee—Section VII B. of the Pricing Schedule

The Exchange currently has an Order Entry Port Fee that is $600 per month per mnemonic.[10] The Exchange proposes to modestly increase the Order Entry Port Fee to $650 per month per mnemonic.

The Order Entry Port Fee is a connectivity fee related to routing orders to the Exchange via an external order entry port. Phlx members access the Exchange's network through order entry ports. A Phlx member may have more than one order entry port. Today, the Exchange assesses members an Order Entry Port Fee of $600 per month per mnemonic. The Exchange proposes to increase the Order Entry Port Fee to $650 per month per mnemonic. The current practice will continue whereby the Order Entry Port Fee will be waived for mnemonics that are used exclusively for Complex Orders [11] where one of the components of the Complex Order is the underlying security.[12] In addition, the current practice will continue whereby member organizations are not being assessed an Order Entry Port Fee for additional ports acquired for only ten business days for the purpose of transitioning technology.[13]

CTI Port Fees—Section VII B. of the Pricing Schedule

The Exchange currently has a CTI Port Fee that is $600 per port per month for each of the first 5 CTI ports, and $100 per port for each port thereafter. The Exchange proposes to modestly increase the CTI Port Fee from $600 to $650 and to continue to charge a smaller amount for the subsequent ports in order to encourage use of CTI ports on the Exchange.

CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation (''OCC''). The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders. This information will be available to members on a real-time basis.[14]

The Exchange assesses port fees for similar ports, namely the Order Entry Ports, CTI Ports and Active SQF Ports,

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a).

[5] A ''Market Maker'' includes Registered Options Traders (Exchange Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (Exchange Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (Exchange Rule 1014(b)(ii)(B)).

[6] A ''Floor Broker'' is defined in Exchange Rule 1060 as an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders received from members and member organizations.

[7] In addition, a member or member organization will pay an additional Permit Fee for each sponsored options participant, which fee will be the Permit Fee that is assessed to the member or member organization sponsoring the options participant. *See* note 16 to section VI A. of the Pricing Schedule.

[8] The term ''Common Ownership'' means members or member organizations under 75% common ownership or control. *See* Preface to Pricing Schedule.

[9] No change is proposed to Permit Fees for PSX only members and member organizations. These fees would continue to be $4,000 unless the member or member organization averages at least 1,000 shares executed per day in a given month, in which case the Permit Fee will be $0.00 in a given month. This volume will be calculated by averaging the shares over a one month period. The Exchange believes 1,000 shares per day in a given month is a reasonable level given the lower volume of business transacted on PSX as compared to other mature equities markets such as The NASDAQ Stock Market LLC.

[10] Mnemonics are codes that identify member organization order entry ports.

[11] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .07(a)(i).

[12] *See* note 25 to section VII B. of the Pricing Schedule.

[13] Similarly, member organizations will continue to be required to provide the Exchange with written notification of the transition and all additional ports which were provided at no cost will be removed at the end of the ten business days. *See* Order Entry Port Fee in section VII B. of the Pricing Schedule.

[14] Other data that is available includes: (1) Options Auction Notifications (*e.g.,* opening imbalance, market exhaust, PIXL or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (''COLA''); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.,* trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (*e.g.,* trading halts, resumption of trading).

discussed below. The Exchange desires to continue assessing the fees on Phlx in order to recoup costs associated with these ports while encouraging members to participate in the market.

Active SQF Port Fee—Section VII B. of the Pricing Schedule

SQF is an interface that enables Specialists, Streaming Quote Traders (''SQTs'') [15] and Remote Streaming Quote Traders (''RSQTs'') [16] to connect and send quotes into Phlx XL.[17] Active SQF ports are ports that receive inbound quotes at any time within that month. Active SQF Ports allow member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed.

Last year, as discussed below, the Exchange underwent a technology refresh (''refresh'' or ''technology refresh''), which is completed. During the technology refresh, Exchange members had to use old Active SQF Ports and new Active SQF Ports as these were being developed, tested, and implemented. Where the Exchange had been offering Active SQF Ports in sets of four to accommodate the connections necessary to access the match engine, as a result of the refresh (discussed below) firms could use fewer ports for a connection.

To help Exchange members through the refresh period, the Exchange last year filed an immediately effective proposal regarding Active SQF Port Fees (the ''prior SQF filing'').[18] In the prior SQF filing, the Exchange added language into Section VII B. of the Pricing Schedule to help avoid things such as double charging during the refresh transition period (''refresh accommodation language''). First, Section VII B. of the Pricing Schedule currently states that Specialists and Market Makers that are subject to the Active SQF Port Fee as of December 1, 2014 will be subject to an Active SQF Port Fee that reflects the average of fees assessed to them for the months of August, September and October 2014 (known as the ''Fixed Active SQF Port Fee''). This Fixed Active SQF Port Fee will be assessed to these Specialists and Market Makers from December 1, 2014 through March 31, 2015. Second, Section VII B. of the Pricing Schedule currently states that Specialists and Market Makers will not be assessed a fee for their use of the new version of the Active SQF Port through March 31, 2015. And third, a Specialist or Market Maker who was not subject to Fixed Active SQF Port Fees prior to December 1, 2014 will be provided new ports and assessed the above [sic] Active SQF Port Fees as of December 1, 2014. These instances of the refresh accommodation language are no longer needed (*e.g.,* the timing has expired) and are therefore being deleted.

Currently, Section VII B. of the Pricing Schedule states that as of April 1, 2015 all Specialists and Market Makers are subject to the following tiered Active SQF Port Fee (''variable Active SQF Port Fee''):

| Number of active SQF port | Monthly fee per port |
|---|---|
| 1 | $2,500 |
| 2–6 | 4,000 |
| 7 and over | 15,000 |

Instead of continuing implementation of the variable Active SQF Port Fees that were put into place during the refresh, the Exchange proposes to assess Specialists and Market Makers an Active SQF Port Fee of $1,250 per port per month (''Active SQF Port Fee''). This Active SQF Port Fee replaces the variable Active SQF Port Fee and is applicable to all that would be assessed for the Active SQF Port.[19] Thus, with the proposal, the Active SQF Port Fee would be a set fee of $1,250 per port per month, capped at $42,000.[20]

At the time that the variable Active SQF Port Fees were put into current Section VII B. of the Pricing Schedule during the technology refresh, four ports were needed to connect to the matching engine; after the refresh, only one port is needed. As noted in the prior SQF filing, the technology refresh was instituted last year in order that the Exchange may provide an equal opportunity to Specialists and Market Makers to access SQF data at a lower cost. The goal was to deploy state-of-the-art hardware and software architecture for a more efficient and robust infrastructure that would support the growing needs of market participants. The refresh changed the previously-needed multi-port connection to the matching engine to only one port. The functionality did not change as a result of the concluded refresh. As the Exchange had anticipated,[21] Specialists and Market Makers certainly benefitted from the efficiency of the service that would be available to them as a result of the refresh. While Specialists and Market Makers were required to make network and other technical changes in order to connect to the Phlx system via SQF, the Exchange believes that member costs declined overall as a result of the more efficient connectivity offered by the refresh.[22] During the technology refresh, the Exchange provided Specialists and Market Makers with new SQF ports for connectivity and functionality testing so that Specialists and Market Makers could migrate from the old Active SQF Ports to the new Active SQF Ports over a reasonable period of time.[23] As discussed, during the refresh period the Exchange implemented refresh accommodation language and a variable Active SQF Port Fee. The refresh is successfully completed and the Exchange is therefore deleting the refresh accommodation language and the variable Active SQF Port Fee, and proposing the above-described Active SQF Port Fee changes. The Exchange believes, as discussed in more detail below, that the Active SQF Port Fee changes, like the Order Entry Port Fee

[15] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[16] An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[17] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010–124).

[18] *See* Securities Exchange Act Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR–Phlx–2014–73) (notice of filing and immediate effectiveness regarding Active SQF Port Fee).

[19] The Exchange notes that the variable Active SQF Fee could, in fact, be more expensive that the proposed Active SQF Fee. For example, where the fixed Active SQF Port Fee for one port per month would be $1,250, the variable Active SQF Port Fee (as applicable to Specialists and Market Makers) would be $2,500; and where the fixed Active SQF Port Fee for 3 ports per month would be $3,750, the variable Active SQF Port Fee would be $4,000 per port.

[20] Currently, per note 26 to Section VII of the Pricing Schedule, the Active SQF Port Fee is capped at $42,000, but includes language that the fee is capped at $41,000 per month through March 31, 2015 (''Active SQF Port Fee Cap''). The Exchange proposes to delete the unnecessary language referring to March 31, 2015.

[21] *See* prior SQF filing.

[22] As discussed, the increased efficiency in connectivity did not require the same infrastructure on the part of members to connect to the Exchange; members have not need to have the same level of connectivity after the conversion to the new ports per the refresh, and this has provided an overall cost reduction.

[23] The Exchange migrated on a symbol by symbol basis thereby requiring the use of both new and old Active SQF Ports for a period of time. Post refresh only new ports are utilized.

and CTI Port Fee changes, are reasonable.[24]

In addition, the Exchange proposes some technical housekeeping changes. First, the Exchange proposes to delete a bullet point in note 26 to Section VII B. of the Pricing Schedule, which is applicable to the Active SQF Port Fee section; the bullet point is not necessary. Second, the Exchange proposes to fix a typographical error by adding an ''l'' in the word ''wil'' in note 26.

The Exchange proposes to amend the Phlx Permit Fee, Order Entry Port Fee and CTI Port Fee. This proposal reflects a modest price increase to members and member organizations while allowing the Exchange to recoup a certain portion of costs associated with permits and ports, namely the Order Entry Port and the CTI Port. The Exchange proposes to also delete the variable Active SQF Port Fee that is applicable to Specialists and Market Makers as of April 1, 2015, and the refresh accommodation language that is no longer necessary. The Exchange believes that the proposed changes are in conformity with the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[25] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[26] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal regarding Phlx Permit Fees allows the Exchange to recoup costs incurred from the membership administration function. The proposals regarding the Order Entry Port Fee and CTI Port Fee allow the Exchange to recoup costs associated with these ports while encouraging members to participate in the market. The proposals regarding deleting the variable Active SQF Port Fee and using the proposed new Active SQF Port Fee instead,[27] and deleting the refresh accommodation language that is no longer necessary, are made while continuing to encourage members to bring options liquidity to the Exchange.

Phlx Permit Fee

The Exchange's proposal to amend Phlx Permit Fees is reasonable because the Exchange is seeking to recoup costs that are incurred by the Exchange.

The Exchange believes it is reasonable to assess different market participants different Permit Fees because each market participant has a different business model and, as a result, pays various other fees to the Exchange to maintain his or her business. Certain market participants such as Floor Brokers, Specialists and Market Makers pay other types of fees. For example, a Floor Broker requires space on the Exchange's trading floor, and infrastructure to support floor trading.[28] A Specialist and Market Maker will similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees, amongst other charges.[29] Taking into account the overall costs incurred by Floor Brokers, Specialists and Market Makers to simply access and conduct their business on the Exchange, it is reasonable to assess these market participants a proposed Permit Fee of $2,300 (rather than $2,150) per month as compared to market participants other than Floor Brokers, Specialists and Market Makers (''Other Market Participants''). The Exchange believes that it is reasonable to assess Other Market Participants a higher Permit Fee of $4,000 in a given month unless they transact a certain volume on the Exchange because these market participants do not incur the higher costs to conduct their business as do Floor Brokers, Specialists and Market Makers. The Exchange also believes that it is reasonable to provide Other Market Participants an opportunity to lower Permit Fees from $4,000 to the same proposed effective rate of $2,300 (rather than $2,150) if they transact a certain volume on Phlx in a given month. The Exchange believes this volume brings revenue to the Exchange, which in turn benefits other market participants because they are able to interact with that volume. The Exchange believes that the continued 100 options threshold in a given month is an achievable hurdle for a majority of options participants on Phlx today, who are capable of meeting this threshold. Finally, assessing different Permit Fee rates to different types of market participants is not novel among options markets.[30]

The Exchange's proposal to amend Phlx Permit Fees is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that continuing to assess Floor Brokers, Specialists and Market Participants effectively the same proposed rate of $2,300 (rather than $2,150) for a Permit Fee recognizes the overall total fee structure of these market participants on Phlx. As mentioned herein, Floor Brokers, Specialists and Market Makers incur fees which are not borne by other market participants.[31] The Exchange believes that the proposed fee structure recognizes the costs that are incurred by these market participants in determining the Permit Fee for Floor Brokers, Specialists and Market Makers. The Exchange believes that Floor Brokers, Specialists and Market Makers serve an important function on the Exchange and already pay a significant portion of the non-transaction fees assessed by the Exchange today. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.[32] These market participants incur greater costs as compared to Professionals, Firms and Broker-Dealers because the type of business they conduct requires them to incur more cost to access the Exchange as compared to others. Other Market Participants (Professionals, Firms and Broker-Dealers) do not incur the same fees as Floor Brokers, Specialists and Market Makers and therefore, in order to allocate fees, the Exchange continues to assess these Other Market Participants an increased fee of $4,000, unless they are able to transact at least 100 options in a given month. The Exchange believes that

[24] For example, just as the Exchange believes that it was reasonable to allow Specialists and Market Makers to utilize new ports at no cost for a period of time to transition their current SQF ports to the new ports that were offered as a result of the technology refresh, so the Exchange believes that it is reasonable to delete such provisions when no longer needed.

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(4) and (5).

[27] The concept of a fixed fee for the Active SQF Port is not novel. A fixed monthly fee was previously adopted, for example, in connection with a specialist unit fee on Phlx. *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61) (notice of filing and immediate effectiveness).

[28] Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule.

[29] *See* Section VI and VII of the Pricing Schedule.

[30] The Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE'') and Miami International Securities Exchange LLC (''MIAX'') assess different Trading Permit Fees to different market participants. *See* CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

[31] Floor Brokers require space on the Exchange's trading floor, and infrastructure to support floor trading. Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule. Specialists and Market Makers similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees amongst other charges. *See, e.g.,* Sections VI and VII of the Pricing Schedule.

[32] *See* Exchange Rule 1060.

assessing Other Market Participants the higher fee of $4,000 and offering the opportunity to lower the Permit Fee by executing a certain amount of volume is equitable and not unfairly discriminatory because transacting volume on Phlx brings liquidity to the Exchange, which in turn benefits other market participants. The Exchange believes that Other Market Participant members, member organizations and those under Common Ownership that add liquidity to the market place also bring revenue to the Exchange by incurring transaction fees.

The Exchange believes it is equitable and not unfairly discriminatory to assess effectively the same proposed Permit Fee of $2,300 (rather than $2,150) to Other Market Participants, equivalent to the fee assessed on Floor Brokers, Specialists and Market Makers, in any given month in which the Other Market Participants achieve the requisite volume because of the liquidity and revenue they bring to Phlx. The opportunity to lower Permit Fees affords Other Market Participants the opportunity to lower their fees by offering a means to benefit the Exchange by bringing liquidity to the marketplace.[33]

CTI Port Fee and Order Entry Port Fee

The Exchange's proposal to amend CTI Port Fees and Order Entry Port Fees is reasonable because the Exchange is seeking to recoup costs that are incurred by the Exchange.

The Exchange believes that continuing to assess a CTI Port Fee on the Exchange at a proposed $650 (rather that $600) per port per month for each of the first 5 CTI ports, and $100 per port for each port thereafter, is reasonable because it would allow the Exchange to recoup costs associated with offering the CTI ports. The Exchange notes that until recently it had a Real-Time Risk Management Fee,[34] but this fee was deleted in favor of using Port Fees.[35] The Exchange has found that the use of Port Fees is an effective way to recoup costs. This proposal reflects a modest price increase to members and member organizations while allowing the Exchange to recoup a certain portion of costs associated with ports, namely the Order Entry Port and CTI Port. Members and member organizations will be able to continue to obtain real-time information via CTI and SQF as discussed.

As with other port fees in subsection Section VII B. of the Pricing Schedule, the CTI Port Fees reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the CTI ports. The CTI Port Fees are reasonable because they enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The proposal to modestly increase the fees is reasonable to continue to recoup costs while encouraging members to connect to the Exchange.

The Exchange believes that continuing to assess an Order Entry Port Fee on the Exchange at a proposed $650 per port per mnemonic is, similarly to the CTI Port Fee, reasonable because it would allow the Exchange to recoup costs associated with offering the Order Entry Ports. As noted, until recently the Exchange had a Real-Time Risk Management Fee that was deleted in favor of using Port Fees, which the Exchange has found is an effective way to recoup costs. This proposal reflects a modest price increase while allowing the Exchange to recoup a certain portion of costs associated with ports, namely the Order Entry Port and CTI Port.[36] Members and member organizations will be able to continue to obtain real-time information via CTI and SQF.

The Exchange believes that the CTI Port Fees for the CTI ports at a proposed $650 per port per month for each of the first 5 CTI ports, and $100 per port for each port thereafter, is equitable and not unfairly discriminatory because the Exchange will assess the same fees for all CTI ports to all members.

The Exchange believes that the Order Entry Fees for the Order Entry Ports at a proposed $650 per month per mnemonic is similarly equitable and not unfairly discriminatory because the Exchange will assess the same fees for all Order Entry Ports to all members.

As with other port fees in Section VII B. of the Pricing Schedule, the CTI Port Fee and the Order Entry Port Fee reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the ports; such fees allow the Exchange to keep pace with increasing technology costs. These fees enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements.

Active SQF Port Fee

The Exchange believes that it is reasonable to delete the variable Active SQF Port Fees. The variable Active SQF Port Fees were, as discussed, put into current Section VII B. of the Pricing Schedule during the technology refresh of the Phlx trading system, which, among other things, allowed the use of one port to connect to the match engine as compared to a set of four ports. The functionality did not change as a result of the refresh. The Exchange properly anticipated that Specialists and Market Makers would benefit from the efficiency of the service that will be available to them as a result of the refresh.[37] While Specialists and Market Makers were required to make network and other technical changes in order to connect to the Phlx system via SQF, the Exchange believes that members costs declined overall as a result of the more efficient connectivity offered by the refresh.[38]

Currently, as of April 1, 2015, Specialists and Market Makers are subject to a variable Active SQF Port Fee based on the number of active ports per month as follows: $2,500 for 1 port, $4,000 for 2–6 ports and $15,000 for 7 or more ports. The Exchange believes that it is reasonable to delete the variable Active SQF Port Fee applicable to Specialists and Market Makers, and replace it with the proposed $1,250 per port per month Active SQF Port Fee applicable to all.[39] The Exchange believes that it is reasonable to assess all firms the same Active SQF Port Fee as opposed to a variable fee because, as

[33] As discussed, the Exchange continuation to assess PSX only members no Permit Fee provided they transact an average of at least 1,000 shares executed per day in a given month is reasonable because the Exchange seeks to continue to attract market participants to the PSX market by assessing no fee.

[34] The Real-Time Risk Management Fee was adopted well over a decade ago for members receiving option trading information on-line (*i.e.,* electronically) from the Exchange. *See* Securities Exchange Act Release No. 43719 (December 13, 2000), 65 FR 80975 (December 22, 2000) (SR–Phlx–00–97) (notice of filing and immediate effectiveness).

[35] *See* Securities Exchange Act Release No. 74000 (January 6, 2015), 80 FR 1570 (January 12, 2015) (SR–Phlx–2014–83) (notice of filing and immediate effectiveness).

[36] As noted, the current practice will continue whereby the Order Entry Port Fee will be waived for mnemonics that are used exclusively for Complex Orders where one of the components of the Complex Order is the underlying security. Similarly, member organizations will continue to be required to provide the Exchange with written notification of the transition and all additional ports which were provided at no cost will be removed at the end of the ten business days. *See* note 25 to section VII B. of the Pricing Schedule.

[37] *See* prior SQF filing.

[38] As noted, and as discussed in the prior SQF filing, the increased efficiency in connectivity did not require the same infrastructure on the part of members to connect to the Exchange; members did not need to have the same level of connectivity after the conversion to the new ports and this provided an overall cost reduction.

[39] The Active SQF Port Fee is capped at $42,000.

discussed, the variable Active SQF Port Fee could, in fact, be more expensive.[40]

The Exchange believes it is equitable and not unfairly discriminatory to delete the variable Active SQF Port Fee, and replace it with the proposed Active SQF Port Fee because all Specialists and Market Makers would be subject to the same Active SQF Port Fee.

Because of the technology refresh, the Exchange added refresh accommodation language into Section VII B. of the Pricing Schedule to avoid double charging and to enable firms to get through the refresh transition period.[41] Because the refresh is now completed and the refresh accommodation language is no longer needed, the Exchange believes that it is reasonable to delete the refresh accommodation language. The Exchange believes that just as it was reasonable to allow Specialists and Market Makers to utilize new ports at no cost for a period of time to transition their current SQF ports to the new ports that were offered as a result of the technology refresh, so it is reasonable to delete such provisions when no longer needed. In order to ease the transition during the refresh from the old SQF ports to new SQF ports, Specialists and Market Makers were given an extended period to test functionality and connectivity and resolve any issues that may arise during the testing phase with the new ports. With the refresh completed, and because of the time periods in the refresh accommodation language as discussed, there is no longer any need for the language and the Exchange believes that it is reasonable to delete it.

The Exchange believes that deletion of the refresh accommodation language is equitable and not unfairly discriminatory because with the deleted refresh accommodation language, the Exchange will assess all current users of Active SQF Ports a fee based on the same criteria.

Currently, per note 26 to Section VII of the Pricing Schedule, the Active SQF Port Fee is capped at $42,000, but includes language that the fee is capped at $41,000 per month through March 31, 2015. The Exchange proposes to delete the unnecessary language referring to March 31, 2015. The Exchange believes that this is reasonable because the $42,000 Active SQF Port Fee Cap is currently in effect and the Exchange is just taking the unneeded language out the Active SQF Port Fee Cap provision.

The Exchange believes that deleting the unnecessary language referring to March 31, 2015 is equitable and not unfairly discriminatory because the Exchange is simply cleaning up the language and will apply the Active SQF Port Fee Cap to all Specialists and Market Makers uniformly.

Finally, the Exchange proposes two technical housekeeping changes. First, the Exchange proposes to delete a bullet point in note 26 to Section VII of the Pricing Schedule, which is applicable to the Active SQF Port Fee section; the bullet point is not necessary. Second, the Exchange proposes to fix a typographical error by adding an ''l'' in the word ''wil'' in note 26; the word is misspelled. The Exchange believes that the changes are reasonable because they will delete unneeded language and clarify it.

The Exchange believes that the technical housekeeping changes are equitable and not unfairly discriminatory because the Exchange will apply them equally per the Pricing Schedule.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that offering Specialists and Market Makers the opportunity to utilize certain Active SQF ports, during this transition with XL, at no cost ensured that the transition was done smoothly. Specialists and Market Makers continued to be assessed the Active SQF Port Fees for current ports at a rate that is representative of their typical usage. The Exchange allowed these market participants to utilize new ports at no cost without limit. As discussed, the Exchange used certain refresh accommodation language to help the refresh go forward. The Exchange believes that deletion of these unneeded provisions will not impose an undue burden on competition. Similarly, the modest proposed increases in fees and establishing that all are liable for the proposed Active SQF Port Fee will not impose an undue burden on competition. Moreover, deleting the unnecessary language that the Active SQF Port Fee is capped at $41,000 per month through March 31, 2015 will not impose an undue burden on competition because the Active SQF Port Fee is already capped at $42,000 per month and the Exchange is merely taking out the unneeded language; moreover, the Active SQF Port Fee Cap would be applied uniformly to all market participants. Finally, the CTI Port Fee and the Order Entry Port Fee reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the Order Entry Ports. Such fees allow the Exchange to keep pace with increasing technology costs, and will not impose an undue burden on competition because the fees would be applied uniformly to all market participants.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the above-described fees that are assessed by the Exchange (as also the rebates paid by the Exchange) are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[42] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[40] For example, where the fixed Active SQF Port Fee for one port per month would be $1,250, the variable Active SQF Port Fee (as applicable to Specialists and Market Makers) would be $2,500; and where the fixed Active SQF Port Fee for 3 ports per month would be $3,750, the variable Active SQF Port Fee would be $4,000 per port.

[41] The refresh accommodation language in Section VII B. of the Pricing Schedule states that Specialists and Market Makers that are subject to the Active SQF Port Fee as of December 1, 2014 will be subject to an Active SQF Port Fee that reflects the average of fees assessed to them for the months of August, September and October 2014. This Fixed Active SQF Port Fee will be assessed to these Specialists and Market Makers from December 1, 2014 through March 31, 2015. Specialists and Market Makers will not be assessed a fee for their use of the new version of the Active SQF Port through March 31, 2015. In addition, a Specialist or Market Maker who was not subject to Fixed Active SQF Port Fees prior to December 1, 2014 will be provided new ports and assessed the above Active SQF Port Fees as of December 1, 2014. *See also* prior SQF filing.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–36 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–36, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10403 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74840; File No. SR–NYSEMKT–2015–31]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Its Rules To Provide for the Use of Ports That Provide Connectivity to the Exchange's Trading Systems Solely for the Cancellation or ''Takedown'' of Quotes and Changes to the NYSE Amex Options Fee Schedule Related to This Quote Takedown Service

April 29, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 17, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or ''takedown'' of quotes. In addition, the proposed rule change reflects changes to the NYSE Amex Options Fee Schedule (''Fee Schedule'') related to this quote takedown service. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or ''takedown'' of quotes. In addition, the proposed rule change reflects changes to the Fee Schedule related to this quote takedown service.

Order/Quote Entry Ports

The Exchange currently makes available to ATP Holders order/quote entry ports for connectivity to Exchange trading systems (each an ''order/quote entry port''). ATP Holders may be authorized to utilize order/quote entry ports for option activity on NYSE Amex Options and incur monthly Port Fees. Currently, the Exchange charges $450 per month, per order/quote entry port for the first 40 ports and $150 per month, per order/quote entry port for any additional ports in excess of 40 (*i.e.,* ports 41 and greater).[4]

While order/quote entry ports may be used by ATP Holders registered as Market Makers to both enter and cancel or remove quotes, Market Makers may dedicate certain ports solely to the removal of quotes, *i.e.,* a ''quote takedown port,''[5] and, until now, the

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, *available at, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.* Unutilized order/quote entry ports that connect to the Exchange via its backup datacenter are considered established for backup purposes and are not subject to Port Fees. In addition, for purpose of calculating the number of order/quote entry ports, the Exchange shall aggregate the ports of Affiliates. *See id.*

[5] *See* Trader Update regarding Options Pre-Trade and Post-Trade Risk Controls, *available at, https://www.nyse.com/publicdocs/nyse/markets/amex-options/US_Options_Risk_Controls_Client_Document.pdf* (announcing availability of ports dedicated to quote takedown to minimize latency for quote takedowns).

Exchange has treated such dedicated quote takedown ports the same as order/quote entry port for Port Fee purposes.

Quote Takedown Ports

The Exchange is proposing to modify its rules to provide ports specifically dedicated to quote cancellation or ''quote takedown'' (each a ''Quote Takedown Port'') as a service distinct from order/quote entry ports, which may be used both for entering quotes or orders and removing or cancelling quotes. The proposed Quote Takedown Ports would be designed to assist ATP Holders registered as Marker Makers in the management of, and risk control over, their quotes, particularly if they have a large number of options issues in their appointment. For example, if a Market Maker detects market indications that may influence the direction or bias of its quotes, the Market Maker may attempt to cancel all of its quotes in a number of classes, thereby avoiding unintended executions, while it evaluates the direction of the market. Thus, to reduce uncertainty, the Marker Maker may submit to the Exchange a ''quote takedown'' message through a dedicated Quote Takedown Port for the prompt removal of quotes. By entering a quote takedown message through a dedicated Quote Takedown Port, a Market Maker may reduce its exposure to risk because of heavy quote traffic-induced latency.

The Exchange proposes to modify the Fee Schedule to provide that certain Quote Takedown Ports would not be subject to Port Fees. Specifically, for each order/quote entry port utilized, the Exchange proposes to allow Market Makers to utilize, free of charge, one Quote Takedown Port. Because Quote Takedown Ports would not be available for quote or order submission, the Exchange is proposing to allow one Quote Takedown Port free of charge for every order/quote entry port that a Market Maker utilizes. In other words, provided a Market Maker does not exceed a 1-to-1 ratio of order/quote entry port-to-Quote Takedown Port, the Quote Takedown Port(s) would be free (the ''1-to-1 ratio''). However, a Market Maker that exceeds the 1-to-1 ratio would be charged for additional Quote Takedown Ports. For example, a Market Maker with thirty-five (35) order/quote entry ports and forty-two (42) Quote Takedown Ports would have forty-two (42) ports subject to charge because the Exchange would charge for the 35 order/quote entry ports and the seven Quote Takedown Ports that exceed the 1–1 ratio (42–35=7). The Exchange would not charge for the first 35 Quote Takedown Ports because those ports would meet the 1-to-1 ratio.

Similarly, the Exchange would not include those Quote Takedown Ports that meet the 1-to-1 ratio to determine a Market Maker's total number of ports for purposes of calculating Port Fees. As noted above, the Exchange charges $450 per month, per port for the first forty ports, and $150 per month for each additional port in excess of forty. Thus, using the example above, the Exchange would not count the thirty-five (35) Quote Takedown Ports (which align with the 35 order/quote entry ports) against the Market Maker's total number of ports utilized, but would count seven (7) additional Quote Takedown Ports. Thus, because the Market Maker would have forty-two (42) chargeable ports, the Market Maker's total monthly port fee would be $18,300 (*i.e.,* 40 ports × $450 per port = $18,000; and 2 ports × $150 per port $300).

The Exchange notes that options Market Makers typically require more than forty (40) order/quote entry ports, in part to satisfy their obligation to maintain continuous two-sided markets in their appointed classes. Thus, the Exchange believes that the proposed change would enhance the ability of Market Maker firms to manage quotes, quote traffic, and their quoting obligations by eliminating fees for certain Quote Takedown Ports, which function as risk management tools rather than trade opportunity tools. The Exchange believes this proposed change would permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.

To reflect the proposed change, the Exchange proposes to add to the Fee Schedule, in Section V. (Technology & System Access Fees), subsection A. (Port Fees), a new category for ''Quote Takedown Ports,'' together with the following language: ''For each order/quote entry port utilized, NYSE Amex Options Market Makers may utilize, free of charge, one port dedicated to quote cancellation or 'quote takedown,' which port(s) will not be included in the count of order/quote entry ports utilized. Any quote takedown port utilized by a NYSE Amex Options Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port.'' The Exchange also proposes to make clear that the Quote Takedown Ports of Affiliates, like order/quote entry ports, are aggregated.[6] Finally, to add clarity regarding Port Fees, the Exchange proposes a non-substantive change to the layout of the table setting forth Port Fees, which the Exchange believes will simplify and add transparency to the Fee Schedule.

The Exchange believes the proposal to offer Quote Takedown Ports would ensure a fair and reasonable use of resources by eliminating charges to Market Makers for certain Quote Takedown Ports (described above), which are used to control and manage risk exposure to the benefit of all marker participants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering ATP Holders registered as Market Makers designated Quote Takedown Ports would enhance Market Makers' ability to manage quotes, quote traffic, and their quoting obligations, which would, in turn, improve their risk controls to the benefit of all participants. The Exchange believes that the Quote Takedown Ports would foster cooperation and coordination with persons engaged in facilitating transactions in securities because Quote Takedown Ports minimize latency for quote takedown, which would enable the fair and reasonable use of Market Makers' resources. Because Quote Takedown Ports, as the name suggests, are only available for quote takedowns and not order or quote entry (or order cancellation), the Quote Takedown Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers, that are subject to heightened obligations that other market participants are not, to meet their quoting obligations, which, in turn, benefits all market participants.

[6] *See* proposed Fee Schedule, Section V.A. (''For purpose of calculating the number of order/quote entry ports and quote takedown ports, the Exchange will aggregate the ports of Affiliates.'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons. First, all ATP Holders would be subject to the same schedule of Port Fees and ATP Holders would continue to be able to request, and pay for only those ports that they require, with no impact to other ATP Holders. As noted above, because Quote Takedown Ports are uniquely designed to address quotes and only Market Makers are obliged to quote, the proposed fee structure for Quote Takedown Ports would not disadvantage non-Market Makers trading on the Exchange. Second, the proposal to enable Market Makers to utilize certain Quote Takedown Ports free of charge would result in the fair and reasonable use of resources by Market Makers, and would encourage trading on the Exchange, thus improving liquidity and price discovery, to the benefit of all market participants. In addition, providing Market Makers a free Quote Takedown Port for each order/quote entry port may increase use of Quote Takedown Ports as a cost effective means of improving risk controls. The increased use of Quote Takedown Ports by Market Makers would improve Market Makers' ability to manage quotes, quote traffic, and their quoting obligations, which would, in turn, improve their risk controls to the benefit of all participants.

The Exchange likewise believes that not including those Quote Takedown Ports that meet the 1-to-1 ratio (order/quote entry ports-to-Quote Takedown Ports) in the count against a Market Maker's total number of ports utilized for purposes of calculating the monthly Port Fees is reasonable, equitable and not unfairly discriminatory. The Exchange notes that options Market Makers, require more than 40 ports in order to satisfy their responsibilities and obligations to investors, which stem from the significant number of series that exist for any particular option class [11] and the corresponding obligations that Market Makers have to maintain continuous quotations in all series in their appointed classes. Furthermore, Market Makers that quote across a significant number, if not all, of the 2,520 classes traded on the Exchange could have responsibility for upwards of 620,000 individual option series.[12] Accordingly, the level of activity that is required to satisfy the quoting obligations, which directly relates to the number of ports needed, is such that the Exchange believes it is equitable and not unfairly discriminatory to only include the number of order/quote entry and Quote Takedown Ports in excess of the 1-to-1 ratio in determining the per port charge for Market Makers.

Finally, the Exchange believes that the proposed change is reasonable, because the Quote Takedown Ports are used for purposes distinct from order/quote entry ports, for which the Exchange charges.[13] In this regard, the Exchange believes that its Port Fees are competitive with those charged by other venues, and that in some cases its Port Fees are less expensive than many of its primary competitors. For example, the Chicago Board Options Exchange (''CBOE'') charges $750 per port per month for a Network Access Port.[14] The NASDAQ Options Market (''NOM'') charges $650 per port per month.[15]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[16] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the proposed change results in the fair and reasonable use of resources by ATP Holders, particularly Market Makers, in that the Exchange allows ATP Holders to utilize one Quote Takedown Port per one order/quote entry port free of charge, the Exchange believes this change would benefit all market participants. In addition, because Quote Takedown Ports enhance Market Makers' risk controls for transactions executed on the Exchange, the Exchange believes the proposal is pro-competitive.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] For example, as of February 24, 2015, there were more than 1,952 individual option series overlying Chipotle Mexican Grill, Inc.

[12] As of February 24, 2015.

[13] The Exchange also charges for use of drop copy ports, which are not discussed in this filing. *See supra* n. 4.

[14] *See* CBOE fee schedule, Command Connectivity Charges, at p 11, *available at, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (charging $750 per month for each Network Access Port (1 Gbps) and $3,500 per month for each Network Access Port (10Gbps)).

[15] *See* NOM Price List, Section 3, NASDAQ Options Market, Access Services, *available at, http://nasdaq.cchwallstreet.com/NASDAQTools/bookmark.asp?id=nasdaq-rule-options_XVS3&manual=/nasdaq/main/nasdaq-optionsrules/*.

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

operative immediately upon filing and thereby enable Market Makers to enhance their risk controls and risk management processes without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[21]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[22] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–31. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–31, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10410 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

[21] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74841; File No. SR–NYSEARCA–2015–32]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Its Rules To Provide for the Use of Ports That Provide Connectivity to the Exchange's Trading Systems Solely for the Cancellation or ''Takedown'' of Quotes and Changes to the NYSE Arca Options Fee Schedule Related to Quote Takedown Service

April 29, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 17 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or ''takedown'' of quotes. In addition, the proposed rule change reflects changes to the NYSE Arca Options Fee Schedule (''Fee Schedule'') related to this quote takedown service. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its rules to provide for the use of ports that provide connectivity to the Exchange's trading systems solely for the cancellation or ''takedown'' of quotes. In addition, the proposed rule change reflects changes to the Fee Schedule related to this quote takedown service.

Order/Quote Entry Ports

The Exchange currently makes available to OTP Holders and OTP Firms (''OTPs'') order/quote entry ports for connectivity to Exchange trading systems (each an ''order/quote entry port''). OTPs may be authorized to utilize order/quote entry ports for option activity on NYSE Arca Options and incur monthly Port Fees. Currently, the Exchange charges $450 per month, per order/quote entry port for the first 40 ports and $150 per month, per order/quote entry port for any additional ports in excess of 40 (*i.e.,* ports 41 and

greater).[4] While order/quote entry ports may be used by OTPs registered as Market Makers to both enter and cancel or remove quotes, Market Makers may dedicate certain ports solely to the removal of quotes, *i.e.,* a ''quote takedown port,'' [5] and, until now, the Exchange has treated such dedicated quote takedown ports the same as order/quote entry port [sic] for Port Fee purposes.

Quote Takedown Ports

The Exchange is proposing to modify its rules to provide ports specifically dedicated to quote cancellation or ''quote takedown'' (each a ''Quote Takedown Port'') as a service distinct from order/quote entry ports, which may be used both for entering quotes or orders and removing or cancelling quotes. The proposed Quote Takedown Ports would be designed to assist OTPs registered as Marker Makers in the management of, and risk control over, their quotes, particularly if they have a large number of options issues in their appointment. For example, if a Market Maker detects market indications that may influence the direction or bias of its quotes, the Market Maker may attempt to cancel all of its quotes in a number of classes, thereby avoiding unintended executions, while it evaluates the direction of the market. Thus, to reduce uncertainty, the Marker Maker may submit to the Exchange a ''quote takedown'' message through a dedicated Quote Takedown Port for the prompt removal of quotes. By entering a quote takedown message through a dedicated Quote Takedown Port, a Market Maker may reduce its exposure to risk because of heavy quote traffic-induced latency.

The Exchange proposes to modify the Fee Schedule to provide that certain Quote Takedown Ports would not be subject to Port Fees. Specifically, for each order/quote entry port utilized, the Exchange proposes to allow Market Makers to utilize, free of charge, one Quote Takedown Port. Because Quote Takedown Ports would not be available for quote or order submission, the Exchange is proposing to allow one Quote Takedown Port free of charge for every order/quote entry port that a Market Maker utilizes. In other words, provided a Market Maker does not exceed a 1-to-1 ratio of order/quote entry port-to-Quote Takedown Port, the Quote Takedown Port(s) would be free (the ''1-to-1 ratio''). However, a Market Maker that exceeds the 1-to-1 ratio would be charged for additional Quote Takedown Ports. For example, a Market Maker with thirty-five (35) order/quote entry ports and forty-two (42) Quote Takedown Ports would have forty-two (42) ports subject to charge because the Exchange would charge for the 35 order/quote entry ports and the seven Quote Takedown Ports that exceed the 1–1 ratio (42 − 35 = 7). The Exchange would not charge for the first 35 Quote Takedown Ports because those ports would meet the 1-to-1 ratio.

Similarly, the Exchange would not include those Quote Takedown Ports that meet the 1-to-1 ratio to determine a Market Maker's total number of ports for purposes of calculating Port Fees. As noted above, the Exchange charges $450 per month, per port for the first forty ports, and $150 per month for each additional port in excess of forty. Thus, using the example above, the Exchange would not count the thirty-five (35) Quote Takedown Ports (which align with the 35 order/quote entry ports) against the Market Maker's total number of ports utilized, but would count seven (7) additional Quote Takedown Ports. Thus, because the Market Maker would have forty-two (42) chargeable ports, the Market Maker's total monthly port fee would be $18,300 (*i.e.,* 40 ports × $450 per port = $18,000; and 2 ports × $150 per port $300).

The Exchange notes that options Market Makers typically require more than forty (40) order/quote entry ports, in part to satisfy their obligation to maintain continuous two-sided markets in their appointed classes. Thus, the Exchange believes that the proposed change would enhance the ability of Market Maker firms to manage quotes, quote traffic, and their quoting obligations by eliminating fees for certain Quote Takedown Ports, which function as risk management tools rather than trade opportunity tools. The Exchange believes this proposed change would permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.

To reflect the proposed change, the Exchange proposes to add to the Fee Schedule, in the table regarding Port Fees under the section ''NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES,'' a new category for ''Quote Takedown Ports,'' together with the following language: ''For each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or 'quote takedown,' which port(s) will not be included in the count of order/quote entry ports utilized. Any quote takedown port utilized by a NYSE Arca Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port.'' In addition, to add clarity regarding Port Fees, the Exchange proposes to move the existing text regarding how the Exchange will aggregate the order/quote entry ports of a Marker Maker's affiliate to appear immediately below the Quote Takedown Ports and to specify that the Exchange will similarly aggregate the Quote Takedown Ports of affiliates.[6]

The Exchange believes the proposal to offer Quote Takedown Ports would ensure a fair and reasonable use of resources by eliminating charges to Market Makers for certain Quote Takedown Ports (described above), which are used to control and manage risk exposure to the benefit of all marker participants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering OTPs registered as Market Makers designated Quote Takedown Ports would enhance Market Makers' ability to manage quotes, quote traffic, and their quoting obligations, which would, in turn, improve their risk controls to the benefit of all participants. The Exchange believes that the Quote Takedown Ports would foster

[4] *See* Fee Schedule, *available at, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* Unutilized order/quote entry ports that connect to the Exchange via its backup datacenter are considered established for backup purposes and are not subject to Port Fees. In addition, for purpose of calculating the number of order/quote entry ports, the Exchange shall aggregate the ports of affiliates. *See id.*

[5] *See* Trader Update regarding Options Pre-Trade and Post-Trade Risk Controls, *available at, https://www.nyse.com/publicdocs/nyse/markets/amex-options/US_Options_Risk_Controls_Client_Document.pdf* (announcing availability of ports dedicated to quote takedown to minimize latency for quote takedowns).

[6] *See* proposed Fee Schedule, Port Fees (''For purpose of calculating the number of order/quote entry ports and quote takedown ports, the Exchange shall aggregate the ports of affiliates.'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities because Quote Takedown Ports minimize latency for quote takedown, which would enable the fair and reasonable use of Market Makers' resources. Because Quote Takedown Ports, as the name suggests, are only available for quote takedowns and not order or quote entry (or order cancellation), the Quote Takedown Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers, that are subject to heightened obligations that other market participants are not, to meet their quoting obligations, which, in turn, benefits all market participants.

The Exchange also believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons. First, all OTPs would be subject to the same schedule of Port Fees and OTPs would continue to be able to request, and pay for only those ports that they require, with no impact to other OTPs. As noted above, because Quote Takedown Ports are uniquely designed to address quotes and only Market Makers are obliged to quote, the proposed fee structure for Quote Takedown Ports would not disadvantage non-Market Makers trading on the Exchange. Second, the proposal to enable Market Makers to utilize certain Quote Takedown Ports free of charge would result in the fair and reasonable use of resources by Market Makers and would encourage trading on the Exchange, thus improving liquidity and price discovery, to the benefit of all market participants. In addition, providing Market Makers a free Quote Takedown Port for each order/quote entry port may increase use of Quote Takedown Ports as a cost effective means of improving risk controls. The increased use of Quote Takedown Ports by Market Makers would improve Market Makers' ability to manage quotes, quote traffic, and their quoting obligations, which would, in turn, improve their risk controls to the benefit of all participants.

The Exchange likewise believes that not including those Quote Takedown Ports that meet the 1-to-1 ratio (order/quote entry ports-to-Quote Takedown Ports) in the count against a Market Maker's total number of ports utilized for purposes of calculating the monthly Port Fees is reasonable, equitable and not unfairly discriminatory. The Exchange notes that options Market Makers, require more than 40 ports in order to satisfy their responsibilities and obligations to investors, which stem from the significant number of series that exist for any particular option class[11] and the corresponding obligations that Market Makers have to maintain continuous quotations in all series in their appointed classes. Furthermore, Market Makers that quote across a significant number, if not all, of the 2,710 classes traded on the Exchange could have responsibility for upwards of 620,000 individual option series.[12] Accordingly, the level of activity that is required to satisfy the quoting obligations, which directly relates to the number of ports needed, is such that the Exchange believes it is equitable and not unfairly discriminatory to only include the number of order/quote entry and Quote Takedown Ports in excess of the 1-to-1 ratio in determining the per port charge for Market Makers.

Finally, the Exchange believes that the proposed change is reasonable, because the Quote Takedown Ports are used for purposes distinct from order/quote entry ports, for which the Exchange charges.[13] In this regard, the Exchange believes that its Port Fees are competitive with those charged by other venues, and that in some cases its Port Fees are less expensive than many of its primary competitors. For example, the Chicago Board Options Exchange (''CBOE'') charges $750 per port per month for a Network Access Port.[14] The NASDAQ Options Market (''NOM'') charges $650 per port per month.[15]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[16] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the proposed change results in the fair and reasonable use of resources by OTPs, particularly Market Makers, in that the Exchange allows OTPs to utilize one Quote Takedown Port per one order/quote entry port free of charge, the Exchange believes this change would benefit all market participants. In addition, because Quote Takedown Ports enhance Market Makers' risk controls for transactions executed on the Exchange, the Exchange believes the proposal is pro-competitive.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] For example, as of February 24, 2015, there were more than 1,952 individual option series overlying Chipotle Mexican Grill, Inc.

[12] As of February 24, 2015.

[13] The Exchange also charges for use of drop copy ports, which are not discussed in this filing. *See supra* n. 4.

[14] *See* CBOE fee schedule, Command Connectivity Charges, at p 11, *available at, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (charging $750 per month for each Network Access Port (1 Gbps) and $3,500 per month for each Network Access Port (10 Gbps)).

[15] *See* NOM Price List, Section 3, NASDAQ Options Market, Access Services, *available at, http://nasdaq.cchwallstreet.com/NASDAQTools/bookmark.asp?id=nasdaq-rule-options_XVS3&manual=/nasdaq/main/nasdaq-optionsrules/*.

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing and thereby enable Market Makers to enhance their risk controls and risk management processes without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[21]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–32. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–32, and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10411 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–74831; File No. SR–DTC–2015–004]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a DTC Custody Service Fee Change

April 29, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, notice is hereby given that on April 17, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change to DTC's Fee Schedule (''Fee Schedule'') with respect to the DTC Custody Service.[5]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change would revise the Fee Schedule with respect to a fee charged to Participants that use the Custody Service, as described below.

The Custody Service provides safe keeping and physical transaction processing for securities certificates and other items (collectively, ''certificates''), including certificates for securities and other assets not eligible for deposit in DTC's core depository services.[6] In utilizing the Custody Service, Participants are able to leverage DTC's vault facility to outsource the safe

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[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Each term not otherwise defined herein has its respective meaning as set forth in the DTC Rules (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] Please see the DTC Custody Service Guide at p. 5, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf* for an overview on Custody Service eligibility.

keeping and subsequent physical transaction processing for certificates. DTC charges each Participant a monthly fee (currently described in the Fee Schedule as a ''Long Position'' Fee) of $0.70 per certificate, per month (''Current Fee'') for safe keeping in the Custody Service.

Pursuant to the proposed rule change, in order to better align fees with the cost of offering the Custody Service, DTC would revise the Fee Schedule to replace the Current Fee with a reduced fee to be named the ''Custody Certificate Position'' Fee (''New Fee''). The New Fee would be a monthly fee calculated in accordance with a ''tiered'' fee structure taking into account the quantity of certificates held in the Custody Service for the Participant on a per account basis as follows:

| Amount ($) | Conditions |
|---|---|
| 0.61 ..... | Monthly fee per certificate, per account; fee applied for each certificate on deposit counted up to an aggregate quantity of 50,000 certificates for the account (i.e., certificates counted as 1–50,000). |
| 0.20 ..... | Monthly fee per certificate, per account; fee applied for each certificate on deposit counted in excess of an aggregate quantity of 50,000 up to an aggregate quantity of 100,000 certificates for the account (i.e., certificates counted as 50,001–100,000). |
| 0.10 ..... | Monthly fee per certificate, per account; fee applied for each certificate on deposit counted in excess of an aggregate quantity of 100,000 certificates for the account (i.e., certificates counted as 100,001 and above). |

For example, a Participant with 200,000 certificates held in the Custody Service as of a month-end for one of its accounts would be charged New Fees for the month as follows for that account:

| Certificates counted by tier | Fee amount per certificate | Fee totals |
|---|---|---|
| First 50,000 certificates counted | $0.61 | $30,500.00 |
| Second 50,000 certificates counted | 0.20 | 10,000.00 |
| Remaining 100,000 certificates | 0.10 | 10,000.00 |
| | Total New Fees for Account | 50,500.00 |

Since the New Fee would be charged on a per account basis, a Participant with multiple accounts would be charged a New Fee amount for each account, as applicable. The amount would be calculated based upon the quantity of certificates held for that account only (*i.e.,* excluding certificates held for the other accounts of the Participant).[7]

Implementation Date

The proposed fee change would take effect on May 1, 2015.

2. Statutory Basis

The proposed rule change would better align DTC's fees with its costs of providing safe keeping for certificates in the Custody Service, and the proposed fee would apply equally in accordance with Participants' use of the Custody Service. Therefore, DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC, in particular section 17A(b)(3)(D)[8] of the Act, which requires that DTC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Participants.

*(B) Clearing Agency's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2015–004 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2015–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[7] Using the example above, a Participant with two accounts, each with a deposit of 200,000 certificates, would be charged a New Fee amount of $50,500.00 per account, or total New Fees of $101,000.00.

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–004 and should be submitted on or before May 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–10401 Filed 5–4–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Announcement of ''America's Seed Fund'' Logo Design Competition for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** The U.S. Small Business Administration (SBA) announces the ''America's Seed Fund'' Logo Design Competition, pursuant to the America Competes Act, to encourage artists and designers to create a thoughtful and imaginative visual representation of the government's largest innovation effort focused on research-driven, innovative and cutting-edge small businesses through the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

**DATES:** The submission period for entries begins 12:00 p.m. EDT, May 4, 2015 or when this notice is published if a later date and ends May 29, 2015 at 11:59 p.m. EDT. The winning contestant will be announced and the winning design will be unveiled during a White House ceremony on June 15, 2015. The winning contestant will be notified in advance of the public announcement.

**FOR FURTHER INFORMATION CONTACT:** Nagesh Rao, Chief Technologist, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., 6th Floor, Washington, DC 20416, (202) 205–7576, *sbirlogochallenge@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

*Competition Details:*

1. *Subject of Competition:* The SBA is seeking a new design to be used as the official logo of the SBIR/STTR Programs and the recently redesigned Web site *https://www.sbir.gov/.* The SBIR/STTR Programs are extremely competitive and encourage small businesses to engage in federally funded research and development (R&D) through eleven Federal agencies with R&D needs. SBIR/STTR awards enable small businesses to explore their technological potential, stimulate innovation to meet federal R&D needs, and potentially profit from private-sector commercialization of developed technologies. Since inception in 1982, 150,000 awards totaling $40 billion have been awarded to the small firms that participate. The programs touch, catalyze and seed the creation of STEM driven innovations in industries critical to the nation's long term competitiveness and growth—from nanotech to robotics to mobile communications to genetic therapies to clean energy to advanced weapons to space exploration. Many of today's technology giants—or their underlying technological components—received seed funding through SBIR or STTR awards via the eleven participating Federal agencies; the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation and the U.S. Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security and Transportation. (Visit the *sbir.gov* Web site at *https://www.sbir.gov/* for more information.) The new logo will serve as the official logo for the SBIR/STTR Programs to be used for promotional and educational information, including but not limited to, the Programs' Web site, SBA's Web site, participating Federal agency Web sites, conferences, events, television, print, and other media outlets. The winning logo is intended to premiere at the 2015 Tibbetts Awards ceremony on June 15, 2015, and be highlighted at the National SBIR Conference, June 15–17, 2015.

2. *Eligibility Rules for Participating in the Competition:* To be eligible to win a prize under this Logo Design Competition, you—

(a) Must register to participate in the competition under the link designated for that purpose by SBA on *challenge.gov;*

(b) Must comply with all the requirements under this notice and the America Competes Act of 2010 (Pub. L. 111–358);

(c) Must be a citizen or permanent resident of the United States before the submission period ends;

(d) May not be a Federal employee acting within the scope of your employment; and,

(e) May not be an entity with an outstanding, unresolved financial obligation to, or that is currently suspended or debarred by, the Federal government.

If you are under 18 years of age, you must have the permission of a parent or legal guardian to participate. If you are a Federal grantee, you may not use Federal funds to develop applications for this competition unless such use is consistent with the purpose of your grant award. If you are a Federal contractor, you may not use Federal funds from a contract to develop or fund efforts in support of applications for this competition. You may use Federal facilities or consult with Federal employees during the competition if the facilities and employees are made available to all contestants participating in the competition on an equitable basis.

3. *Registration Process for Participants:* Design competition participants must submit their ''America's Seed Fund'' Logo Designs online using the link designated for that purpose on *challenge.gov,* either by filtering search criteria to ''Small Business Administration'' or going to *https://www.sbir.gov/,* where the link will be posted. SBA will accept logo design competition submissions only through *challenge.gov.*

Things to keep in mind as you design your ''America's Seed Fund'' Logo:

(a) Translating the common programmatic elements of the SBIR and STTR programs—to support scientific excellence and technological innovation through the investment of Federal research funds in critical American priorities to build a strong national economy . . . one small business at a time. (For more information about the SBIR and STTR Programs, visit the Web site at *https://www.sbir.gov/.*);

(b) Reflecting the importance of the SBIR/STTR Programs in an insightful and ultimately innovative manner; and,

[11] 17 CFR 200.30–3(a)(12).

(c) Evoking through imagery thoughts related to words such as—Innovation, Inventions, High-Tech, Cutting Edge, Technology, Startups, Seed Money, STEM driven, Angel Funding, Seeding Ideas, Business Plans, Forward-Looking, Venture Capital, Widely Applicable, High-Growth Entrepreneurship, National Competitiveness, and Next Generation Solutions.

When uploading your ''America's Seed Fund'' Logo design, in the ''Submission Text'' field please also include a brief description about your logo entry and thought process behind the design—how it relates to the SBIR/STTR Programs as ''America's Seed Fund''.

4. *Prizes for Winners:* The winning contestant's design will become the official logo for the SBIR/STTR Programs, the Programs' Web site at *sbir.gov,* and any official SBA, SBIR Program and/or STTR Program purpose. The winning contestant will be invited to an unveiling of the winning logo design during a White House ceremony honoring the 2015 Tibbetts Award and SBIR Hall of Fame winners in Washington, DC, on June 15, 2015. The winning contestant will receive a congratulatory letter with winning design logo from SBA Administrator Maria Contreras-Sweet. The winning contestant and winning logo design will also be recognized during the National SBIR Conference, June 15–17, 2015, in National Harbor, MD. Any and all associated travel costs will be the sole responsibility of the winning contestant.

5. *Selection of Winners:* SBA will select a judging panel that will consist of SBA officials, Program Managers of the SBIR/STTR participating Federal agencies, and at least one official from the National Endowment for the Arts. Judges will be fair and impartial. A judge may not have a familial or financial relationship with an individual who is a registered contestant in the competition. Judges will fully comply with all applicable government ethics requirements for Federal employees.

Judges will use the following criteria to judge the submitted designs:

(a) Design relates to the SBIR/STTR Programs as ''America's Seed Fund''. The subjects and ideas of small business, innovation, technological advancement, commercialization, and research and development need to be conveyed in the design of the logo. This may be done through a realistic or abstract design.

(b) Creativity and originality. Is the visual quality of the design at once informative and representative of imagery connected to the SBIR/STTR Programs?

(c) Design can be easily replicated. Can this design be replicated successfully, without excessive cost, for many media formats?

The judging panel will evaluate the submissions and select up to ten logos to recommend to the SBA Administrator, who will choose the final winning design from all submissions, including the up to ten logos recommended to the SBA Administrator by the judging panel. All judging will take place between approximately May 19, 2015, and approximately May 29, 2015. SBA will publicly announce the winner and unveil the winning logo on June 15, 2015. For questions or further information, please see the contact information listed above.

6. *Applicable Law:* This design competition is being conducted by SBA pursuant to the America Competes Act (15 U.S.C. 3719) and is subject to all applicable federal laws and regulations. By participating in this design competition, each contestant gives its full and unconditional agreement to the Official Rules and the related administrative decisions described in this notice, which are final and binding in all matters related to the design competition. A contestant's eligibility for a prize award is contingent upon their fulfilling all requirements identified in this notice. Publication of this notice is not an obligation of funds on the part of SBA. SBA reserves the right to modify or cancel this design competition, in whole or in part, at any time prior to the award of prizes.

7. *Conflicts of Interest:* No individual acting as a judge at any stage of this design competition may have personal or financial interests in, or be an employee, officer, director, or agent of any contestant or have a familial or financial relationship with a contestant.

8. *Intellectual Property Rights:*

(a) By submitting a design to this competition, you represent and warrant that you are the sole author and owner of the submitted design. Designs must be your original work, and must not violate or infringe the rights of other parties, including but not limited to privacy, publicity, or intellectual property rights, or material that constitutes copyright or license infringement. Your design may not contain any material that is inappropriate, indecent, obscene, hateful, defamatory, or in any way disparaging. Your design cannot have been submitted previously in another promotion or contest of any kind.

(b) You understand and agree that if your entry is selected as the winning design, it may be modified or altered by SBA, in its sole discretion, as deemed appropriate or necessary to execute, produce, or distribute the winning design in its final logo format.

(c) The winning contestant will, in consideration of the prize to be awarded, grant to SBA an irrevocable, royalty-free, exclusive worldwide license to reproduce, distribute, copy, display, create derivative works, and publicly post, link to, and share, the winning design or parts thereof, for the purpose of the design competition and for any official SBA, SBIR Program and/or STTR Program purpose.

9. *Publicity Rights:* By registering and entering a submission, each contestant consents to SBA's and its agents' use, in perpetuity, of its name, likeness, photograph, voice, opinions, and/or hometown and state information for promotional or informational purposes through any form of media, worldwide, without payment or consideration.

10. *Liability and Insurance Requirements:* (a) By registering and entering a submission, each contestant agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in this competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

(b) By participating in this competition, you agree to indemnify the Federal government against third party claims for damages arising from or related to competition activities.

(c) By registering and entering a submission, each contestant further represents and warrants that it possesses sufficient liability insurance or financial resources to cover claims by a third party for death, bodily injury, or property damage or loss resulting from any activity it carries out in connection with its participation in this competition, or claims by the Federal Government for damage or loss to Government property resulting from such an activity. Challenge winners should be prepared to demonstrate proof of insurance or financial responsibility in the event SBA deems it necessary.

11. *Record Retention and Disclosure:* All submissions and related materials provided to SBA in the course of this Competition automatically become SBA records and cannot be returned.

Award Approving Official: Javier Saade, Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

**Authority:** Pub. L. 111–358 (2011).

Dated: April 29, 2015.

**Javier Saade,**

*Associate Administrator, Office of Investment and Innovation.*

[FR Doc. 2015–10428 Filed 5–4–15; 8:45 a.m.]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** 30-Day notice.

**SUMMARY:** The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

**DATES:** Submit comments on or before June 4, 2015.

**ADDRESSES:** Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*.

*Copies:* A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**SUPPLEMENTARY INFORMATION:** Small Business Administration Form 700 provides a record of interviews conducted by SBA personnel with small business owners, homeowners and renters (disaster victims) who seek financial assistance to help in the recovery from physical or economic disasters. The basic information collected helps the Agency to make preliminary eligibility assessment.

**Solicitation of Public Comments**

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

**Summary of Information Collections**

(1) *Title:* Disaster Home/Business Loan Inquiry Record.

*Description of Respondents:* Disaster Recovery Victims.

*Form Number:* SBA Form 700.

*Estimated Annual Respondents:* 2,831.

*Estimated Annual Responses:* 2,831.

*Estimated Annual Hour Burden:* 747.

**Curtis B. Rich,**

*Management Analyst.*

[FR Doc. 2015–10427 Filed 5–4–15; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 9125]**

### 60-Day Notice of Proposed Information Collection: Exchange Alumni Virtual Program

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATE(S): The Department will accept comments from the public up to July 6, 2015.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering Docket Number: ''DOS–2015–0020'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: alumni@state.gov.*
- *Regular Mail:* Send written comments to: Bureau of Educational and Cultural Affairs; U.S. Department of State; SA–5, 2200 C Street NW., Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Megan Huber, Bureau of Educational and Cultural Affairs; U.S. Department of State; SA–5, 2200 C Street NW., Washington, DC 20522, who may be reached on 202–632–9487 or at *alumni@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Exchange Alumni Virtual Program.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Alumni Affairs Division, ECA/P/A.
- *Form Number:* DS–7010.
- *Respondents:* Exchange program alumni of U.S. government-sponsored exchange programs.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Time per Response:* Approximately 30 minutes per response.
- *Total Estimated Burden Time:* 50 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

The Exchange Alumni Virtual Program provides a platform for former participants of U.S. government-sponsored exchange programs to extend and multiply the impacts of their exchanges by virtually engaging with foreign alumni and students. The program supports critical foreign policy goals, such as enhancing English learning and the promotion of American culture and values abroad, particularly in countries where views of American culture may not always be positive. The program also provides American alumni with an opportunity to develop their foreign language skills in critical languages or other competencies gained on their exchange programs, while continuing to deepen their own cultural awareness and global skills.

The information is sought pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended (also known as the Fulbright-Hays Act) (22 U.S.C. 2451 *et seq.*).

Respondents to this form are U.S. government-sponsored exchange program alumni. Alumni Affairs collects data from program applicants in order to determine eligibility and to choose the best candidates for the program.

*Methodology:*

Information will be collected electronically, via the International Exchange Alumni Web site, *alumni.state.gov.*

Dated: April 29, 2015.

**Rick Ruth,**

*Acting Deputy Director, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2015–10491 Filed 5–4–15; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 9124]**

### In the Matter of the Review of the Designation of Popular Front for the Liberation of Palestine (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) and (b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C), (b)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that the circumstances that were the basis for the 2009 decision to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, the Secretary of State hereby determines that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: April 27, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015–10484 Filed 5–4–15; 8:45 am]

**BILLING CODE 4710–AD–P**

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting Notice; Meeting No. 15–02

The TVA Board of Directors will hold a public meeting on May 7, 2015, at the Von Braun Center's East Hall 2, 700 Monroe Street, Huntsville, Alabama. The public may comment on any agenda item or subject at a public listening session which begins at 8:30 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

**Agenda**

Chair's Welcome

*Old Business*

Approval of minutes of the February 12, 2015, Board Meeting

*New Business*

1. Report from President and CEO
2. Report of the External Relations Committee
   A. Kingston—Emory River Road Properties
3. Report of the Audit, Risk, and Regulation Committee
4. Report of the People and Performance Committee
5. Report of the Finance, Rates, and Portfolio Committee
   A. Generation Fleet Planning—Widows Creek
6. Report of the Nuclear Oversight Committee
   A. Watts Bar 2 Update

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: April 30, 2015.

**Sherry A. Quirk,**

*General Counsel.*

[FR Doc. 2015–10581 Filed 5–1–15; 4:15 pm]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2006–24015; FMCSA–2006–26066; FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2012–0338]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 4, 2015. Comments must be received on or before June 4, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2006–24015; FMCSA–2006–26066; FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2012–0338], using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## II. Exemption Decision

This notice addresses 21 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 21applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Timothy H. DuBois (MN)
David L. Ellis (OK)
Alf M. Gronstedt (TX)
Richard G. Gruber (SC)
Matthew J. Hahn (PA)
Dennis K. Harris (GA)
Raymond G. Hayden (LA)
Donald E. Howell (PA)
Tommy T. Hudson (VA)
Casey R. Johnson (MN)
Clifford D. Johnson (VA)
William D. Johnson (OK)
Phillip L. Mangen (OH)
Clarence M. Miles (OK)
Steven M. Montalbo (CA)
Harry M. Oxendine (NC)
Vincent Rubino (NJ)
Randy G. Spilman (OH)
Thomas S. Thompson (NE)
Robert A. Wegner (MN)
Wayne A. Whitehead (NY)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it wasgranted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 21 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 67 FR 76439; 68 FR 10298; 68 FR 13360; 68 FR 19598; 68 FR 33570; 70 FR 14747; 70 FR 25878; 71 FR 14566; 71 FR 30227; 71 FR 63379; 72 FR 1050; 72 FR 27624; 72 FR 28093; 74 FR 980; 74 FR 7097; 74 FR 8302; 74 FR 15584; 74 FR 19270; 74 FR 20253; 76 FR 4414; 76 FR 11215; 76 FR 15361; 76 FR 17481; 76 FR 25762; 76 FR 28125; 76 FR 29026; 77 FR 74731; 78 FR 798; 78 FR 12811; 78 FR 12822; 78 FR 16761; 78 FR 18667; 78 FR 24300; 78 FR 30954). Each of these 21 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2006–24015; FMCSA–2006–26066; FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2012–0338), indicate the specific section of this document to which each comment applies, and provide a reason for each

suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2006–24015; FMCSA–2006–26066; FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2012–0338'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

*Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2006–24015; FMCSA–2006–26066; FMCSA–2008–0398; FMCSA–2011–0024; FMCSA–2012–0338'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: April 29, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–10444 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0106; FMCSA–2009–0086]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 12, 2015. Comments must be received on or before June 4, 2015.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2008–0106; FMCSA–2009–0086], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

#### II. Exemption Decision

This notice addresses 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael D. Abel (NE), Paul M. Christina (PA), Kenneth W. Dunn (TN), Edward J. Grant (IL), Johnny K. Hiatt (NC), Richard S. Hoffman (ID), Jeffrey M. Mueller (MO), George M. Nelson (OH), Christopher A. Weidner (CT), Paul A. Wolfe (OH).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (74 FR 19267; 74 FR 28094; 76 FR 32016; 78 FR 32703). Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2008–0106; FMCSA–2009–0086), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2008–0106; FMCSA–2009–0086'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

*Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2008–0106; FMCSA–2009–0086'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: April 29, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015–10445 Filed 5–4–15; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

## Notice of Funds Availability (NOFA) Inviting Applications for the FY 2015 Funding Round of the Bank Enterprise Award Program (BEA Program)

*Announcement Type:* Announcement of funding opportunity.

*Funding Opportunity Number:* CDFI–2015–BEA.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 21.021.

KEY DATES:

TABLE 1—FY 2015 BEA PROGRAM FUNDING ROUND KEY DATES FOR APPLICANTS

| Description | Deadline | Time (Eastern daylight time—EDT) | Submission method |
|---|---|---|---|
| Last day to contact BEA Program staff | June 11, 2015 | 5:00 p.m. EDT | CDFI Fund Helpdesk: 202–653–0421 or *cdfihelp@cdfi.treas.gov.* |
| Last day to contact Certification, Compliance Monitoring and Evaluation staff. | June 11, 2015 | 5:00 p.m. EDT | CDFI Fund Helpdesk: 202–653–0421 or *cdfihelp@cdfi.treas.gov.* |
| Application Part I: BEA Program Application Due Date (Forms include: SF–424 Mandatory, Environmental Review Form, Certifications and Excel charts). | June 15, 2015 | 11:59 p.m. EDT | Electronically via Grants.gov. |

TABLE 1—FY 2015 BEA PROGRAM FUNDING ROUND KEY DATES FOR APPLICANTS—Continued

| Description | Deadline | Time (Eastern daylight time—EDT) | Submission method |
|---|---|---|---|
| Last day to contact IT Help Desk | June 17, 2015 | 5:00 p.m. EDT | CDFI Fund Helpdesk: 202–653–0421 or *cdfihelp@cdfi.treas.gov.* |
| Application Part II: myCDFIFund Due Date: (Includes: myCDFIFund account registration, BEA Signature Page and Documentation of Qualified Activities). | June 17, 2015 | 5:00 p.m. EDT | Electronically via myCDFIFund. |

**SUMMARY:** This NOFA is issued in connection with the fiscal year (FY) 2015 funding round of the Bank Enterprise Award Program (BEA Program). The BEA Program is administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund). Through the BEA Program, the CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) for increasing their levels of loans, investments, service activities, and technical assistance within Distressed Communities, and financial assistance to Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period.

## I. Program Description

A. *History:* The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has awarded over $2 billion to CDFIs, community development organizations, and financial institutions through the Community Development Financial Institutions Program (CDFI Program), the Native American CDFI Assistance Program (NACA Program), the BEA Program, the Capital Magnet Fund, and the Financial Education and Counseling Pilot Program. In addition, the CDFI Fund has allocated $40 billion in tax credit allocation authority through the New Markets Tax Credit Program (NMTC Program) and has obligated $525 million in bond guarantees through the CDFI Bond Guarantee Program.

The BEA Program complements the community development activities of banks and thrifts (collectively referred to as banks for purposes of this Notice) by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and service activities within Distressed Communities. Providing monetary awards to banks for increasing their community development activities leverages the CDFI Fund's dollars and puts more capital to work in Distressed Communities throughout the nation.

B. *Priorities:* Through the BEA Program, the CDFI Fund specifies the following priorities:

1. Estimated award amounts for Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs;

2. Priority Factors based on Applicant's asset size, as described in Section V.D. of this NOFA (''Application Review Information: Priority Factors''); and

3. Priority of awards: The CDFI Fund will rank Applicants in each category of Qualified Activity according to the priorities described in Section V.F.4 of this NOFA (''Application Review Information: Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic Financial Risk, and Application Rejection: Selection Process'').

C. *Baseline Period and Assessment Period dates:* A BEA Program Award is based on an Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period. For the FY 2015 funding round, the Baseline Period is calendar year 2013 (January 1, 2013 through December 31, 2013), and the Assessment Period is calendar year 2014 (January 1, 2014 through December 31, 2014). If Qualified Activities in a specific category result in a decrease in activity from the Baseline Period to the Assessment Period, there is no need to report the activity.

D. *Authorizing Statutes and Regulations:* The BEA Program was authorized by the Bank Enterprise Award Act of 1991, as amended. The regulations governing the BEA Program can be found at 12 CFR part 1806 (Interim Rule). The Interim Rule provides guidance on evaluation criteria and other requirements of the BEA Program. Detailed BEA Program requirements are also found in the Application associated with this NOFA. The CDFI Fund encourages interested parties and Applicants to review the Interim Rule, this NOFA, the Application, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements) for a complete understanding of the program. Capitalized terms in this NOFA are defined in the authorizing statute, the Interim Rule, this NOFA, the Application, and the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials. Application materials can be found on Grants.gov and the CDFI Fund's Web site at *www.cdfifund.gov/bea.*

E. *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200):* In December 2014, the Department of the Treasury published a final rule, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000) (Uniform Requirements), which adopted the government-wide framework for grants management codified by the Office of Management and Budget (OMB) at 2 CFR part 200, combining several OMB guidance circulars, reducing administrative burden for award Recipients, and reducing the risk of waste, fraud and abuse of Federal financial assistance. The Uniform Requirements establish financial, administrative, procurement, and program management standards that Federal award-making agencies, including the CDFI Fund, and award Recipients must follow. When evaluating award applications, awarding agencies must evaluate the risks to the program posed by each applicant, and each applicant's merits and eligibility. These requirements are designed to ensure that applicants for Federal assistance receive a fair and consistent review prior to an award decision. This

review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award requirements with which award Recipients must comply.

F. *Funding limitations:* The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund programs, or reallocate remaining funds to a future BEA Program funding round, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

**II. Federal Award Information**

*A. Funding Availability*

1. *FY 2015 Funding Round and Award Amounts:* The CDFI Fund expects to award approximately $18 million in FY 2015 BEA Program Awards in appropriated funds under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a maximum Award amount; however, under no circumstances will an Award be higher than $2 million for any Recipient. The CDFI Fund also reserves the right to impose a minimum Award amount due to availability of funds.

2. *Anticipated Start Date and Period of Performance:* The CDFI Fund anticipates the period of performance for the FY 2015 Funding Round will begin in the Fall of calendar year 2015. Specifically, the period of performance begins with the date the CDFI Fund issues the notice of award and will conclude one (1) full calendar year after the date of the notice of award, during which the Recipient must meet the performance goals set forth in the Award Agreement.

B. *Types of Awards:* BEA Program Awards are made in the form of grants.

C. *Eligible Activities:* Eligible Activities for the BEA Program are referred to as Qualified Activities and are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103). It is the explicit policy of the CDFI Fund that BEA Program Awards may not be used by Recipients to recover overhead or indirect costs. Each of the Qualified Activities will be ineligible for indirect costs and an associated indirect cost rate. CDFI Related Activities (12 CFR 1806.103(p)) include Equity Investments, Equity-Like Loans, and CDFI Support Activities.

Distressed Community Financing Activities (12 CFR 1806.103(u)) include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; Small Business Loans and related Project Investments, and Small Dollar Consumer Loans. Service Activities (12 CFR 1806.103(oo)) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products. When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of a Qualified Activity that has been fully disbursed or, in the case of a partially disbursed Qualified Activity, will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section VII. B.1. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. An activity funded with prior BEA Program Award dollars, or funded to satisfy requirements of a BEA Program Award Agreement from a prior Award, shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

D. *Designation of Distressed Community:* Each CDFI Partner that is the recipient of CDFI Support Activities from an Applicant must designate a Distressed Community. CDFI Partners that receive Equity Investments, Equity-Like Loans or Grants are not required to designate a Distressed Community.

Applicants applying for a BEA Program Award for performing Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline and Assessment Period activities are in Distressed Communities when completing their Application.

Please note that a Distressed Community as defined by the BEA Program is not necessarily the same as an Investment Area as defined by the CDFI Program or a Low-Income Community as defined by the NMTC Program.

1. *Definition of Distressed Community:* A Distressed Community must meet certain minimum geographic area and eligibility requirements, which are defined in the Interim Rule at 12 CFR 1806.103(t) and more fully described in 12 CFR 1806.401. Applicants should use the CDFI Fund's Information Mapping System (CIMS3) to determine whether a Baseline Period activity or Assessment Period activity is located in a qualified Distressed Community.

2. *Distressed Community Designation by a CDFI Partner:* A CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

a. Selecting a census tract that meets the minimum area and eligibility requirements; or by

b. selecting two or more contiguous census tracts that, in the aggregate, meet minimum area and eligibility requirements set forth in paragraph (1) of this section. A CDFI Partner designates a Distressed Community by submitting a map of the Distressed Community as described in the BEA Program Application. CDFI Partners must use CIMS3 to designate a Distressed Community. CIMS3 is accessed through myCDFIFund and contains step-by-step instructions on how to create and save the aforementioned map of the Distressed Community. myCDFIFund is an electronic interface that is accessed through the CDFI Fund's Web site (*www.cdfifund.gov*). Instructions for registering with myCDFIFund are available on the CDFI Fund's Web site. If you have any questions or problems with registering, please contact the CDFI Fund IT HelpDesk by telephone at (202) 653–0300, or by email to *ITHelpDesk@cdfi.treas.gov.*

3. *Distressed Community Determination by a BEA Applicant:* A BEA Applicant shall determine an area is a Distressed Community by:

a. Selecting a census tract where the Qualified Activity occurred that meets the minimum area and eligibility requirements; or

b. selecting the census tract where the Qualified Activity occurred, plus one or more census tracts directly contiguous to where the Qualified Activity occurred that when considered in the aggregate, meet the minimum area and eligibility requirements set forth in paragraph (1) of this section.

E. *Award Agreement:* Each Recipient under this NOFA must sign an Award Agreement prior to disbursement by the CDFI Fund of the Award proceeds. The Award Agreement contains the terms

and conditions of the Award. For further information, see Section VI of this NOFA.

## III. Eligibility Information

A. *Eligible Applicants:* For the purposes of this NOFA, the following table sets forth the eligibility criteria to receive an award from the CDFI Fund.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS

| Criteria | Description |
|---|---|
| Eligible Applicants | Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in Section 3 of the Federal Deposit Insurance Act 12 U.S.C. 1813(c)(2). For the FY 2015 funding round, an Applicant must be FDIC-insured as of December 31, 2014 to be eligible for consideration for a BEA Program Award under this NOFA. The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified. |
| CDFI Applicant | For the FY 2015 funding round, an eligible certified-CDFI Applicant is an Insured Depository Institution that was certified as a CDFI as of December 31, 2014 and that maintains its status as a certified CDFI at the time BEA Program Awards are announced under this NOFA.<br>No CDFI Applicant may receive a FY 2015 BEA Program Award if it has: (1) An application pending for assistance under the FY 2015 round of the CDFI Program; (2) been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the date of the FY 2015 notice of award issued by the CDFI Program; or (3) ever received assistance under the CDFI Program for the same activities for which it is seeking a FY 2015 BEA Program Award. Please note that Applicants may apply for both a CDFI Program Award and a BEA Program Award in FY 2015; however, receiving a FY 2015 CDFI Program award removes an Applicant from eligibility for a FY 2015 BEA Program Award. |
| Debarment/Do Not Pay Verification | The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant if the Applicant is delinquent on any Federal debt. The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check. |

*Prior Award Recipients:* The previous success of an Applicant in any of the CDFI Fund's programs will not be considered under this NOFA. Prior BEA Program Award Recipients and prior Award Recipients of other CDFI Fund programs are eligible to apply under this NOFA, except as noted in the following table:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR AWARD RECIPIENTS

| Criteria | Description |
|---|---|
| Pending resolution of noncompliance | If an Applicant that is a prior Award Recipient or Allocatee under any CDFI Fund program: (i) Has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. |
| Default status | The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program if, as of the applicable Application deadline of this NOFA, the CDFI Fund has made a final determination that such Applicant is in default of a previously executed assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee. Such entities will be ineligible to apply for an Award pursuant to this NOFA so long as the Applicant's prior award or allocation remains in default status or such other time period as specified by the CDFI Fund in writing. |
| Undisbursed funds | For the purposes of this section, the term ''undisbursed funds'' is defined as: (i) In the case of prior BEA Program Award(s), any balance of Award funds equal to or greater than five percent of the total prior BEA Program Award(s) that remains undisbursed more than three years after the end of the calendar year in which the CDFI Fund signed an Award Agreement with the Award Recipient, or (ii) in the case of prior CDFI Program or other CDFI Fund program award(s), any balance of award funds equal to or greater than five percent of the total prior award(s) that remains undisbursed more than two years after the end of the calendar year in which the CDFI Fund signed the applicable assistance agreement with the Award Recipient.<br>The term ''undisbursed funds'' does not include (i) tax credit allocation authority allocated through the NMTC Program; (ii) any award funds for which the CDFI Fund received a full and complete disbursement request from the Award Recipient as of the Application deadline of this NOFA; (iii) an award that does not have a fully executed award agreement; or (iv) any award funds for an award that has been terminated, expired, rescinded, or de-obligated by the CDFI Fund. |

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR AWARD RECIPIENTS—Continued

| Criteria | Description |
|---|---|
| | The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award Recipient under any CDFI Fund program if the Applicant has a balance of undisbursed funds under said prior award(s), as of the Application deadline of this NOFA. Further, an entity is not eligible to apply for an Award pursuant to this NOFA if an Affiliate of the Applicant is a prior CDFI Fund award Recipient under any CDFI Fund program, and has a balance of undisbursed funds under said prior Award(s), as of the Application deadline of this NOFA. In the case where an Affiliate of the Applicant is a prior CDFI Fund award Recipient under any CDFI Fund program, and has a balance of undisbursed funds under said prior award(s), as of the Application deadline of this NOFA, the CDFI Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds. |

*Contact the CDFI Fund:* Accordingly, Applicants that are prior Recipients and/or Allocatees under any CDFI Fund program are advised to: (i) Comply with requirements specified in an assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). An Applicant that is unsure about the disbursement status of any prior award should contact the CDFI Fund by sending an email to *cdfihelp@cdfi.treas.gov.* All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring, and Evaluation helpdesk by email at *ccme@cdfi.treas.gov* or by telephone at (202) 653–0421. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA through June 11, 2015. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or email inquiries that are received after 5:00 p.m. ET on June 11, 2015 until after the Application deadline. The CDFI Fund will respond to technical issues related to myCDFIFund Accounts through 5:00 p.m. ET on June 17, 2015 at *ithelpdesk@cdfi.treas.gov* or by telephone at (202) 653–0422.

B. *Cost sharing or matching fund requirements:* Not applicable.

## IV. Application and Submission Information

A. *Address to Request an Application Package:* Application materials can be found on Grants.gov and the CDFI Fund's Web site at *www.cdfifund.gov/bea.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.*

B. *Content and Form of Application Submission:* All Application materials must be prepared using the English language and calculations must be made in U.S. dollars. Detailed Application content requirements are found in the Application associated with this NOFA. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Additional information, including instructions relating to the submission of the Application via Grants.gov, and the submission of the FY 2015 BEA Signature Page and supporting documentation via myCDFIFund, is set forth in further detail in the Application.

C. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM):* Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number and a current Employer Identification Number (EIN). Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Applicants without a DUNS number will not be able to register and submit an Application in the Grants.gov system.

An active SAM account is required to submit Applications via Grants.gov. Neither the SAM account, EIN, nor the DUNS number can be that of the depository institution holding company of the Applicant. Applicants are advised to allow ample time to complete the entire registration and submission process prior to the application deadline. The SAM registration process can take several weeks to complete. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Application by the Application deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system. For more information about SAM, please visit *https://www.sam.gov.*

An Application that does not include an EIN or DUNS number is incomplete and cannot be transmitted to the CDFI Fund. The preceding sentences do not limit the CDFI Fund's ability to contact an Applicant for the purpose of confirming or clarifying information regarding a DUNS number or EIN. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application.

The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. As set forth in further detail in the Application, any Qualified Activity missing the required documentation will be disqualified. Applicants will not be allowed to submit missing documentation for Qualified Activities after the Application deadline. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Applicants must submit Applications under this NOFA via Grants.gov and with certain required documentation via myCDFIFund according to the instructions in the Application.

1. *Grants.gov:* In order to submit an Application via Grants.gov, Applicants must complete a multi-step registration process. This includes providing a DUNS and registration at *www.sam.gov.* The CDFI Fund strongly encourages Applicants to start the Grants.gov

registration process as soon as possible (refer to the following link: *http://www.grants.gov/web/grants/register.html*) as it may take several weeks to complete. An Applicant that has previously registered with Grants.gov must verify that its registration is current and active. Applicants should contact Grants.gov directly with questions related to the registration or submittal process as the CDFI Fund does not maintain the Grants.gov system.

2. *myCDFIFund:* All Applicants and CDFI Partners must complete a FY 2015 BEA Signature Page in myCDFIFund, the CDFI Fund's Internet-based interface. All Applicants and CDFI Partners must register User and Organization accounts in myCDFIFund by the applicable Application deadline. Failure to register and complete a FY 2015 BEA Signature Page in myCDFIFund could result in the CDFI Fund being unable to accept the Application. As myCDFIFund is the CDFI Fund's primary means of communication with Applicants and Award Recipients, institutions must make sure that they update their contact information in their myCDFIFund accounts. In addition, the Applicant should ensure that the Applicant name is the same institution's name on the Application materials (SF–424 and other forms). EINs and DUNS numbers in the Applicant's System for Award Management (SAM) account must match those listed in myCDFIFund. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.* Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must be submitted electronically via the BEA Signature Page interface in myCDFIFund. Detailed instructions regarding submission of Qualified Activity documentation is provided in the Application instructions. Applications, attachments, and Qualified Activity documentation delivered by hard copy to the CDFI Fund's Washington, DC office address will be rejected, unless the Applicant previously requested a paper version of the Application as described in Section IV.A.

D. *Submission Dates and Times:* The following table provides the critical deadlines for the FY 2015 Funding Round. Applications and other required documents and other attachments received after the deadline on the applicable date will be rejected. Please note that the document submission deadlines in this NOFA and the Application are strictly enforced. The CDFI Fund will not grant exceptions or waivers for late submissions except where the submission delay was a direct result of a Federal government administrative or technological error.

TABLE 4—FY 2015 BEA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

| Description | Deadline | Time (eastern daylight time—EDT) | Submission method |
|---|---|---|---|
| Application Part I: BEA Program Application Due Date ..... (Application Part I Forms include: SF–424 Mandatory, Environmental Review Form, Certifications and Excel charts). | June 15, 2015 ..... | 11:59 p.m. EDT ..... | Electronically via Grants.gov. |
| Application Part II: myCDFIFund Due Date (This includes myCDFIFund account registration, BEA Signature Page and Documentation of Qualified Activities). | June 17, 2015 ..... | 5:00 pm EDT ..... | Electronically via myCDFIFund. |

1. *Confirmation of Application Submission:* Applicants may verify their Application submission in Grants.gov and myCDFIFund.

a. *Grants.gov:* Each Applicant will receive an email from Grants.gov immediately after Application submission confirming that the submission has entered the Grants.gov system. This email will contain a tracking number for the submitted Application package. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted Application package was either successfully validated or rejected with errors. However, Applicants should not rely on the second email notification from Grants.gov to confirm that their Applications were validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their Application package by contacting the helpdesk at Grants.gov directly. The Application package is not officially accepted by the CDFI Fund until Grants.gov has validated the Application.

b. *myCDFIFund.gov:* Applicants will not receive an email confirmation for the BEA Signature Page and related materials submitted in myCDFIFund. Instead, Applicants should check their myCDFIFund account to ensure that the BEA Signature Page is listed under ''Submitted Applications.'' Step-by-step instructions are provided in the Application and supplemental guidance materials.

2. *Multiple Application Submissions:* If an Applicant submits multiple versions of its Application, the CDFI Fund will only review the last Application submitted in Grants.gov.

3. *Late Submission:* The CDFI Fund will not accept an Application submitted after the Application deadline except where the submission delay was a direct result of a Federal government administrative or technological error. In such case, the Applicant must submit a request for acceptance of late Application submission and include documentation of the error no later than two business days after the applicable Application deadline. The CDFI Fund will not respond to request for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Helpdesk at *cdfihelp@cdfi.treas.gov* with a subject line of ''Late Application Submission Request.''

E. *Funding Restrictions:* BEA Program Awards are limited by the following:

1. A Recipient shall use BEA Program funds only for the eligible activities described in Section II. D. of this NOFA and its Award Agreement.

2. A Recipient may not distribute BEA Program funds to an Affiliate, Subsidiary, or any other entity, without the CDFI Fund's prior written approval.

3. BEA Program funds shall only be disbursed to the Recipient.

4. The CDFI Fund, in its sole discretion, may disburse BEA Program funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

F. *Other Submission Requirements:* None.

## V. Application Review Information

A. *Criteria:* If the Applicant submitted a complete and eligible Application, the

CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or run the risk that its Application will be rejected.

1. *CDFI Related Activities:* CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners.

2. *Eligible CDFI Partner:* CDFI Partner is defined as a CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant (12 CFR 1806.103(o)). For the purposes of this NOFA, an eligible CDFI Partner is an entity that has been certified as a CDFI as of the end of the applicable Assessment Period and is Integrally Involved in a Distressed Community.

3. *Integrally Involved:* Integrally Involved is defined as having provided: (i) At least 10 percent of financial transactions or dollars transacted (*e.g.,* loans or equity investments), or 10 percent of Development Service Activities (as defined in 12 CFR 1805.104(s)), in one or more Distressed Communities identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, (ii) having transacted at least 25 percent of financial transactions (*e.g.,* loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of this NOFA, or (iii) demonstrated that it has attained at least 10 percent of market share for a particular product in one or more Distressed Communities (such as home mortgages originated in one or more Distressed Communities) in at least one of the three calendar years preceding the date of this NOFA.

4. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

5. *Certificates of Deposit:* Section 1806.103(q) of the Interim Rule states that any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

a. For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury Web site at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.* For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the Web site daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded daily, quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market interest rate over the life of the CD, in the determination of the CDFI Fund.

b. For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 1806.103(q) and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

6. *Equity Investment:* An Equity Investment means financial assistance in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund provided by an Applicant or its Subsidiary to a CDFI Partner that meets the criteria set forth in the applicable NOFA.

7. *Equity-Like Loan:* An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI Partner, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103(z)). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

a. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

b. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

c. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

d. The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

8. *CDFI Support Activity:* A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI Partner, in the form of a loan, technical assistance, or deposits.

9. *CDFI Program Matching Funds:* Equity Investments, Equity-Like Loans, and CDFI Support Activities (except technical assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

10. *Distressed Community Financing Activities and Service Activities:* Distressed Community Financing Activities comply with consumer protection laws and include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments, Education Loans, Commercial Real Estate Loans and related Project Investments, Home Improvement Loans, Small Business Loans and related Project Investments (12 CFR 1806.103(ll)), and Small Dollar Consumer Loans. In addition to the regulatory requirements, this NOFA provides the following additional requirements:

a. Commercial Real Estate Loans and related Project Investments: For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103(k)) and related Project Investments (12 CFR 1806.103(ll)) are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. For such transactions, Applicants must provide a separate

narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

b. Small Dollar Consumer Loan: For purposes of this NOFA, eligible Small Dollar Consumer Loans are affordable loans that serve as available alternatives to the marketplace for individuals who are Eligible Residents with a total principal value between $500 and $5,000 and have a term of ninety (90) days or more.

11. *Reporting certain Financial Services:* The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

a. $100.00 per account for Targeted Financial Services including youth savings accounts, Electronic Transfer Accounts and Individual Development Accounts;

b. $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

c. $5.00 per check cashing transaction;

d. $25,000 per new ATM installed at a location in a Distressed Community;

e. $2,500 per ATM operated at a location in a Distressed Community;

f. $250,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator; and

g. In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services.

h. When reporting the opening of a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same Distressed Community in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

i. Financial Service Activities must be provided by the Applicant to Low- and Moderate-Income Residents. An Applicant may determine the number of Low- and Moderate-Income individuals who are recipients of Financial Services by either: (i) Collecting income data on its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Low-and Moderate-Income residents to whom it is claiming to have provided the Financial Services.

j. When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the Supplemental Guidance to the FY 2015 BEA Program Application.

12. *Priority Factors:* Priority Factors are the numeric values assigned to individual types of activity within: (i) The Distressed Community Financing, and (ii) Services categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2014) as reported by the Applicant in the Application. Asset size classes (*i.e.,* small institutions, intermediate-small institutions, and large institutions) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is establishing Priority Factors based on Applicant asset size to be applied to all activity within the Distressed Community Financing Activities and Service Activities categories only, as follows:

TABLE 5—CRA ASSET SIZE CLASSIFICATION

| | Priority factor |
|---|---|
| Small institutions (assets of less than $305 million as of 12/31/2014) | 5.0 |
| Intermediate—small institutions (assets of at least $305 million but less than $1.221 billion as of 12/31/2014) | 3.0 |
| Large institutions (assets of $1.221 billion or greater as of 12/31/2014) | 1.0 |

13. *Certain Limitations on Qualified Activities:*

a. *Low-Income Housing Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

b. *New Markets Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in this NOFA are considered Distressed Community Financing Activities.

c. *Loan Renewals and Refinances:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a Bank Enterprise Award if such financial assistance consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant. Payoff of a separate third party obligation will only be considered a Qualified Activity if the payoff of a transaction is part of the sale of property or business to an unaffiliated party to the borrower. Applicants should include a narrative statement to describe any such transactions. Otherwise the transaction will be disqualified.

d. *Certain Business Types:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity,

as defined in this part, for the purposes of financing the following business types: Golf courses, race tracks, gambling facilities, certain farming businesses as described in 26 CFR part 1.45D–1(d)(5)(iii)(C), country clubs, massage parlors, hot tub facilities, suntan facilities, or stores where the principal business is the sale of alcoholic beverages for consumption off premises.

e. *Prior BEA Program Awards:* Qualified Activities funded with prior funding round BEA Program Award dollars or funded to satisfy requirements of the BEA Program Award Agreement shall not constitute a Qualified Activity for the purposes of calculating or receiving a BEA Program Award.

f. *Prior CDFI Program Awards:* No CDFI Applicant may receive a BEA Program Award for activities funded by another CDFI Fund program or Federal program.

14. *Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic and Financial Risk, and Application Rejection:* The Interim Rule describes the process for selecting Applicants to receive a BEA Program Award and determining Award amounts.

a. *Award percentages:* In the CDFI Related Activities category (except for an Equity Investment or Equity-Like Loan), for CDFI Applicants, the estimated Award amount will be equal to 18 percent of the increase in Qualified Activity for the category. If an Applicant is not a CDFI Applicant, the estimated Award amount will be equal to 6 percent of the increase in Qualified Activity for the category. Notwithstanding the foregoing, for a CDFI Applicant and for an Applicant that is not a CDFI Applicant, the Award percentage applicable to an Equity Investment, Equity-Like Loan, or Grant in a CDFI shall be 15 percent of the increase in Qualified Activity for the category.

In Distressed Community Financing Activities and Service Activities categories, for a CDFI Applicant, the estimated Award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a CDFI Applicant, the estimated Award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

b. *Award Amounts:* Applicants will calculate and request an estimated Award amount in accordance with a multi-step procedure that is outlined in the Interim Rule (at 12 CFR 1806.403). As outlined in the Interim Rule at 12 CFR 1806.404, the CDFI Fund will determine actual Award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and the priority ranking of each Applicant. In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. In some cases, the actual Award amount calculated by the CDFI Fund may not be the same as the estimated Award amount requested by the Applicant.

For purposes of calculating Award disbursement amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to $250,000 as fully disbursed. For all other Qualified Activities, Award Recipients will have 12 months from the end of the Assessment Period to make disbursements and 18 months from the end of the Assessment Period to submit to the CDFI Fund disbursement requests for the corresponding portion of their Awards, after which the CDFI Fund will rescind and de-obligate any outstanding Award balance and said outstanding Award balance will no longer be available to the Award Recipient.

B. *Review and Selection Process:*

1. *Application Review Process:* All Applications will be initially evaluated by external non-Federal reviewers. Reviewers are selected based on their experience in understanding various financial transactions, reading and interpreting financial documentation, strong written communication skills, and strong mathematical skills. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund. The CDFI Fund's application reader conflict of interest policy is located on the CDFI Fund's Web site.

2. *Selection Process:* If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Award Recipients will be selected based on the process described in the Interim Rule at 12 CFR 1806.404. This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR 1806.404(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual Award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual Award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

The CDFI Fund, in its sole discretion: (i) May adjust the estimated Award amount that an Applicant may receive, (ii) may establish a maximum amount that may be awarded to an Applicant, and (iii) reserves the right to limit the amount of an Award to any Applicant if the CDFI Fund deems it appropriate.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or run the risk of having its Application rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's Award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

3. *Programmatic and Financial Risk:* The CDFI Fund will consider safety and soundness information from the appropriate Federal bank regulatory agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). If the appropriate Federal bank regulatory agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of completing the activities for which funding has been requested. The CDFI Fund will not approve a BEA Program Award under any circumstances for an Applicant if the appropriate Federal bank regulatory agency indicates that the Applicant received a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not approve a BEA Program Award for the following reasons if at the time of application the Applicant received any of the following:

a. A CRA assessment rating of below ''Satisfactory'' on its most recent examination;

b. a going concern opinion on its most recent audit;

c. a Prompt Corrective Action directive from its regulator.

Applicants and/or their appropriate Federal bank regulator agency may be contacted by the CDFI Fund to provide additional information related to Federal bank regulatory or CRA information. The CDFI Fund will consider this information and may choose to disapprove a BEA Program Award for an Applicant if the information indicates that the Applicant may be unable to responsibly manage, re-invest, and/or report on a BEA Program Award during the performance period.

4. *Application Rejection:* The CDFI Fund reserves the right to reject an Application if information (including administrative error) comes to the CDFI Fund's attention that either: Adversely affects an Applicant's eligibility for an award; adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

There is no right to appeal the CDFI Fund's Award decisions. The CDFI Fund's Award decisions are final. The CDFI Fund will not discuss the specifics of an Applicant's BEA Program Application or provide reasons why an Applicant did not receive a BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2015 Application and Award decision process until 30 days after the award announcement date.

C. *Anticipated Announcement and Federal Award Dates:* The CDFI Fund anticipates making its FY 2015 BEA Program award announcement by September 30, 2015.

**VI. Federal Award Administration Information**

A. *Federal Award Notices:* The CDFI Fund will notify an Applicant of its selection as an Award Recipient by delivering a Notice of Award and Award Agreement. The Notice of Award and Award Agreement will contain the general terms and conditions governing the CDFI Fund's provision of an Award. The Award Recipient will receive a copy of the Notice of Award and Award Agreement via myCDFIFund. The Award Recipient is required to execute the Award Agreement and return it to the CDFI Fund. Each Award Recipient must also ensure that complete and accurate banking information is reflected in its System for Award Management (SAM) account on *www.sam.gov* in order to receive its award disbursement.

B. *Administrative and National Policy Requirements:* If, prior to entering into an Award Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects: The Award Recipient's eligibility for an award; the CDFI Fund's evaluation of the Application; the Award Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Award Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the award or take other actions as it deems appropriate.

If the Award Recipient's certification status as a CDFI changes, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the Award, modify the Notice of Award, and modify the Award Agreement based on the Award Recipient's non-CDFI status.

By executing an Award Agreement, the Award Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the Effective Date of the Award Agreement that either adversely affects the Award Recipient's eligibility for an Award, or adversely affects the CDFI Fund's evaluation of the Award Recipient's Application, or indicates fraud or mismanagement on the part of the Award Recipient, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the Award Agreement or take other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Award Recipient fails to return the Award Agreement, signed by the authorized representative of the award Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines. In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA for any criteria described in the following table:

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT

| Criteria | Description |
|---|---|
| Failure to meet reporting requirements. | If an Applicant, is a prior CDFI Fund award Recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guaranty, as of the date of the Notice of Award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Recipient or Allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guaranty. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior Recipient or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA. |
| Pending resolution of noncompliance. | If, at any time prior to entering into an Award Agreement under this NOFA, an Applicant that is a prior CDFI Fund award Recipient or Allocatee under any CDFI Fund program: Has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, but the CDFI Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award, allocation, bond loan agreement, or agreement to guaranty, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If said prior Recipient or Allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA. |

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT—Continued

| Criteria | Description |
|---|---|
| Default status | If prior to entering into an Award Agreement under this NOFA: The CDFI Fund has made a final determination that an Applicant that is a prior CDFI Fund Recipient or Allocatee under any CDFI Fund program whose award or allocation terminated in default of such prior agreement; the CDFI Fund has provided written notification of such determination to such organization; and the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, assistance, bond loan agreement(s), or agreement to guaranty is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA. |
| Compliance with Federal civil rights requirements. | If prior to entering into an Award Agreement under this NOFA, the Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Award Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA. |
| Do Not Pay | The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the award Recipient is identified as ineligible to be a recipient per the Do Not Pay database. |
| Safety and soundness | If it is determined the award Recipient is or will be incapable of meeting its Award obligations, the CDFI Fund will deem the award Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Award Agreement. |

Award Agreement: After the CDFI Fund selects an Award Recipient, unless an exception detailed in this NOFA applies, the CDFI Fund and the Award Recipient will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the Award, which will include, but not be limited to: (i) The amount of the Award; (ii) the type of the Award; (iii) the approved uses of the Award; (iv) the performance goals and measures; (v) the performance periods; and (vi) the reporting requirements. The Award Agreement shall provide that an Award Recipient shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved Application, and all other applicable requirements; (ii) not receive any disbursement of award dollars until the CDFI Fund has determined that the Award Recipient has fulfilled all applicable requirements; and (iii) use the BEA Award amount for BEA Qualified Activities.

C. *Reporting:* The CDFI Fund will require each Award Recipient that receives an Award of over $50,000 through this NOFA to account for and report to the CDFI Fund on the use of the Award. This will require Award Recipients to establish administrative controls, subject to applicable OMB Circulars. The CDFI Fund will collect information from each such Award Recipient on its use of the Award at least once following the Award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Award Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components:

TABLE 7—REPORTING REQUIREMENTS

| Criteria | Description |
|---|---|
| Single Audit Narrative Report (or like report). | The Recipient must submit, via myCDFIFund, a Single Audit Narrative Report for each year of its period of performance notifying the CDFI Fund whether it is required to have a single audit pursuant to OMB Single Audit requirements. |
| Single Audit (if applicable) (or similar report). | A Recipient that is a non-profit entity that expends $750,000 or more in Federal awards during its fiscal year must have a single audit conducted for that year. If a Recipient is required to complete a Single Audit Report, it should be submitted to the Federal Audit Clearinghouse see 2 CFR Subpart F-Audit Requirements in the Uniform Federal Award Requirements. For-profit award Recipients will be required to complete and submit a similar report directly to the CDFI Fund. |
| Use of BEA Program Award Report. | If the award Recipient receives a BEA Program award of over $50,000, it must submit the Use of Award report to the CDFI Fund via myCDFIFund. |
| Explanation of Noncompliance (as applicable) or successor report. | If the award Recipient fails to meet a Performance Goal or reporting requirements, it must submit the Explanation of Noncompliance via myCDFI Fund. |

Each Award Recipient is responsible for the timely and complete submission of the Reporting requirements. The CDFI Fund reserves the right to contact the Award Recipient to request additional information and documentation. The CDFI Fund will use such information to monitor each Award Recipient's compliance with the requirements in the Award Agreement and to assess the impact of the BEA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however,

such reporting requirements will be modified only after notice has been provided to award Recipients.

D. *Financial Management and Accounting:* The CDFI Fund will require award Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Each of the Qualified Activities categories will be ineligible for indirect costs and an associated indirect cost rate. The cost principles used by award Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the BEA Program award. In addition, the CDFI Fund will require award Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Award Agreement; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information.

## VII. Federal Awarding Agency Contacts

A. *Questions Related to Application and Prior Award Recipient Reporting, Compliance and Disbursements:* The CDFI Fund will respond to questions concerning this NOFA, the Application and reporting, compliance, or disbursements between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that this NOFA is published through the date listed in Table 1. The CDFI Fund will post responses to frequently asked questions in a separate document on its Web site. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.*

The following table lists CDFI Fund contact information:

TABLE 8—CONTACT INFORMATION

| Type of question | Telephone number (not toll free) | Email addresses |
|---|---|---|
| BEA Program | 202–653–0421 | *cdfihelp@cdfi.treas.gov.* |
| Certification, Compliance Monitoring, and Evaluation | 202–653–0423 | *ccme@cdfi.treas.gov.* |
| myCDFIFund—IT Help Desk | 202–653–0422 | *IThelpdesk@cdfi.treas.gov.* |

B. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using the CDFI Fund's Web site should call (202) 653–0422 for assistance (this is not a toll free number).

C. *Communication With the CDFI Fund:* The CDFI Fund will use its myCDFIFund Internet interface to communicate with Applicants and Award Recipients under this NOFA. Award Recipients must use myCDFIFund to submit required reports. The CDFI Fund will notify Award Recipients by email using the addresses maintained in each Award Recipient's myCDFIFund account. Therefore, an Award Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s).

D. *Civil Rights and Diversity:* Any person who is eligible to receive benefits or services from CDFI Fund or award Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

## VIII. Other Information

A. *Reasonable Accommodations:* Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Michael Jones, Community Development Financial Institutions Fund, U.S. Department of the Treasury at *JonesM@cdfi.treas.gov* no later than 72 hours in advance of the application deadline.

B. *Paperwork Reduction Act:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559–0005.

C. *Application Information Sessions:* The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

**Authority:** 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: April 30, 2015.

**Mary Ann Donovan,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 2015–10432 Filed 5–4–15; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of five individuals and one entity whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8

U.S.C. 1182). Additionally, OFAC is publishing an update to the name of one individual currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

**DATES:** The unblocking and removal from the SDN List of the individuals and entity identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on April 28, 2015. Additionally, the update to the SDN List of the individual identified in this notice is also effective on April 28, 2015.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

**Background**

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On April 28, 2015, the Associate Director of the Office of Global Targeting removed from the SDN List the individuals and entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act: Individuals:

1. FONTES MORENO, Eleazar, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; Avenida Serdan No. 122 Poniente, Altos 10, Hermosillo, Sonora, Mexico; Ave. Real 73, Hermosillo, Sonora 83200, Mexico; DOB 23 Jul 1947; POB Hermosillo, Sonora, Mexico; nationality Mexico; citizen Mexico; Passport 260057687 (Mexico); C.U.R.P. FOME470723HSRNRL05 (Mexico) (individual) [SDNTK].
2. CANAVAL LANDAZURI, Enrique Antonio, c/o VUELA PERU S.A.C., Lima, Peru; c/o ASOCIACION CIVIL LOS PROMOTORES AERONAUTICOS, Lima, Peru; Avenida Pedro Venturo 687, URB Higuereta, Lima, Peru; DOB 06 Jan 1953; LE Number 07790775 (Peru) (individual) [SDNTK].
3. CASTANO GIL, Hector; DOB 24 Mar 1959; POB Amalfi, Antioquia, Colombia; Cedula No. 3371328 (Colombia) (individual) [SDNTK].
4. GUBEREK GRIMBERG, Arieh, Bogota, Colombia; DOB 17 Sep 1959; POB Bogota, Colombia; Cedula No. 79149680 (Colombia) (individual) [SDNTK] (Linked To: SBT S.A.; Linked To: PROMESAS DEL FUTBOL COLOMBIANO S.A.; Linked To: COMERCIALIZADORA INTERNACIONAL ANDINA LIMITADA; Linked To: COLOMBO PERUANA DE TEJIDOS S.A.; Linked To: COMPANIA REAL DE PANAMA S.A.; Linked To: GUBEREK GRIMBERG E HIJOS Y CIA. S. EN C.).
5. HERNANDEZ SAN MARTIN, Ricardo Arturo, c/o AVIANDINA S.A.C., Lima, Peru; c/o PERU GLOBAL TOURS S.A.C., Lima, Peru; Calle Huancavelica 270, URB Santa Patricia, Lima, Peru; DOB 04 Jul 1955; LE Number 10321329 (Peru) (individual) [SDNTK].

*Entity*

1. CARTRONIC GROUP PERU S.A.C., Lima, Peru; RUC # 20544359160 (Peru) [SDNTK].

Additionally on April 28, 2015, the Associate Director of the Office of Global Targeting updated the SDN record for the individual listed below, whose property and interests in property continue to be blocked pursuant to the Kingpin Act:

*Individual*

1. CALLE QUIROS, Luis Santiago, Madrid, Spain; Lima, Peru; DOB 22 Jul 1965; POB Madrid, Spain; citizen Spain; alt. citizen Peru; D.N.I. 01927713–Z (Spain); alt. D.N.I. 10831176–8 (Peru) (individual) [SDNTK] (Linked To: TEXTIMAX SPAIN S.L.; Linked To: CASTIZAL MADRILENA S.L.; Linked To: INMOBILIARIA CASTIZAL S.A.C.; Linked To: UCALSA PERU S.A.).

Dated: April 28, 2015.

**Gregory T. Gatjanis,**

*Associate Director, Office of Global Targeting, Office of Foreign Assets Control.*

[FR Doc. 2015–10459 Filed 5–4–15; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals And Blocked Persons Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of the five individuals and three entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''. Additionally, OFAC is publishing an update to the name of one individual currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the five individuals and three entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on April 28, 2015. Additionally, the update to the SDN List of the individual identified in this notice is also effective on April 28, 2015.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site

(*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

**Background**

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the Order). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On April 28, 2015, the Associate Director of the Office of Global Targeting removed from the SDN List the individuals and entities listed below, whose property and interests in property were blocked pursuant to the Order:

*Individuals*

1. ESPITIA PINILLA, Ricardo, Bogota, Colombia; DOB 26 Apr 1962; POB Colombia; nationality Colombia; citizen Colombia; Cedula No. 19483017 (Colombia); Passport AI264250 (Colombia) (individual) [SDNT].
2. MAFLA POLO, Jose Freddy, Carrera 4 No. 11–45 Ofc. 503, Cali, Colombia; Calle 52N No. 5B–111, Cali, Colombia; Carrera 11 No. 46–24 Apt. 201, Cali, Colombia; Carrera 11 No. 46–26, Cali, Colombia; c/o COMPANIA DE FOMENTO MERCANTIL S.A., Cali, Colombia; c/o PARQUE INDUSTRIAL PROGRESO S.A., Yumbo, Colombia; c/o CONSTRUCCIONES PROGRESO DEL PUERTO S.A., Puerto Tejada, Colombia; c/o GEOPLASTICOS S.A., Cali, Colombia; c/o J. FREDDY MAFLA Y CIA. S.C.S., Cali, Colombia; POB Cali, Valle, Colombia; Cedula No. 16689935 (Colombia); Passport 16689935 (Colombia) (individual) [SDNT].
3. MORENO FERNANDEZ, Monica, c/o RUIZ DE ALARCON 12 S.L., Madrid, Spain; Spain; DOB 20 Apr 1963; nationality Colombia; citizen Colombia; Cedula No. 31903968 (Colombia); Passport AG744728 (Colombia); alt. Passport AE613367 (Colombia); National Foreign ID Number X3881333Z (Spain) (individual) [SDNT].
4. MARIN ZAMORA, Jaime Alberto (a.k.a. ''BETO MARIN''), c/o PLASTEC LTDA., Colombia; Carrera 13A No. 1A–139, Armenia, Quindio, Colombia; Avenida San Martin 4–46, Bocagrande, Cartagena, Colombia; DOB 22 Jul 1964; POB Quimbaya, Quindio, Colombia; citizen Colombia; Cedula No. 7544228 (Colombia); Passport AF595263 (Colombia); alt. Passport AD380146 (Colombia) (individual) [SDNT].
5. ANDRADE QUINTERO, Ancizar, c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIAS LTDA., Cali, Colombia; DOB 23 Jan 1962; Cedula No. 16672464 (Colombia) (individual) [SDNT].

*Entities*

1. J. FREDDY MAFLA Y CIA. S.C.S., Carrera 4 No. 11–45 Ofc. 503, Cali, Colombia; NIT #800020482–4 (Colombia) [SDNT].
2. PLASTEC LTDA., Km. 1 Via Jardines, Armenia, Quindio, Colombia; NIT #801000358–7 (Colombia) [SDNT].
3. GAVIRIA MOR Y CIA. LTDA., Calle 16 No. 11–82 Ofc. 302, Girardot, Colombia; NIT #800212771–2 (Colombia) [SDNT].

Additionally, on April 28, 2015, the Associate Director of the Office of Global Targeting updated the SDN record for the individual listed below, whose property and interests in property continue to be blocked pursuant to Executive Order 12978:

*Individual*

1. MALDONADO ESCOBAR, Fernando; DOB 16 May 1961; POB Bogota, Colombia; Cedula No. 19445721 (Colombia); Passport AH330349 (Colombia) (individual) [SDNT] (Linked To: AUDITORES ESPECIALIZADOS LTDA.; Linked To: AQUAMARINA ISLAND INTERNATIONAL CORPORATION).

Dated: April 28, 2015.

**Gregory T. Gatjanis,**

*Associate Director, Office of Global Targeting, Office of Foreign Assets Control.*

[FR Doc. 2015–10455 Filed 5–4–15; 8:45 am]

**BILLING CODE 4810–AL–P**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2015.

**SUMMARY:** Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

**DATES:** The Commission has specified an effective date of November 1, 2015, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Doherty, Public Affairs Officer, (202) 502–4502, *jdoherty@ussc.gov.* The amendments set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 16, 2015 (*see* 80 FR 2569 through 2590). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 12, 2015. On April 30, 2015, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2015.

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rules of Practice and Procedure 4.1.

**Patti B. Saris,**
*Chair.*

1. *Amendment:* Section 1B1.3(a)(1)(B) is amended by striking ''all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity,'' and inserting the following:

''all acts and omissions of others that were—

(i) within the scope of the jointly undertaken criminal activity,

(ii) in furtherance of that criminal activity, and

(iii) reasonably foreseeable in connection with that criminal activity;''.

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended by striking Note 2 as follows:

''2. A 'jointly undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was both:

(A) In furtherance of the jointly undertaken criminal activity; and

(B) reasonably foreseeable in connection with that criminal activity.

Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the criminal activity jointly undertaken by the defendant (the 'jointly undertaken criminal activity') is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (*i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement). The conduct of others that was both in furtherance of, and reasonably foreseeable in connection with, the criminal activity jointly undertaken by the defendant is relevant conduct under this provision. The conduct of others that was not in furtherance of the criminal activity jointly undertaken by the defendant, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (*i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others.

Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

With respect to offenses involving contraband (including controlled substances), the defendant is accountable for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of contraband that were within the scope of the criminal activity that he jointly undertook.

The requirement of reasonable foreseeability applies only in respect to the conduct (*i.e.,* acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).

A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.,* in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's culpability; in such a case, an upward departure may be warranted.

*Illustrations of Conduct for Which the Defendant Is Accountable*

(a) Acts and Omissions Aided or Abetted by the Defendant

(1) Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded). Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (*i.e.,* the specific objective of the criminal activity he joined was the off-loading of the entire shipment). Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.

In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B)(applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity (the scope of which was the importation of the shipment of marihuana). A finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.

(b) Acts and Omissions Aided or Abetted by the Defendant; Requirement That the Conduct of Others Be in Furtherance of the Jointly Undertaken Criminal Activity and Reasonably Foreseeable

(1) Defendant C is the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined). Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).

(c) Requirement That the Conduct of Others Be in Furtherance of the Jointly Undertaken Criminal Activity and Reasonably Foreseeable; Scope of the Criminal Activity

(1) Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was not in furtherance of the criminal activity he jointly undertook with Defendant D (*i.e.,* the forgery of the $800 check).

(2) Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was in furtherance of the jointly undertaken criminal activity and was reasonably foreseeable in connection with that criminal activity.

(3) Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions in furtherance of the importation of that shipment that were reasonably foreseeable (*see* the discussion in example (a)(1) above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not in furtherance of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).

(4) Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was within the scope of his jointly undertaken criminal activity and reasonably foreseeable. Defendant L is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because the scope of his jointly undertaken criminal activity is limited to that amount. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.

(5) Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not in furtherance of her jointly undertaken criminal activity (*i.e.,* the one delivery).

(6) Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were in furtherance of the jointly undertaken criminal activity and reasonably foreseeable in connection with that criminal activity.

(7) Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R.

(8) Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object

of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity. In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, in cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.'';

by redesignating Notes 3 through 10 as Notes 5 through 12, respectively, and inserting the following new Notes 2, 3, and 4:

''2. *Accountability Under More Than One Provision.*—In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. If a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.

3. *Jointly Undertaken Criminal Activity (Subsection (a)(1)(B)).*—

(A) *In General.*—A 'jointly undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was:

(i) Within the scope of the jointly undertaken criminal activity;

(ii) in furtherance of that criminal activity; and

(iii) reasonably foreseeable in connection with that criminal activity.

The conduct of others that meets all three criteria set forth in subdivisions (i) through (iii) (*i.e.,* 'within the scope,' 'in furtherance,' and 'reasonably foreseeable') is relevant conduct under this provision. However, when the conduct of others does not meet any one of the criteria set forth in subdivisions (i) through (iii), the conduct is not relevant conduct under this provision.

(B) *Scope.*—Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the 'jointly undertaken criminal activity' is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (*i.e.,* the scope of the specific conduct and objectives embraced by the defendant's agreement). In doing so, the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others. Accordingly, the accountability of the defendant for the acts of others is limited by the scope of his or her agreement to jointly undertake the particular criminal activity. Acts of others that were not within the scope of the defendant's agreement, even if those acts were known or reasonably foreseeable to the defendant, are not relevant conduct under subsection (a)(1)(B).

In cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.

A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.,* in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's culpability; in such a case, an upward departure may be warranted.

(C) *In Furtherance.*—The court must determine if the conduct (acts and omissions) of others was in furtherance of the jointly undertaken criminal activity.

(D) *Reasonably Foreseeable.*—The court must then determine if the conduct (acts and omissions) of others that was within the scope of, and in furtherance of, the jointly undertaken criminal activity was reasonably foreseeable in connection with that criminal activity.

Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was within the scope of the jointly undertaken criminal activity (the robbery), was in furtherance of that criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

With respect to offenses involving contraband (including controlled substances), the defendant is accountable under subsection (a)(1)(A) for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity under subsection (a)(1)(B), all quantities of contraband that were involved in transactions carried out by other participants, if those transactions were within the scope of, and in furtherance of, the jointly undertaken criminal activity and were reasonably foreseeable in connection with that criminal activity.

The requirement of reasonable foreseeability applies only in respect to the conduct (*i.e.,* acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).

4. *Illustrations of Conduct for Which the Defendant is Accountable under Subsections (a)(1)(A) and (B).*—

(A) *Acts and omissions aided or abetted by the defendant.*—

(i) Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded).

Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (*i.e.,* the specific objective of the criminal activity he joined was the off-loading of the entire shipment). Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.

In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B) (applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity and all three criteria of subsection (a)(1)(B) are met. First, the conduct was within the scope of the criminal activity (the importation of the shipment of marihuana). Second, the off-loading of the shipment of marihuana was in furtherance of the criminal activity, as described above. And third, a finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established. *See* Application Note 2.

(B) *Acts and omissions aided or abetted by the defendant; acts and omissions in a jointly undertaken criminal activity.*—

(i) Defendant C is the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined). Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).

(C) *Requirements that the conduct of others be within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable.*—

(i) Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was not within the scope of the jointly undertaken criminal activity (*i.e.,* the forgery of the $800 check).

(ii) Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was within the scope of the jointly undertaken criminal activity (the scheme to sell fraudulent stocks), was in furtherance of that criminal activity, and was reasonably foreseeable in connection with that criminal activity.

(iii) Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions of others related to the importation of that shipment on the basis of subsection (a)(1)(B) (*see* the discussion in example (A)(i) above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not within the scope of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).

(iv) Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was within the scope of his jointly undertaken criminal activity (to distribute child pornography with Defendant K), in furtherance of that criminal activity, and reasonably foreseeable. Defendant L is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because he is not engaged in a jointly undertaken criminal activity with the other defendants. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.

(v) Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on

only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not within the scope of her jointly undertaken criminal activity (*i.e.,* the one delivery).

(vi) Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in connection with that criminal activity.

(vii) Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R. Defendant S is not accountable under subsection (a)(1)(B) for the other quantities imported by Defendant R because those quantities were not within the scope of his jointly undertaken criminal activity (*i.e.,* the 500 grams).

(viii) Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity (which under subsection (a)(1)(B) were also in furtherance of, and reasonably foreseeable in connection with, the criminal activity). In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, the scope of the jointly undertaken criminal activity may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities. *See* Application Note 3(B).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 14(E) by striking ''Application Note 9'' both places such term appears and inserting ''Application Note 11''.

The Commentary to § 2X3.1 captioned ''Application Notes'' is amended in Note 1 by striking ''Application Note 10'' and inserting ''Application Note 12''.

The Commentary to § 2X4.1 captioned ''Application Notes'' is amended in Note 1 by striking ''Application Note 10'' and inserting ''Application Note 12''.

*Reason for Amendment:* This amendment is a result of the Commission's effort to clarify the use of relevant conduct in offenses involving multiple participants.

The amendment makes clarifying revisions to § 1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)). It restructures the guideline and its commentary to set out more clearly the three-step analysis the court applies in determining whether a defendant is accountable for the conduct of others in a jointly undertaken criminal activity under § 1B1.3(a)(1)(B). The three-step analysis requires that the court (1) identify the scope of the jointly undertaken criminal activity; (2) determine whether the conduct of others in the jointly undertaken criminal activity was in furtherance of that criminal activity; and (3) determine whether the conduct of others was reasonably foreseeable in connection with that criminal activity.

Prior to this amendment, the ''scope'' element of the three-step analysis was identified in the commentary to § 1B1.3 but was not included in the text of the guideline itself. This amendment makes clear that, under the ''jointly undertaken criminal activity'' provision, a defendant is accountable for the conduct of others in a jointly undertaken criminal activity if the conduct meets all three criteria of the three-step analysis. This amendment is not intended as a substantive change in policy.

2. *Amendment:* Section 2B1.1(b) is amended by striking paragraph (1) as follows:

''(1) If the loss exceeded $5,000, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $5,000 or less | no increase |
| (B) More than $5,000 | add 2 |
| (C) More than $10,000 | add 4 |
| (D) More than $30,000 | add 6 |
| (E) More than $70,000 | add 8 |
| (F) More than $120,000 | add 10 |
| (G) More than $200,000 | add 12 |
| (H) More than $400,000 | add 14 |
| (I) More than $1,000,000 | add 16 |
| (J) More than $2,500,000 | add 18 |
| (K) More than $7,000,000 | add 20 |
| (L) More than $20,000,000 | add 22 |
| (M) More than $50,000,000 | add 24 |
| (N) More than $100,000,000 | add 26 |
| (O) More than $200,000,000 | add 28 |
| (P) More than $400,000,000 | add 30.''; |

and inserting the following:

''(1) If the loss exceeded $6,500, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $6,500 or less | no increase |
| (B) More than $6,500 | add 2 |
| (C) More than $15,000 | add 4 |
| (D) More than $40,000 | add 6 |
| (E) More than $95,000 | add 8 |
| (F) More than $150,000 | add 10 |
| (G) More than $250,000 | add 12 |
| (H) More than $550,000 | add 14 |
| (I) More than $1,500,000 | add 16 |
| (J) More than $3,500,000 | add 18 |
| (K) More than $9,500,000 | add 20 |
| (L) More than $25,000,000 | add 22 |
| (M) More than $65,000,000 | add 24 |
| (N) More than $150,000,000 | add 26 |
| (O) More than $250,000,000 | add 28 |
| (P) More than $550,000,000 | add 30.''. |

Section 2B1.4(b)(1) is amended by striking ''$5,000'' and inserting ''$6,500''.

Section 2B1.5(b)(1) is amended by striking ''$2,000'' and inserting ''$2,500''; and by striking ''$5,000'' both places such term appears and inserting ''$6,500''.

Section 2B2.1(b) is amended by striking paragraph (2) as follows:

''(2) If the loss exceeded $2,500, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $2,500 or less | no increase |
| (B) More than $2,500 | add 1 |
| (C) More than $10,000 | add 2 |
| (D) More than $50,000 | add 3 |
| (E) More than $250,000 | add 4 |
| (F) More than $800,000 | add 5 |
| (G) More than $1,500,000 | add 6 |
| (H) More than $2,500,000 | add 7 |
| (I) More than $5,000,000 | add 8.''; |

and inserting the following:

''(2) If the loss exceeded $5,000, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $5,000 or less | no increase |
| (B) More than $5,000 | add 1 |
| (C) More than $20,000 | add 2 |
| (D) More than $95,000 | add 3 |
| (E) More than $500,000 | add 4 |
| (F) More than $1,500,000 | add 5 |
| (G) More than $3,000,000 | add 6 |
| (H) More than $5,000,000 | add 7 |
| (I) More than $9,500,000 | add 8.''. |

Section 2B2.3(b)(3) is amended by striking ''$2,000'' and inserting ''$2,500''; and by striking ''$5,000'' both places such term appears and inserting ''$6,500''.

Section 2B3.1(b) is amended by striking paragraph (7) as follows:

''(7) If the loss exceeded $10,000, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $10,000 or less | no increase |
| (B) More than $10,000 | add 1 |
| (C) More than $50,000 | add 2 |
| (D) More than $250,000 | add 3 |
| (E) More than $800,000 | add 4 |
| (F) More than $1,500,000 | add 5 |
| (G) More than $2,500,000 | add 6 |
| (H) More than $5,000,000 | add 7.''; |

and inserting the following:

''(7) If the loss exceeded $20,000, increase the offense level as follows:

| Loss (apply the greatest) | Increase in level |
|---|---|
| (A) $20,000 or less | no increase. |
| (B) More than $20,000 | add 1 |
| (C) More than $95,000 | add 2 |
| (D) More than $500,000 | add 3 |
| (E) More than $1,500,000 | add 4 |
| (F) More than $3,000,000 | add 5 |
| (G) More than $5,000,000 | add 6 |
| (H) More than $9,500,000 | add 7.''. |

Section 2B3.2(b)(2) is amended by striking ''$10,000'' and inserting ''$20,000''.

Sections 2B3.3(b)(1), 2B4.1(b)(1), 2B5.1(b)(1), 2B5.3(b)(1), and 2B6.1(b)(1) are each amended by striking ''$2,000'' and inserting ''$2,500''; and by striking ''$5,000'' both places such term appears and inserting ''$6,500''.

Sections 2C1.1(b)(2), 2C1.2(b)(2), and 2C1.8(b)(1) are each amended by striking ''$5,000'' and inserting ''$6,500''.

Sections 2E5.1(b)(2) and 2Q2.1(b)(3) are each amended by striking ''$2,000'' and inserting ''$2,500''; and by striking ''$5,000'' both places such term appears and inserting ''$6,500''.

Section 2R1.1(b) is amended by striking paragraph (2) as follows:

''(2) If the volume of commerce attributable to the defendant was more than $1,000,000, adjust the offense level as follows:

| Volume of commerce (apply the greatest) | Adjustment to offense level |
|---|---|
| (A) More than $1,000,000 | add 2 |
| (B) More than $10,000,000 | add 4 |
| (C) More than $40,000,000 | add 6 |
| (D) More than $100,000,000 | add 8 |
| (E) More than $250,000,000 | add 10 |
| (F) More than $500,000,000 | add 12 |
| (G) More than $1,000,000,000. | add 14 |
| (H) More than $1,500,000,000. | add 16.''; |

and inserting the following:

''(2) If the volume of commerce attributable to the defendant was more than $1,000,000, adjust the offense level as follows:

| Volume of commerce (apply the greatest) | Adjustment to offense level |
|---|---|
| (A) More than $1,000,000 | add 2 |
| (B) More than $10,000,000 | add 4 |
| (C) More than $50,000,000 | add 6 |
| (D) More than $100,000,000 | add 8 |
| (E) More than $300,000,000 | add 10 |
| (F) More than $600,000,000 | add 12 |
| (G) More than $1,200,000,000. | add 14 |
| (H) More than $1,850,000,000. | add 16.''. |

Section 2T3.1(a) is amended by striking ''$1,000'' both places such term appears and inserting ''$1,500''; and by striking ''$100'' both places such term appears and inserting ''$200''.

Section 2T4.1 is amended by striking the following:

| ''Tax loss (apply the greatest) | Offense level |
|---|---|
| (A) $2,000 or less | 6 |
| (B) More than $2,000 | 8 |
| (C) More than $5,000 | 10 |
| (D) More than $12,500 | 12 |
| (E) More than $30,000 | 14 |
| (F) More than $80,000 | 16 |
| (G) More than $200,000 | 18 |
| (H) More than $400,000 | 20 |
| (I) More than $1,000,000 | 22 |
| (J) More than $2,500,000 | 24 |
| (K) More than $7,000,000 | 26 |
| (L) More than $20,000,000 | 28 |
| (M) More than $50,000,000 | 30 |
| (N) More than $100,000,000 | 32 |
| (O) More than $200,000,000 | 34 |
| (P) More than $400,000,000 | 36.''; |

and inserting the following:

| ''Tax loss (apply the greatest) | Offense level |
|---|---|
| (A) $2,500 or less | 6 |
| (B) More than $2,500 | 8 |
| (C) More than $6,500 | 10 |
| (D) More than $15,000 | 12 |
| (E) More than $40,000 | 14 |
| (F) More than $100,000 | 16 |
| (G) More than $250,000 | 18 |
| (H) More than $550,000 | 20 |
| (I) More than $1,500,000 | 22 |
| (J) More than $3,500,000 | 24 |
| (K) More than $9,500,000 | 26 |
| (L) More than $25,000,000 | 28 |
| (M) More than $65,000,000 | 30 |
| (N) More than $150,000,000 | 32 |
| (O) More than $250,000,000 | 34 |
| (P) More than $550,000,000 | 36.''; |

Section 5E1.2 is amended in subsection (c)(3) by striking the following:

''FINE TABLE

| Offense level | A minimum | B maximum |
|---|---|---|
| 3 and below | $100 | $5,000 |
| 4–5 | 250 | 5,000 |
| 6–7 | 500 | 5,000 |
| 8–9 | 1,000 | 10,000 |
| 10–11 | 2,000 | 20,000 |
| 12–13 | 3,000 | 30,000 |
| 14–15 | 4,000 | 40,000 |
| 16–17 | 5,000 | 50,000 |
| 18–19 | 6,000 | 60,000 |
| 20–22 | 7,500 | 75,000 |
| 23–25 | 10,000 | 100,000 |
| 26–28 | 12,500 | 125,000 |
| 29–31 | 15,000 | 150,000 |
| 32–34 | 17,500 | 175,000 |
| 35–37 | 20,000 | 200,000 |
| 38 and above | 25,000 | 250,000.'', |

and inserting the following:

''FINE TABLE

| Offense level | A minimum | B maximum |
|---|---|---|
| 3 and below | $200 | $9,500 |
| 4–5 | 500 | 9,500 |
| 6–7 | 1,000 | 9,500 |
| 8–9 | 2,000 | 20,000 |
| 10–11 | 4,000 | 40,000 |
| 12–13 | 5,500 | 55,000 |
| 14–15 | 7,500 | 75,000 |
| 16–17 | 10,000 | 95,000 |
| 18–19 | 10,000 | 100,000 |
| 20–22 | 15,000 | 150,000 |
| 23–25 | 20,000 | 200,000 |
| 26–28 | 25,000 | 250,000 |
| 29–31 | 30,000 | 300,000 |
| 32–34 | 35,000 | 350,000 |
| 35–37 | 40,000 | 400,000 |
| 38 and above | 50,000 | 500,000.''; |

in subsection (c)(4) by striking ''$250,000'' and inserting ''$500,000'';

and by inserting after subsection (g) the following new subsection (h):

''(h) Special Instruction

(1) For offenses committed prior to November 1, 2015, use the applicable fine guideline range that was set forth in the version of § 5E1.2(c) that was in effect on November 1, 2014, rather than the applicable fine guideline range set forth in subsection (c) above.''.

Section 8C2.4 is amended in subsection (d) by striking the following:

''OFFENSE LEVEL FINE TABLE

| Offense level | Amount |
|---|---|
| 6 or less | $5,000 |
| 7 | 7,500 |
| 8 | 10,000 |
| 9 | 15,000 |
| 10 | 20,000 |
| 11 | 30,000 |
| 12 | 40,000 |
| 13 | 60,000 |
| 14 | 85,000 |
| 15 | 125,000 |
| 16 | 175,000 |
| 17 | 250,000 |
| 18 | 350,000 |
| 19 | 500,000 |
| 20 | 650,000 |
| 21 | 910,000 |
| 22 | 1,200,000 |
| 23 | 1,600,000 |
| 24 | 2,100,000 |
| 25 | 2,800,000 |
| 26 | 3,700,000 |
| 27 | 4,800,000 |
| 28 | 6,300,000 |
| 29 | 8,100,000 |
| 30 | 10,500,000 |
| 31 | 13,500,000 |
| 32 | 17,500,000 |
| 33 | 22,000,000 |
| 34 | 28,500,000 |
| 35 | 36,000,000 |
| 36 | 45,500,000 |
| 37 | 57,500,000 |
| 38 or more | 72,500,000.'', |

''OFFENSE LEVEL FINE TABLE—Continued

and inserting the following:

''OFFENSE LEVEL FINE TABLE

| Offense level | Amount |
|---|---|
| 6 or less | $8,500 |
| 7 | 15,000 |
| 8 | 15,000 |
| 9 | 25,000 |
| 10 | 35,000 |
| 11 | 50,000 |
| 12 | 70,000 |
| 13 | 100,000 |
| 14 | 150,000 |
| 15 | 200,000 |
| 16 | 300,000 |
| 17 | 450,000 |
| 18 | 600,000 |
| 19 | 850,000 |
| 20 | 1,000,000 |
| 21 | 1,500,000 |
| 22 | 2,000,000 |
| 23 | 3,000,000 |
| 24 | 3,500,000 |
| 25 | 5,000,000 |
| 26 | 6,500,000 |
| 27 | 8,500,000 |
| 28 | 10,000,000 |
| 29 | 15,000,000 |
| 30 | 20,000,000 |
| 31 | 25,000,000 |
| 32 | 30,000,000 |
| 33 | 40,000,000 |
| 34 | 50,000,000 |
| 35 | 65,000,000 |
| 36 | 80,000,000 |
| 37 | 100,000,000 |
| 38 or more | 150,000,000.'' |

and by inserting after subsection (d) the following new subsection (e):

''(e) Special Instruction

(1) For offenses committed prior to November 1, 2015, use the offense level fine table that was set forth in the version of § 8C2.4(d) that was in effect on November 1, 2014, rather than the offense level fine table set forth in subsection (d) above.''.

*Reason for Amendment:* This amendment makes adjustments to the monetary tables in §§ 2B1.1 (Theft, Property, Destruction, and Fraud), 2B2.1 (Burglary), 2B3.1 (Robbery), 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors), 2T4.1 (Tax Table), 5E1.2 (Fines for Individual Defendants), and 8C2.4 (Base Fine) to account for inflation. The amendment adjusts the amounts in each of the seven monetary tables using a specific multiplier derived from the Consumer Price Index (CPI), and then rounds—

- Amounts greater than $100,000,000 to the nearest multiple of $50,000,000;
- amounts greater than $10,000,000 to the nearest multiple of $5,000,000;
- amounts greater than $1,000,000 to the nearest multiple of $500,000;
- amounts greater than $100,000 to the nearest multiple of $50,000;
- amounts greater than $10,000 to the nearest multiple of $5,000;
- amounts greater than $1,000 to the nearest multiple of $500; and
- amounts of $1,000 or less to the nearest multiple of $50.

In addition, the amendment includes conforming changes to other Chapter Two guidelines that refer to the monetary tables.

Congress has generally mandated that agencies in the executive branch adjust the civil monetary penalties they impose to account for inflation using the CPI. *See* 28 U.S.C. 2461 note (Federal Civil Penalties Inflationary Adjustment Act of 1990). Although the Commission's work does not involve civil monetary penalties, it does establish appropriate criminal sentences for categories of offenses and offenders, including appropriate amounts for criminal fines. While some of the monetary values in the Chapter Two guidelines have been revised since they were originally established in 1987, none of the tables has been specifically revised to account for inflation.

Due to inflationary changes, there has been a gradual decrease in the value of the dollar over time. As a result, monetary losses in current offenses reflect, to some degree, a lower degree of harm and culpability than did equivalent amounts when the monetary tables were established or last substantively amended. Similarly, the fine levels recommended by the guidelines are lower in value than when they were last adjusted, and therefore, do not have the same sentencing impact as a similar fine in the past. Based on its analysis and widespread support for inflationary adjustments expressed in public comment, the Commission concluded that aligning the above monetary tables with modern dollar values is an appropriate step at this time.

The amendment adjusts each table based on inflationary changes since the year each monetary table was last substantially amended:

- Loss table in § 2B1.1 and tax table in § 2T4.1: adjusting for inflation from 2001 ($1.00 in 2001 = $1.34 in 2014);
- Loss tables in §§ 2B2.1 and 2B3.1 and fine table for individual defendants at § 5E1.2(c)(3): adjusting for inflation

from 1989 ($1.00 in 1989 = $1.91 in 2014);

• Volume of Commerce table in § 2R1.1: adjusting for inflation from 2005 ($1.00 in 2005 = $1.22 in 2014); and

• Fine table for organizational defendants at § 8C2.4(d): adjusting for inflation from 1991 ($1.00 in 1991 = $1.74 in 2014).

Adjusting from the last substantive amendment year appropriately accounts for the Commission's previous work in revising these tables at various times. Although not specifically focused on inflationary issues, previous Commissions engaged in careful examination (and at times, a wholesale rewriting) of the monetary tables and ultimately included monetary and enhancement levels that it considered appropriate at that time. The Commission estimates that this amendment would result in the Bureau of Prisons having approximately 224 additional prison beds available at the end of the first year after implementation, and approximately 956 additional prison beds available at the end of its fifth year of implementation.

Finally, the amendment adds a special instruction to both §§ 5E1.2 and 8C2.4 providing that, for offenses committed prior to November 1, 2015, the court shall use the fine provisions that were in effect on November 1, 2014, rather than the fine provisions as amended for inflation. This addition responds to concerns expressed in public comment that changes to the fine tables might create *ex post facto* problems. It ensures that an offender whose offense level is calculated under the current *Guidelines Manual* is not subject to the inflated fine provisions if his or her offense was committed prior to November 1, 2015. Such guidance is similar to that provided in the commentary to § 5E1.3 (Special Assessment) relating to the amount of the special assessment to be imposed in a given case.

3. *Amendment:* Section 2B1.1 is amended in subsection (b)(2) by striking the following:

''(Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved 50 or more victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.'',

and inserting the following:

''(Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by 2 levels;

(B) resulted in substantial financial hardship to five or more victims, increase by 4 levels; or

(C) resulted in substantial financial hardship to 25 or more victims, increase by 6 levels.'';

in subsection (b)(10)(C) by inserting after ''the offense otherwise involved sophisticated means'' the following: ''and the defendant intentionally engaged in or caused the conduct constituting sophisticated means'';

and in subsection (b)(16)(B) by inserting ''or'' at the end of subdivision (i), and by striking ''; or (iii) substantially endangered the solvency or financial security of 100 or more victims''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(A)(ii) by striking ''(I) means the pecuniary harm that was intended to result from the offense; and'' and inserting ''(I) means the pecuniary harm that the defendant purposely sought to inflict; and'';

in Note 3(F)(ix) by striking ''there shall be a rebuttable presumption that the actual loss attributable to the change in value of the security or commodity is the amount determined by—'' and inserting ''the court in determining loss may use any method that is appropriate and practicable under the circumstances. One such method the court may consider is a method under which the actual loss attributable to the change in value of the security or commodity is the amount determined by—'';

in Note 4 by striking ''50 victims'' and inserting ''10 victims'' at subdivision (C)(ii); and by inserting at the end the following new subdivision (F):

''(F) *Substantial Financial Hardship.*—In determining whether the offense resulted in substantial financial hardship to a victim, the court shall consider, among other factors, whether the offense resulted in the victim—

(i) becoming insolvent;

(ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);

(iii) suffering substantial loss of a retirement, education, or other savings or investment fund;

(iv) making substantial changes to his or her employment, such as postponing his or her retirement plans;

(v) making substantial changes to his or her living arrangements, such as relocating to a less expensive home; and

(vi) suffering substantial harm to his or her ability to obtain credit.'';

in Note 9 by striking ''Sophisticated Means Enhancement under'' in the heading and inserting ''Application of''; and by inserting at the end of the heading of subdivision (B) the following: ''under Subsection (b)(10)(C)'';

and in Note 20(A)(vi) by striking both ''or credit record'' and ''or a damaged credit record''.

*Reason for Amendment:* This amendment makes several changes to the guideline applicable to economic crimes, § 2B1.1 (Theft, Property Destruction, and Fraud), to better account for harm to victims, individual culpability, and the offender's intent. This amendment is a result of the Commission's multi-year study of § 2B1.1 and related guidelines, and follows extensive data collection and analysis relating to economic offenses and offenders. Using this Commission data, combined with legal analysis and public comment, the Commission identified a number of specific areas where changes were appropriate.

**Victims Table**

First, the amendment revises the victims table in § 2B1.1(b)(2) to specifically incorporate substantial financial hardship to victims as a factor in sentencing economic crime offenders. As amended, the first tier of the victims table provides for a 2-level enhancement where the offense involved 10 or more victims or mass-marketing, or if the offense resulted in substantial financial hardship to one or more victims. The 4-level enhancement applies if the offense resulted in substantial financial hardship to five or more victims, and the 6-level enhancement applies if the offense resulted in substantial financial hardship to 25 or more victims. As a conforming change, the special rule in Application Note 4(C)(ii)(I), pertaining to theft of undelivered mail, is also revised to refer to 10 rather than 50 victims.

In addition, the amendment adds a non-exhaustive list of factors for courts to consider in determining whether the offense caused substantial financial hardship. These factors include: becoming insolvent; filing for bankruptcy; suffering substantial loss of a retirement, education, or other savings or investment fund; making substantial changes to employment; making substantial changes to living arrangements; or suffering substantial harm to the victim's ability to obtain credit. Two conforming changes are also included. First, one factor—substantial harm to ability to obtain credit—was previously included in Application Note 20(A)(vi) as a potential departure consideration. The amendment removes this language from the Application

Note. Second, the amendment deletes subsection (b)(16)(B)(iii), which provided for an enhancement where an offense substantially endangered the solvency or financial security of 100 or more victims.

The Commission continues to believe that the number of victims is a meaningful measure of the harm and scope of an offense and can be indicative of its seriousness. It is for this reason that the amended victims table maintains the 2-level enhancement for offenses that involve 10 or more victims or mass marketing. However, the revisions to the victims table also reflect the Commission's conclusion that the guideline should place greater emphasis on the extent of harm that particular victims suffer as a result of the offense. Consistent with the Commission's overall goal of focusing more on victim harm, the revised victims table ensures that an offense that results in even one victim suffering substantial financial harm receives increased punishment, while also lessening the cumulative impact of loss and the number of victims, particularly in high-loss cases.

**Intended Loss**

Second, the amendment revises the commentary at § 2B1.1, Application Note 3(A)(ii), which has defined intended loss as ''pecuniary harm that was intended to result from the offense.'' In interpreting this provision, courts have expressed some disagreement as to whether a subjective or an objective inquiry is required. *Compare United States* v. *Manatau,* 647 F.3d 1048 (10th Cir. 2011) (holding that a subjective inquiry is required), *United States* v. *Diallo,* 710 F.3d 147, 151 (3d Cir. 2013) (''To make this determination, we look to the defendant's subjective expectation, not to the risk of loss to which he may have exposed his victims.''), *United States* v. *Confredo,* 528 F.3d 143, 152 (2d Cir. 2008) (remanding for consideration of whether defendant had ''proven a subjective intent to cause a loss of less than the aggregate amount'' of fraudulent loans), and *United States* v. *Sanders,* 343 F.3d 511, 527 (5th Cir. 2003) (''our case law requires the government prove by a preponderance of the evidence that the defendant had the subjective intent to cause the loss that is used to calculate his offense level''), *with United States* v. *Innarelli,* 524 F.3d 286, 291 (1st Cir. 2008) (''we focus our loss inquiry for purposes of determining a defendant's offense level on the objectively reasonable expectation of a person in his position at the time he perpetrated the fraud, not on his subjective intentions or hopes'') and *United States* v. *Lane,* 323 F.3d 568, 590 (7th Cir. 2003) (''The determination of intended loss under the Sentencing Guidelines therefore focuses on the conduct of the defendant and the objective financial risk to victims caused by that conduct'').

The amendment adopts the approach taken by the Tenth Circuit by revising the commentary in Application Note 3(A)(ii) to provide that intended loss means the pecuniary harm that ''the defendant purposely sought to inflict.'' The amendment reflects the Commission's continued belief that intended loss is an important factor in economic crime offenses, but also recognizes that sentencing enhancements predicated on intended loss, rather than losses that have actually accrued, should focus more specifically on the defendant's culpability.

**Sophisticated Means**

Third, the amendment narrows the focus of the specific offense characteristic at § 2B1.1(b)(10)(C) to cases in which the defendant intentionally engaged in or caused conduct constituting sophisticated means. Prior to the amendment, the enhancement applied if ''the offense otherwise involved sophisticated means.'' Based on this language, courts had applied this enhancement on the basis of the sophistication of the overall scheme without a determination of whether the defendant's own conduct was ''sophisticated.'' *See, e.g., United States* v. *Green,* 648 F.3d 569, 576 (7th Cir. 2011); *United States* v. *Bishop-Oyedepo,* 480 Fed. App'x 431, 433–34 (7th Cir. 2012); *United States* v. *Jenkins-Watt,* 574 F.3d 950, 965 (8th Cir. 2009). The Commission concluded that basing the enhancement on the defendant's own intentional conduct better reflects the defendant's culpability and will appropriately minimize application of this enhancement to less culpable offenders.

**Fraud on the Market**

Finally, the amendment revises the special rule at Application Note 3(F)(ix) relating to the calculation of loss in cases involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity. When this special rule was added to the guidelines, it established a rebuttable presumption that the specified loss calculation methodology provides a reasonable estimate of the actual loss in such cases. As amended, the method provided in the special rule is no longer the presumed starting point for calculating loss in these cases. Instead, the revised special rule states that the provided method is one method that courts may consider, but that courts, in determining loss, are free to use any method that is appropriate and practicable under the circumstances. This amendment reflects the Commission's view that the most appropriate method to determine a reasonable estimate of loss will often vary in these highly complex and fact-intensive cases.

This amendment, in combination with related revisions to the mitigating role guideline at § 3B1.2 (Mitigating Role), reflects the Commission's overall goal of focusing the economic crime guideline more on qualitative harm to victims and individual offender culpability.

4. *Amendment:* Section 2D1.1(c) is amended in each of subdivisions (5), (6), (7), (8), and (9) by striking the lines referenced to Schedule III Hydrocodone; and in each of subdivisions (10), (11), (12), (13), (14), (15), (16), and (17) by striking the lines referenced to Schedule III Hydrocodone, and in the lines referenced to Schedule III substances (except Ketamine or Hydrocodone) by striking ''or Hydrocodone''.

The annotation to § 2D1.1(c) captioned ''Notes to Drug Quantity Table'' is amended in Note (B) in the last paragraph by striking ''The term 'Oxycodone (actual)' refers'' and inserting ''The terms 'Hydrocodone (actual)' and 'Oxycodone (actual)' refer''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 8(D), under the heading relating to Schedule I or II Opiates, by striking the line referenced to Hydrocodone/Dihydrocodeinone and inserting the following:

''1 gm of Hydrocodone (actual) = 6700 gm of marihuana'';

in the heading relating to Schedule III Substances (except ketamine and hydrocodone) by striking ''and hydrocodone'' both places such term appears;

and in the heading relating to Schedule III Hydrocodone by striking the heading and subsequent paragraphs as follows:

''*Schedule III Hydrocodone* ****

1 unit of Schedule III hydrocodone = 1 gm of marihuana

**** Provided, that the combined equivalent weight of all Schedule III substances (except ketamine), Schedule IV substances (except flunitrazepam), and Schedule V substances shall not exceed 2,999.99 kilograms of marihuana.'';

and in Note 27(C) by inserting after ''methamphetamine,'' the following: ''hydrocodone,''.

*Reason for Amendment:* This amendment changes the way the primary drug trafficking guideline calculates a defendant's drug quantity in cases involving hydrocodone in response to recent administrative actions by the Food and Drug Administration and the Drug Enforcement Administration. The amendment adopts a marihuana equivalency for hydrocodone (1 gram equals 6700 grams of marihuana) based on the weight of the hydrocodone alone.

In 2013 and 2014, the Food and Drug Administration approved several new pharmaceuticals containing hydrocodone which can contain up to twelve times as much hydrocodone in a single pill than was previously available. Separately, in October 2014, the Drug Enforcement Administration moved certain commonly-prescribed pharmaceuticals containing hydrocodone from the less-restricted Schedule III to the more-restricted Schedule II. Among other things, the scheduling doubled the statutory maximum term of imprisonment available for trafficking in the pharmaceuticals that were previously controlled under Schedule III from 10 years to 20 years. The change also rendered obsolete the entries in the Drug Quantity Table and Drug Equivalency Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) that set a marihuana equivalency for the pharmaceuticals that were previously controlled under Schedule III.

As a result of these administrative actions, all pharmaceuticals that include hydrocodone are now subject to the same statutory penalties. There is wide variation in the amount of hydrocodone available in these pharmaceuticals and in the amount of other ingredients (such as binders, coloring, acetaminophen, etc.) they contain. This variation raises significant proportionality issues within § 2D1.1, where drug quantity for hydrocodone offenses has previously been calculated based on the weight of the entire substance that contains hydrocodone or on the number of pills. Neither of these calculations directly took into account the amount of actual hydrocodone in the pills.

The amendment addresses these changed circumstances by setting a new marihuana equivalency for hydrocodone based on the weight of the hydrocodone alone. Without this change, defendants with less actual hydrocodone could have received a higher guideline range than those with more hydrocodone because pills with less hydrocodone can sometimes contain more non-hydrocodone ingredients, leading the lower-dose pills to weigh more.

In setting the marihuana equivalency, the Commission considered: Potency of the drug, medical use of the drug, and patterns of abuse and trafficking, such as prevalence of abuse, consequences of misuse including death or serious bodily injury from use, and incidence of violence associated with its trafficking. The Commission noted that the Drug Enforcement Administration's rescheduling decision relied in part on the close relationship between hydrocodone and oxycodone, a similar and commonly-prescribed drug that was already controlled under Schedule II. Scientific literature, public comment, and testimony supported the conclusion that the potency, medical use, and patterns of abuse and trafficking of hydrocodone are very similar to oxycodone. In particular, the Commission heard testimony from abuse liability specialists and reviewed scientific literature indicating that, in studies conducted under standards established by the Food and Drug Administration for determining the abuse liability of a particular drug, the potencies of hydrocodone and oxycodone when abused are virtually identical, even though some physicians who prescribe the two drugs in a clinical setting might not prescribe them in equal doses. Public comment indicated that both hydrocodone and oxycodone are among the top ten drugs most frequently encountered by law enforcement and that their methods of diversion and rates of diversion per kilogram of available drug are similar. Public comment and review of the scientific literature also indicated that the users of the two drugs share similar characteristics, and that some users may use them interchangeably, a situation which may become more common as the more powerful pharmaceuticals recently approved by the Food and Drug Administration become available.

Based on proportionality considerations and the Commission's assessment that, for purposes of the drug guideline, hydrocodone and oxycodone should be treated equivalently, the amendment adopts a marihuana equivalency for hydrocodone (actual) that is the same as the existing equivalency for oxycodone (actual): 1 gram equals 6,700 grams of marihuana.

5. *Amendment:* The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 3(A) by inserting after ''that makes him substantially less culpable than the average participant'' the following: ''in the criminal activity'', by striking ''concerted'' and inserting ''the'', by striking ''is not precluded from consideration for'' each place such term appears and inserting ''may receive'', by striking ''role'' both places such term appears and inserting ''participation'', and by striking ''personal gain from a fraud offense and who had limited knowledge'' and inserting ''personal gain from a fraud offense or who had limited knowledge''; in Note 3(C) by inserting at the end the following new paragraphs:

''In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

(i) the degree to which the defendant understood the scope and structure of the criminal activity;

(ii) the degree to which the defendant participated in planning or organizing the criminal activity;

(iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;

(iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;

(v) the degree to which the defendant stood to benefit from the criminal activity.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.'';

in Note 4 by striking ''concerted'' and inserting ''the criminal'';

and in Note 5 by inserting after ''than most other participants'' the following: ''in the criminal activity''.

*Reason for Amendment:* This amendment is a result of the Commission's study of § 3B1.2 (Mitigating Role). The Commission conducted a review of cases involving low-level offenders, analyzed case law, and considered public comment and testimony. Overall, the study found that mitigating role is applied inconsistently and more sparingly than the Commission intended. In drug cases, the Commission's study confirmed that

mitigating role is applied inconsistently to drug defendants who performed similar low-level functions (and that rates of application vary widely from district to district). For example, application of mitigating role varies along the southwest border, with a low of 14.3 percent of couriers and mules receiving the mitigating role adjustment in one district compared to a high of 97.2 percent in another. Moreover, among drug defendants who do receive mitigating role, there are differences from district to district in application rates of the 2-, 3-, and 4-level adjustments. In economic crime cases, the study found that the adjustment was often applied in a limited fashion. For example, the study found that courts often deny mitigating role to otherwise eligible defendants if the defendant was considered ''integral'' to the successful commission of the offense.

This amendment provides additional guidance to sentencing courts in determining whether a mitigating role adjustment applies. Specifically, it addresses a circuit conflict and other case law that may be discouraging courts from applying the adjustment in otherwise appropriate circumstances. It also provides a non-exhaustive list of factors for the court to consider in determining whether an adjustment applies and, if so, the amount of the adjustment.

Section 3B1.2 provides an adjustment of 2, 3, or 4 levels for a defendant who plays a part in committing the offense that makes him or her ''substantially less culpable than the average participant.'' However, there are differences among the circuits about what determining the ''average participant'' requires. The Seventh and Ninth Circuits have concluded that the ''average participant'' means only those persons who actually participated in the criminal activity at issue in the defendant's case, so that the defendant's relative culpability is determined only by reference to his or her co-participants in the case at hand. *See, e.g., United States* v. *Benitez,* 34 F.3d 1489, 1498 (9th Cir. 1994); *United States* v. *Cantrell,* 433 F.3d 1269, 1283 (9th Cir. 2006); *United States* v. *DePriest,* 6 F.3d 1201, 1214 (7th Cir. 1993). The First and Second Circuits have concluded that the ''average participant'' also includes ''the universe of persons participating in similar crimes.'' *See United States* v. *Santos,* 357 F.3d 136, 142 (1st Cir. 2004); *see also United States* v. *Rahman,* 189 F.3d 88, 159 (2d Cir. 1999). Under this latter approach, courts will ordinarily consider the defendant's culpability relative both to his co-participants and to the typical offender.

The amendment generally adopts the approach of the Seventh and Ninth Circuits, revising the commentary to specify that, when determining mitigating role, the defendant is to be compared with the other participants ''in the criminal activity.'' Focusing the court's attention on the individual defendant and the other participants is more consistent with the other provisions of Chapter Three, Part B. *See, e.g.,* § 3B1.2 (the adjustment is based on ''the defendant's role in the offense''); § 3B1.2, comment. (n.3(C)) (a determination about mitigating role ''is heavily dependent upon the facts of the particular case''); Ch. 3, Pt. B, intro. comment. (the determination about mitigating role ''is to be made on the basis of all conduct within the scope of § 1B1.3 (Relevant Conduct)'').

Next, the amendment addresses cases in which the defendant was ''integral'' or ''indispensable'' to the commission of the offense. Public comment suggested, and a review of case law confirmed, that in some cases a defendant may be denied a mitigating role adjustment solely because he or she was ''integral'' or ''indispensable'' to the commission of the offense. *See, e.g., United States* v. *Skinner,* 690 F.3d 772, 783–84 (6th Cir. 2012) (a ''defendant who plays a lesser role in a criminal scheme may nonetheless fail to qualify as a minor participant if his role was indispensible or critical to the success of the scheme''); *United States* v. *Panaigua-Verdugo,* 537 F.3d 722, 725 (7th Cir. 2008) (defendant ''played an integral part in the transactions and therefore did not deserve a minor participant reduction''); *United States* v. *Deans,* 590 F.3d 907, 910 (8th Cir. 2010) (''Numerous decisions have upheld the denial of minor role adjustments to defendants who . . . play a critical role''); *United States* v. *Carter,* 971 F.2d 597, 600 (10th Cir. 1992) (because defendant was ''indispensible to the completion of the criminal activity . . . to debate which one is less culpable than the others . . . is akin to the old argument over which leg of a three-legged stool is the most important leg.''). However, a finding that the defendant was essential to the offense does not alter the requirement, expressed in Note 3(A), that the court must assess the defendant's culpability relative to the average participant in the offense. Accordingly, the amendment revises the commentary to emphasize that ''the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative'' and that such a defendant may receive a mitigating role adjustment, if he or she is otherwise eligible.

The amendment also revises two paragraphs in Note 3(A) that illustrate how mitigating role interacts with relevant conduct principles in § 1B1.3. Specifically, the illustrations provide that certain types of defendants are ''not precluded from consideration for'' a mitigating role adjustment. The amendment revises these paragraphs to state that these types of defendants ''may receive'' a mitigating role adjustment. The Commission determined that the double-negative tone (''not precluded'') may have had the unintended effect of discouraging courts from applying the mitigating role adjustment in otherwise appropriate circumstances.

Finally, the amendment provides a non-exhaustive list of factors for the court to consider in determining whether to apply a mitigating role adjustment and, if so, the amount of the adjustment. The factors direct the court to consider the degree to which the defendant understood the scope and structure of the criminal activity, participated in planning or organizing the criminal activity, and exercised decision-making authority, as well as the acts the defendant performed and the degree to which he or she stood to benefit from the criminal activity. The Commission was persuaded by public comment and a detailed review of cases involving low-level offenders, particularly in fraud cases, that providing a list of factors will give the courts a common framework for determining whether to apply a mitigating role adjustment (and, if so, the amount of the adjustment) and will help promote consistency.

The amendment further provides, as an example, that a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for a mitigating role adjustment.

6. *Amendment:* The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 4(B) by striking ''not counted as a single sentence'' and inserting ''not treated as a single sentence''.

Section 4A1.1(e) is amended by striking ''such sentence was counted as a single sentence'' and inserting ''such sentence was treated as a single sentence''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in Note 5 by striking ''are counted as a single sentence'' and inserting ''are treated as a single sentence''; and by striking ''are counted as a single prior

sentence'' and inserting ''are treated as a single prior sentence''.

Section 4A1.2(a)(2) is amended by striking ''those sentences are counted separately or as a single sentence'' and inserting ''those sentences are counted separately or treated as a single sentence''; by striking ''Count any prior sentence'' and inserting ''Treat any prior sentence''; and by striking ''if prior sentences are counted as a single sentence'' and inserting ''if prior sentences are treated as a single sentence''.

The Commentary to § 4A1.2 captioned ''Application Notes'' is amended in Note 3 by redesignating Note 3 as Note 3(B), and by inserting at the beginning the following:

'' *Application of 'Single Sentence' Rule (Subsection (a)(2)).*—

(A) *Predicate Offenses.*—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (*see* § 4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted ''separately'' from each other (*see* § 4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under § 4A1.1(b), because it was not imposed within ten years of the defendant's commencement of the instant offense. *See* § 4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.'';

and in Note 3(B) (as so redesignated) by striking ''Counting multiple prior sentences as a single sentence'' and inserting ''Treating multiple prior sentences as a single sentence''; and by striking ''and the resulting sentences were counted as a single sentence'' and inserting ''and the resulting sentences were treated as a single sentence''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by striking ''the sentences for the two prior convictions will be counted as a single sentence'' and inserting ''the sentences for the two prior convictions will be treated as a single sentence''.

*Reason for Amendment:* This amendment responds to a circuit conflict regarding the meaning of the ''single sentence'' rule, set forth in subsection (a)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), and its implications for the career offender guideline and other guidelines that provide sentencing enhancements for predicate offenses.

When the defendant's criminal history includes two or more prior sentences that meet certain criteria specified in § 4A1.2(a)(2), those prior sentences are counted as a ''single sentence'' rather than separately. Generally, this operates to reduce the cumulative impact of prior sentences in determining a defendant's criminal history score. Courts, however, are divided over whether this ''single sentence'' rule also causes certain prior convictions that ordinarily would qualify as predicate offenses under the career offender guideline to be disqualified from serving as predicate offenses. *See* § 4B1.2 (Definitions of Terms Used in Section 4B1.1), comment. (n.3).

In 2010, in *King* v. *United States,* the Eighth Circuit held that when two or more prior sentences are treated as a single sentence under the guidelines, all the criminal history points attributable to the single sentence are assigned to only one of the prior sentences—specifically, the one that was the longest. *King,* 595 F.3d 844, 852 (8th Cir. 2010). Accordingly, only that prior sentence may be considered a predicate offense for purposes of the career offender guideline. *Id.* at 849, 852.

In 2014, in *United States* v. *Williams,* a panel of the Sixth Circuit considered and rejected *King,* because it permitted the defendant to ''evade career offender status because he committed *more* crimes.'' *Williams,* 753 F.3d 626, 639 (6th Cir. 2014) (emphasis in original). *See also United States* v. *Cornog,* 945 F.2d 1504, 1506 n.3 (11th Cir. 1991) (''It would be illogical . . . to ignore a conviction for a violent felony just because it happened to be coupled with a nonviolent felony conviction having a longer sentence.'').

After the *Williams* decision, a different panel of the Eighth Circuit agreed with the Sixth Circuit's analysis but was not in a position to overrule the earlier panel's decision in *King. See Donnell* v. *United States,* 765 F.3d 817, 820 (8th Cir. 2014). The Eighth Circuit has applied the analysis from *King* to a case involving the firearms guideline and to a case in which the prior sentences were consecutive rather than concurrent. *See, e.g., Pierce* v. *United States,* 686 F.3d 529, 533 n.3 (8th Cir. 2012) (firearms); *United States* v. *Parker,* 762 F.3d 801, 808 (8th Cir. 2014) (consecutive sentences). This issue has also been addressed by other courts, some which have followed the Sixth Circuit's approach in *Williams. See, e.g., United States* v. *Carr,* 2013 WL 4855341 (N.D. Ga. 2013); *United States* v. *Agurs,* 2014 WL 3735584 (W.D. Pa., July 28, 2014). Other decisions have been consistent with the Eighth Circuit's approach in *King. See, e.g., United States* v. *Santiago,* 387 F. App'x 223 (3d Cir. 2010); *United States* v. *McQueen,* 2014 WL 3749215 (E.D. Wash., July 28, 2014).

The amendment generally follows the Sixth Circuit's approach in *Williams.* It amends the commentary to § 4A1.2 to provide that, for purposes of determining predicate offenses, a prior sentence included in a single sentence should be treated as if it received criminal history points if it independently would have received criminal history points. It also provides examples, including an example to illustrate the potential impact of the applicable time periods prescribed in § 4A1.2(e). Finally, §§ 4A1.1 (Criminal History Category) and 4A1.2 are revised stylistically so that sentences ''counted'' as a single sentence are referred to instead as sentences ''treated'' as a single sentence.

The amendment ensures that those defendants who have committed more crimes, in addition to a predicate offense, remain subject to enhanced penalties under certain guidelines such as the career offender guideline. Conversely, by clarifying how the single sentence rule interacts with the time limits set forth in § 4A1.2(e), the amendment provides that when a prior sentence was so remote in time that it does not independently receive criminal history points, it cannot serve as a predicate offense.

7. *Amendment:* The Commentary to § 1B1.11 captioned ''Background'' is amended by striking ''144 S. Ct.'' and inserting ''133 S. Ct.''.

The Commentary to § 2B4.1 captioned ''Statutory Provisions'' is amended by striking ''41 U.S.C. 53, 54'' and inserting ''41 U.S.C. 8702, 8707''.

The Commentary to § 2B4.1 captioned ''Background'' is amended by striking ''41 U.S.C. 51, 53–54'' and inserting ''41 U.S.C. 8702, 8707''.

The Commentary to § 2C1.8 captioned ''Statutory Provisions'' is amended by striking ''2 U.S.C.'' and all that follows through ''441k;'' and after ''18 U.S.C. 607'' inserting ''; 52 U.S.C. 30109(d), 30114, 30116, 30117, 30118, 30119, 30120, 30121, 30122, 30123, 30124(a), 30125, 30126''; and by striking ''Statutory Index (Appendix A)'' and inserting ''Appendix A (Statutory Index)''.

The Commentary to § 2C1.8 captioned ''Application Notes'' is amended in Note 1 by striking ''2 U.S.C. 441e(b)'' and inserting ''52 U.S.C. 30121(b)''; by striking ''2 U.S.C. 431 et seq'' and inserting ''52 U.S.C. 30101 *et seq.'';* and by striking ''(2 U.S.C. 431(8) and (9))'' and inserting ''(52 U.S.C. 30101(8) and (9))''.

Section 2D1.11(e)(7) is amended in the line referenced to Norpseudoephedrine by striking ''400'' and inserting ''400 G''.

The Commentary to § 2H2.1 captioned ''Statutory Provisions'' is amended by striking ''42 U.S.C. 1973i, 1973j(a), (b)'' and inserting ''52 U.S.C. 10307, 10308(a), (b)''.

The Commentary to § 2H4.2 captioned ''Application Notes'' is amended in Note 2 by striking ''*et. seq.''* and inserting ''*et seq.''.*

The Commentary to § 2M3.9 is amended by striking ''§ 421'' each place such term appears and inserting ''§ 3121''; and by striking ''§ 421(d)'' and inserting ''§ 3121(d)''.

The Commentary following § 3D1.5 captioned ''Illustrations of the Operation of the Multiple-Count Rules'' is amended by striking the heading as follows:

''*Illustrations of the Operation of the Multiple-Count Rules'',*

and inserting the following new heading:

''*Concluding Commentary to Part D of Chapter Three*

*Illustrations of the Operation of the Multiple-Count Rules'';*

in Example 1 by striking ''convicted on'' and inserting ''convicted of''; and by striking ''$12,000'' and inserting ''$21,000'';

in Example 2 by striking ''Defendant C'' and inserting ''Defendant B''; by striking ''convicted on'' and inserting ''convicted of''; and by striking ''offense level for bribery (22)'' and inserting ''offense level for bribery (20)'';

and in Example 3 by striking ''Defendant D'' and inserting ''Defendant C''; by striking ''$27,000'', ''$12,000'', ''$15,000'', and ''$20,000'' and inserting ''$1,000'' in each place such terms appear; by striking ''$74,000'' and inserting ''$4,000''; and by striking ''16'' both places such term appears and inserting ''9''.

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in Note 5 by striking ''2 U.S.C. 437g(d)(1)(D)'' and inserting ''52 U.S.C. 30109(d)(1)(D)''; and by striking ''2 U.S.C. 441f'' and inserting ''52 U.S.C. 30122''.

Appendix A (Statutory Index) is amended by striking the following line references:

''2 U.S.C. § 437g(d) 2C1.8
2 U.S.C. § 439a 2C1.8
2 U.S.C. § 441a 2C1.8
2 U.S.C. § 441a–1 2C1.8
2 U.S.C. § 441b 2C1.8
2 U.S.C. § 441c 2C1.8
2 U.S.C. § 441d 2C1.8
2 U.S.C. § 441e 2C1.8
2 U.S.C. § 441f 2C1.8
2 U.S.C. § 441g 2C1.8
2 U.S.C. § 441h(a) 2C1.8
2 U.S.C. § 441i 2C1.8
2 U.S.C. § 441k 2C1.8'',

and inserting at the end the following new line references:

''52 U.S.C. § 30109(d) 2C1.8
52 U.S.C. § 30114 2C1.8
52 U.S.C. § 30116 2C1.8
52 U.S.C. § 30117 2C1.8
52 U.S.C. § 30118 2C1.8
52 U.S.C. § 30119 2C1.8
52 U.S.C. § 30120 2C1.8
52 U.S.C. § 30121 2C1.8
52 U.S.C. § 30122 2C1.8
52 U.S.C. § 30123 2C1.8
52 U.S.C. § 30124(a) 2C1.8
52 U.S.C. § 30125 2C1.8
52 U.S.C. § 30126 2C1.8'';

by striking the following line references:

''42 U.S.C. § 1973i(c) 2H2.1
42 U.S.C. § 1973i(d) 2H2.1
42 U.S.C. § 1973i(e) 2H2.1
42 U.S.C. § 1973j(a) 2H2.1
42 U.S.C. § 1973j(b) 2H2.1
42 U.S.C. § 1973j(c) 2X1.1
42 U.S.C. § 1973aa 2H2.1
42 U.S.C. § 1973aa–1 2H2.1
42 U.S.C. § 1973aa–1a 2H2.1
42 U.S.C. § 1973aa–3 2H2.1
42 U.S.C. § 1973bb 2H2.1
42 U.S.C. § 1973gg–10 2H2.1'',

and inserting after the line referenced to 50 U.S.C. App. § 2410 the following new line references:

''52 U.S.C. § 10307(c) 2H2.1
52 U.S.C. § 10307(d) 2H2.1
52 U.S.C. § 10307(e) 2H2.1
52 U.S.C. § 10308(a) 2H2.1
52 U.S.C. § 10308(b) 2H2.1
52 U.S.C. § 10308(c) 2X1.1
52 U.S.C. § 10501 2H2.1
52 U.S.C. § 10502 2H2.1
52 U.S.C. § 10503 2H2.1
52 U.S.C. § 10505 2H2.1
52 U.S.C. § 10701 2H2.1
52 U.S.C. § 20511 2H2.1'';

and by striking the line referenced to 50 U.S.C. 421 and inserting after the line referenced to 50 U.S.C. 1705 the following new line reference:

''50 U.S.C. § 3121 2M3.9''.

*Reason for Amendment:* This amendment makes certain technical changes to the *Guidelines Manual.*

First, the amendment sets forth technical changes to reflect the editorial reclassification of certain sections in the United States Code. Effective February 2014, the Office of the Law Revision Counsel transferred provisions relating to voting and elections from titles 2 and 42 to a new title 52. It also transferred provisions of the National Security Act of 1947 from one place to another in title 50. To reflect the new section numbers of the reclassified provisions, changes are made to—

(1) the Commentary to § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property);

(2) the Commentary to § 2H2.1 (Obstructing an Election or Registration);

(3) the Commentary to § 2M3.9 (Disclosure of Information Identifying a Covert Agent);

(4) Application Note 5 to § 5E1.2 (Fines for Individual Defendants); and

(5) Appendix A (Statutory Index).

Second, it makes stylistic and technical changes to the Commentary following § 3D1.5 (Determining the Total Punishment) captioned ''Illustrations of the Operation of the Multiple-Count Rules'' to better reflect its purpose as a concluding commentary to Part D of Chapter Three.

Finally, it makes clerical changes to—

(1) the Background Commentary to § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing (Policy Statement)), to correct a typographical error in a U.S. Reports citation;

(2) the Commentary to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), to correct certain United States Code citations to correspond with their respective references in Appendix A

that were revised by Amendment 769 (effective November 1, 2012);

(3) subsection (e)(7) to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), to add a missing measurement unit to the line referencing Norpseudoephedrine; and

(4) Application Note 2 to § 2H4.2 (Willful Violations of the Migrant and Seasonal Agricultural Worker Protection Act), to correct a typographical error in an abbreviation.

[FR Doc. 2015–10516 Filed 5–4–15; 8:45 am]

**BILLING CODE 2210–40–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0165]**

### Agency Information Collection (Financial Status Report) Activities Under OMB Review

**AGENCY:** The Office of Management, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that The Office of Management, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 4, 2015.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0165'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0165'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Financial Status Report.

*OMB Control Number:* 2900–0165.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Claimants complete VA Form 5655 to report their financial status. VA uses the data collected to determine the claimant's eligibility for a waiver of collection, setup a payment plan or for the acceptance of a compromise offer on their VA benefit debt.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 7529 on February 10, 2015.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 95,570 hours.

*Estimated Average Burden per Respondent:* 1 hour.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 95,570.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2015–10461 Filed 5–4–15; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 80 Tuesday,
No. 86 May 5, 2015

Part II

## Department of Commerce

Bureau of Industry and Security

15 CFR Parts 734, 740, 742, et al.

## Department of State

22 CFR Part 121

Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII; Proposed Rules

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 734, 740, 742, 744, 772, and 774**

**[Docket No. 140221170–4170–01]**

**RIN 0694–AF75**

## Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule describes how articles the President determines no longer warrant control under Category XII (Fire Control, Range Finder, Optical and Guidance and Control Equipment) of the United States Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) would be controlled under the Commerce Control List (CCL) by creating new ''600 series'' Export Control Classification Numbers (ECCN)s 6A615, 6B615 and 6D615 for military fire control, range finder, and optical items, by revising ECCN 7A611 and by creating new ECCNs 7B611, 7C611 and 7E611 for military optical and guidance items. In addition, for certain night vision items currently subject to the Export Administration Regulations (EAR), this rule proposes to expand the scope of control, eliminate the use of some license exceptions, and create new ECCNs for certain software and technology related to night vision items. This proposed rule would also expand the scope of end-use restrictions on certain exports and reexports of certain cameras, systems, or equipment and expand the scope of military commodities described in ECCN 0A919.

**DATES:** Comments must be received by July 6, 2015.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* Search for this rule using its regulations.gov docket number: BIS–2015–0016.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF75 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF75.

**FOR FURTHER INFORMATION CONTACT:** Dennis Krepp, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Telephone: 202–482–1309, Email: *Dennis.Krepp@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

This proposed rule is part of the Administration's Export Control Reform Initiative, the objective of which is to protect and enhance U.S. national security interests. The Initiative began in August 2009 when President Obama directed the Administration to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. Once the Department of State's International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML) are amended to control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and the Export Administration Regulations (EAR) are amended to control military items that do not warrant USML controls, the U.S. export control system will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid US-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1).

BIS has published and will continue to publish additional **Federal Register** notices containing proposed amendments to the CCL that describe proposed controls for additional categories of articles to the extent the President determines such articles no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies' Munitions List (Wassenaar Arrangement Munitions List or WAML) and the Missile Technology Control Regime's Equipment, Software and Technology Annex (MTCR Annex).

Following the structure set forth in the final rule entitled ''Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform'' (78 FR 22660, April 16, 2013) (''April 16 (initial implementation) rule''), this proposed rule describes BIS's proposal for controlling under the EAR and its CCL fire control, range finder, optical, and guidance and control equipment, and related articles now controlled by the ITAR's USML Category XII. The proposed changes described in this proposed rule and the corresponding changes in the State Department's proposed amendment to Category XII of the USML are based on a review of Category XII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are currently controlled by USML Category XII that are either (i) inherently military and otherwise warrant control on the USML or (ii) if it is a type common to non-military equipment, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML. If an article did not satisfy either standard, but was nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military applications, it was identified in current or new ECCNs proposed in this notice.

In the April 16 (initial implementation) rule, BIS created a series of new ECCNs to control items that would be removed from the USML, or that are items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that are already controlled elsewhere on the CCL. That final rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the

Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

A ''600 series'' ECCN will not be created, however, if an existing ECCN is subject to controls for reasons other than Anti-Terrorism (AT) reasons and allows for identification, classification, and control of items transferred from the USML. Many of the items controlled under Category XII of the ITAR would also be subject to controls established by the Wassenaar Arrangement List of Dual-Use Goods and Technologies, which are reflected in many existing ECCNs on the CCL. Consequently, for many items, the review identified control parameters to delineate those items that would remain controlled under USML Category XII of the ITAR from those that would be subject to the lower threshold controls identified in the CCL. Accordingly, this proposed rule would revise the following existing ECCNs: 0A987, optical sighting devices for firearms; 2A984, concealed object detection equipment; 6A004, optical equipment and components; 6A005, lasers, components, and optical equipment; 6A007, gravity meters and gravity gradiometers; 6A008, radar systems, equipment, and assemblies; 6A107, gravity meters and gravity gradiometers; 7A001, accelerometers; 7A002, gyros or angular rate sensors; 7A003, inertial measurement equipment or systems; 7A005, Global Navigation Satellite Systems receiving equipment; 7A101, accelerometers; and 7A102, gyros. In order to maintain consistency with the Wassenaar Arrangement, proposed revisions to these ECCNs would not amend the control parameters in the Items paragraph of the ECCNs. Rather, most amendments add notes to the Related Controls paragraph or specific subparagraphs of the Items paragraph to reference the corresponding control under Category XII of the USML.

The review also identified several sensors and cameras that provide important night vision capability for military use but are also widely used in civil products and applications. In order to address the sensitivity of these items that are currently on the Wassenaar Arrangement's Dual-Use Control List and thus controlled under ECCNs 6A002 (optical sensors or equipment and components therefor) and 6A003 (cameras, systems or equipment, and components therefor) on the Commerce Control List, this proposed rule would amend the availability of License Exceptions STA and APR for certain items; revise the license review policy; expand the license requirement in § 744.9; expand software controls related to ECCNs 6A002 and 6A003 by revising ECCNs 6D002, 6D003, and 6D991; and create new ECCNs 6D994 and 6E994 for repair, maintenance, or overhaul software or technology for ECCNs 6A002, 6A003, or 6A990 commodities. In addition, this proposed rule proposes to revise controls for certain read-out integrated circuits in ECCN 6A990 and related software and technology in ECCNs 6D991 and 6E990, as well as newly proposed ECCNs 6D994 and 6E994. To ensure interagency review of all items in ECCNs 6A002 and 6A990, this proposed rule would establish a new RS control that would require a license to export or reexport these commodities, as well as related software and technology, to all destinations, including Canada. This worldwide RS control, described further in § 742.6(a)(8), would effectively add a license requirement for Canada for all exports and reexports of ECCNs 6A002 and 6A990 commodities.

This proposed rule would also amend ECCN 6A002 to specify that focal plane arrays controlled under that ECCN include certain focal plane arrays in a ''permanent encapsulated sensor assembly'', as that term is proposed to be defined in § 772.1, are subject to the EAR. Under this proposed rule, focal plane arrays described in ECCN 6A002 that are not in a ''permanent encapsulated sensor assembly'' would be subject to the ITAR. Although these items are proposed to be subject to a worldwide license requirement, these commodities would be eligible for *de minimis* treatment (unless subject to § 734.4(a)(5)) under the EAR and clearly included on the CCL, thus addressing concerns foreign manufacturers have expressed regarding jurisdictional uncertainty on components incorporated in foreign-made commercial items.

This proposed rule would also revise controls pertaining to cameras classified under ECCN 6A993.a as a result of meeting the criteria to Note 3.a to ECCN 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz). The interagency review found that these 9 Hz cameras have been incorporated into foreign military commodities. As a result, this proposed rule would amend § 744.9 to include such 9 Hz cameras and subject them to the license requirements described in that section. This change is described more fully below. Additionally, this proposed rule would create new ECCN 0E987 to control technology required for the development or production of ECCN 0A987 commodities that incorporate a focal plane array or image intensifier tube.

For those items being transferred from Category XII of the ITAR that are not covered by an existing ECCN that have controls for reasons other than AT reasons, this proposed rule would create (or revise in the case of 7A611) the following ''600 series'' ECCNs: 6A615, military fire control, range finder, and optical equipment; 6B615, test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of military fire control, range finder, and optical equipment; 6D615, software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of military fire control, range finder, and optical equipment controlled by ECCNs 6A615 or 6B615; 6E615, technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of military fire control, range finder, and optical equipment controlled by 6A615 or 6B615 or software controlled under 6D615; 7A611, military guidance and control equipment; 7B611, test, inspection, and production ''equipment'' and related commodities ''specially designed'' for military guidance and control equipment; 7D611, software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 7A611 or equipment controlled by 7B611; and 7E611, technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 7A611, equipment controlled by 7B611, or software controlled by 7D611.

As the U.S. Government works through the proposed revisions to the USML and the related proposed new controls on the CCL, the agencies recognize that some proposed control parameters may control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. BIS believes that multiple perspectives would be beneficial to this process, and, while welcoming comments from all interested persons concerning any aspect of this proposed rule, it believes that input from users of the lists on the following issues would be particularly helpful.

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all items that meet Wassenaar Arrangement commitments embodied in USML Category XII. To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules when reviewed together.

(2) Another key goal of this rulemaking is to identify items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List. The public is asked to identify any items proposed for control on the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List.

(3) A third key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL, and between the CCL's 600 series and the rest of the CCL, for control of the items at issue. The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles, and thus do not establish a ''bright line'' between the USML and the CCL, or between the 600 series and the rest of the CCL.

(4) Although the proposed revisions to the USML and the CCL do not preclude the possibility that items in normal commercial use would or should be ITAR-controlled because, *e.g.,* they provide the United States with a critical military or intelligence advantage, or controlled in the EAR's 600 series controls, the U.S. Government does not want to inadvertently control items on the ITAR or in the 600 series that are in normal commercial use. As described in the State Department's proposed rule, items that would be controlled on the USML have been identified as possessing parameters or characteristics that provide a critical military or intelligence advantage. The corresponding 600 series entries would control all other such items not meeting this standard, but that are nonetheless ''specially designed'' for military applications. The public is thus asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII or the new 600 series entries proposed in this rule that are now in normal commercial use and should thus controlled elsewhere on the CCL. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items.

(5) If there are any criteria proposed in the revised USML Category XII or new 600 series entries that the public believes control items in normal commercial use, the public is asked to identify different parameters or characteristics that would cover items exclusively or primarily in military use.

(6) If there are any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement's Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML or the 600 series entries.

(7) BIS seeks public comment on the use of the phrase ''permanent encapsulated sensor assembly'' in this proposed rule.

(8) BIS also encourages comments on the proposed expansion of license requirements and removal of license exception availability on items, as described in this rule, that are currently exportable without a license or under a license exception.

(9) Finally, BIS seeks comments on the impact of the proposed new license requirements for the export to Canada of items described in this rule.

**Detailed Description of Changes in This Proposed Rule—Increased Controls for Night Vision Items**

To address concerns regarding the control of night vision items currently subject to the EAR or proposed to be transferred from USML Category XII to the CCL, as well as foreign-made military commodities incorporating night vision items, this proposed rule would revise the policies for night vision items controlled in Category 6 by amending §§ 734.4(a), 740.16, 740.20, 742.6, and 744.9 of the EAR. These changes are described more fully herein.

*Revisions to Section 734.4*

Section 734.4(a)(5) of the EAR currently provides that there is no *de minimis* level for foreign military commodities, as described in ECCN 0A919, that incorporate certain night vision items. Since this proposed rule would expand the scope of items controlled under ECCN 0A919, as described further below, § 734.4(a)(5) would also be revised to reflect changes to that ECCN. Under this proposed rule, there would be no *de minimis* level for foreign-made military commodities described in ECCN 0A919, which incorporate commodities classified under ECCNs 6A002, 6A003, 6A990, or 6A993.a (that meet the criteria of Note 3.a to ECCN 6A003.b.4.b).

*Addition to Section 740.2*

Section 740.2 sets forth restrictions on all license exceptions. This rule would make technology for production of commodities defined in ECCNs 6A002.a.2 (image intensifier tubes), 6A002.a.3 (certain focal plane arrays), or 6A990 (read-out integrated circuits specially designed for focal plane arrays controlled by ECCN 6A003.a.2) and controlled under ECCNs 6E002 or 6E990 ineligible for any license exception. The restriction is being proposed because of the potential use of these tubes, arrays and integrated circuits in night vision devices.

*Availability of License Exception APR*

Section 740.16 of the EAR currently authorizes specified reexports of items subject to the EAR by certain countries to specified destinations without individual licenses from BIS. To ensure appropriate control for items in ECCNs 6A002, 6A003, and 6A990, as well as items covered by ECCN 0A919 incorporating such items, this rule proposes to remove APR availability for reexports from Country Group A:1 or cooperating countries for items described in ECCNs 6A002, 6A003, and 6A990. However, cameras described in ECCN 6A003 may be exported or reexported under License Exception APR to and among Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom if such cameras are fully packaged for use as consumer ready civil products or such cameras with not more than 111,000 elements are to be embedded in civil products. This rule also would make commodities described in ECCN 0A897 (optical sighting devices for firearms) that incorporate an image intensifier tube ineligible for export to and among countries in Country Group A:1 and cooperating countries under License Exception APR because of the night vision capability of those devices.

*Availability of License Exception STA*

The EAR currently restricts the use of License Exception STA for specific commodities controlled by ECCNs 6A002 or 6A003, as well as related technology controlled by 6E001 or 6E002, for export or reexport to countries listed in § 740.20(c)(2). By amending § 740.20(b)(2), this rule proposes to remove License Exception STA availability for newly-proposed technology controlled under ECCN 0E987; all commodities controlled under ECCN 6A002; commodities

controlled under ECCN 6A990; software controlled under ECCN 6D002 for the ''use'' of commodities controlled under ECCN 6A002.b; software controlled under ECCN 6D003.c; software controlled under ECCN 6D991 for the ''development,'' ''production,'' or ''use'' of commodities controlled under ECCNs 6A002, 6A003, or 6A990; software controlled under new ECCN 6D994; technology controlled under ECCN 6E001 for the ''development'' of commodities controlled under ECCNs 6A002 or 6A003; technology controlled under ECCN 6E002 for the ''production'' of commodities controlled under ECCNs 6A002 or 6A003; technology controlled under ECCN 6E990; and technology controlled under new 6E994.

*Revisions to Regional Stability Licensing Policy*

Section 742.6 sets forth controls that support U.S. foreign policy to maintain regional stability. This proposed rule would add new § 742.6(a)(8) to require a license worldwide for the export or reexport of some Category 0 and 6 items. Specifically, the new provision would pertain to: Commodities described in ECCNs 6A002 or 6A990; ''software'' described in ECCN 6D002 for the ''use'' of ECCN 6A002.b commodities; ''software'' described in ECCN 6D003.c; ''software'' described in ECCN 6D991 for the ''development,'' ''production,'' or ''use'' of ECCN 6A002, 6A003, or 6A990 commodities; ''software'' described in ECCN 6D994; ''technology'' described in ECCN 0E987; ''technology'' described in ECCN 6E001 for the ''development'' of ECCN 6A002 or 6A003 commodities; ''technology'' described in ECCN 6E002 for the ''production'' of ECCN 6A002 or 6A003 commodities; ''technology'' described in ECCN 6E990; and ''technology'' described in ECCN 6E994.

With the exception of military commodities controlled under ECCN 0A919, license applications for all commodities described above subject to the worldwide RS control will be reviewed on a case-by-case basis, as described in § 742.6(b)(1)(ii). However, license applications for all items described in the above paragraph, including military commodities controlled under ECCN 0A919, would be subject to ITAR licensing policies for exports or reexports of such items to military end users described in § 744.9(d) or for incorporation into a ''military commodity'' controlled by ECCN 0A919.

This rule further proposes to revise § 742.6(b)(1) to set forth a presumption of denial for exports or reexports of software controlled under ECCNs 6D002 (for the ''use'' of ECCN 6A002.b commodities), 6D003.c, and 6D991 (for the ''development,'' ''production,'' or ''use'' of commodities controlled under ECCNs 6A002, 6A003, or 6A990). Software controlled under ECCN 6D994, however, would be reviewed on a case-by-case basis.

With respect to technology, this proposed rule would revise § 742.6(b)(1) to set forth a presumption of denial for exports or reexports of technology controlled under ECCNs 0E987, 6E001 (for ''development'' of ECCN 6A002 or 6A003 commodities), 6E002 (for ''production'' of ECCN 6A002 or 6A003 commodities except for technology required for integration, mounting, inspection, testing, or quality assurance), and 6E990. However, applications for ECCN 6E002 ''build-to-print technology'' that is required for integration, mounting, inspection, testing, or quality assurance would be reviewed on a case-by-case basis.

This rule also would add ECCN 6A003.b (certain imaging cameras) to § 742.6(b)(1)(iii)(C) to apply the license application review policy of the ITAR if being exported or reexported for incorporation into a ''military commodity'' controlled by ECCN 0A919.

Finally, this rule proposes no substantive changes to the existing licensing policy described in current § 742.6(b)(1), but this rule does propose to re-structure the description of those policies under § 742.6(b)(1)(i)–(b)(1)(iv).

*Revisions to End-Use/End-User Controls*

Section 744.9 currently requires a license for the export or reexport to any destination other than Canada for cameras controlled by ECCNs 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c when the exporter knows or is informed that the item is intended to be used by a ''military end-user'' or to be incorporated into a ''military commodity'' controlled by ECCN 0A919, in addition to other applicable license requirements in the EAR.

This proposed rule would revise § 744.9 to require a license for exports, reexports, or transfers (in-country) of commodities controlled by ECCN 0A987 (incorporating items in ECCNs 6A002 and 6A003, or certain cameras in 6A993.a), ECCN 6A002, ECCN 6A003, ECCN 6A990, ECCN 6A993.a commodities meeting the criteria of Note 3.a to ECCN 6A003.b.4.b., ECCN 8A002.d.1.c, and ECCN 8A002.d.2, when the exporter or reexporter knows or is informed that the item is intended to be used by a ''military end-user'' or to be incorporated into a ''military commodity'' controlled by ECCN 0A919. Commodities controlled by ECCN 6A993.a as a result of meeting the criteria of Note 3.a to ECCN 6A003.b.4.b are cameras with a maximum frame rate equal to or less than 9 Hz. Although these 9 Hz cameras are subject only to Anti-Terrorism controls, the U.S. Government determined that 9 Hz cameras are used in foreign-made military commodities and thus merited inclusion in § 744.9.

License applications submitted as a result of the proposed revisions of § 744.9 would be reviewed under the ITAR licensing policy described in §§ 742.6(b)(1)(iii) and 744.9(c).

*Addition of Definition to Part 772*

To more precisely address the jurisdictional split for focal plane arrays described in ECCN 6A002, this rule proposes to add a definition for focal plane arrays in a ''permanent encapsulated sensor assembly.'' Focal plane arrays described in ECCN 6A002 that are focal plane arrays in a ''permanent encapsulated sensor assembly'' and are not otherwise subject to the ITAR would be subject to the EAR, while focal plane arrays described in ECCN 6A002 that are not in a ''permanent encapsulated sensor assembly'' would be subject to the ITAR.

*Revisions to ECCN 0A919*

ECCN 0A919 currently controls ''military commodities'' produced and located outside the United States that are not subject to the ITAR, and incorporate one or more cameras controlled under ECCNs 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c. In addition, ECCN 0A919 controls such ''military commodities'' if they incorporate more than a *de minimis* amount of U.S.-origin 600 series content or are the direct products of U.S.-origin 600 series technology or software.

To control the reexport of such military commodities that incorporate a wider group of items on the CCL, this proposed rule would revise ECCN 0A919 to control military commodities produced outside the United States that are not subject to the ITAR, and have any of the following characteristics: (i) Incorporate one or more commodities classified under ECCNs 6A002, 6A003, or 6A990; (ii) incorporate one or more commodities controlled under ECCN 6A993.a as a result of meeting the criteria specified in Note 3.a to ECCN 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz); (iii) incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content; or (iv) are direct products of U.S.-origin ''600 series'' technology.

*Establishment of ECCN 0E987*

This proposed rule would create a new ECCN for technology required for the ''development'' or ''production'' of commodities controlled by ECCN 0A987, if such commodities incorporate a focal plane array or image intensifier tube. ECCN 0E987 would be subject to a worldwide RS control and Anti-Terrorism (AT Column 1) control. In addition, items controlled by 0E987 would not be eligible for License Exception STA.

*Revisions to ECCN 6A002*

ECCN 6A002 currently controls specified optical sensors or equipment and components therefor. The Department of State's proposed rule for Category XII, which is being published concurrently with this rule, enumerates certain optical sensors and components, such as image intensifier tubes and focal plane arrays, that are subject to the ITAR. Consequently, this proposed rule adds references to the ITAR in the Related Controls paragraph of ECCN 6A002, as well as references to ECCN 0A919, § 744.9, and other related ECCNs.

ECCN 6A002 is currently subject to National Security (NS), Missile Technology (MT), Crime Control (CC), RS, Anti-Terrorism (AT), and United Nations (UN) reasons for control. To ensure interagency review of any proposed export or reexport of an ECCN 6A002 commodity, this proposed rule would revise this ECCN's RS control to require a license for all destinations, including Canada, for the entire entry. The proposed worldwide RS control eliminates the need to maintain the current RS column 1 control. Consequently, this proposed rule would revise the License Requirements section of ECCN 6A002 accordingly. Also, this rule proposes to add notes within the Items paragraph of the ECCN to further specify when items described in ECCN 6A002 (and on the Wassenaar Arrangement's Lists of Dual-Use Goods and Technologies) would be subject to the ITAR.

*Revisions to ECCN 6A003*

ECCN 6A003 currently controls specified cameras, systems or equipment and components therefor. Under the Department of State's proposed rule, Category XII(c) more positively enumerates certain items that are also described by ECCN 6A003. Consequently, this proposed rule adds a reference to USML Category XII(c) in the Related Controls paragraph of ECCN 6A003. Also, this rule revises the Related Controls references to ECCN 0A919 and § 744.9 to reflect the expansion of the applicability of those provisions to all of ECCN 6A003.

*Revisions to ECCN 6A990*

Under the Department of State's proposed rule to revise USML Category XII, certain read-out integrated circuits would be controlled under XII(e). Read-out integrated circuits (ROICs) that are ''specially designed'' for focal plane arrays controlled under ECCN 6A002.a.3 would be classified under ECCN 6A990 and subject to the worldwide RS control described in § 742.6(a)(8). In addition, these items would not be eligible for License Exception STA and would be subject to the limitations on the use of License Exception APR in § 740.16(a)(2) and (b)(2). This rule also proposes to insert references to Category XII(e), ECCN 0A919, and § 744.9 under the Related Controls paragraph. Also, this rule would allow for the use of License Exception LVS for this ECCN with a $500 value limit. This change would ensure that controls on ROICs subject to the EAR are not more restrictive than controls for ROICs proposed to be controlled in USML Category XII(e), which would be eligible for the exemption in § 123.16(b)(2) of the ITAR.

*Revisions to ECCN 6A993*

As previously mentioned, § 744.9 is proposed to be revised to require a license for 9 Hz cameras if exported to a ''military end user'' or if incorporated into a ''military commodity.'' To remind readers of the applicability of § 744.9 and ECCN 0A919 to 9 Hz cameras, this rule provides a reference to those provisions under the Related Controls paragraph of 6A993.

*Revisions to ECCNs 6D002, 6D003, and 6D991, and Establishment of 6D994*

The Wassenaar Arrangement's Lists of Dual-Use Goods and Technologies impose limited controls on software related to commodities controlled under ECCNs 6A002 and 6A003. As a result, the CCL currently has the following multilateral and unilateral software controls related to such items: ECCN 6D002 (software ''specially designed'' for the ''use'' of commodities controlled under ECCN 6A002.b), ECCN 6D003.c (software designed or modified for cameras incorporating ''focal plane arrays'' specified by ECCN 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in ECCN 6A003.b.4 Note 3.a), and ECCN 6D991 (software specially designed for the ''use'' of commodities controlled under ECCN 6A002.a.1.d).

To address concerns regarding the lack of comprehensive software controls related to commodities controlled under ECCNs 6A002 and 6A003, as well as read-out integrated circuits in 6A990, this proposed rule would consolidate existing, unilateral software controls and would expand them to revise ECCN 6D991 to also control software, not elsewhere specified, that is ''specially designed'' for the ''development,'' ''production,'' or ''use'' of commodities controlled by ECCNs 6A002, 6A003, or 6A990. In addition, this proposed rule would create ECCN 6D994 to control software, not elsewhere specified, that is ''specially designed'' for the maintenance, repair, or overhaul of commodities controlled by ECCNs 6A002, 6A003, or 6A990. Under this proposed rule, ECCNs 6D002 (for ECCN 6A002.b commodities only), 6D003.c, 6D991 (for ECCNs 6A002, 6A003, or 6A990), and 6D994 would impose a worldwide RS control, which would be subject to the licensing policy described in § 742.6(a)(8). Also, this proposed rule would remove eligibility to use License Exception TSR for the software described above in ECCNs 6D002 and 6D003.

To prevent confusion over multiple ECCNs potentially controlling the same software, this proposed rule would add language to the Related Controls paragraphs of ECCNs 6D991 and 6D994 to confirm that software currently controlled under ECCNs 6D002 and 6D003.c would remain controlled under those provisions. To reflect this understanding, this proposed rule would also revise the Related Controls paragraphs of ECCNs 6D002 and 6D003 to provide references to ECCNs 6D991 and 6D994. Additionally, to ensure consistency of controls among ECCNs 6D002, 6D003, 6D991, and 6D994, this proposed rule would establish a worldwide RS control for 6D002 software ''specially designed'' for the ''use'' of commodities controlled under 6A002.b and for 6D003.c software.

*Revisions to ECCNs 6E001 and 6E002*

ECCNs 6E001 and 6E002 currently control ''development'' and ''production'' technology, respectively, related to multiple ECCNs in Category 6, including items related to night vision in ECCNs 6A002 and 6A003. Since this proposed rule would expand the level of control for commodities in ECCNs 6A002 and 6A003 by adding a worldwide RS control, this rule would also add a worldwide RS control for 6E001 technology related to commodities controlled under ECCNs 6A002 or 6A003. Similarly, this rule would add a worldwide RS control for

6E002 technology related to commodities controlled under ECCNs 6A002 or 6A003. While this new RS control would remove the need to maintain an RS column 1 control for such technology, such level of control would remain for technology related to commodities controlled under ECCN 6A008.j.1. License applications for ECCN 6E001 and 6E002 technology that are subject to the worldwide RS requirement would be subject to the licensing policy described in § 742.6(b)(1)(iv). In addition, this proposed rule would remove eligibility for License Exception TSR for all 6E001 or 6E002 technology related to commodities controlled under 6A002 or 6A003, and this proposed rule would add guidance to the Related Controls paragraphs in ECCNs 6E001 and 6E002 to provide clarity on technology controls related to satellites and focal plane arrays.

*Revisions to ECCN 6E990*

Since this rule proposes to revise the entry for read-out integrated circuits in ECCN 6A990, which would be subject to a worldwide RS control, this rule would also revise ECCN 6E990, which would apply to ''development'' and ''production'' technology for such read-out integrated circuits. To ensure consistency of control, this proposed rule would add a worldwide RS license requirement, as described in § 742.6(a)(8), for such technology.

*Establishment of ECCN 6E994*

Since not all technology moving from USML Category XII to the CCL would be controlled under ECCN 6E615 or 7E611, this proposed rule would create new ECCN 6E994 to control technology required for the repair, maintenance, or overhaul of commodities controlled under ECCNs 6A002, 6A003, or 6A990. Such technology is not currently controlled under existing technology ECCNs in Category 6. Technology controlled under ECCN 6E994 would be subject to an RS control, which would impose a worldwide license requirement. License applications for 6E994 technology would be reviewed on a case-by-case basis, as described in proposed § 742.6(b)(1)(ii).

**Detailed Description of Changes Proposed by This Rule—Establishment of ''600 Series'' for Military Fire Control, Range Finder, and Optical Equipment Under New ECCNs 6A615, 6B615, 6D615, and 6E615**

This proposed rule would create new ECCN 6A615 to control fire control, range finder, and optical commodities that would be removed from the USML and would not be covered by an existing ECCN subject to controls for reasons other than Anti-Terrorism (AT) reasons. ECCN 6A615.a through .c controls light detection and ranging (LIDAR), laser detection and ranging (LADAR), or laser range-gated systems or equipment having a resolution (*i.e.,* ground point spacing) less (better) than 0.4 m from an altitude above ground level of 16,500 ft. or greater, and incorporating a gimbal-mounted transmitter or beam director; certain gimbals permanently configured to contain a camera payload operating exclusively in the visible spectrum (*i.e.,* 400 nm to 760 nm); and certain zinc selenide, zinc sulfide, germanium, or chalcogenide optics blanks. ECCN 6A615.d through .g is proposed to control weapon sights, weapon aiming systems or equipment, and weapon imaging systems (*e.g.,* clip-ons) or equipment having a peak response wavelength exceeding 700 nm but not exceeding 1,000 nm and not controlled under USML Category XII or ECCN 0A987; targeting or target location systems or equipment incorporating or ''specially designed'' to incorporate a laser rangefinder controlled in USML Category XII(b)(3); mobile reconnaissance, scout, or surveillance systems or equipment providing real-time target location and not controlled in USML Category XII; and certain combat vehicle, tactical wheeled vehicle, naval vessel, or aircraft pilotage systems or equipment. ECCN 6A615.h through .w are reserved. Paragraph .x is proposed to control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by ECCN 6A615 (except 6A615.y) or a defense article in Category XII and not controlled elsewhere on the USML or in ECCNs 6A615.y or 3A611.y. Items controlled under 6A615 (excluding 6A615.y) would be controlled for NS, RS, AT, and UN reasons. Paragraph .y controls specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in ECCN 6A615 and not elsewhere specified on the USML or in the CCL, as well as ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor. No items are listed in 6A615.y under this proposed rule, but should any items be added, they would be subject to AT controls only.

New ECCN 6B615 would control test, inspection, and production equipment and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities described in ECCN 6A615 or military fire control, range finder, and optical equipment described in USML Category XII. Paragraph .a would impose controls on test, inspection, and production equipment ''specially designed'' for items controlled in ECCN 6A615 (excluding any items to be added to 6A615.y) or USML Category XII that are not enumerated in USML Category XII or controlled by a ''600 series'' ECCN. Paragraph .b would control environmental test facilities ''specially designed'' for certification, qualification, or testing of commodities controlled in ECCN 6A615 (except 6A615.y) or USML Category XII that are not enumerated in USML Category XII or a ''600 series'' ECCN. ECCN 6B615.c through .w would be reserved. Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for such test, inspection and production end items and equipment that are not enumerated on the USML or controlled by another ''600 series'' ECCN. Items in ECCN 6B615 would be controlled for NS, RS, AT, and UN reasons.

New ECCN 6D615 would control software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 6A615 or 6B615. Such software would be controlled for NS, RS, AT, and UN reasons, with the exception of any software that would be added to 6D615.y, which would be controlled for AT reasons only.

New ECCN 6E615 would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by 6A615, 6B615, or 6D615. Such technology would be controlled for NS, RS, AT, and UN reasons, with the exception of any technology that would be added to 6E615.y, which would be controlled for AT reasons only.

**Detailed Description of Changes Proposed by This Rule—Revisions to the CCL for Guidance and Control Equipment**

*Establishment of ''600 Series'' for Military Guidance and Control Equipment Under ECCNs 7A611, 7B611, 7D611, and 7E611*

This proposed rule would establish a ''600 series'' under ECCNs 7A611, 7B611, 7D611, and 7E611 for military guidance and control equipment, software, and technology. Categories 6 and 7 of the CCL currently control certain guidance and control equipment

that correlate to guidance and control equipment currently in USML Category XII. In order to ease understanding and use of this ''600 series,'' BIS is proposing to consolidate such controls under Category 7 rather than both Categories 6 and 7. However, should readers look for military guidance and control equipment, such as gravity meters (gravimeters), under Category 6, this proposed rule would amend ECCN 6A611 to refer readers to Category 7 for such items. ECCN 6A611 was added to the CCL by a previously published final rule entitled Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Other Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 79 FR 37551 (July 1, 2014). Also, to assist readers in locating controls for navigation and avionics items ''specially designed'' for a military application, this proposed rule would move the current heading of ECCN 7A611 into the Related Controls paragraph of proposed ECCN 7A611.

Under this proposed ''600 series,'' ECCN 7A611 would control military guidance and control equipment that would be removed from USML Category XII and that are not covered by an existing ECCN subject to controls for reasons other than Anti-Terrorism (AT) reasons. Paragraph .a would control guidance, navigation, or control systems ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN and meeting any of the parameters described in 7A611.a.1 through a.5. Paragraph .b would control inertial measurement units, inertial reference units, or attitude and heading reference systems ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and incorporating accelerometers controlled by 7A611.c.1 or certain gyros controlled by 7A611.d. Paragraph .c would control accelerometers ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN and meeting any of the parameters described in 7A611.c.1 through c.3. Paragraph .d would control gyros ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN and meeting any of the parameters described in 7A611.d.1 through d.3. Paragraph .e would control gravity meters (gravimeters) ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having automatic motion compensation and an accuracy of less (better) than 2 mGal and greater (worse) than 1 mGal. Paragraphs .f through .w would be reserved. Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by ECCN 7A611 (except 7A611.y) or a guidance and control defense article in USML Category XII and not controlled elsewhere on the USML or in 7A611.y or 3A611.y. All items controlled under 7A611 (excluding 7A611.y) would be controlled for NS, RS, AT, and UN reasons, while some of such items would also be controlled for MT reasons. Paragraph .y would control specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in ECCN 7A611, or a guidance and control defense article in USML Category XII and not elsewhere specified on the USML or in the CCL, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor. No items would be listed in 7A611.y under this proposed rule, but should any items be added, they would be subject to AT controls only.

New ECCN 7B611 would impose controls on test, inspection, and production equipment and related commodities ''specially designed'' for military guidance and control equipment. Paragraph .a would control such equipment ''specially designed'' for the ''production,'' ''development,'' repair, overhaul, or refurbishing of items controlled in ECCN 7A611 or guidance and control items in USML Category XII that are not enumerated in USML Category XII or controlled by a ''600 series'' ECCN. Paragraph .b would control environmental test facilities ''specially designed'' for certification, qualification, or testing of commodities controlled in ECCN 7A611 (except 7A611.y) or guidance and control commodities in USML Category XII that are not enumerated in USML Category XII or a ''600 series'' ECCN. Paragraphs .c through .w are reserved. Paragraph .x would control parts, components, accessories, and attachments that are ''specially designed'' for such test, inspection and production equipment that are not enumerated on the USML or controlled by another ''600 series'' ECCN. Items in ECCN 7B611 would be controlled for NS, RS, AT, and UN reasons, with some items also being controlled for MT reasons.

New ECCN 7D611 would control software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 7A611 or equipment controlled by 7B611. Such software would be controlled for NS, RS, AT, and UN reasons, with some software also being controlled for MT reasons. Any software added to 7D611.y would be controlled for AT reasons only. ''Development'' and ''production'' software described in 7D611.a would not be eligible for License Exception STA.

New ECCN 7E611 would control technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by 7A611, 7B611, or 7D611. Such technology would be controlled for NS, RS, AT, and UN reasons, with some technology also being controlled for MT reasons. Any technology added to 7E611.y would be controlled for AT reasons only. ''Development'' and ''production'' technology described in 7E611.a would not be eligible for License Exception STA.

*Revisions to ECCNs 6A007 and 6A107*

ECCNs 6A007 and 6A107 currently control certain gravity meters (gravimeters) and gravity gradiometers. Under the State Department's proposed rule, gravity meters and gravity gradiometers subject to the ITAR would be controlled under USML Category XII(d)(4) and (d)(5), respectively. Consequently, this proposed rule would add references to the Related Controls paragraphs of ECCNs 6A007 and 6A107 to refer readers to Category XII(d)(4) and (d)(5), as well as to gravity meters controlled under proposed ECCN 7A611.

*Revisions to ECCNs 7A001 and 7A101*

ECCN 7A001 currently controls linear accelerometers in ECCN 7A001.a and angular or rotational accelerometers in ECCN 7A001.b that meet the parameters identified in those provisions. These parameters serve as the threshold for control under the Wassenaar Arrangement List of Dual-Use Goods and Technologies. Under the State Department's proposed rule, proposed Category XII(d)(2) identifies those parameters for accelerometers that would be subject to the ITAR. This proposed rule would add language to the Related Controls paragraph of ECCN 7A001 to refer readers to Category XII(d)(2) to help ensure jurisdictional clarity. Additionally, this rule proposes to add a reference to ECCN 7A611 for accelerometers controlled under the new 600 series.

ECCN 7A101 controls accelerometers other than those controlled under ECCN 7A001. As with the amendment to ECCN 7A001, this proposed rule would also add language to the Related

Controls section of ECCN 7A101 to refer readers to the State Department's Category XII(d)(2) for accelerometers subject to the ITAR and to ECCN 7A611 for accelerometers controlled under the new 600 series.

*Revisions to ECCNs 7A002 and 7A102*

ECCN 7A002 controls gyros or angular rate sensors that meet the specifications set forth in the Wassenaar Arrangement List of Dual-Use Goods and Technologies. Under the State Department's proposed rule, proposed Category XII(d)(3) identifies those gyros that would be subject to the ITAR and distinguishes them from gyros subject to the EAR that meet the parameters established by the Wassenaar Arrangement. As such, this proposed rule would amend the Related Controls paragraph of ECCN 7A002 to add a reference to gyros controlled under proposed Category XII(d)(3). For gyros and angular rate sensors proposed to be moved from Category XII to the new 600 series, this rule proposes to add a reference to ECCN 7A611.

ECCN 7A102 controls gyros, other than those controlled under ECCN 7A002. As with the amendment to ECCN 7A002, this proposed rule would also add language to the Related Controls section of ECCN 7A102 to refer readers to the State Department's Category XII(d)(3) for gyros subject to the ITAR and to ECCN 7A611 for gyros controlled under the new ''600 series.'' This rule would also add references to ECCNs 7A002 and 7A994.

*Revisions to ECCN 7A003*

ECCN 7A003 controls inertial measurement equipment or systems that meet the parameters set forth in the Wassenaar Arrangement List of Dual-Use Goods and Technologies. Largely using many of the parameters identified by Wassenaar, proposed Category XII(d)(1) sets the threshold for guidance or navigation systems to be subject to the ITAR. As a result, this proposed rule would amend the Related Controls paragraph of ECCN 7A003 to refer readers to Category XII(d)(1) for such systems. In addition, this rule proposes to add a reference to ECCN 7A611 for inertial measurement units, inertial reference units, or heading reference systems controlled under the new ''600 series.''

**Detailed Description of Changes Proposed by This Rule—Revisions to Other ECCNs**

*Revisions to ECCN 0A987*

ECCN 0A987 currently controls specified optical sighting devices, and this proposed rule revises ECCN 0A987.f to specify that the entry controls laser aiming devices or laser illuminators designed for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm with an output power less than or equal to 5 mW. A proposed note to ECCN 0A987.f would further specify that the entry does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights. This proposed rule would also provide jurisdictional guidance in the Related Controls paragraph to more clearly delineate jurisdiction between USML Category XII and ECCN 0A987.

*Revisions to ECCN 2A984*

ECCN 2A984 currently controls concealed object detection equipment that operates in the frequency range from 30 GHz to 3000 GHz and has a spatial resolution of 0.5 milliradians up to and including 1 milliradian at a standoff distance of 100 meters. Under the Department of State's proposed revisions to USML Category XII, terahertz imaging equipment or systems having a peak response in the same frequency range but having a better resolution (*i.e.,* resolution less than 0.5 milliradians at a standoff range of 100 meters) would be controlled under XII(c)(17). Consequently, this proposed rule would add a reference to Category XII(c)(17) of the Related Controls paragraph of ECCN 2A984.

No items would move from the USML to ECCN 2A984 as a result of this proposed amendment. Rather, this proposed amendment helps establish a bright line to determine export control jurisdiction for these items.

*Revisions to ECCN 6A004*

ECCN 6A004 currently controls optical equipment and components, including gimbals meeting a number of parameters, including slew, bandwidth, angular pointing error, diameter, and angular acceleration. The Department of State proposes to control gimbals under Category XII(c) based on number of axes of active stabilization, minimum root-mean-square stabilization, and in some instances whether they are ''specially designed'' for items controlled under Category XII. Since the control parameters between ECCN 6A004 and Category XII(c) vary, this proposed rule would classify gimbals moving from the USML to the CCL under the 600 series ECCN 6A615. In addition, the proposed use of ECCN 6A615 over ECCN 6A004 reflects the concern that the gimbals should be controlled for RS column 1 reasons rather than national security (NS) column 2 reasons. To aid in properly determining jurisdiction and classification of gimbals, this proposed rule would amend the Related Controls paragraph of ECCN 6A004 to reference gimbals controlled under Category XII(c), gimbals controlled under new ECCN 6A615, and certain ''space qualified'' components subject to the ITAR.

*Revisions to ECCN 6A005*

ECCN 6A005 currently controls specified lasers, components and optical equipment. The Department of State's proposed rule for Category XII would establish controls for lasers under XII(b)(9) through (b)(13) that largely follow the control parameters established by the Wassenaar Arrangement List of Dual-Use Goods and Technologies. Essentially, the current Wassenaar controls establish a baseline of controls with no upper limit to designate those lasers that are inherently military. Therefore, the State Department's proposed rule amending Category XII would establish the upper threshold parameters for lasers subject to the ITAR. To reflect these parameters, this proposed rule would amend ECCN 6A005 to provide corresponding references under the applicable Items subparagraph. For example, this proposed rule would add a note to tunable lasers having an output wavelength exceeding 1,400 nm controlled under ECCN 6A005.c.3.b to refer readers to tunable semiconductor lasers in the same wavelength parameter that are controlled under USML Category XII(b)(10). This proposed rule would add similar reference notes to ECCNs 6A005.d.1.a.2, d.1.b.3, d.1.d.1.d, d.1.d.2.d, and d.1.d.3.b.

This proposed rule also proposes to revise the Related Controls paragraph of ECCN 6A005 to provide general references to lasers controlled under USML Category XII based on the parameters established by Wassenaar. Additionally, this proposed rule would add references in the Related Controls paragraph to XII(b)(9) for certain lasers for electronic combat systems controlled in Category XI, XII(b)(14) for developmental laser and laser systems funded by the Department of Defense, and XVIII for certain laser-based directed energy weapon items.

*Revisions to ECCN 6A008*

ECCN 6A008 currently controls radar systems, equipment, and assemblies, including certain laser detection and ranging (LADAR) and light detection and ranging (LIDAR) equipment under ECCN 6A008.j. The Department of

State's proposed rule would control certain LIDAR, LADAR, and range-gated systems and equipment described in USML Category XII(b). Consequently, this proposed rule would amend the Related Controls paragraph of ECCN 6A008 to add references to those provisions of Category XII. In addition, LIDAR, LADAR, and range-gated systems or equipment having a resolution less (better) than 0.4 m from an altitude above ground level of 16,500 feet or greater, and incorporating a gimbal-mounted transmitter or beam director, would be moved from the USML to ECCN 6A615. This proposed rule would move these items to ECCN 6A615 rather than ECCN 6A005 due to differences in control parameters between ECCNs 6A008 and 6A615. Accordingly, this proposed rule would also add a reference to ECCN 6A615 in the Related Controls section of ECCN 6A008.

*Revisions to ECCN 7A005*

ECCN 7A005 currently controls specified Global Navigation Satellite Systems (GNSS) receiving equipment. No GNSS receiving equipment, including Global Position Satellite equipment, is proposed to move from the USML to the CCL as a result of the review of Category XII of the ITAR. However, this proposed rule proposes to amend the Related Controls section of ECCN 7A005 to use ''GNSS'' in place of ''GPS'' and to provide a reference to Categories XI and XII, which are the USML locations of such receivers.

*Revisions to ECCN 8A002*

To reflect the expansion of the scope of § 744.9 to apply to 8A002.d.1.c and .d.2 items, this proposed rule would add an additional sentence regarding § 744.9 to the Related Controls paragraph of 8A002.

**Effects of This Proposed Rule**

*De Minimis*

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new ''600 series'' ECCNs. Section 734.3 of the EAR provides, *inter alia,* that under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a *de minimis* percentage of controlled U.S.-origin content. Under the April 16 (initial implementation) rule, there is no *de minimis* eligibility for ''600 series'' items destined for countries subject to a U.S. arms embargo, but there is a 25% *de minimis* percentage for ''600 series'' items destined for all countries not subject to U.S. arms embargoes. The fire control, range finder, optical, and guidance and control items that would be subject to the EAR as a result of this proposed rule would become eligible for *de minimis* treatment, so long as they are not subject to the proposed restrictions described in § 734.4(a)(5) for incorporation into foreign military commodities and are not destined for a country subject to a U.S. arms embargo.

*Use of License Exceptions*

Unless subject to the restrictions on the use of STA in § 740.20(b)(2), many of the fire control, range finder, optical, and guidance and control items described in this proposed rule would become eligible for several license exceptions, including STA, which would be available for exports to certain government agencies of NATO and other multi-regime allies. The exchange of information and statements required under STA is substantially less burdensome than the license application requirements currently required under the ITAR, as discussed in more detail in the ''Regulatory Requirements'' section of this proposed rule. Some items covered by this rule also would be eligible for the following license exceptions: LVS (limited value shipments), up to $1500, and RPL (servicing and parts replacement).

*Alignment With the Wassenaar Arrangement Munitions List.*

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with U.S. obligations to the multilateral export control regimes. Accordingly, the Administration will, in this proposed rule, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. USML Category XII encompasses multiple WAML categories, including ML 5 (*e.g.,* fire control and range-finding systems), ML 11 (*e.g.,* ''guidance and navigation equipment''), and ML 15 (*e.g.,* imaging equipment). This proposed rule uses two of these categories—ML 15 (''[i]maging or countermeasure equipment . . . specially designed for military use, and specially designed components and accessories therefor'') and ML 11 (''electronic equipment specially designed for military use,'' including ''guidance and navigation equipment'')—to add items moving from USML Category XII to the new 600 series ECCNs ending in ''15'' and ''11.''

**Request for Comments**

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before July 6, 2015. All comments must be in writing and submitted via one or more of the methods listed under the **ADDRESSES** caption to this notice. All comments (including any personal identifiable information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields for information that would identify the commenter blank, and including no identifying information in the comment itself.

**Export Administration Act**

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the

requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rule published on July 15, 2011 (76 FR 41958) (''July 15 proposed rule''), BIS initially believed that the combined effect of all rules to be published adding items to the EAR that will be removed from the ITAR as part of the administration's Export Control Reform Initiative will increase the number of license applications to be submitted by approximately 16,000 annually. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that will come under BIS jurisdiction and whether those items would be eligible for export under license exception. As of June 21, 2012, BIS revised that estimate to an increase in license applications of 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694–0088. BIS continues to believe that its revised estimate is accurate.

Some items formerly on the USML would become eligible for License Exception STA under this rule. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on fire control, range finder, optical, and guidance and control items. With few exceptions, most exports of such items, even when destined to NATO member states and other close allies, require State Department authorization. In addition, the exports of technology necessary to produce such items in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, such technology would become eligible for export to NATO member states and other close allies under License Exception STA unless otherwise specifically excluded. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration believes that complying with the requirements of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

This proposed rule would also require licenses for Canada for the following ECCNs that do not currently require a license for that destination: 6A002, 6A990, 6D002 (for 6A002.b items), 6D003.c, 6E001 (for 6A002 or 6A003 items), 6E002 (for 6A002 or 6A003 items), and 6E990. Further, this proposed rule would implement a worldwide license requirement for the following ECCNs that are currently controlled for anti-terrorism reasons or for new ECCNs that would control items currently designated as EAR99: 0E987; 6D991 (for 6A002, 6A003, or 6A990); and 6E994. In addition, the items described in this paragraph would be ineligible for License Exception STA under this proposed rule. BIS anticipates that these proposed changes would increase the number of license applications submitted and the number of § 743.3 reports submitted under control number 0694–0137. However, these proposed changes would also apply to items moving from Category XII of the USML to the CCL, and the burden likely will be reduced for such items when comparing license requirements of the ITAR to those of the EAR. In particular, license applications for exports of technology transferred from the USML to the CCL are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that the November 28 (military electronics) rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble to that proposed rule (77 FR 70945, 70950–70951, November 28, 2012). Although BIS received no comments on that rationale, and has accordingly made no changes to the proposed rule based on the RFA certification, BIS has determined that, in the interest of openness and transparency, it will briefly restate the rationale behind the certification here.

This proposed rule is part of the Administration's Export Control Reform Initiative, which seeks to revise the USML to a positive list—one that does not use generic, catch-all controls for items listed—and to move some items that the President has determined no longer merit control under the ITAR to control under the CCL.

Although BIS does not collect data on the size of entities that apply for and are issued export licenses, and is therefore unable to estimate the exact number of small entities—as defined by the Small Business Administration's regulations implementing the RFA—BIS acknowledges that some small entities may be affected by this proposed rule.

The main effects on small entities resulting from this rule will be in application times, costs, and delays in receiving licenses to export goods subject to the CCL. However, while

small entities may experience some costs and time delays for exports due to the license requirements of the CCL, these costs and delays will likely be significantly less than they were for items previously subject to the USML. BIS believes that in fact this rule will result in significantly reduced administrative costs and delays for exports of items that will, upon this rule's implementation, be subject to the EAR rather than the ITAR. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. By contrast, BIS is statutorily prohibited from imposing licensing fees. In addition, exporters and reexporters of goods that would become subject to the EAR under this rule would need fewer licenses because their transactions would become eligible for license exceptions that were not available under the ITAR. Additionally, the ITAR controls parts and components even when they are incorporated—in any amount—into a foreign-made product. That limitation on the use of U.S.-made goods subject to the ITAR discouraged foreign manufacturers from importing U.S. goods. However, the EAR has a *de minimis* exception for U.S.-manufactured goods that are incorporated into foreign-made products. This exception may benefit small entities by encouraging foreign producers to use more U.S.-made items in their goods.

Even where an exporter or reexporter would need to obtain a license under the EAR, that process is both cheaper and the process is more flexible than obtaining a license under the ITAR. For example, unlike the ITAR, the EAR does not require license applicants to provide BIS with a purchase order with the application, meaning that small (or any) entities can enter into negotiations or contracts for the sale of goods without having to caveat any sale presentations with a reference to the need to obtain a license under the ITAR before shipment can occur. Second, the EAR allows license applicants to obtain licenses to cover all expected exports or reexports to a particular consignee over the life of a license, rather than having to obtain a new license for every transaction.

In short, BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts to small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. Accordingly, the Chief Counsel for Regulation for the Department of Commerce has certified that this rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

**List of Subjects**

*15 CFR Part 734*

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports, Terrorism.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

*15 CFR Part 772*

Exports.

*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

## PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 2. Section 734.4 is amended by revising paragraph (a)(5) to read as follows:

**§ 734.4 *De minimis* U.S. content.**

(a) * * *

(5) There is no *de minimis* level for foreign made military commodities described in ECCN 0A919.a.1.

* * * * *

## PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 4. Section 740.2 is amended by revising paragraph (a)(7) as follows:

**§ 740.2 Restrictions on all license exceptions.**

(a) * * *

(7) Technology for ''production'' of commodities defined in ECCNs 6A002.a.2, 6A002.a.3, or 6A990 that is controlled under ECCNs 6E002 or 6E990.

* * * * *

■ 5. Section 740.16 is amended by revising paragraphs (a)(2), (b)(2), and (b)(3) to read as follows:

**§ 740.16 Additional permissive reexports (APR).**

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919; commodities described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications); or commodities described in ECCNs 6A002, 6A003, or 6A990; and

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(3) of this section, ''military commodities'' described in ECCN 0A919 and commodities described in ECCNs 6A002, 6A003, or 6A990 or commodities described in ECCN 0A987 incorporating an image intensifier tube, may not be reexported under this paragraph (b).

(3) Cameras described in ECCNs 6A003 may be exported or reexported to and among countries in Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea,

Spain, Sweden, Switzerland, Turkey, and the United Kingdom if:

(i) Such cameras are fully packaged for use as consumer ready civil products; or,

(ii) Such cameras with not more than 111,000 elements are to be embedded in civil products.

■ 6. Section 740.20 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(x), to read as follows:

**§ 740.20 License Exception Strategic Trade Authorization (STA).**

* * * * *

(b) * * *

(2) * * *

(ii) License Exception STA may not be used for any item controlled under ECCNs 0A981, 0A982, 0A983, 0E985, 0E982, or 0E987.

* * * * *

(x) License Exception STA may not be used for items controlled by ECCNs 6A002; 6A990; 6D002 (software specially designed for the ''use'' of commodities controlled under 6A002.b); 6D003.c; 6D991 (software ''specially designed'' for the ''development,'' ''production,'' or ''use'' of commodities controlled under 6A002, 6A003, or 6A990); 6D994; 6E001 (''technology'' for the ''development'' of commodities controlled under ECCNs 6A002 or 6A003); 6E002 ''technology'' (for the ''production'' of commodities controlled under ECCNs 6A002 or 6A003); 6E990; or 6E994.

* * * * *

## PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

■ 8. Section § 742.6 is amended by:

■ a. Adding paragraph (a)(8); and

■ b. Revising paragraph (b)(1), to read as follows:

**§ 742.6 Regional stability.**

(a) * * *

(8) *Special worldwide RS license requirement for specified items controlled in Category 0 or 6.* A license is required to export or reexport the following items to all destinations, including Canada:

(i) ''Technology'' controlled under ECCN 0E987;

(ii) All commodities controlled under ECCNs 6A002;

(iii) All commodities controlled under ECCN 6A990;

(iv) ''Software'' controlled under ECCN 6D002 for the ''use'' of commodities controlled under 6A002.b;

(v) ''Software'' controlled under ECCN 6D003.c;

(vi) ''Software'' controlled under ECCN 6D991 for the ''development,'' ''production,'' or ''use'' of commodities controlled under ECCNs 6A002, 6A003, or 6A990;

(vii) ''Software'' controlled under ECCN 6D994;

(viii) ''Technology'' controlled under ECCN 6E001 for the ''development'' of commodities controlled under 6A002 or 6A003;

(ix) ''Technology'' controlled under ECCN 6E002 for the ''production'' of commodities controlled under 6A002 or 6A003;

(x) ''Technology'' controlled under 6E990; and

(xi) ''Technology'' controlled under ECCN 6E994.

(b) *Licensing policy.*—(1) *Licensing policy for RS Column 1 items or items subject to worldwide RS control.*

(i) Applications for exports and reexports of 9x515 and ''600 series'' items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. Applications for export or reexport of items classified under any 9x515 or ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) of this section will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. Applications for export or reexport of ''parts,'' ''components,'' ''accessories,'' ''attachments,'' ''software,'' or ''technology'' ''specially designed'' or otherwise required for the F–14 aircraft will generally be denied. When destined to the People's Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any 9x515 ECCN will be subject to a policy of denial.

(ii) Applications for exports and reexports described in paragraphs (a)(1), (a)(2), (a)(6), (a)(7), (a)(8)(ii), (a)(8)(iii), (a)(8)(vii), and (a)(8)(xi) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

(iii) The following applications will be reviewed applying the policies for similar items that are subject to the International Traffic in Arms Regulations (22 CFR parts 120–130):

(A) Reexports of items described in paragraph (a)(3) of this section;

(B) Exports or reexports of items described in paragraph (a)(8) of this section to military end users described in § 744.9(d); and

(C) Exports or reexports of commodities described in paragraphs (a)(8)(ii) and (a)(8)(iii) of this section or in ECCN 6A003.b for incorporation into a ''military commodity'' controlled by ECCN 0A919.

(iv) Applications for exports or reexports of software or technology described in paragraphs (a)(8)(i), (a)(8)(iv), (a)(8)(v), (a)(8)(vi), (a)(8)(viii), and (a)(8)(x) will be reviewed with a presumption of denial. There is also a presumption of denial for technology described in paragraph (a)(8)(ix), unless it is ''build-to-print technology'' that is required for integration, mounting, inspection, testing, or quality assurance (*e.g.,* necessary to meet International Standards Organization (ISO) certification), which will be reviewed on a case-by-case basis.

* * * * *

## PART 744—[AMENDED]

■ 9. The authority citation for 15 CFR part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of January 21, 2015, 80 FR 3461 (January 22, 2015).

■ 10. Section 744.9 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

**§ 744.9 Restrictions on certain exports and reexports of certain cameras, systems, or equipment.**

(a) *General prohibitions.* In addition to the applicable license requirements for national security, regional stability, anti-terrorism and United Nations embargo reasons in §§ 742.4, 742.6, 742.8, 746.3, and 746.8 of the EAR, a license is required to export, reexport, or transfer (in-country) to any destination commodities described in ECCNs 0A987 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), 8A002.d.1.c, or 8A002.d.2 if at the time of export, reexport, or transfer, the exporter, reexporter, or transferor knows or is informed, or is unable to determine whether the item will be or is intended to be:

(1) Used by a ''military end-user,'' as defined in paragraph (d) of this section; or

(2) Incorporated into a ''military commodity'' controlled by ECCN 0A919.

(b) *Additional prohibition on exporters or reexporters informed by BIS.* BIS may inform an exporter, reexporter, or transferor, either individually by specific notice or through amendment to the EAR, that a license is required for the export, reexport, or transfer of commodities described in ECCNs 0A987 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), 8A002.d.1.c, or 8A002.d.2 to specified end users, because BIS has determined that there is an unacceptable risk of diversion to the users or unauthorized incorporation into the ''military commodities'' described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration.

* * * * *

## PART 772—[AMENDED]

■ 11. The authority citation for part 772 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 12. Section 772.1 is amended by adding a definition for ''permanent encapsulated sensor assembly'' in alphabetical order to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

*Permanent encapsulated sensor assembly.* (Cat 6) A permanent encapsulated sensor assembly (*e.g.* sealed enclosure, vacuum package) containing an infra-red focal plane array (IRFPA) that prevents direct access to the IRFPA, disassembly of the sensor assembly, and removal of the IRFPA without destruction or damage to the IRFPA.

* * * * *

## PART 774—[AMENDED]

■ 13. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

**Supplement No. 1 to Part 774 [Amended]**

■ 14. In Supplement No. 1 to part 774, Category 0, ECCN 0A919 is amended by revising the Items paragraph of the List of Items Controlled section to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

* * * * *

**0A919 ''Military commodities'' located and produced outside the United States as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Items:*

a. ''Military commodities'' produced and located outside the United States that are not subject to the International Traffic in Arms Regulations (22 CFR parts 120–130) and having any of the following characteristics:

a.1. Incorporate one or more commodities classified under ECCNs 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criterion of Note 3.a to 6A003.b.4);

a.2. Incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content (see § 734.4 of the EAR); *or*

a.3. Are direct products of U.S.-origin ''600 series'' technology or software (see § 736.2(b)(3) of the EAR).

b. [Reserved]

■ 15. In Supplement No. 1 to part 774, Category 0, ECCN 0A987 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section;

■ b. Revising paragraph f. in the Items paragraph in the List of Items Controlled section; and

■ c. Adding a note to 0A987.f, to read as follows:

**0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and ''components'' as follows (See List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) Sighting devices operating outside the visible spectrum, as enumerated in USML Category XII, or laser aiming or laser illumination equipment not specified in 0A987.f are subject to the ITAR. (2) Section 744.9 imposes a license requirement on certain commodities described in 0A987 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

* * * * *

*Items:*

* * * * *

f. Laser aiming devices or laser illuminators designed for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm with an output power less than or equal to 5 mW.

**Note:** *0A987.f does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights.*

* * * * *

■ 16. In Supplement No. 1 to part 774, Category 0, add ECCN 0E987 between ECCN 0E984 and EAR99, to read as follows:

**0E987 ''Technology'' ''required'' for the ''development,'' or ''production'' of commodities controlled by 0A987 that incorporate a focal plane array or image intensifier tube.**

**License Requirements**

*Reason for Control:* RS, AT.

| Control(s) | Country chart (see Supp. No. 1 to part 738) |
|---|---|
| RS applies to entire entry. | A license is required to export and reexport these items to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (see § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 17. In Supplement No. 1 to part 774, Category 2, ECCN 2A984 is amended by adding Note 4 to the end of the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**2A984 Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution of 0.5 milliradian up to and including 1 milliradian at a standoff distance of 100 meters; and ''parts'' and ''components,'' n.e.s.**

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**List of Items Controlled**

*Related Controls:* *** (4) See USML Category XII(c)(17) for terahertz imaging equipment or systems having a peak response in the frequency range exceeding 30 GHz but not exceeding 3000 GHz and having a resolution less (better) than 0.5 milliradians at a standoff range of 100 m.

* * * * *

■ 18. In Supplement No. 1 to part 774, Category 6, ECCN 6A002 is amended by:

■ a. Revising the Control(s) table in the License Requirements section;

■ b. Removing the ''Special Conditions for STA'' section;

■ c. Revising the Related Controls paragraph in the List of Items Controlled section;

■ d. Revising paragraphs a.2 and a.3 in the Items paragraph of the List of Items Controlled section. The revisions to read as follows:

**6A002 Optical sensors and equipment and ''components'' therefor, as follows (see List of Items Controlled).**

**License Requirements**

* * * * *

| Control(s) | Country chart (see Supp. No. 1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 2. |
| MT applies to optical detectors in 6A002.a.1 or a.3 that are ''specially designed'' or modified to protect ''missiles'' against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for ''missiles''. | MT Column 1. |
| RS applies to entire entry. | A license is required to export and reexport these items to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (*See* § 742.6(a)(8)). |
| CC applies to police-model infrared viewers in 6A002.c. | CC Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to 6A002.a.1, a.2, a.3 and c. | See § 746.1(b) for UN controls. |

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**List of Items Controlled**

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*Related Controls:* (1) The following commodities are ''subject to the ITAR'' (see 22 CFR parts 120 through 130): (a) ''Image intensifiers'' defined in 6A002.a.2 and ''focal plane arrays'' defined in 6A002.a.3 ''specially designed,'' modified, or configured for military use and not part of civil equipment; (b) ''Space qualified'' solid-state detectors defined in 6A002.a.1, ''space qualified'' imaging sensors (*e.g.,* ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and ''space qualified'' cryocoolers defined in 6A002.d.1, unless, on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination indicating the commodity is subject to the EAR. (2) See also ECCNs 6A102, 6A202, and 6A992. (3) See ECCN 0A919 for foreign-made military commodities that incorporate commodities described in 6A002. (4) Section 744.9 imposes a license requirement on commodities described in ECCN 6A002 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919. (5) Image intensifier tubes described in ECCN 6A002.a.2 that are second generation image intensification tubes are ''subject to the ITAR.'' (6) See the Related Controls paragraphs to ECCNs 6E001 and 6E002 for controls on technology for the ''development'' or ''production'' of focal plane arrays in a ''permanent encapsulated sensor assembly'' subject to the EAR.

* * * * *

*Items:*

a. * * *

a.1. * * *

a.2. Image intensifier tubes and ''specially designed'' ''components'' therefor, as follows:

**Note 1:** *Image intensifier tubes described in 6A002.a.2 having a luminous sensitivity exceeding 500 microamps per lumen are ''subject to the ITAR.''*

**Note 2:** *6A002.a.2 does not control non-imaging photomultiplier tubes having an electron sensing device in the vacuum space limited solely to any of the following:*

*a. A single metal anode; or*

*b. Metal anodes with a center to center spacing greater than 500* µm.

**Technical Note:** *'Charge multiplication' is a form of electronic image amplification and is defined as the generation of charge carriers as a result of an impact ionization gain process. 'Charge multiplication' sensors may take the form of an image intensifier tube, solid state detector or ''focal plane array.''*

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. Electron image amplification using any of the following:

a.2.a.2.a. A microchannel plate with a hole pitch (center-to-center spacing) of 12 µm or less; *or*

a.2.a.2.b. An electron sensing device with a non-binned pixel pitch of 500 µm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate; *and*

a.2.a.3. Any of the following photocathodes:

a.2.a.3.a. Multialkali photocathodes (*e.g.,* S–20 and S–25) having a luminous sensitivity exceeding 350 µA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other ''III–V compound'' semiconductor photocathodes having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.2.b. Image intensifier tubes having all of the following:

a.2.b.1. A peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,800 nm;

a.2.b.2. Electron image amplification using any of the following:

a.2.b.2.a. A microchannel plate with a hole pitch (center-to-center spacing) of 12 µm or less; *or*

a.2.b.2.b. An electron sensing device with a non-binned pixel pitch of 500 µm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate; *and*

a.2.b.3. ''III/V compound'' semiconductor (*e.g.,* GaAs or GaInAs) photocathodes and transferred electron photocathodes, having a maximum ''radiant sensitivity'' exceeding 15 mA/W;

a.2.c. ''Specially designed'' ''components'' as follows:

a.2.c.1. Microchannel plates having a hole pitch (center-to-center spacing) of 12 μm or less;

a.2.c.2. An electron sensing device with a non-binned pixel pitch of 500 μm or less, ''specially designed'' or modified to achieve 'charge multiplication' other than by a microchannel plate;

a.2.c.3. ''III–V compound'' semiconductor (*e.g.,* GaAs or GaInAs) photocathodes and transferred electron photocathodes;

**Note:** *6A002.a.2.c.3 does not control compound semiconductor photocathodes designed to achieve a maximum ''radiant sensitivity'' of any of the following:*

*a. 10 mA/W or less at the peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm; or*

*b. 15 mA/W or less at the peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,800 nm.*

a.3. Non-''space-qualified'' ''focal plane arrays'' as follows:

**N.B.:** *'Microbolometer' non-''space-qualified'' ''focal plane arrays'' are only specified by 6A002.a.3.f.*

**Technical Note:** *Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays'';*

**Note 1:** *6A002.a.3 includes photoconductive arrays and photovoltaic arrays.*

**Note 2:** *6A002.a.3 does not control:*

*a. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;*

*b. Pyroelectric detectors using any of the following:*

*b.1. Triglycine sulphate and variants;*

*b.2. Lead-lanthanum-zirconium titanate and variants;*

*b.3. Lithium tantalate;*

*b.4. Polyvinylidene fluoride and variants; or*

*b.5. Strontium barium niobate and variants.*

*c. ''Focal plane arrays'' ''specially designed'' or modified to achieve 'charge multiplication' and limited by design to have a maximum ''radiant sensitivity'' of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:*

*c.1. Incorporating a response limiting mechanism designed not to be removed or modified; and*

*c.2. Any of the following:*

*c.2.a. The response limiting mechanism is integral to or combined with the detector element; or*

*c.2.b. The ''focal plane array'' is only operable with the response limiting mechanism in place.*

**Note 3:** *Focal plane arrays described in 6A002.a.3 that are not in a ''permanent encapsulated sensor assembly'' subject to the EAR are ''subject to the ITAR.''*

**Technical Note:** *A response limiting mechanism integral to the detector element is designed not to be removed or modified without rendering the detector inoperable.*

a.3.a. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. Any of the following:

a.3.a.2.a. A response ''time constant'' of less than 0.5 ns; *or*

a.3.a.2.b. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.3.b. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. Any of the following:

a.3.b.2.a. A response ''time constant'' of 95 ns or less; *or*

a.3.b.2.b. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W;

a.3.c. Non-''space-qualified'' non-linear (2-dimensional) ''focal plane arrays'' having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

**N.B.:** *Silicon and other material based 'microbolometer' non-''space-qualified'' ''focal plane arrays'' are only specified by 6A002.a.3.f.*

a.3.d. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'' having all of the following:

a.3.d.1. Individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 3,000 nm; *and*

a.3.d.2. Any of the following:

a.3.d.2.a. A ratio of 'scan direction' dimension of the detector element to the 'cross-scan direction' dimension of the detector element of less than 3.8; *or*

a.3.d.2.b. Signal processing in the detector elements;

**Note:** *6A002.a.3.d does not control ''focal plane arrays'' (not to exceed 32 elements) having detector elements limited solely to germanium material.*

**Technical Note:** *For the purposes of 6A002.a.3.d, 'cross-scan direction' is defined as the axis parallel to the linear array of detector elements and the 'scan direction' is defined as the axis perpendicular to the linear array of detector elements.*

a.3.e. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'' having individual elements with a peak response in the wavelength range exceeding 3,000 nm but not exceeding 30,000 nm;

a.3.f. Non-''space-qualified'' non-linear (2-dimensional) infrared ''focal plane arrays'' based on 'microbolometer' material having individual elements with an unfiltered response in the wavelength range equal to or exceeding 8,000 nm but not exceeding 14,000 nm;

**Technical Note:** *For the purposes of 6A002.a.3.f, 'microbolometer' is defined as a thermal imaging detector that, as a result of a temperature change in the detector caused by the absorption of infrared radiation, is used to generate any usable signal.*

a.3.g. Non-''space-qualified'' ''focal plane arrays'' having all of the following:

a.3.g.1. Individual detector elements with a peak response in the wavelength range exceeding 400 nm but not exceeding 900 nm;

a.3.g.2. ''Specially designed'' or modified to achieve 'charge multiplication' and having a maximum ''radiant sensitivity'' exceeding 10 mA/W for wavelengths exceeding 760 nm; *and*

a.3.g.3. Greater than 32 elements;

* * * * *

■ 19. In Supplement No. 1 to part 774, Category 6, ECCN 6A003 is amended by:

■ a. Revising note 5 in the Related Controls paragraph in the List of items Controlled section; and

■ b. Adding note 6 to the Related Controls paragraph in the List of items Controlled section, to read as follows:

**6A003 Cameras, systems or equipment, and ''components'' therefor, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* * * * (5) Section 744.9 imposes a license requirement on cameras described in 6A003 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919. (6) See USML Category XII(c) for cameras ''subject to the ITAR.''

* * * * *

■ 20. In Supplement No. 1 to part 774, Category 6, ECCN 6A004 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

**6A004 Optical equipment and ''components,'' as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* (1) For optical mirrors or 'aspheric optical elements' ''specially designed'' for lithography ''equipment,'' see ECCN 3B001. (2) See USML Category XII(c) for gimbals ''subject to the ITAR.'' (3) See ECCN 6A615.b for gimbals containing a camera payload operating exclusively in the visible spectrum (*i.e.,* 400 nm to 760 nm). (4) ''Space qualified'' components for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1 are ''subject to the ITAR.'' (5) See also 6A994.

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■ 21. In Supplement No. 1 to part 774, Category 6, ECCN 6A005 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section; and

■ b. Adding Notes to paragraphs c.3.b, d.1.a.2, d.1.b.3, d.1.d.1.d, d.1.d.2.d, and d.1.d.3.b in the Items paragraph of the List of Items Controlled section, to read as follows:

**6A005 ''Lasers,'' ''components'' and optical equipment, as follows (see List of Items Controlled), excluding items that are subject to the export licensing authority**

**of the Nuclear Regulatory Commission (see 10 CFR part 110).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* (1) See ECCN 6D001 for ''software'' for items controlled under this entry. (2) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 6A205 and 6A995. (4) See ECCN 3B001 for excimer ''lasers'' ''specially designed'' for lithography equipment. (5) ''Lasers'' ''specially designed'' or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (6) See USML Category XII(b)(10) for certain tunable semiconductor lasers. (7) See USML Category XII(b)(11) for certain non-tunable single transverse mode semiconductor lasers. (8) See USML Category XII(b)(12) for certain non-tunable multiple transverse mode semiconductor lasers. (9) See USML Category XII(b)(13) for certain laser stacked arrays. (10) See USML Category XII(b)(9) for certain lasers for electronic combat systems controlled in USML Category XI. (11) See USML Category XII(b)(14) for developmental laser and laser systems funded by the Department of Defense. (12) See USML Category XVIII for certain laser-based directed energy weapon systems, equipment, and components.

*Related Definitions:* * * *

*Items:*

* * * * *

c. * * *

c.3. * * *

c.3.b. * * *

**Note:** *See USML Category XII(b)(10) for tunable semiconductor lasers having an output wavelength exceeding 1,400 nm and an output power greater than 1 W.*

* * * * *

d. * * *

d.1. * * *

d.1.a. * * *

d.1.a.2. * * *

**Note:** *See USML Category XII(b)(11) for non-tunable single transverse mode semiconductor lasers having an output wavelength exceeding 1,510 nm and either an average output power or continuous wave (CW) output power greater than 2 W.*

* * * * *

d.1.b. * * *

d.1.b.3. * * *

**Note:** See USML Category XII(b)(12) for non-tunable multiple transverse mode semiconductor lasers having an output wavelength exceeding 1,900 nm and either an average output power or CW output power greater than 2 W.

* * * * *

d.1.d. * * *

d.1.d.1. * * *

d.1.d.1.d. * * *

**Note:** See USML Category XII(b)(13)(i) for laser stacked arrays having an output wavelength less than 1,400 nm and a peak pulsed power density greater than 3,300 W/cm2.

* * * * *

d.1.d.2. * * *

d.1.d.2.d. * * *

**Note:** See USML Category XII(b)(13)(ii) for laser stacked arrays having an output wavelength exceeding 1,400 nm but less than 1,900 nm and a peak pulsed power density greater than 700 W/cm2.

* * * * *

d.1.d.3. * * *

d.1.d.3.b. * * *

**Note:** See USML Category XII(b)(13)(iii) for laser stacked arrays having an output wavelength exceeding 1,900 nm and a peak pulsed power density greater than 70 W/cm2. See also USML Category XII(b)(13)(iv) for laser stacked arrays having an output wavelength exceeding 1,900 nm, and either an average output power or CW output power greater than 20 W.

* * * * *

■ 22. In Supplement No. 1 to part 774, Category 6, ECCN 6A007 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6A007 Gravity meters (gravimeters) and gravity gradiometers, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) See USML Category XII(d)(4) for certain gravity meters (gravimeters). (2) See USML Category XII(d)(5) for certain gravity gradiometers. (3) See ECCN 7A611 for gravity meters (gravimeters) ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having automatic motion compensation and an accuracy of less (better) than 2 mGal and greater (worse) than 1mGal. (4) See also ECCNs 6A107 and 6A997.

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■ 23. In Supplement No. 1 to part 774, Category 6, ECCN 6A008 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

**6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and ''specially designed'' ''components'' therefor.**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* This entry does not control: Secondary surveillance radar (SSR); Car radar designed for collision prevention; Displays or monitors used for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm; Meteorological (weather) radar. See also ECCNs 6A108 and 6A998. ECCN 6A998 controls, *inter alia,* the Light Detection and Ranging (LIDAR) equipment excluded by the note to paragraph j of this ECCN (6A008). See USML Category XII(b) for certain LIDAR, Laser Detection and Ranging (LADAR), or range-gated systems or equipment. See ECCN 6A615 for LIDAR, LADAR, or range-gated systems or equipment having a resolution (*i.e.,* ground point spacing) less (better) than 0.4 m from an altitude above ground level of 16,500 ft. or greater, and incorporating a gimbal-mounted transmitter or beam director.

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■ 24. In Supplement No. 1 to part 774, Category 6, ECCN 6A107 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

**6A107 Gravity meters (gravimeters) or gravity gradiometers, other than those controlled by 6A007, designed or modified for airborne or marine use, as follows, (see List of Items Controlled) and ''specially designed'' ''parts'' and ''components'' therefor.**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* (1) See USML Category XII(d)(4) for certain gravity meters (gravimeters) subject to the ITAR. (2) See USML Category XII(d)(5) for certain gravity gradiometers subject to the ITAR. (3) See ECCN 7A611 for gravity meters (gravimeters) ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having automatic motion compensation and an accuracy of less (better) than 2 mGal and greater (worse) than 1mGal.

* * * * *

■ 25. In Supplement No. 1 to part 774, Category 6, ECCN 6A611 is revised to read as follows:

**6A611 Acoustic systems and equipment, radar, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor, ''specially designed'' for a military application that are not enumerated in any USML category or other ECCN are controlled by ECCN 3A611. Military guidance and control equipment, including certain gravity meters (gravimeters), that are not enumerated in any USML category or ECCN are controlled by ECCN 7A611.**

■ 26. In Supplement No. 1 to part 774, Category 6, add ECCN 6A615 between ECCNs 6A611 and 6A990, to read as follows:

**6A615 Military fire control, range finder, and optical, equipment, and ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments,'' as follows (See List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 6A615.y. | NS Column 1. |
| RS applies to entire entry except 6A615.y. | RS Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 6A615.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*LVS:* $1500
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 6A615.

**List of Items Controlled**

*Related Controls:* (1) Military fire control, range finder, optical, and guidance and control equipment that are enumerated on the USML Category XII, and technical data (including software) directly related thereto, are ''subject to the ITAR.'' (2) See Related Controls in ECCNs 0A987, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 7A001, 7A002, 7A003, 7A005, and 7A101. (3) See ECCN 3A611 and USML Category XI for controls on countermeasure equipment. (4) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.
*Related Definitions:* N/A
*Items:*

a. Light Detection and Ranging (LIDAR), Laser Detection and Ranging (LADAR), or laser range-gated systems or equipment having a resolution (*i.e.,* ground point spacing) less (better) than 0.4 m from an altitude above ground level of 16,500 ft. or greater, and incorporating a gimbal-mounted transmitter or beam director.

b. Gimbals permanently configured to contain a single payload consisting of a camera operating exclusively in the visible spectrum (*i.e.,* 400 nm to 760 nm) and having a minimum root-mean-square (RMS) stabilization better (less) than 35 microradians.

c. Zinc selenide, zinc sulfide, germanium or chalcogenide optics blanks, being flat or initially curved, and having any of the following:

c.1. Diameter exceeding 3 inches and thickness exceeding 1.5 inches;

c.2. Diameter exceeding 5 inches;

c.3. Length and width both exceeding 3 inches and thicknesses exceeding 1.5 inches; or

c.4. Length and width both exceeding 5 inches.

d. Weapon sights, weapon aiming systems or equipment, and weapon imaging systems or equipment (*e.g.* clip-on), having peak response at a wavelength exceeding 700 nm but not exceeding 1,000 nm, and not controlled by 0A987.

e. Targeting or target location systems or equipment incorporating or ''specially designed'' to incorporate a laser rangefinder controlled in USML Cat XII(b)(3).

f. Mobile reconnaissance, scout or surveillance systems or equipment providing real-time target location.

g. Combat vehicle, tactical wheeled vehicle, naval vessel, or aircraft pilotage systems or equipment incorporating a variable field of view or field of regard, and incorporating a photon detector-based infrared focal plane array having less than 640 elements.

h. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 6A615 (except 6A615.y) or a defense article enumerated or otherwise described in Category XII and not elsewhere specified on the USML, in 6A615.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a fire control, range finder, or optical defense article in USML Category XII and not elsewhere specified on the USML or in the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1 [RESERVED]

■ 27. In Supplement No. 1 to part 774, Category 6, ECCN 6A990, the License Requirements Section, the List Based License Exceptions Section and the related controls paragraph of the List of Items Controlled Section are revised to read as follows:

**6A990 Read-out integrated circuits ''specially designed'' for ''focal plane arrays'' controlled by 6A002.a.3.**

**License Requirements**

*Reason for Control:* RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| RS applies to entire entry. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*LVS:* $500
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See USML Category XII(e) for read-out integrated circuits ''subject to the ITAR.'' (2) See ECCN 0A919 for foreign made military commodities that incorporate commodities described in 6A990. (3) Section 744.9 imposes a license requirement on commodities described in 6A990 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919.

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■ 28. In Supplement No. 1 to part 774, Category 6, ECCN 6A993 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6A993 Cameras, not controlled by 6A003 or 6A203, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* (1) See ECCN 0A919 for foreign made military commodities that incorporate cameras described in 6A993.a that meet the criteria specified in Note 3.a to 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz). (2) Section 744.9 imposes license requirements on cameras described in 6A993.a as a result of meeting the criteria specified in Note 3.a to 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz) if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919.

* * * * *

■ 29. In Supplement No. 1 to part 774, Category 6, add ECCN 6B615 between ECCNs 6B108 and 6B995, to read as follows:

**6B615 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated or otherwise described in ECCN 6A615 or military fire control, range finder, and optical equipment enumerated or otherwise described in USML Category XII (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1. |
| RS applies to entire entry. | RS Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*LVS:* $1,500
*GBS:* N/A

*CIV:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6B615.

**List of Items Controlled**

*Related Controls:* (1) See Related Controls in ECCNs 0A987, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 7A001, 7A003, 7A005, and 7A101. (2) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content.

*Related Definitions:* N/A

*Items:*

a. Test, inspection, and production equipment (other than production equipment and components controlled in paragraph y of this entry) ''specially designed'' for the ''production'' or ''development'' of commodities controlled in ECCN 6A615 (except 6A615.y) or USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

b. Environmental test facilities ''specially designed'' for the certification, qualification or testing of commodities controlled in ECCN 6A615 (except 6A615.y) or USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

c. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity listed in this entry and that are not enumerated on the USML or controlled by another ''600 series'' ECCN.

■ 30. In Supplement No. 1 to part 774, Category 6, ECCN 6D002 is amended by:

■ a. Revising the License Requirements section;

■ b. Revising the List Based License Exceptions section; and

■ c. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6D002 ''Software'' ''specially designed'' for the ''use'' of equipment controlled by 6A002.b, 6A008 or 6B008.**

**License Requirements**

*Reason for Control:* NS, MT, RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1. |
| MT applies to ''software'' for equipment controlled by 6A008 or 6B008 for MT reasons. | MT Column 1. |
| RS applies to ''software'' for equipment controlled by 6A002.b. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (*See* § 742.6(a)(8)). |
| RS applies to ''software'' for equipment controlled by 6A008.j.1. | RS Column 1. |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* Yes, except N/A for the following: (1) Items controlled for MT reasons; (2) ''Software'' ''specially designed'' for the ''use'' of ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1; or (3) ''Software'' ''specially designed'' for the ''use'' of commodities controlled by 6A002.b.

**List of Items Controlled**

* * * * *

*Related Controls:* (1) ''Software'' ''specially designed'' for the ''use'' of ''space-qualified'' LIDAR ''equipment'' ''specially designed'' for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. (2) See also 6D102, 6D991, 6D992, and 6D994.

■ 31. In Supplement No. 1 to part 774, Category 6, ECCN 6D003 is amended by:

■ a. Revising the Control(s) table in the License Requirements section;

■ b. Revising the List Based License Exceptions section; and

■ c. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6D003 Other ''software'' as follows (see List of Items Controlled).**

**License Requirements**

* * * * *

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1. |
| RS applies to 6D003.c. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (*See* § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

* * * * *

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* Yes for 6D003.h.1

*TSR:* Yes, except for 6D003.c and except for exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''software'' for items controlled by 6D003.a.

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* See also 6D103, 6D991, 6D993, and 6D994.

* * * * *

■ 32. In Supplement No. 1 to part 774, Category 6, add ECCN 6D615 between ECCNs 6D201 and 6D991, to read as follows:

**6D615 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 6A615 or equipment controlled by 6B615 (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 6D615.y. | NS Column 1. |
| RS applies to entire entry except 6D615.y. | RS Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 6D615.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 6D615.

**List of Items Controlled**

*Related Controls:* (1) ''Software'' directly related to articles enumerated in USML Category XII is subject of USML paragraph XII(f). (2) See Related Controls in ECCNs 0A987, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 7A001, 7A003, 7A005, and 7A101. (3) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a

*de minimis* amount of U.S.-origin ''600 series'' controlled content.
*Related Definitions:* N/A
*Items:*

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCNs 6A615 (except 6A615.y) or 6B615.

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' or operation or maintenance of commodities described in 6A615.y.

■ 33. In Supplement No. 1 to part 774, Category 6, ECCN 6D991 is revised to read as follows:

**6D991 ''Software,'' n.e.s., ''specially designed'' for the ''development'', ''production'', or ''use'' of commodities controlled by 6A002, 6A003, 6A990, 6A991, 6A996, 6A997, or 6A998.**

**License Requirements**

*Reason for Control:* RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| RS applies to ''software'' for commodities controlled by 6A002, 6A003, and 6A990. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| RS applies to ''software'' for commodities controlled by 6A998.b. | RS Column 1. |
| RS applies to ''software'' for commodities controlled by 6A998.c. | RS Column 2. |
| AT applies to entire entry, except ''software'' for commodities controlled by 6A991. | AT Column 1. |
| AT applies to ''software'' for commodities controlled by 6A991. | AT Column 2. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 6D002 for ''software'' ''specially designed'' for the ''use'' of commodities controlled under ECCN 6A002.b. (2) See ECCN 6D003.c for ''software'' ''specially designed'' for cameras incorporating ''focal plane arrays'' specified by 6A002.a.3.f and ''specially designed'' to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a.
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 34. In Supplement No. 1 to part 774, Category 6, add ECCN 6D994 between ECCNs 6D993 and the header that reads ''E. Technology'', to read as follows:

**6D994 ''Software'', n.e.s., ''specially designed'' for the maintenance, repair, or overhaul of commodities controlled by 6A002, 6A003, or 6A990.**

**License Requirements**

*Reason for Control:* RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| RS applies to entire entry. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (see § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 6D002 for software ''specially designed'' for the ''use'' of commodities controlled under ECCN 6A002.b. (2) See ECCN 6D003.c for software designed or modified for cameras incorporating ''focal plane arrays'' specified by 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a.
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 35. In Supplement No. 1 to part 774, Category 6, ECCN 6E001 is amended by:

■ a. Revising the Reason for Control paragraph and the Table in the License Requirements section;

■ b. Revising the CIV and TSR paragraphs in the List Based License Exceptions section; and

■ c. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment, materials or ''software'' controlled by 6A (except 6A990, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998, or 6A999.c), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).**

**License Requirements**

*Reason for Control:* NS, MT, NP, RS, CC, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to ''technology'' for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003. | NS Column 1. |
| MT applies to ''technology'' for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons. | MT Column 1. |
| NP applies to ''technology'' for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225, 6A226, 6D001, or 6D201 for NP reasons. | NP Column 1. |
| RS applies to ''technology'' for commodities controlled by 6A002 or 6A003. | A license is required to export and reexport these items to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| RS applies to ''technology'' for items controlled by 6A002.a.1, .a.2, .a.3, or .c, 6A003.b.3 or .b.4, or 6A008.j.1. | RS Column 1. |
| CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons. | CC Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons. | See § 746.1(b) for UN controls. |

* * * * *

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A
*TSR:* Yes, except for the following: (1) Items controlled for MT reasons; (2) ''Technology'' for commodities controlled by 6A002, 6A003, 6A004.e or 6A008.j.1; (3) ''Technology'' for ''software'' ''specially designed'' for ''space qualified'' ''laser''

radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002; or (4) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''development'' of the following: 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.d, 6A001.a.2.e., 6A004.c, 6A004.d,, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when ''specially designed'' for real time applications; or (c) ''Software'' controlled by 6D001 and ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 6B008, or 6D003.a.

* * * * *

**List of Items Controlled**

*Related Controls:* (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) See also 6E101, 6E201, and 6E991. (3) Technology for incorporating or integrating infrared focal plane arrays (IRFPAs) into permanent encapsulated sensor assemblies subject to the EAR, or integrating such assemblies into an item subject to the EAR, and integrating image intensifier tubes (IITs) into an item subject to the EAR, including integrating items subject to the EAR into foreign military commodities outside the United States is subject to the EAR. This technology includes the testing, operation instructions for a focal plane array in a ''permanent encapsulated sensor assembly'' subject to the EAR, mechanical dimensions and physical characteristics of the sensor assembly, provided such information does not include design methodology, engineering analysis, or manufacturing know-how.

* * * * *

■ 36. In Supplement No. 1 to part 774, Category 6, ECCN 6E002 is amended by:

■ a. Revising the Reason for Control paragraph and the Table in the License Requirements section;

■ b. Revising the CIV and TSR paragraphs in the List Based License Exceptions section; and

■ c. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**6E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment or materials controlled by 6A (except 6A990, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998 or 6A999.c), 6B (except 6B995) or 6C (except 6C992 or 6C994).**

**License Requirements**

*Reason for Control:* NS, MT, NP, RS, CC, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to ''technology'' for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005. | NS Column 1. |
| MT applies to ''technology'' for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons. | MT Column 1. |
| NP applies to ''technology'' for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons. | NP Column 1. |
| RS applies to ''technology'' for items controlled by 6A002 or 6A003. | A license is required to export and reexport these items to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| RS applies to ''technology'' for items controlled by 6A008.j.1. | RS Column 1. |
| CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons. | CC Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons. | See § 746.1(b) for UN controls. |

* * * * *

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002, 6A003, 6A004.e, 6A008.j.1; or

(3) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''production'' of the following: (a) Items controlled by 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A004.c, 6A004.d, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, 6B008; and (b) Items controlled by 6A001.a.2.c and 6A001.a.2.f when ''specially designed'' for real time applications.

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**List of Items Controlled**

*Related Controls:* (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) See also 6E992. (3) Technology for incorporating or integrating IRFPAs into ''permanent encapsulated sensor assemblies'' subject to the EAR, or integrating such assemblies into an item subject to the EAR, and integrating image intensifier tubes (IITs) into an item subject to the EAR, including integrating items subject to the EAR into foreign military commodities outside the United States, is subject to the EAR. This technology includes the testing results, interface and operation instructions for a focal plane array in a ''permanent encapsulated sensor assembly'' subject to the EAR, mechanical dimensions and physical characteristics of the sensor assembly, provided such information does not include design methodology, engineering analysis, or manufacturing know-how.

* * * * *

■ 37. In Supplement No. 1 to part 774, Category 6, add ECCN 6E615 between ECCNs 6E202 and 6E990, to read as follows:

**6E615 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6A615, equipment controlled by 6B615, or ''software'' controlled by 6D615 (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 6E615.y. | NS Column 1. |
| RS applies to entire entry except 6E615.y. | RS Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 6E615.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 6E615.

**List of Items Controlled**

*Related Controls:* (1) Technical data directly related to articles enumerated or otherwise described in USML Category XII are subject

to the control of USML Category XII(f). (2) See Related Controls in ECCNs 0A987, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 7A001, 7A003, 7A005, and 7A101.

*Related Definitions:* N/A

*Items:*

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCNs 6A615 (except 6A615.y), 6B615, or 6D615 (except 6D615.y).

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or ''software'' in ECCN 6A615.y or 6D615.y.

■ 38. In Supplement No. 1 to part 774, Category 6, revise ECCN 6E990 to read as follows:

**6E990 ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by ECCN 6A990.**

**License Requirements**

*Reason for Control:* RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| RS applies to entire entry. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

The list of items controlled is contained in the ECCN heading.

■ 39. In Supplement No. 1 to part 774, Category 6, add a new ECCN 6E994 between ECCNs 6E993 and EAR99, to read as follows:

**6E994 ''Technology'' ''required'' for the maintenance, repair, or overhaul of commodities controlled under 6A002, 6A003, or 6A990.**

**License Requirements**

*Reason for Control:* RS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| RS applies to entire entry. | A license is required to export and reexport to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (See § 742.6(a)(8)). |
| AT applies to entire entry. | AT Column 1. |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*CIV:* N/A

*TSR:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 6E001 for ''development'' technology and ECCN 6E002 for ''production'' technology. (2) See ECCN 6E990 for ''development'' and ''production'' technology for commodities controlled by 6A990.

*Related Definitions:* N/A

*Items:*

The list of items controlled is contained in the ECCN heading.

■ 40. In Supplement No. 1 to part 774, Category 7, ECCN 7A001 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**7A001 Accelerometers as follows (see List of Items Controlled) and ''specially designed'' ''components'' therefor.**

* * * * *

**List of Items Controlled**

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*Related Controls:* (1) See USML Category XII(d)(2) for accelerometers having a bias stability of less (better) than 20 micro g, a scale factor stability of less (better) than 20 parts per million, or capable of measuring greater than 100,000 g. (2) See ECCN 7A611 for accelerometers ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and meeting certain specifications described in 7A611. (3) See also ECCNs 7A101 and 7A994. For angular or rotational accelerometers, see ECCN7A001.b. MT controls do not apply to accelerometers that are ''specially designed'' and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.

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■ 41. In Supplement No. 1 to part 774, Category 7, ECCN 7A002 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**7A002 Gyros or angular rate sensors, having any of the following (see List of Items Controlled) and ''specially designed'' ''components'' therefor.**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) See USML Category XII(d)(3) for gyros or angular rate sensors having an angle random walk of less (better) than 0.00125 degree per square root hour or having a bias stability less (better) than 0.0015 degrees per hour. (2) See also ECCNs 7A102 and 7A994. For angular or rotational accelerometers, see ECCN 7A001.b. (3) See ECCN 7A611 for gyros or angular rate sensors ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and meeting certain specifications described in 7A611.

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■ 42. In Supplement No. 1 to part 774, Category 7, ECCN 7A003 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**7A003 'Inertial measurement equipment or systems,' having any of the following (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Related Controls:* See also ECCNs 7A103 and 7A994. See USML Category XII(d)(1) for guidance or navigation systems: (i) having a CEP of position error rate less (better) than 0.35 nautical miles per hour; (ii) having a heading error or true north determination of less (better) than 0.50 mrad secant (latitude); or (iii) specified to function at linear acceleration levels exceeding 25 g. See ECCN 7A611 for inertial measurement units, inertial reference units, or heading reference systems ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and meeting certain specifications described in 7A611.

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■ 43. In Supplement No. 1 to part 774, Category 7, amend ECCN 7A005 by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**7A005 Global Navigation Satellite Systems (GNSS) receiving equipment having any of the following (see List of Items Controlled) and ''specially designed'' ''components'' therefor.**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) See also ECCNs 7A105 and 7A994. Typically commercially available GNSS receivers do not employ decryption or adaptive antennas and are classified as 7A994. (2) For equipment ''specially designed'' for military use, see USML Categories XI and XII.

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■ 44. In Supplement No. 1 to part 774, Category 7, ECCN 7A101 is amended by revising the Related Controls paragraph

in the List of Items Controlled section, to read as follows:

**7A101 Accelerometers, other than those controlled by 7A001 (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) See USML Category XII(d)(2) for accelerometers having a bias stability of less (better) than 20 micro g, a scale factor stability of less (better) than 20 parts per million, or capable of measuring greater than 100,000 g. (2) See ECCN 7A611 for accelerometers ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and meeting certain specifications described in 7A611. (3) This entry does not control accelerometers that are ''specially designed'' and developed as MWD (Measurement While Drilling) sensors for use in downhole well service operations.

* * * * *

■ 45. In Supplement No. 1 to part 774, Category 7, ECCN 7A102 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**7A102 Gyros, other than those controlled by 7A002 (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.**

* * * * *

**List of Items Controlled**

*Related Controls:* (1) See USML Category XII(d)(3) for gyros or angular rate sensors having an angle random walk of less (better) than 0.00125 degree per square root hour or having a bias stability less (better) than 0.0015 degrees per hour. (2) See ECCN 7A611 for gyros ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and meeting certain specifications described in 7A611. (3) See also ECCNs 7A002 and 7A994.

* * * * *

■ 46. In Supplement No. 1 to part 774, Category 7, ECCN 7A611 is revised to read as follows:

**7A611 Military guidance and control equipment, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 7A611.y. | NS Column 1. |
| RS applies to entire entry except 7A611.y. | RS Column 1. |
| MT applies to commodities in 7A611.b, .c, and .d that meet or exceed the parameters of 7A101, 7A102, or 7A103. | MT Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 7A611.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1500
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7A611.

**List of Items Controlled**

*Related Controls:* (1) Navigation and avionics equipment and systems, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor, ''specially designed'' for a military application that are not enumerated in any USML category or another ''600 series'' ECCN are controlled by ECCN 3A611. (2) Military guidance and control equipment that are enumerated on the USML Category XII, and technical data (including software) directly related thereto, are ''subject to the ITAR.'' (3) See ECCNs 6A007, 7A001, 7A002, 7A003, 7A101, and 7A102. (4) See ECCN 3A611 and USML Category XI for controls on countermeasure equipment. (5) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S. origin ''600 series'' controlled content.

*Related Definitions:* N/A

*Items:*

a. Guidance, navigation, or control systems ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having any of the following:

a.1. A ''CEP'' of position error rate of less (better) than or equal to 0.70 nautical miles per hour and greater (worse) than 0.35 nautical miles per hour;

a.2. A heading error or true north determination of less (better) than or equal to 0.060 degree secant (latitude) and greater (worse) than 0.02865 degree secant (latitude);

a.3. Specified to function at linear acceleration levels exceeding 6 g and less than or equal to 25 g;

a.4. Stored heading aircraft carrier alignment features; or

a.5. Inertial measurement equipment or systems designed to use data from Global Navigation Satellite System (GNSS) or ''DBRN'' systems and having an INS navigation position accuracy subsequent to normal alignment of:

a.5.a. 20 meters CEP after loss of GNSS or ''DBRN'' for a period greater than 4 minutes but less than or equal to 30 minutes; or

a.5.b. 30 meters CEP after loss of GNSS or ''DBRN'' for a period greater than 30 minutes;

b. Inertial measurement units, inertial reference units, or attitude and heading reference systems ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and incorporating accelerometers meeting the control thresholds of 7A611.c.1, 7A611.c.2, 7A611.c.3, or USML Category XII(d), or gyros meeting the control thresholds of 7A611.d.1, 7A611.d.2, 7A611.d.3, or USML Category XII(d);

c. Accelerometers ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having any of the following:

c.1. A bias stability of less (better) than or equal to 200 micro g and greater (worse) than or equal to 20 micro g;

c.2. A scale factor stability of less (better) than or equal to 200 parts per million and greater than or equal to 20 parts per million; or

c.3. Specified to function at linear acceleration levels exceeding 10 g;

d. Gyros or angular rate sensors ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having any of the following:

d.1. An ''angle random walk'' of less (better) than or equal to 0.010 degree per square root hour and greater than or equal to 0.00125 degrees per square root hour;

d.2. A bias stability of less (better) than or equal to 0.015 degree per hour and greater than or equal to 0.0015 degrees per hour; or

d.3. Specified to function at linear acceleration levels exceeding 10 g;

e. Gravity meters (gravimeters) ''specially designed'' for a defense article enumerated on the USML or for a ''600 series'' ECCN, and having automatic motion compensation and an accuracy of less (better) than 2 mGal and greater (worse) than 1mGal.

f. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 7A611 (except 7A611.y) or a guidance and control defense article in Category XII and not elsewhere specified on the USML, in 7A611.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a guidance and control defense article in Category XII and not elsewhere specified on the USML or in the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1 [RESERVED]

■ 47. In Supplement No. 1 to part 774, Category 7, add ECCN 7B611 between ECCNs 7B103 and 7B994, to read as follows:

**7B611 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for military guidance and control equipment, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1. |
| RS applies to entire entry. | RS Column 1. |
| MT applies to ''equipment'' and related commodities ''specially designed'' for commodities controlled for MT reasons in 7A611. | MT Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1500
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7B611.

**List of Items Controlled**

*Related Controls:* (1) See Related Controls in ECCNs 6A007, 7A001, 7A002, 7A003, 7A101, and 7A102. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S. origin ''600 series'' controlled content.
*Related Definitions:* N/A
*Items:*

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled in ECCN 7A611 or guidance and control equipment in USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

b. Environmental test facilities ''specially designed'' for the certification, qualification, or testing of commodities controlled in ECCN 7A611 (except 7A611.y) or guidance and control equipment in USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

c. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity listed in this entry and that are not enumerated on the USML or controlled by another ''600 series'' ECCN.

■ 48. In Supplement No. 1 to part 774, Category 7, add ECCN 7D611 between ECCNs 7D103 and 7D994, to read as follows:

**7D611 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 7A611 or equipment controlled by 7B611 (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 7D611.y. | NS Column 1. |
| RS applies to entire entry except 7D611.y. | RS Column 1. |
| MT applies to ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled for MT reasons in 7A611 or 7B611. | MT Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 7D611.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''development'' or ''production'' ''software'' in 7D611.a. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 7D611.

**List of Items Controlled**

*Related Controls:* (1) ''Software'' directly related to articles enumerated in USML Category XII is subject of USML paragraph XII(f). (2) See Related Controls in ECCNs 6A007, 7A001, 7A002, 7A003, 7A101, and 7A102. (3) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S. origin ''600 series'' controlled content.
*Related Definitions:*
*Items:*

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCNs 7A611 (except 7A611.y) or 7B611.

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' or operation or maintenance of commodities described in 7A611.y.

■ 49. In Supplement No. 1 to part 774, Category 7, add ECCN 7E611 between ECCNs 7E104 and 7E994, to read as follows:

**7E611 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 7A611, equipment controlled by 7B611, or software controlled by 7D611, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, AT, UN

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry except 7E611.y. | NS Column 1. |
| RS applies to entire entry except 7E611.y. | RS Column 1. |
| MT applies to ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled for MT reasons in 7A611, 7B611, or 7D611. | MT Column 1. |
| AT applies to entire entry. | AT Column 1. |
| UN applies to entire entry except 7E611.y. | See § 746.1(b) for UN controls. |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''development'' or ''production'' ''technology'' in 7E611.a. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 7E611.

**List of Items Controlled**

*Related Controls:* Technical data directly related to articles enumerated in USML Category XII are subject to the control of USML Category XII(f).
*Related Definitions:* N/A
*Items:*

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or ''software'' controlled by ECCNs 7A611 (except 7A611.y), 7B611, or 7D611 (except 7D611.y).

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCNs 7A611.y or 7D611.y.

■ 50. In Supplement No. 1 to part 774, Category 7, ECCN 8A002 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

**8A002 Marine systems, equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Related Controls:* (1) See also 8A992 and for underwater communications systems, see Category 5, Part I—Telecommunications. (2) See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note. (3) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating image intensifier tubes specified by 6A002.a.2.a or 6A002.a.2.b, see 6A003.b.3. (4) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating ''focal plane arrays'' specified by 6A002.a.3.g, see 6A003.b.4.c. (5) Section 744.9 imposes a license requirement on commodities described in 8A002.d.1.c or .d.2 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

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Dated: April 16, 2015.

**Kevin J. Wolf,**

*Assistant Secretary of Commerce for Export Administration.*

[FR Doc. 2015–10353 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF STATE

### 22 CFR Part 121

**[Public Notice: 9110]**

**RIN 1400–AD32**

## Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XII (fire control, range finder, optical and guidance and control equipment) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML.

**DATES:** The Department of State will accept comments on this proposed rule until July 6, 2015.

**ADDRESSES:** Interested parties may submit comments within 60 days of the date of publication by one of the following methods:

- *Email: DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—Category XII.''
- *Internet:* At *www.regulations.gov*, search for this notice by using this rule's RIN (1400–AD32).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or any information for which a claim of confidentiality is asserted. All comments and transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov*. ATTN: Regulatory Change, USML Category XII.

**SUPPLEMENTARY INFORMATION:** The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.*, ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011. The Department of State's full plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf*.

**Revision of Category XII**

This proposed rule revises USML Category XII, covering fire control, range finder, optical and guidance and control equipment, to advance the national security objectives set forth above and to more accurately describe the articles within the category, in order to establish a ''bright line'' between the USML and the CCL for the control of these articles.

Paragraph (a) is revised to add subparagraphs (1) through (9) to more clearly describe the articles controlled in (a).

Paragraph (a)(1) is added for fire control systems and equipment.

Paragraph (a)(2) is added for weapons sights and weapons aiming or imaging systems, with certain infrared focal plane arrays, image intensifier tubes, ballistic computers, or lasers.

Paragraph (a)(3) is added for electronic or optical weapon positioning, laying, or spotting systems or equipment.

Paragraph (a)(4) is added for certain laser spot trackers and laser spot detectors.

Paragraph (a)(5) is added for bomb sights and bombing computers.

Paragraph (a)(6) is added for electro-optical missile or ordnance tracking or guidance systems.

Paragraph (a)(7) is added for electro-optical systems or equipment that automatically detect and locate weapons launch or fire.

Paragraph (a)(8) is added for certain remote wind sensing systems or equipment for enhanced targeting.

Paragraph (a)(9) is added for certain helmet mounted display (HMD) systems.

Paragraph (b) is revised to add subparagraphs (1) through (14) to more clearly describe the articles controlled in (b).

Paragraph (b)(1) is added for laser target designators or coded target markers.

Paragraph (b)(2) is added for certain infrared laser aiming or target illumination systems.

Paragraph (b)(3) is added for certain laser range finders.

Paragraph (b)(4) is added for certain targeting or target location systems.

Paragraph (b)(5) is added for optical augmentation systems.

Paragraph (b)(6) is added for certain light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems and includes a carve out for certain LIDAR systems for civil automotive applications.

Paragraph (b)(7) is added for certain synthetic aperture LIDAR or LADAR systems.

Paragraph (b)(8) is added for LIDAR, LADAR, or other laser range-gated identified in subparagraphs (i)–(vi).

Paragraph (b)(9) is added for certain lasers for electronic combat systems controlled in Category XI(a)(4).

Paragraph (b)(10) is added for certain tunable semiconductor lasers.

Paragraph (b)(11) is added for certain non-tunable single transverse mode semiconductor lasers.

Paragraph (b)(12) is added for certain non-tunable multiple transverse mode semiconductor lasers.

Paragraph (b)(13) is added for laser stacked arrays identified in subparagraphs (i)–(iv).

Paragraph (b)(14) is added for developmental lasers funded by the Department of Defense.

Paragraph (c) is revised to add subparagraphs (1) through (21) to more clearly describe the articles controlled in (c).

Paragraph (c)(1) is added for certain second and third generations image intensifier tubes (IITs).

Paragraph (c)(2) is added for certain photon detector, microbolometer detector, or multispectral detector infrared focal plane arrays (IRFPAs).

Paragraph (c)(3) is added for certain one-dimensional photon detector IRFPAs in a permanent encapsulated sensor assembly.

Paragraph (c)(4) is added for certain two-dimensional photon detector IRFPAs in a permanent encapsulated sensor assembly.

Paragraph (c)(5) is added for certain microbolometer IRFPAs in a permanent encapsulated sensor assembly.

Paragraph (c)(6) is added for multispectral IRFPAs in a permanent encapsulated sensor assembly.

Paragraph (c)(7) is added for certain charge multiplication focal plane arrays.

Paragraph (c)(8) is added for certain charge multiplication focal plane arrays in a permanent encapsulated sensor assembly.

Paragraph (c)(9) is added for certain integrated IRFPA dewar cooler assemblies (IDCAs).

Paragraph (c)(10) is added for gimbals with two or more axes of active stabilization having a minimum root-mean-square (RMS) stabilization better (less) than 200 microradians.

Paragraph (c)(11) is added for gimbals with two or more axes of active stabilization having a minimum root-mean-square (RMS) stabilization better (less) than 100 microradians.

Paragraph (c)(12) is added for infrared imaging camera cores identified in subparagraphs (i)–(xi). Camera cores meeting the shock tolerance criteria described in (c)(12)(ii) are controlled on the USML whether or not they are tested to meet these criteria.

Paragraph (c)(13) is added for binoculars, bioculars, monoculars, goggles, or head- or helmet-mounted imaging systems with IITs or camera cores controlled in this category.

Paragraph (c)(14) is added for certain targeting systems.

Paragraph (c)(15) is added for infrared search and track (IRST) systems.

Paragraph (c)(16) is added for infrared imaging systems identified in subparagraphs (i)–(ix).

Paragraph (c)(17) is added for certain terahertz imaging systems.

Paragraph (c)(18) is added for near-to-eye display systems or equipment, specially designed for articles controlled in this subchapter.

Paragraph (c)(19) is added for systems or equipment that project radiometrically calibrated scenes directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm.

Paragraph (c)(20) is added for certain systems or equipment incorporating an infrared beacon or emitter specially designed for Identification Friend or Foe (IFF) and specially designed parts and components therefor.

Paragraph (c)(21) is added for developmental imaging systems funded by the Department of Defense.

A note is added to paragraph (c) to address the incorporation of these defense articles into commercial items. With minor exceptions, all bare IRFPAs are controlled in Category XII, paragraph (c)(2). However, once an IRFPA has been incorporated into a permanent encapsulated sensor assembly, it ceases to be controlled in paragraph (c)(2) because it is incorporated into a higher order assembly. The permanent encapsulated sensor assembly will be controlled in paragraphs (c)(3)–(6), if it meets the control parameters of one of those paragraphs. These control parameters are set at a level that the Department has determined excludes most commercial products. Further, once most IRFPAs and permanent encapsulated sensor assemblies are incorporated into a camera core, monocular, or binocular or other higher order system, that system will not be subject to the ITAR or require authorization from the Department for export, unless it is specifically enumerated. Most multi-spectral IRFPAs and IRFPAs with charge multiplication are excluded from the note and remain subject to the ITAR, even when incorporated into higher order assemblies or end-items. IRFPA, permanent encapsulated sensor assemblies, camera cores, monoculars, binoculars, and other higher order systems not enumerated on the USML are generally subject to the EAR.

Paragraph (d) is revised to move controls on Global Navigation Satellite System (GNSS) equipment from Category XV and to add subparagraphs (1) through (9) to more clearly describe the articles controlled in (d).

Paragraph (d)(1) is added for certain guidance or navigation systems.

Paragraph (d)(2) is added for certain accelerometers.

Paragraph (d)(3) is added for certain gyroscopes or angular rate sensors.

Paragraph (d)(4) is added for certain mobile relative gravimeters.

Paragraph (d)(5) is added for certain mobile gravity gradiometers.

Paragraph (d)(6) is added for Global Navigation Satellite System receiving equipment from Category XV.

Paragraph (d)(7) is added for certain GNSS anti-jam systems employing adaptive antennas.

Paragraph (d)(8) is added for certain GNSS security devices.

Paragraph (d)(9) is added for developmental guidance, navigation, or control devices, systems or equipment funded by the Department of Defense.

Paragraph (e) is revised to add subparagraphs (1) through (15) to more clearly describe the parts and components controlled in (e).

A significant aspect of this more positive, but not yet tiered, proposed USML category is that it does not contain controls on all generic parts, components, accessories, and attachments that are specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains, with a few exceptions, a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. The exceptions pertain to those parts, components, accessories, and attachments identified as ''specially designed.''

Paragraph (e)(1) is added for specially designed optical sensors for electronic combat systems controlled in Category XI(a)(4).

Paragraph (e)(2) is added for certain image intensifier tube (IIT) parts and components identified in subparagraphs (i)–(vii).

Paragraph (e)(3) is added for certain wafers incorporating structures for Read-Out Integrated Circuits (ROICs)

controlled in (e)(4) or (e)(5) or for IRFPA detectors controlled in (c)(2).

Paragraph (e)(4)is added for ROICs specially designed for IRFPAs.

Paragraph (e)(5) is added for certain ROICs specially designed for a system, camera core, or packaged IRFPA controlled in paragraph (c).

Paragraph (e)(6) is added for specially designed vacuum packages or other sealed enclosures for an IRFPA or IIT controlled in paragraph (c).

Paragraph (e)(7) is added for integrated IRFPA dewar cooler assembly (IDCA) parts and components identified in subparagraphs (i)–(iv).

Paragraph (e)(8) is added for specially designed IRFPA Joule-Thomson (JT) self-regulating cryostats.

Paragraph (e)(9) is added for specially designed infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings.

Paragraph (e)(10) is added for specially designed drive, control, signal or image processing electronics.

Paragraph (e)(11) is added for signal processing electronics identified in subparagraphs (i)–(iii).

Paragraph (e)(12) is added for specially designed near-to-eye displays.

Paragraph (e)(13) is added for specially designed resonators, receivers, transmitters, modulators, gain media, and drive electronics or frequency converters.

Paragraph (e)(14) is added for two-dimensional infrared scene projector emitter arrays (*i.e.*, resistive arrays) that emit infrared radiation within the 900 nm to 30,000 nm wavelength range.

Paragraph (e)(15) is added for classified parts, components, accessories, attachments, and associated equipment.

A note is added to paragraph (e) to address the incorporation of these defense articles into commercial items.

Paragraph (f) is revised to more clearly describe the technical data and defense services controlled in paragraph (f).

Three notes are added to paragraph (f) to address technical data and defense services when incorporating defense articles into commercial items. Note 1 clarifies that technical data directly related to IITs, IRFPAs, integrated IRFPA dewar cooler assemblies and related wafers and ROICs controlled in this Category remains USML controlled, even when those defense articles are part of a system that is subject to the EAR. Note 2 enumerates certain technical data and software that are directly related to the defense articles controlled in this Category in paragraphs A, B, and C. It also includes a note to paragraph A, identifying certain technology that is not technical data. Note 3 states that certain technology for the incorporation or integration of IRFPAs and IITs in to items subject to the EAR, including into permanent encapsulated sensor assemblies, is subject to the EAR.

A new (x) paragraph has been added to USML Category XII, allowing ITAR licensing for commodities, software, and technology subject to the EAR provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category XII *and* are described in the purchase documentation submitted with the application.

Finally, articles common to the Missile Technology Control Regime (MTCR) Annex and the USML are to be identified on the USML with the parenthetical ''(MT)'' at the end of each section containing such articles. A separate proposed rule will address the sections in the ITAR that include MTCR definitions.

The following definitions explain and amplify terms used in this Category and are provided to assist exporters in understanding the scope of the proposed control.

Charge multiplication is a form of electronic image amplification, the generation of charge carriers as a result of an impact ionization gain process.

Focal plane array is a linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, which work in the focal plane.

**Note:** This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Image intensifier tube refers to an imaging device that incorporates a photoemissive transducer (*i.e.*, photocathode) and achieves electron image amplification in the vacuum space.

Microbolometer is a thermal imaging detector that, as a result of a temperature change in the detector caused by the absorption of infrared radiation, is used to generate a usable signal.

Multispectral refers to producing discrete outputs associated with more than one spectral band of response.

**Request for Comments**

As the U.S. Government works through the proposed revisions to the USML, some control parameters are proposed recognizing that they will control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Categories 5, 11 and 15 (WA–ML15) and the relevant Dual Use List Categories including the IRFPAs in Category 6 (WA–DU 6.A.2). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category XII contained in this notice and the new and revised ECCNs published separately by the Department of Commerce when reviewed together.

(2) Another key goal of this rulemaking is to identify items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List. The public is asked to identify any items proposed for control on the USML that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List.

(3) A third key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles and thus do not establish a ''bright line'' between the USML and the CCL.

(4) Although the proposed revisions to the USML do not preclude the possibility that items in normal commercial use would or should be ITAR-controlled because, *e.g.*, they provide the United States with a critical military or intelligence advantage, the U.S. government does not want to inadvertently control items on the ITAR that are in normal commercial use. Items that would be controlled on the USML in this proposed rule have been identified as possessing parameters or characteristics that provide a critical military or intelligence advantage. The public is thus asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII that are now in normal commercial use. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items.

(5) For any criteria the public believes control items in normal commercial use, the public is asked to identify parameters or characteristics that cover

items exclusively or primarily in military use.

(6) For any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement's Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML.

(7) DDTC seeks public comments on each paragraph of the proposed USML Category XII. In addition, DDTC specifically seeks public comments on the following concepts that are introduced in proposed USML Category XII: A) Using integration of an IRFPA into a permanent encapsulated sensor assembly as a control parameter; B) using the incorporation of an IRFPA into an infrared imaging camera core as a control parameter and the definition of camera cores in the note to XII(c)(12); C) the weapon shock load control criterion in XII(c)(12)(ii); and D) proposed controls on specific technical data in XII(f).

**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 sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 60-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 rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Reform Act of 1995*

This proposed 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.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed 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 proposed 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 proposed 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 proposed amendment.

*Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess 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, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

*Executive Order 12988*

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

*Paperwork Reduction Act*

Following is a listing of approved Department of State collections that will be affected by revision of the U.S. Munitions List (USML) and the Commerce Control List pursuant to the President's Export Control Reform (ECR) initiative. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the categories published in this rule. In accordance with the Paperwork Reduction Act, the Department of State will request comment on these collections from all interested persons at the appropriate time. In particular, the Department will seek comment on changes to licensing burden based on implementation of regulatory changes pursuant to ECR, and on projected changes based on continued implementation of regulatory changes pursuant to ECR. The information collections are as follows:

(1) Statement of Registration, DS–2032, OMB No. 1405–0002. The Department estimates that between 3,000 and 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of between 6,000 and 10,000 hours annually, based on a revised time burden of two hours to complete a Statement of Registration.

(2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003. The Department estimates that there will be 35,000 fewer DSP–5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually.

(3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013. The Department estimates that there will be 200 fewer DSP–61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually.

(4) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023. The Department estimates that there will be 800 fewer DSP–73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually.

(5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–

0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

(6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually.

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the ITAR will decline commensurate with the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that up to 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 100,000 hours annually. However, the ITAR does provide for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

**List of Subjects in 22 CFR Part 121**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 121 is proposed to be amended as follows:

## PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 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. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

### § 121.1 [Amended]

■ 2. Section 121.1 is amended by removing and reserving paragraph (e) in U.S. Munitions List Category VIII.

■ 3. Section 121.1 is amended by revising U.S. Munitions List Category XII to read as follows:

### § 121.1 The United States Munitions List.

* * * * *

**Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment**

*(a) Fire control, weapons sights, aiming, and imaging systems and equipment, as follows:

(1) Fire control systems or equipment, and specially designed parts and components therefor;

(2) Weapon sights, weapon aiming systems or equipment, and weapon imaging systems or equipment (*e.g.,* clip-on), with or without an integrated viewer, display, or reticle, and incorporating or specially designed to incorporate any of the following:

(i) An infrared focal plane array having a peak response at a wavelength exceeding 1,000 nm;

(ii) An article subject to this subchapter; or

(iii) A ballistic computer for adjusting the aim point display;

(3) Electronic or optical weapon positioning, laying, or spotting systems or equipment;

(4) Laser spot trackers or laser spot detection, location or imaging systems or equipment, with an operational wavelength shorter than 400 nm or longer than 710 nm, and a detection range greater than 300 m;

**Note to paragraph (a)(4):** For controls on LIDAR, see paragraph (b)(9) of this category.

(5) Bomb sights or bombing computers;

(6) Electro-optical missile or ordnance tracking systems or equipment, or electro-optical ordnance guidance systems or equipment;

(7) Electro-optical systems or equipment that automatically detect and locate weapons launch or fire;

(8) Remote wind-sensing systems or equipment specially designed for ballistic-corrected aiming, and specially designed parts and components therefor;

(9) Helmet mounted display (HMD) systems or equipment, incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions, or control infrared imaging systems or equipment, other than such items controlled in Category VIII, (*e.g.,* Combat Vehicle Crew HMD, Mounted Warrior HMD, Integrated Helmet Assembly Subsystem, Drivers Head Tracked Vision System).

*(b) Lasers, and laser systems and equipment, as follows:

(1) Laser target designators or coded target markers;

(2) Aiming or target illumination systems or equipment having a laser output wavelength exceeding 710 nm;

(3) Laser rangefinders having any of the following:

(i) Q-switched laser pulse; or

(ii) Laser output wavelength exceeding 1,000 nm;

(4) Targeting or target location systems or equipment incorporating or specially designed to incorporate a laser rangefinder controlled in paragraph (b)(3) of this category, and incorporating or specially designed to incorporate a Global Navigation Satellite System (GNSS), guidance or navigation article controlled in paragraph (d) of this category (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km range);

(5) Systems or equipment that use laser energy with an output wavelength exceeding 710 nm to exploit differential target-background retroreflectance in order to detect personnel or optical/electro-optical equipment (*e.g.,* optical augmentation systems);

(6) Light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems or equipment, incorporating or specially designed to incorporate an article controlled in this subchapter (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

**Note to paragraph (b)(6):** This paragraph does not control LIDAR systems or equipment for civil automotive applications having a range limited to 200 m or less.

(7) Synthetic aperture LIDAR or LADAR systems or equipment, having a stand-off range of 100 m or greater (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(8) LIDAR, LADAR, or other laser range-gated systems or equipment, as follows (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km):

(i) Systems or equipment having a resolution (*i.e.,* ground point spacing) of 0.2 m or less (better) from an altitude above ground level of greater than 16,500 ft, and incorporating or specially designed to incorporate a gimbal-mounted transmitter or beam director, and specially designed parts and components therefor;

(ii) Aircraft systems or equipment having a laser output wavelength exceeding 1,000 nm and a detection range exceeding 500 m for an obstacle

with a diameter or width less than or equal to 10 mm (*e.g.,* wire, power line);

(iii) Systems or equipment having an electrical bandwidth of 100 MHz or greater, and incorporating or specially designed to incorporate either a Geiger-mode detector array having at least 32 elements or a linear-mode detector array having at least 128 elements;

(iv) Systems or equipment employing coherent heterodyne or coherent homodyne detection techniques, having an angular resolution of less (better) than 100 microradians and an operational carrier noise ratio (CNR) less than 10;

(v) Systems or equipment that automatically classify or identify submersibles, mines, unexploded ordnance or improvised explosive devices (IEDs); or

(vi) Systems or equipment specially designed for obstacle avoidance or autonomous navigation in ground vehicles controlled in Category VII;

**Note to paragraphs (b)(4) and (b)(6) through (8):** ''Payload'' is the total mass that can be carried or delivered by the specified rocket, missile, SLV, drone or unmanned aerial vehicle that is not used to maintain flight. For definition of ''range'' as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of ''range'' as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(9) Lasers operating at a wavelength exceeding 3,000 nm that provide a modulated output for systems or equipment controlled in Category XI(a)(4);

(10) Tunable semiconductor lasers having an output wavelength exceeding 1,400 nm and an output power greater than 1 W;

(11) Non-tunable single transverse mode semiconductor lasers having an output wavelength exceeding 1,510 nm and either an average output power or continuous wave (CW) output power greater than 2 W;

(12) Non-tunable multiple transverse mode semiconductor lasers having an output wavelength exceeding 1,900 nm and either an average output power or CW output power greater than 2 W;

(13) Laser stacked arrays as follows:

(i) Having an output wavelength not exceeding 1,400 nm and a peak pulsed power density greater than 3,300 W/$cm^2$;

(ii) Having an output wavelength exceeding 1,400 nm but less than 1,900 nm and a peak pulsed power density greater than 700 W/$cm^2$;

(iii) Having an output wavelength exceeding 1,900 nm and a peak pulsed power density greater than 70 W/$cm^2$; or

(iv) Having an output wavelength exceeding 1,900 nm, and either an average output power or CW output power greater than 20W;

(14) Developmental lasers and laser systems or equipment funded by the Department of Defense;

**Note 1 to paragraph (b)(14):** This paragraph does not control developmental lasers and laser systems or equipment (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

**Note 2 to paragraph (b)(14):** Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

**Note 3 to paragraph (b)(14):** This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2016, or later.

*(c) Infrared focal plane arrays, image intensifier tubes, night vision, electro-optic, infrared and terahertz systems, equipment and accessories, including cameras and cores, as follows:

(1) Image intensifier tubes (IITs) having a peak response within the wavelength range exceeding 400 nm but not exceeding 2,050 nm and incorporating either a microchannel plate described in paragraph (e)(2)(i) of this category or electron sensing device described in paragraph (e)(2)(iv) of this category, as follows, and specially designed parts and components therefor:

(i) Incorporating a multialkali photocathode having a luminous sensitivity exceeding 500 microamps per lumen (*e.g.,* GEN 2 IITs);

(ii) Incorporating a compound semiconductor photocathode having a radiant sensitivity exceeding 20 mA/W (*e.g.,* GEN 3 IITs);

(2) Photon detector, microbolometer detector, or multispectral detector infrared focal plane arrays (IRFPAs) having a peak response within the wavelength range exceeding 900 nm but not exceeding 30,000 nm and not integrated into a permanent encapsulated sensor assembly, and detector elements therefor;

**Note 1 to paragraph (c)(2):** This paragraph does not control lead sulfide or lead selenide IRFPAs having a peak response within the wavelength range exceeding 1,000 nm but not exceeding 5,000 nm and not exceeding 16 detector elements, or pyrolectric IRFPAs with detectors composed of any of the following or their variants: Triglycine sulphate, lead-lanthanum-zirconium titanate, lithium tantalite, polyvinylidene fluoride, or strontium barium niobate.

**Note 2 to paragraph (c)(2):** For controls on readout integrated circuits (ROICs), see paragraphs (e)(4) and (e)(5) of this category.

(3) One-dimensional photon detector IRFPAs described in paragraph (c)(2) of this category in a permanent encapsulated sensor assembly, having greater than 640 detector elements;

(4) Two-dimensional photon detector IRFPAs described in paragraph (c)(2) of this category in a permanent encapsulated sensor assembly, having greater than 256 detector elements;

(5) Microbolometer IRFPAs described in paragraph (c)(2) of this category in a permanent encapsulated sensor assembly, having greater than 328,000 detector elements;

(6) Multispectral IRFPAs in a permanent encapsulated sensor assembly, having a peak response in any spectral band within the wavelength range exceeding 1,500 nm but not exceeding 30,000 nm;

(7) Charge multiplication focal plane arrays having greater than 1,600 elements in any dimension and having a maximum radiant sensitivity exceeding 50 mA/W for any wavelength exceeding 760 nm but not exceeding 900 nm, and avalanche detector elements therefor;

(8) Charge multiplication focal plane arrays described in paragraph (c)(7) of this category in a permanent encapsulated sensor assembly, and avalanche detector elements therefor;

(9) Integrated IRFPA dewar cooler assemblies (IDCAs), with or without an IRFPA, having any of the following:

(i) Cryocoolers having a cooling source temperature below 218 K and a mean-time-to-failure (MTTF) in excess of 3000 hours;

(ii) Active cold fingers;

(iii) Variable or dual aperture mechanisms; or

(iv) Dewars specially designed for articles controlled in paragraphs (a), (b), or (c) of this category;

(10) Gimbals with two or more axes of active stabilization having a minimum root-mean-square (RMS) stabilization better (less) than 200 microradians, and specially designed for articles controlled in this subchapter;

(11) Gimbals with two or more axes of active stabilization having a minimum root-mean-square (RMS) stabilization better (less) than 100 microradians;

**Note to paragraph (c)(11):** This paragraph does not control gimbals containing only a non-removable camera payload operating exclusively in the visible spectrum (*i.e.,* 400 nm to 760 nm).

(12) Infrared imaging camera cores (*e.g.,* modules, engines, kits), and specially designed electronics and

optics therefor, having any of the following:

(i) An image intensifier tube described in paragraph (c)(1) of this category;

(ii) Output imagery when subject to more than 20 weapon shock load events of 325 g for 0.4 ms and a microbolometer IRFPA having greater than 111,000 detector elements;

(iii) A microbolometer IRFPA described in paragraph (c)(2) of this category having greater than 328,000 detector elements, or a microbolometer IRFPA described in paragraph (c)(5) of this category;

(iv) An IDCA described in paragraph (c)(9) of this category, or IDCA parts or components described in paragraph (e)(7) of this category;

(v) A one-dimensional photon detector IRFPA described in paragraph (c)(2) of this category having a peak response within the wavelength range exceeding 900 nm but not exceeding 2,500 nm and greater than 640 detector elements;

(vi) A one-dimensional or two-dimensional photon detector IRFPA described in paragraph (c)(2) of this category having a peak response within the wavelength range exceeding 2,500 nm but not exceeding 30,000 nm and greater than 256 detector elements;

(vii) A one-dimensional photon detector IRFPA described in paragraph (c)(3) of this category;

(viii) A two-dimensional photon detector IRFPA described in paragraph (c)(2) or (4) of this category having a peak response within the wavelength range exceeding 900 nm but not exceeding 2,500 nm, and greater than 111,000 detector elements;

(ix) A two-dimensional photon detector IRFPA described in paragraph (c)(4) of this category having a peak response within the wavelength range exceeding 2,500 nm but not exceeding 30,000 nm;

(x) A multispectral infrared focal plane array described in paragraph (c)(2) or (6) of this category; or

(xi) A charge multiplication IRFPA controlled in paragraph (c)(7) or (8) of this category;

**Note to paragraph (c)(12):** The articles controlled by this paragraph have sufficient electronics to enable as a minimum the output of an analog or digital signal once power is applied.

(13) Binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems or equipment (including video-based articles having a separate near-to-eye display) that incorporate or are specially designed to incorporate any of the following, and specially designed electronics, optics, and displays therefor:

(i) An IIT controlled in this category; or

(ii) An infrared imaging camera core controlled in paragraph (c)(12)(i) through (xi) of this category;

**Note to paragraph(c)(13):** The articles controlled in this paragraph include binoculars, bioculars, monoculars, goggles, or head- or helmet-mounted imaging systems or equipment (including video-based articles having a separate near-to-eye display) that incorporate or are specially designed to incorporate an IRFPA or IIT article (*e.g.,* IDCA, IRFPA assembly) and electronics separately.

(14) Targeting systems or equipment incorporating or specially designed to incorporate an article controlled in this category (*e.g.,* pods, IBAS, SGFLIR, gunner TIS), and specially designed parts and components therefor;

(15) Infrared search and track (IRST) systems or equipment that incorporate or are specially designed to incorporate an article controlled in this category, and maintain positional or angular state of a target through time, and specially designed parts and components therefor;

(16) Infrared imaging systems or equipment (*e.g.,* fully packaged cameras) incorporating or specially designed to incorporate an article controlled in this category, as follows, and specially designed electronics, optics, and displays therefor:

(i) Having two or more axes of active stabilization and a minimum root-mean-square (RMS) stabilization better (less) than 200 microradians;

(ii) Mobile reconnaissance, scout, or surveillance systems or equipment providing real-time target location at ranges greater than 5 km (*e.g.,* LRAS, CIV, HTI, SeeSpot, MMS);

(iii) Fixed-site reconnaissance, surveillance or perimeter security systems or equipment having greater than 640 detector elements in any dimension;

(iv) Combat vehicle, tactical wheeled vehicle, naval vessel, or aircraft pilotage systems or equipment having a variable field of view or field of regard (*e.g.,* electronic pan or tilt), and either an IRFPA article controlled in this subchapter with greater than 640 detector elements in any dimension, or an IIT controlled in this category (*e.g.,* DAS, DVE, SeaFLIR, PNVS);

**Note to paragraph (c)(16)(iv):** This paragraph does not control distributed aperture sensors specially designed for civil automotive lane departure warning or collision avoidance.

(v) Multispectral imaging systems or equipment that either incorporate a multispectral IRFPA described in paragraph (c)(2) or (6) of this category, or classify or identify military or intelligence targets or characteristics;

(vi) Automated missile detection or warning;

(vii) Hardened to withstand electromagnetic pulse (EMP) or chemical, biological, or radiological threats;

(viii) Incorporating mechanism(s) to reduce signature; or

(ix) Specially designed for military platforms controlled in USML Categories VI, VII or VIII (MT if designed or modified for unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(17) Terahertz imaging systems or equipment having a peak response in the frequency range exceeding 30 GHz but not exceeding 3000 GHz and having a resolution less (better) than 0.5 milliradians at a standoff range of 100 m;

(18) Near-to-eye display systems or equipment, specially designed for articles controlled in this subchapter;

(19) Systems or equipment that project radiometrically calibrated scenes directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm; or

(20) Systems or equipment incorporating an infrared (IR) beacon or emitter specially designed for Identification Friend or Foe (IFF), and specially designed parts and components therefor;

(21) Developmental imaging systems or equipment funded by the Department of Defense.

**Note 1 to paragraph (c)(21):** This paragraph does not control imaging systems or equipment (a) in production; (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

**Note 2 to paragraph (c)(21):** Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

**Note 3 to paragraph (c)(21):** This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2016, or later.

**Note 1 to paragraph (c):** A permanent encapsulated sensor assembly (*e.g.,* sealed enclosure, vacuum package) prevents direct access to the IRFPA, disassembly of the sensor assembly, and removal of the IRFPA without destruction or damage to the IRFPA.

**Note 2 to paragraph (c):** The articles described in paragraphs (c)(1) through (5), (c)(7), (c)(8), and (c)(12) other than (c)(12)(ix) having greater than 640 detector elements in any dimension, and (c)(12)(x) are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR, and cannot be removed without destruction or damage to the article or render the item inoperable. Articles are not subject to the EAR until integrated into the item subject to the EAR. Defense articles intended to be integrated, and technical data and defense services directly related thereto remain subject to the ITAR prior to integration. See paragraph (f) of this category for enumerated technical data and software, and specific information subject to the EAR.

(d) Guidance, navigation, and control systems and equipment as follows:

(1) Guidance or navigation systems (*e.g.,* inertial navigation systems, inertial measurement units, inertial reference units, attitude and heading reference systems) as follows (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range greater than or equal to 300 km);

(i) Having a circle of equal probability (CEP) of position error rate less (better) than 0.35 nautical miles per hour;

(ii) Having a heading error or true north determination of less (better) than 0.50 mrad secant (latitude) (0.02865 degrees secant (latitude)); or

(iii) Specified to function at linear acceleration levels exceeding 25 g;

**Note to paragraph (d)(1):** For aircraft and unmanned aerial vehicle guidance or navigation systems, see USML Category VIII(e). For rocket or missile flight control and guidance systems (including guidance sets), see USML Category IV(h).

(2) Accelerometers having a bias stability of less (better) than 20 μg, a scale factor stability of less (better) than 20 parts per million, or capable of measuring greater than 100,000 g (MT if having a scale factor repeatability less (better) than 1250 ppm and bias repeatability less (better) than 1250 micro g or specified to function at acceleration levels greater than 100 g);

**Note 1 to paragraph (d)(2):** For weapon fuze accelerometers, see USML Category III(d) or IV(h).

**Note 2 to paragraph (d)(2):** MT designation does not include accelerometers that are designed to measure vibration or shock.

(3) Gyroscopes or angular rate sensors having an angle random walk of less (better) than 0.00125 degree per square root hour or having a bias stability less (better) than 0.0015 degrees per hour (MT if having a rated drift stability of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment or specified to function at acceleration levels greater than 100 g);

(4) Mobile relative gravimeters, having automatic motion compensation, with an in-service accuracy of less (better) than 0.4 mGal (MT if designed or modified for airborne or marine use and having a time to steady-state registration of two minutes or less);

(5) Mobile gravity gradiometers having an accuracy of less (better) than 10 Eötvös squared per radian per second for any component of the gravity gradient tensor, and having a spatial gravity wavelength resolution of 50 m or less (MT if designed or modified for airborne or marine use);

**Note to paragraph (d)(5):** ''Eötvös'' is a unit of acceleration divided by distance that was used in conjunction with the older centimeter-gram-second system of units. The Eötvös is defined as 1/1,000,000,000 Galileo (Gal) per centimeter.

(6) Global Navigation Satellite System (GNSS) receiving equipment, as follows, and specially designed parts and components therefor:

(i) Global Navigation Satellite System (GNSS) receiving equipment specially designed for military applications (MT if designed or modified for airborne applications and capable of providing navigation information at speeds in excess of 600 m/s);

(ii) Global Positioning System (GPS) receiving equipment specially designed for encryption or decryption (*e.g.,* Y-Code, M-Code) of GPS precise positioning service (PPS) signals (MT if designed or modified for airborne applications);

(iii) GPS receiving equipment specially designed for use with a null steering antenna, an electronically steerable antenna, or including a null steering antenna designed to reduce or avoid jamming signals (MT if designed or modified for airborne applications); or

**Note to paragraph (6)(iii):** The articles described in this paragraph are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR. Articles do not become subject to the EAR until integrated into the item subject to the EAR. Export, reexport, retransfer, or temporary import of, and technical data and defense services directly related to, defense articles intended to be integrated, remain subject to the ITAR.

(iv) GPS receiving equipment specially designed for use with rockets, missiles, space launch vehicles (SLVs), drones, or unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km (MT);

**Note to paragraph (6)(iv):** ''Payload'' is the total mass that can be carried or delivered by the specified rocket, missile, SLV, drone or unmanned aerial vehicle that is not used to maintain flight. For definition of ''range'' as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of ''range'' as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(7) GNSS anti-jam systems employing adaptive antennas that have a minimum of four antenna elements, add 35 dB or greater anti-jam margin, and produce nulls in the direction of jammers or high-gain beams in the direction of satellites at any ranging code frequency;

(8) GNSS security devices (*e.g.,* Selective Availability Anti-Spoofing Modules, Security Modules, and Auxiliary Output Chips), Selective Availability Anti-Spoofing Module (SAASM), Security Module (SM) and Auxiliary Output Chip (AOC) chips; or

(9) Developmental guidance, navigation, or control devices, systems or equipment funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km);

**Note 1 to paragraph (d)(9):** This paragraph does not control guidance, navigation, or control, systems, or equipment (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

**Note 2 to paragraph (d)(9):** Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

**Note 3 to paragraph (d)(9):** This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2016, or later.

**Note 4 to paragraph (d)(9):** For definition of ''range'' as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of ''range'' as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(e) Parts, components, accessories, attachments, and associated equipment as follows:

(1) Optical sensors having a spectral filter for systems or equipment controlled in USML Category XI(a)(4), or optical sensor assemblies that provide threat warning or tracking for systems or equipment controlled in Category

XI(a)(4) and specially designed optics and electronics therefor;

(2) Image intensifier tube (IIT) parts and components as follows:

(i) Microchannel plates having a hole pitch (center-to-center spacing) of 12 μm or less;

(ii) Multialkali photocathodes (*e.g.,* S–20 and S–25) having a luminous sensitivity exceeding 500 microamps per lumen;

(iii) III/V compound semiconductor (*e.g.,* GaAs or GaInAs) photocathodes and transferred electron photocathodes having a radiant sensitivity exceeding 20 mA/W;

(iv) Electron sensing devices with detectors having a non-binned center-to-center spacing less than 100 μm, and either achieving charge multiplication within the vacuum space other than by a microchannel plate or specially designed for operation with a microchannel plate;

(v) Phosphor screens, including output faceplates, specially designed for IITs controlled in this category;

(vi) Miniature autogated power supplies providing internal sensing and control of the photocathode to increase the dynamic range of IITs controlled in this category; or

(vii) Fiber-optic inverters, couplers or tapers specially designed for IITs controlled in this category;

(3) Wafers incorporating structures for either a ROIC controlled in paragraph (e)(4) or (5) of this category, or an IRFPA or detector elements therefor controlled in paragraph (c)(2) of this category;

(4) Read-Out Integrated Circuits (ROICs) specially designed for an IRFPA controlled in paragraph (c)(2) of this category or detector elements therefor, as follows:

(i) One-dimensional photon detector IRFPA having greater than 640 detector elements;

(ii) Two-dimensional photon detector IRFPA having greater than 256 detector elements;

(iii) A microbolometer IRFPA having greater than 19,200 elements; or

(iv) Multispectral IRFPA;

**Note to paragraph (e)(4):** ROICs are specially designed for an infrared focal plane array detector even if the detector is incorporated into an item that is not enumerated on the U.S. Munitions List.

(5) ROICs specially designed for a camera/core/packaged IRFPA subject to the controls of this subchapter;

(6) Vacuum packages or other sealed enclosures for an IRFPA or IIT controlled in paragraph (c) of this category specially designed for incorporation or integration into an article controlled in paragraphs (a), (b), or (c) of this category;

(7) Integrated IRFPA dewar cooler assembly (IDCA) parts and components, as follows:

(i) Cryocoolers having a cooling source temperature below 218 K and a mean-time-to-failure (MTTF) in excess of 3000 hours;

(ii) Active cold fingers;

(iii) Variable or dual aperture mechanisms; or

(iv) Dewars specially designed for articles controlled in paragraphs (a), (b) or (c) of this category;

(8) IRFPA Joule-Thomson (JT) self-regulating cryostats specially designed for articles controlled in this subchapter;

(9) Infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for any article controlled in this category;

(10) Drive, control, signal or image processing electronics, specially designed for articles controlled in this category;

(11) Signal processing electronics, attachments or accessories that provide:

(i) Automatic or aided detection and recognition, classification, identification or discrimination of military or intelligence items;

(ii) Multi-sensor fusion other than image blending; or

**Note to paragraph (e)(11)(ii):** Multi-sensor fusion refers to automatically combining imagery or information from two or more sensors, including at least one article controlled in this category, to improve classification, identification, or tracking of targets relative to any of the individual sensors.

(iii) Target aim point adjustment;

(12) Near-to-eye displays specially designed for articles controlled in this category;

(13) Resonators, receivers, transmitters, modulators, gain media, and drive electronics or frequency converters specially designed for laser systems or equipment controlled in this category;

(14) Two-dimensional infrared scene projector emitter arrays (*i.e.,* resistive arrays) that emit infrared radiation within the 900 nm to 30,000 nm wavelength range; or

(15) Any part, component, accessory, attachment, or associated equipment, that:

(i) Is ''classified'';

(ii) Contains ''classified'' software;

(iii) Is manufactured using ''classified'' production data; or

(iv) Is being developed using ''classified'' information.

**Note to paragraph (e)(15):** ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

**Note to paragraph (e):** The articles described in this paragraph are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR, and cannot be removed without destruction or damage to the article or render the item inoperable. Articles are not subject to the EAR until integrated into the item subject to the EAR. Defense articles intended to be integrated, and technical data and defense services directly related thereto, remain subject to the ITAR prior to integration. See paragraph (f) of this category for enumerated technical data and software, and specific information subject to the EAR.

*(f) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

**Note 1 to paragraph (f):** Technical data and defense services directly related to image intensifier tubes and specially designed parts and components therefor controlled in paragraph (c)(1) of this category, infrared focal plane arrays (IRFPAs) and detector elements therefor controlled in paragraph (c)(2) of this category, integrated IRFPA dewar cooler assemblies (IDCAs) controlled in paragraph (c)(9) of this category, wafers incorporating IRFPA or ROIC structures controlled in paragraph (e)(3) of this category, and specially designed readout integrated circuits (ROICs) controlled in paragraphs (e)(4) and (5) of this category, remain subject to the ITAR even if the technical data or defense services could also apply to items subject to the EAR.

**Note 2 to paragraph (f):** Software and technical data include:

A. Design or manufacturing process descriptions (*e.g.,* steps, sequences, conditions, parameters) for lasers described in paragraphs (b)(6) and (b)(9) through (13) of this category, IITs controlled in paragraph (c)(1) of this category and their parts and components controlled in paragraph (e)(2) of this category (including tube sealing techniques, interface techniques within the vacuum space for photocathodes, microchannel plates, phosphor screens, input glass-window faceplates, input or output fiber optics (*e.g.,* inverter)), IRFPAs and detector elements therefor controlled in paragraph (c)(2) of this category, integrated IRFPA dewar cooler assemblies (IDCAs) controlled in paragraph (c)(9) of this category, wafers incorporating structures for an IRFPA and detector elements therefor controlled in paragraph (c)(2) or structures for ROICs controlled in paragraph (e)(4) or (5)

of this category, and specially designed ROICs controlled in paragraphs (e)(4) and (5) of this category (including bonding or mating (*e.g.,* hybridization of IRFPA detectors and ROICs), prediction or optimization of IRFPAs or ROICs at cryogenic temperatures, junction formation, passivation).

**Note to paragraph A of note 2 to paragraph (f):** Technical data does not include information directly related to basic operating instructions, testing results, incorporating or integrating IRFPAs into higher level packaged assemblies not enumerated in this category, or external interface control documentation associated with such assemblies or assemblies subject to the EAR, provided such information does not include design methodology, engineering analysis, or manufacturing know-how for a USML controlled IRFPA.

B. Software that converts an article controlled in this category into an item subject to the EAR or an item subject to the EAR into an article controlled in this category is directly related to the defense article controlled in this category. When a defense article has been converted into an item subject to the EAR through software, the presence of the software that prevents the item from meeting or exceeding a USML control parameter does not make the item subject to the ITAR.

C. EO/IR simulation or projection system software that replicates via simulation either the output data or information provided by any article controlled in this category, a radiometrically calibrated spectral signature of any article controlled in this subchapter, volumetric effects of plumes or military operational obscurants, or countermeasure effects.

**Note 3 to paragraph (f):** Technology for incorporating or integrating IRFPAs into permanent encapsulated sensor assemblies subject to the EAR, or integrating such assemblies into an item subject to the EAR, and integrating IITs into an item subject to the EAR, including integrating items subject to the EAR into foreign military commodities outside the United States, is subject to the EAR.

(g)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

**Note to paragraph (x):** Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

* * * * *

**§ 121.1 [Amended]**

■ 4. Section 121.1 is amended by removing and reserving paragraph (c) in U.S. Munitions List Category XV.

**Rose E. Gottemoeller,**

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

[FR Doc. 2015–09673 Filed 5–4–15; 8:45 am]

**BILLING CODE 4710–25–P**

# FEDERAL REGISTER

Vol. 80 Tuesday,
No. 86 May 5, 2015

Part III

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 418**

**[CMS–1629–P]**

**RIN 0938–AS39**

# Medicare Program; FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the hospice payment rates and the wage index for fiscal year (FY) 2016, including implementing the last year of the phase-out of the wage index budget neutrality adjustment factor (BNAF). This proposed rule also discusses recent hospice payment reform research and analyses and proposes to differentiate payments for routine home care (RHC) based on the beneficiary's length of stay and to implement a service intensity add-on (SIA) payment for services provided in the last 7 days of a beneficiary's life, if certain criteria are met. In addition, this rule would implement changes to the aggregate cap calculation mandated by the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act), align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the federal fiscal year starting in FY 2017, make changes to the hospice quality reporting program, and would include a clarification regarding diagnosis reporting on the hospice claim.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 29, 2015.

**ADDRESSES:** In commenting, please refer to file code CMS–1629–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1629–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1629–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Debra Dean-Whittaker, (410) 786–0848 for questions regarding the CAHPS® Hospice Survey. Michelle Brazil, (410) 786–1648 for questions regarding the hospice quality reporting program. For general questions about hospice payment policy please send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

Wage index addenda will be available only through the internet on the CMS Web site at: (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*)

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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**Acronyms**

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

APU Annual Payment Update
ASPE Assistant Secretary of Planning and Evaluation
BBA Balanced Budget Act of 1997
BETOS Berenson-Eggers Types of Service
BIPA Benefits Improvement and Protection Act of 2000
BNAF Budget Neutrality Adjustment Factor
BLS Bureau of Labor Statistics
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CBSA Core-Based Statistical Area
CCN CMS Certification Number
CCW Chronic Conditions Data Warehouse
CFR Code of Federal Regulations
CHC Continuous Home Care
CHF Congestive Heart Failure
CMS Centers for Medicare & Medicaid Services
COPD Chronic Obstructive Pulmonary Disease
CoPs Conditions of Participation
CPI Center for Program Integrity
CPI–U Consumer Price Index-Urban Consumers
CR Change Request
CVA Cerebral Vascular Accident
CWF Common Working File
CY Calendar Year
DME Durable Medical Equipment
DRG Diagnostic Related Group
ER Emergency Room
FEHC Family Evaluation of Hospice Care
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
GIP General Inpatient Care
HCFA Healthcare Financing Administration
HHS Health and Human Services
HIPPA Health Insurance Portability and Accountability Act
HIS Hospice Item Set
HQRP Hospice Quality Reporting Program
IACS Individuals Authorized Access to CMS Computer Services
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
ICR Information Collection Requirement
IDG Interdisciplinary Group
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014
IOM Institute of Medicine
IPPS Inpatient Prospective Payment System
IRC Inpatient Respite Care
LCD Local Coverage Determination
MAC Medicare Administrative Contractor
MAP Measure Applications Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multifactor Productivity
MSA Metropolitan Statistical Area
MSS Medical Social Services
NHPCO National Hospice and Palliative Care Organization
NF Long Term Care Nursing Facility
NOE Notice of Election
NOTR Notice of Termination/Revocation
NP Nurse Practitioner
NPI National Provider Identifier
NQF National Quality Forum
OIG Office of the Inspector General
OACT Office of the Actuary
OMB Office of Management and Budget
PRRB Provider Reimbursement Review Board
PS&R Provider Statistical and Reimbursement Report
Pub. L Public Law
QAPI Quality Assessment and Performance Improvement
RHC Routine Home Care
RN Registered Nurse
SBA Small Business Administration
SEC Securities and Exchange Commission
SIA Service Intensity Add-on
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TEP Technical Expert Panel
UHDDS Uniform Hospital Discharge Data Set
U.S.C. United States Code

## I. Executive Summary for This Proposed Rule

*A. Purpose*

This rule proposes updates to the payment rates for hospices for fiscal year (FY) 2016, as required under section 1814(i) of the Social Security Act (the Act) and reflects the final year of the 7-year Budget Neutrality Adjustment Factor (BNAF) phase-out finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39407). Our proposed update to payment rates for hospices also includes a proposal to

change the hospice wage index by incorporating the new Office of Management and Budget (OMB) core-based statistical area (CBSA) definitions, changes to the aggregate cap calculation required by section 1814(i)(2)(B)(ii) of the Act, and includes a proposal to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the federal fiscal year starting in FY 2017. In addition, in accordance with section 1814(i)(6)(D)(i) of the Act, this rule proposes to create two different payment rates for routine home care (RHC) that would result in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate days 61 or over of hospice care. Also, in accordance with section 1814(i)(6)(d)(i) of the Act, this rule proposes a service intensity add-on (SIA) payment that would result in an add-on payment equal to the Continuous Home Care (CHC) hourly payment rate multiplied by the amount of direct patient care provided by a registered nurse (RN) or social worker provided during the last 7 days of a beneficiary's life, if certain criteria are met. In addition, section 3004(c) of the Affordable Care Act established a quality reporting program for hospices. In accordance with section 1814(i)(5)(A) of the Act, starting in FY 2014, hospices that have failed to meet quality reporting requirements receive a 2 percentage point reduction to their payment update percentage. Although this proposed rule does not propose new quality measures, it provides updates on the hospice quality reporting program. Finally, this proposed rule includes a clarification regarding diagnosis reporting on the hospice claim form.

*B. Summary of the Major Provisions*

Section III.A of this proposed rule provides an update on hospice payment reform research and analysis. As a result of the hospice payment reform research and analysis conducted over the past several years, some of which is described in section III.A of this proposed rule and in various technical reports available on the CMS Hospice Center Web page (*http://www.cms.gov/Center/Provider-Type/Hospice-Center.html*). Section III.B proposes to create two different payment rates for RHC that would result in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for days 61 or over of hospice care. Section III.B also proposes SIA payment, in addition to the per diem rate for the RHC level of care, that would result in an add-on payment equal to the CHC hourly payment rate multiplied by the amount of direct patient care provided by a RN or social worker that occurred during the last 7 days of a beneficiary's life, if certain criteria were met.

In section III.C.1 of this rule, we propose to update the hospice wage index using a 50/50 blend of the existing CBSA designations and the new CBSA designations outlined in a February 28, 2013, OMB bulletin. Section III.C.2 of this rule implements year 7 of the 7-year BNAF phase-out finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39407). In section III.C.3, we propose to update the hospice payment rates for FY 2016 by 1.8 percent. Section III.C.4 would implement changes mandated by the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act), in which the aggregate cap for accounting years that end after September 30, 2016 and before October 1, 2025, would be updated by the hospice payment update rather than using the CPI–U. Specifically, the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016, would be updated by the FY 2016 percentage update for hospice care. In addition, in section III.D, we are proposing to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the fiscal year for FY 2017 and later. We believe that this would allow for the timely implementation of the IMPACT Act changes while better aligning the cap accounting year with the timeframe described in the IMPACT Act.

In section III.E of this rule, we discuss updates to the hospice quality reporting program, including participation requirements for current year (CY) 2015 regarding the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey, and remind the hospice industry that last year we set the July 1, 2014 implementation date for the Hospice Item Set (HIS) and the January 1, 2015 implementation date for the CAHPS® Hospice Survey. More than seven new quality measures will be derived from these tools; therefore, no new measures were proposed this year. Also, Section III.E of this rule will make changes related to the reconsideration process, extraordinary circumstance extensions or exemptions, hospice quality reporting program (HQRP) eligibility requirements for newly certified hospices and new data submission timeliness requirements and compliance thresholds. Finally, in Section III.F, we clarify that hospices must report all diagnoses of the beneficiary on the hospice claim as a part of the ongoing data collection efforts for possible future hospice refinements. We believe that reporting of all diagnoses on the hospice claim aligns with current coding guidelines as well as admission requirements for hospice certifications.

*C. Summary of Impacts*

TABLE 1—IMPACT SUMMARY TABLE

| Provision description | Transfers |
|---|---|
| FY 2016 Hospice Wage Index and Payment Rate Update. | The overall economic impact of this proposed rule is estimated to be $200 million in increased payments to hospices during FY 2016. |

## II. Background

*A. Hospice Care*

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professionals and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Hospice is compassionate patient and family-centered care for those who are terminally ill. It is a comprehensive, holistic approach to treatment that recognizes that the impending death of an individual necessitates a change from curative to palliative care.

Medicare regulations define ''palliative care'' as ''patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.'' (42 CFR 418.3) Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit. *See also* Hospice Conditions of Participation final rule (73 FR 32088) (2008). The goal of palliative care in hospice is to improve the quality of life of individuals, and their families, facing the issues associated with a life-threatening illness through the

prevention and relief of suffering by means of early identification, assessment and treatment of pain and other issues. This is achieved by the hospice interdisciplinary team working with the patient and family to develop a comprehensive care plan focused on coordinating care services, reducing unnecessary diagnostics or ineffective therapies, and offering ongoing conversations with individuals and their families about changes in their condition. It is expected that this comprehensive care plan will shift over time to meet the changing needs of the patient and family as the individual approaches the end of life.

Medicare hospice care is palliative care for individuals with a prognosis of living 6 months or less if the terminal illness runs its normal course. When an individual is terminally ill, many health problems are brought on by underlying condition(s), as bodily systems are interdependent. In the June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088), we stated that ''the medical director must consider the primary terminal condition, related diagnoses, current subjective and objective medical findings, current medication and treatment orders, and information about unrelated conditions when considering the initial certification of the terminal illness.'' As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Social Security Act (the Act) and our regulations at § 418.3 that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. The certification of terminal illness must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms, as set out at § 418.22(b)(3).

The goal of hospice care is to make the hospice patient as physically and emotionally comfortable as possible, with minimal disruption to normal activities, while remaining primarily in the home environment. Hospice care uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers and volunteers. While the goal of hospice care is to allow for the individual to remain in his or her home environment, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice facility for procedures necessary for pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services are to ensure that any new or worsening symptoms are intensively addressed so that the individual can return to his or her home environment at a home level of care. Short-term, intermittent, inpatient respite services are also available to the family of the hospice patient when needed to relieve the family or other caregivers. Additionally, an individual can receive continuous home care during a period of crisis in which an individual requires primarily continuous nursing care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered on a continuous basis for as much as 24 hours a day, and these periods must be predominantly nursing care in accordance with our regulations at § 418.204. A minimum of 8 hours of nursing, or nursing and aide, care must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices are expected to comply with all civil rights laws, including the provision of auxiliary aids and services to ensure effective communication with patients or patient care representatives with disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, and to provide language access for such persons who are limited in English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at *http://www.hhs.gov/ocr/civilrights*.

*B. History of the Medicare Hospice Benefit*

Before the creation of the Medicare hospice benefit, hospice programs were originally operated by volunteers who cared for the dying. During the early development stages of the Medicare hospice benefit, hospice advocates were clear that they wanted a Medicare benefit that provided all-inclusive care for terminally-ill individuals, provided pain relief and symptom management, and offered the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting.[1]

[1] Connor, Stephen. (2007). Development of Hospice and Palliative Care in the United States. OMEGA. 56(1), p89–99.

As stated in the August 22, 1983 proposed rule entitled ''Medicare Program; Hospice Care'' (48 FR 38146), ''the hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home to enable the terminally ill individual to remain at home in the company of family and friends as long as possible.'' The concept of a patient ''electing'' the hospice benefit and being certified as terminally ill were two key components of the legislation responsible for the creation of the Medicare Hospice Benefit (section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), (Pub. L. 97–248)). Section 122 of TEFRA created the Medicare Hospice benefit, which was implemented on November 1, 1983. Under sections 1812(d) and 1861(dd) of the Act, codified at 42 U.S.C. 1395d(d) and 1395x(dd), we provide coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a Medicare-certified hospice. Our regulations at § 418.54(c) stipulate that the comprehensive hospice assessment must identify the patient's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions, and address those needs in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: The nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms (§ 418.54(c)). The Medicare hospice benefit requires the hospice to cover all reasonable and necessary palliative care related to the terminal prognosis, as described in the patient's plan of care. The December 16, 1983 Hospice final rule (48 FR 56008) requires hospices to cover care for interventions to manage pain and symptoms. Additionally, the hospice Conditions of Participation (CoP) at § 418.56(c) require that the hospice must provide all reasonable and necessary services for the palliation and management of the terminal illness, related conditions and interventions to manage pain and symptoms. Therapy and interventions must be assessed and managed in terms of providing palliation and comfort without undue symptom burden for the hospice patient

or family.[2] In the December 16, 1983 Hospice final rule (48 FR 56010 through 56011), regarding what is related versus unrelated to the terminal illness, we stated: ''. . .we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case-by-case basis. It is our general view that hospices are required to provide virtually all the care that is needed by terminally ill patients.'' Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis; all conditions are considered to be related to the terminal illness. It is also the responsibility of the hospice physician to document why a patient's medical needs will be unrelated to the terminal prognosis.

As stated in the December 16,1983 Hospice final rule, the fundamental premise upon which the hospice benefit was designed was the ''revocation'' of traditional curative care and the ''election'' of hospice care for end-of-life symptom management and maximization of quality of life (48 FR 56008). After electing hospice care, the patient typically returns to the home from an institutionalized setting or remains in the home, to be surrounded by family and friends, and to prepare emotionally and spiritually for death while receiving expert symptom management and other supportive services. Election of hospice care also includes waiving the right to Medicare payment for curative treatment for the terminal prognosis, and instead receiving palliative care to manage pain or symptoms.

The benefit was originally designed to cover hospice care for a finite period of time that roughly corresponded to a life expectancy of 6 months or less. Initially, beneficiaries could receive three election periods: Two 90-day periods and one 30-day period. Currently, Medicare beneficiaries can elect hospice care for two 90-day periods and an unlimited number of subsequent 60-day periods; however, the expectation remains that beneficiaries have a life expectancy of 6 months or less if the terminal illness runs its normal course.

*C. Services Covered by the Medicare Hospice Benefit*

One requirement for coverage under the Medicare Hospice benefit is that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologics); medical appliances; counseling services (including dietary counseling); short-term inpatient care (including both respite care and procedures necessary for pain control and acute or chronic symptom management) in a hospital, nursing facility, or hospice inpatient facility; continuous home care during periods of crisis and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available, as needed, to beneficiaries 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act). Upon the implementation of the hospice benefit, the Congress expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see Section 1861(dd)(2)(E) of the Act and (48 FR 38149)). As stated in the August 22, 1983 Hospice proposed rule, the hospice interdisciplinary group should be comprised of paid hospice employees as well as hospice volunteers (48 FR 38149). This expectation supports the hospice philosophy of holistic, comprehensive, compassionate, end-of-life care.

Before the Medicare hospice benefit was established, the Congress requested a demonstration project to test the feasibility of covering hospice care under Medicare. The National Hospice Study was initiated in 1980 through a grant sponsored by the Robert Wood Johnson and John A. Hartford Foundations and CMS (then, the Health Care Financing Administration (HCFA)). The demonstration project was conducted between October 1980 and March 1983. The project summarized the hospice care philosophy and principles as the following:

- Patient and family know of the terminal condition.
- Further medical treatment and intervention are indicated only on a supportive basis.
- Pain control should be available to patients as needed to prevent rather than to just ameliorate pain.
- Interdisciplinary teamwork is essential in caring for patient and family.
- Family members and friends should be active in providing support during the death and bereavement process.
- Trained volunteers should provide additional support as needed.

The cost data and the findings on what services hospices provided in the demonstration project were used to design the Medicare hospice benefit. The identified hospice services were incorporated into the service requirements under the Medicare hospice benefit. Importantly, in the August 22, 1983 Hospice proposed rule, we stated ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices'' (48 FR 38149).

*D. Medicare Payment for Hospice Care*

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in part 418, establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (RHC, CHC, inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services needed to manage the beneficiaries' care, as required by section 1861(dd)(1) of the Act. There has been little change in the hospice payment structure since the benefit's inception. The per diem rate based on level of care was established in 1983, and this payment structure remains today with some adjustments, as noted below:

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided for the following two changes in the

[2] Paolini, DO, Charlotte. (2001). Symptoms Management at End of Life. JAOA. 101(10). p609–615.

methodology concerning updating the daily payment rates: (1) Effective January 1, 1990, the daily payment rates for RHC and other services included in hospice care were increased to equal 120 percent of the rates in effect on September 30, 1989; and (2) the daily payment rate for RHC and other services included in hospice care for fiscal years (FYs) beginning on or after October 1, 1990, were the payment rates in effect during the previous Federal fiscal year increased by the hospital market basket percentage increase.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were updated by a factor equal to the hospital market basket percentage increase, minus 1 percentage point. Payment rates for FYs from 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs will be the hospital market basket percentage increase for the FY. The Act requires us to use the inpatient hospital market basket to determine hospice payment rates.

3. FY 1998 Hospice Wage Index Final Rule

In the August 8, 1997 FY 1998 Hospice Wage Index final rule (62 FR 42860), we implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The original hospice wage index was based on 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formed to negotiate a new wage index methodology that could be accepted by the industry and the government. This Committee was comprised of representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. The Committee decided that in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index, to cushion the impact of using a new wage index methodology. To implement this policy, a Budget Neutrality Adjustment Factor (BNAF) will be computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index, subject to a wage index floor.

4. FY 2010 Hospice Wage Index Final Rule

Inpatient hospital pre-floor and pre-reclassified wage index values, as described in the August 8, 1997 Hospice Wage Index final rule, are subject to either a budget neutrality adjustment or application of the wage index floor. Wage index values of 0.8 or greater are adjusted by the (BNAF). Starting in FY 2010, a 7-year phase-out of the BNAF began (August 6, 2009 FY 2010 Hospice Wage Index final rule, (74 FR 39384)), with a 10 percent reduction in FY 2010, an additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total 40 percent reduction in FY 2012, an additional 15 percent reduction for a total of 55 percent in FY 2013, and an additional 15 percent reduction for a total 70 percent reduction in FY 2014. The phase-out will continue with an additional 15 percent reduction for a total reduction of 85 percent in FY 2015, and an additional 15 percent reduction for complete elimination in FY 2016. We note that the BNAF is an adjustment which increases the hospice wage index value. Therefore, the BNAF reduction is a reduction in the amount of the BNAF increase applied to the hospice wage index value. It is not a reduction in the hospice wage index value or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity, as specified in section 1886(b)(3)(B)(xi)(II) of the Act, as amended by section 3132(a) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act (Pub. L. 111–152) (collectively referred to as the Affordable Care Act)). In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions as specified in section 1814(i)(1)(C)(v) of the Act).

In addition, sections 1814(i)(5)(A) through (C) of the Act, as amended by section 3132(a) of the Affordable Care Act, require hospices to begin submitting quality data, based on measures to be specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act was amended by section 3132(b)(2)(D)(i) of the Affordable Care Act, and requires, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th-day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we finalized in the CY 2011 Home Health Prospective Payment System final rule (75 FR 70435) that the 180th-day recertification and subsequent recertification's corresponded to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as amended by section 3132(a)(1)(B) of the Affordable Care Act, authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the Affordable Care Act would capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determines to be appropriate. The data collected may be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we are required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

When the Medicare Hospice benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice can receive in a year. The Congress stipulated that a ''cap amount'' be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and is adjusted annually by the change in the medical

care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year (section 1814(i)(2)(B) of the Act). The cap year is defined as the period from November 1st to October 31st. As we stated in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) for the 2012 cap year and subsequent cap years, the hospice aggregate cap will be calculated using the patient-by-patient proportional methodology, within certain limits. We will allow existing hospices the option of having their cap calculated via the original streamlined methodology, also within certain limits. New hospices will have their cap determinations calculated using the patient-by-patient proportional methodology. The patient-by-patient proportional methodology and the streamlined methodology are two different methodologies for counting beneficiaries when calculating the hospice aggregate cap. A detailed explanation of these methods is found in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314). If a hospice's total Medicare reimbursement for the cap year exceeded the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. FY 2015 Hospice Rate Update Final Rule

When electing hospice, a beneficiary waives Medicare coverage for any care for the terminal illness and related conditions except for services provided by the designated hospice and attending physician. A hospice is to file a Notice of Election (NOE) as soon as possible to establish the hospice election within the claims processing system. Late filing of the NOE can result in inaccurate benefit period data and leaves Medicare vulnerable to paying non-hospice claims related to the terminal illness and related conditions and beneficiaries possibly liable for any cost-sharing associated costs. The FY 2015 Hospice Rate Update final rule (79 FR 50452) finalized a requirement that requires the NOE be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5 day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50454, 50474). Similar to the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation. This update to the beneficiary's status allows claims from non-hospice providers to process and be paid. Upon live discharge or revocation, the beneficiary immediately resumes the Medicare coverage that had been waived when he or she elected hospice. The FY 2015 Hospice Rate Update final rule also finalized a requirement that requires hospices to file a notice of termination/revocation within 5 calendar days of a beneficiary's live discharge or revocation, unless the hospices have already filed a final claim. This requirement helps to protect beneficiaries from delays in accessing needed care (79 FR 50509).

A hospice ''attending physician'' is described by the statutory and regulatory definitions as a medical doctor, osteopath, or nurse practitioner whom the patient identifies, at the time of hospice election, as having the most significant role in the determination and delivery of his or her medical care. We received reports of problems with the identification of the patient's designated attending physician and a third of hospice patients had multiple providers submit Part B claims as the ''attending physician'' using a modifier. The FY 2015 Hospice Rate Update final rule finalized a requirement that the election form must include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians (79 FR 50479).

Hospice providers are required to begin using a Hospice Experience of Care Survey for informal caregivers of hospice patients surveyed in 2015. The FY 2015 Hospice Rate Update final rule provided background and a description of the development of the Hospice Experience of Care Survey, including the model of survey implementation, the survey respondents, eligibility criteria for the sample, and the languages in which the survey is offered. The FY 2015 Hospice Rate Update final rule also outlined participation requirements for CY 2015 and discussed vendor oversight activities and the reconsideration and appeals process (79 FR 50496).

Finally, the FY 2015 Hospice Rate Update final rule requires providers to complete their aggregate cap determination within 5 months after the cap year, but not sooner than 3 months after the end of the cap year, and remit any overpayments. Those hospices that do not submit their aggregate cap determinations will have their payments suspended until the determination is completed and received by the Medicare Administrative Contractor (MAC) (79 FR 50503).

8. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act (IMPACT Act) of 2014 became law on October 6, 2014 (Pub. L. 113–185). Section 3(a) of the IMPACT Act mandates that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025, as it was found that surveys of hospices were being performed on an infrequent basis. In addition, the IMPACT Act also implements a provision set forth in the Affordable Care Act that requires medical review of hospice cases involving patients receiving more than 180 days care in select hospices that show a preponderance of such patients, and the IMPACT Act contains a new provision mandating that the aggregate cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures. Specifically, the 2016 cap year, which starts on November 1, 2015 and ends on October 31, 2016, will be updated by the FY 2016 payment update percentage for hospice care. In accordance with the statute, we will continue to do this through any cap year ending before October 1, 2025 (that is, through cap year 2025).

*E. Trends in Medicare Hospice Utilization*

Since the implementation of the hospice benefit in 1983, and especially within the last decade, there has been substantial growth in hospice utilization. The number of Medicare beneficiaries receiving hospice services has grown from 513,000 in FY 2000 to over 1.3 million in FY 2013. Similarly, Medicare hospice expenditures have risen from $2.8 billion in FY 2000 to an estimated $15.3 billion in FY 2013. Our Office of the Actuary (OACT) projects that hospice expenditures are expected to continue to increase, by approximately 8 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare Hospice Benefit for end-of-life care, and a growing preference for care provided in home and community-based settings. However, this increased spending is partly due to an increased average lifetime length of stay for beneficiaries, from 54 days in 2000 to 98.5 days in FY 2013, an increase of 82 percent.

There have also been changes in the diagnosis patterns among Medicare hospice enrollees. Specifically, there were notable increases between 2002

and 2007 in neurologically-based diagnoses, including various dementia diagnoses. Additionally, there have been significant increases in the use of non-specific, symptom-classified diagnoses, such as ''debility'' and ''adult failure to thrive.'' In FY 2013, ''debility'' and ''adult failure to thrive'' were the first and sixth most common hospice diagnoses, respectively, accounting for approximately 14 percent of all diagnoses. Effective October 1, 2014, hospice claims were returned to the provider if ''debility'' and ''adult failure to thrive'' were coded as the principal hospice diagnosis as well as other ICD–9–CM codes that are not permissible as principal diagnosis codes per ICD–9–CM coding guidelines. We reminded the hospice industry that this policy would go into effect and claims would start to be returned October 1, 2014 in the FY 2015 hospice rate update final rule. As a result of this, there has been a shift in coding patterns on hospice claims. For FY 2014, the most common hospice principal diagnoses were Alzheimer's disease, Congestive Heart Failure, Lung Cancer, Chronic Airway Obstruction and Senile Dementia which constituted approximately 32 percent of all claims-reported principal diagnosis codes reported in FY 2014 (see Table 2 below).

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2014

| Rank | ICD–9/Reported Principal Diagnosis | Count | Percentage |
|---|---|---|---|
| | **Year: FY 2002** | | |
| 1 | 162.9 Lung Cancer | 73,769 | 11 |
| 2 | 428.0 Congestive Heart Failure | 45,951 | 7 |
| 3 | 799.3 Debility Unspecified | 36,999 | 6 |
| 4 | 496 COPD | 35,197 | 5 |
| 5 | 331.0 Alzheimer's Disease | 28,787 | 4 |
| 6 | 436 CVA/Stroke | 26,897 | 4 |
| 7 | 185 Prostate Cancer | 20,262 | 3 |
| 8 | 783.7 Adult Failure To Thrive | 18,304 | 3 |
| 9 | 174.9 Breast Cancer | 17,812 | 3 |
| 10 | 290.0 Senile Dementia, Uncomp | 16,999 | 3 |
| 11 | 153.0 Colon Cancer | 16,379 | 2 |
| 12 | 157.9 Pancreatic Cancer | 15,427 | 2 |
| 13 | 294.8 Organic Brain Synd Nec | 10,394 | 2 |
| 14 | 429.9 Heart Disease Unspecified | 10,332 | 2 |
| 15 | 154.0 Rectosigmoid Colon Cancer | 8,956 | 1 |
| 16 | 332.0 Parkinson's Disease | 8,865 | 1 |
| 17 | 586 Renal Failure Unspecified | 8,764 | 1 |
| 18 | 585 Chronic Renal Failure (End 2005) | 8,599 | 1 |
| 19 | 183.0 Ovarian Cancer | 7,432 | 1 |
| 20 | 188.9 Bladder Cancer | 6,916 | 1 |
| | **Year: FY 2007** | | |
| 1 | 799.3 Debility Unspecified | 90,150 | 9 |
| 2 | 162.9 Lung Cancer | 86,954 | 8 |
| 3 | 428.0 Congestive Heart Failure | 77,836 | 7 |
| 4 | 496 COPD | 60,815 | 6 |
| 5 | 783.7 Adult Failure To Thrive | 58,303 | 6 |
| 6 | 331.0 Alzheimer's Disease | 58,200 | 6 |
| 7 | 290.0 Senile Dementia Uncomp | 37,667 | 4 |
| 8 | 436 CVA/Stroke | 31,800 | 3 |
| 9 | 429.9 Heart Disease Unspecified | 22,170 | 2 |
| 10 | 185 Prostate Cancer | 22,086 | 2 |
| 11 | 174.9 Breast Cancer | 20,378 | 2 |
| 12 | 157.9 Pancreas Unspecified | 19,082 | 2 |
| 13 | 153.9 Colon Cancer | 19,080 | 2 |
| 14 | 294.8 Organic Brain Syndrome NEC | 17,697 | 2 |
| 15 | 332.0 Parkinson's Disease | 16,524 | 2 |
| 16 | 294.10 Dementia In Other Diseases w/o Behav. Dist | 15,777 | 2 |
| 17 | 586 Renal Failure Unspecified | 12,188 | 1 |
| 18 | 585.6 End Stage Renal Disease | 11,196 | 1 |
| 19 | 188.9 Bladder Cancer | 8,806 | 1 |
| 20 | 183.0 Ovarian Cancer | 8,434 | 1 |
| | **Year: FY 2013** | | |
| 1 | 799.3 Debility Unspecified | 127,415 | 9 |
| 2 | 428.0 Congestive Heart Failure | 96,171 | 7 |
| 3 | 162.9 Lung Cancer | 91,598 | 6 |
| 4 | 496 COPD | 82,184 | 6 |
| 5 | 331.0 Alzheimer's Disease | 79,626 | 6 |
| 6 | 783.7 Adult Failure To Thrive | 71,122 | 5 |
| 7 | 290.0 Senile Dementia, Uncomp | 60,579 | 4 |
| 8 | 429.9 Heart Disease Unspecified | 36,914 | 3 |
| 9 | 436 CVA/Stroke | 34,459 | 2 |
| 10 | 294.10 Dementia In Other Diseases w/o Behavioral Dist | 30,963 | 2 |
| 11 | 332.0 Parkinson's Disease | 25,396 | 2 |

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2014—Continued

| Rank | ICD–9/Reported Principal Diagnosis | Count | Percentage |
|---|---|---|---|
| 12 | 153.9 Colon Cancer | 23,228 | 2 |
| 13 | 294.20 Dementia Unspecified w/o Behavioral Dist | 23,224 | 2 |
| 14 | 174.9 Breast Cancer | 23,059 | 2 |
| 15 | 157.9 Pancreatic Cancer | 22,341 | 2 |
| 16 | 185 Prostate Cancer | 21,769 | 2 |
| 17 | 585.6 End-Stage Renal Disease | 19,309 | 1 |
| 18 | 518.81 Acute Respiratory Failure | 15,965 | 1 |
| 19 | 294.8 Other Persistent Mental Dis.—classified elsewhere | 14,372 | 1 |
| 20 | 294.11 Dementia In Other Diseases w/Behavioral Dist | 13,687 | 1 |
| | **Year: FY 2014** | | |
| 1 | 331.0 Alzheimer's disease | 127,438 | 9 |
| 2 | 428.0 Congestive heart failure, unspecified | 106,570 | 8 |
| 3 | 162.9 Lung Cancer | 89,726 | 6 |
| 4 | 496 COPD | 78,643 | 6 |
| 5 | 290.0 Senile dementia, uncomplicated | 40,120 | 3 |
| 6 | 429.9 Heart disease, unspecified | 36,929 | 3 |
| 7 | 436 CVA/Stroke | 33,466 | 2 |
| 8 | 294.20 Dementia, unspecified, without behavioral disturbance | 33,119 | 2 |
| 9 | 332.0 Parkinson's Disease | 30,070 | 2 |
| 10 | 153.9 Colon Cancer | 23,385 | 2 |
| 11 | 174.9 Breast Cancer | 23,343 | 2 |
| 12 | 157.9 Pancreatic Cancer | 22,521 | 2 |
| 13 | 185 Prostate Cancer | 22,136 | 2 |
| 14 | 585.6 End stage renal disease | 21,467 | 2 |
| 15 | 294.10 Dementia in conditions classified elsewhere w/o behav disturbance. | 19,523 | 1 |
| 16 | 331.2 Senile degeneration of brain | 18,660 | 1 |
| 17 | 518.81 Acute respiratory failure | 17,347 | 1 |
| 18 | 290.40 Vascular dementia, uncomplicated | 17,220 | 1 |
| 19 | 491.21 Obstructive chronic bronchitis with (acute) exacerbation | 15,985 | 1 |
| 20 | 429.2 Cardiovascular disease, unspecified | 14,186 | 1 |

**Note(s):** The frequencies shown represent beneficiaries that had a least one claim with the specific ICD–9–CM code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they have multiple claims during that time period with different principal diagnoses.

Source: FY 2002 and 2007 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on February 14 and February 20, 2013. FY 2013 hospice claims data from the CCW, accessed on June 26, 2014 and preliminary FY 2014 hospice claims data from the CCW, accessed on January 26, 2015.

## III. Provisions of the Proposed Rule

### *A. Hospice Payment Reform Research and Analyses*

In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The data collected may be used to revise the methodology for RHC and other hospice services (in a budget-neutral manner in the first year), no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. The Secretary is required to consult with hospice programs and the MedPAC regarding additional data collection and payment reform options.

Since 2010, we have undertaken efforts to collect the data needed to establish what revisions to the methodology for determining the hospice payment rates may be necessary. Effective April 1, 2014, we began requiring additional information on hospice claims regarding drugs and certain durable medical equipment and effective October 1, 2014, we finalized changes to the hospice cost report to improve data collection on the costs of providing hospice care.[3] In addition, our research contractor Abt Associates conducted a hospice literature review; held stakeholder meetings; and developed and maintained an analytic plan, which supports effort towards implementing hospice payment reform. During the stakeholder meetings, attendees articulated concerns of sweeping payment reform changes and encouraged us to consider incremental steps or to use existing regulatory authority to refine the hospice program. We also held five industry technical expert panels (TEPs) via webinar and in-person meetings; consulted with federal hospice experts; provided annual updates on findings from our research and analyses and reform options in the FY 2014 and FY 2015 Hospice Wage Index and Payment Rate Update proposed and final rules (78 FR 48234 and 79 FR 50452); and updated the hospice industry on reform work through Open Door Forums, industry conferences and academic conferences.[4] We have taken into consideration the recommendations from MedPAC on reforming hospice payment, as articulated in the MedPAC Reports to Congress since 2009. The MedPAC recommendations and research provided a foundation for our development of an analytic plan and additional payment reform concepts. Furthermore, MedPAC participated in post-TEP meeting briefings with other federal hospice experts. These meetings provided valuable feedback regarding the TEP's comments and discussed

[3] CMS Transmittal 2864, ''Additional Data Reporting Requirements for Hospice claim''. Available at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R2864P.pdf.*

[4] *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-Project-Background.pdf.*

potential research and analyses to consider for hospice payment reform.

The FY 2012 Hospice Wage Index final rule (76 FR 47324) noted our collaboration with the Assistant Secretary of Planning and Evaluation (ASPE) to develop analyses that were used to inform our research efforts. The results from such analyses were used by Abt Associates to facilitate discussion, in 2012, of potential payment reform options and to guide the identification of topics for further analysis. In early 2014, we began working with Acumen, LLC, using real-time claims data, to monitor the vulnerabilities identified in the 2013 and 2014 Abt Associates' Hospice Payment Reform Technical Reports. On September 18, 2014, the IMPACT Act, mandated that the Centers for Medicare & Medicaid (CMS) undertake additional hospice monitoring and oversight activities. As noted previously, the IMPACT Act requires CMS to survey hospices at least as frequently as every 3 years for the next 10 years and review medical records of hospice beneficiaries on the hospice benefit for 180 days or greater as specified by the Secretary. CMS is actively engaged in cross-agency collaboration to meet the intent of the IMPACT Act to increase monitoring and oversight of hospice providers.

The majority of the research and analyses conducted by CMS and summarized in this rule were based on analyses of FY 2013 Medicare claims and cost report data conducted by our research contractor, Abt Associates, unless otherwise specified. In addition, we cite research and analyses, conducted by Acumen, LLC that are based on real-time claims data from the Integrated Data Repository (IDR). In the sections below, analysis conducted on pre-hospice spending, non-hospice spending for hospice beneficiaries during a hospice election, and live discharge rates highlight potential vulnerabilities of the Medicare hospice benefit.

1. Pre-Hospice Spending

In 1982, the Congress introduced hospice into the Medicare program as an alternative to aggressive treatment at the end of life. During the development of the benefit, multiple testimonies from industry leaders and hospice families, it was reported that hospices provided high-quality, compassionate and humane care while also offering a reduction in Medicare costs.[5] Additionally, a Congressional Budget Office (CBO) study asserted that hospice care would result in sizable savings over conventional hospital care.[6] Those savings estimates were based on a comparison of spending in the last 6 months of life for a cancer patient not utilizing hospice care versus the cost of hospice care for the 6 months preceding death.[7] The original language for section 1814(i) of the Act (prior to August 29, 1983) set the hospice aggregate cap amount at 40 percent of the average Medicare per capita expenditure amount for cancer patients in the last 6 months of life. When the hospice benefit was created, the average lifetime length of stay for a hospice patient was between 55 and 75 days. Since the implementation of the Medicare hospice benefit, the principal diagnosis for patients electing the hospice benefit has changed from primarily cancer diagnoses in 1983 to primarily non-cancer diagnoses in FY 2014.[8] Alzheimer's disease and Congestive Heart Failure (CHF) were the most reported principal diagnoses comprising 17 percent of all diagnoses reported (see Table 2 in section II.E) in FY 2014.

Analysis was conducted to evaluate pre-hospice spending for beneficiaries who ever used hospice that died in FY 2013. To evaluate pre-hospice spending, we calculated the median daily Medicare payments for such beneficiaries for the 180 days, 90 days, and 30 days prior to electing hospice care. We then categorized patients according to the principal diagnosis reported on the hospice claim. The analysis revealed that for some patients, the Medicare payments in the 180 days prior to the hospice election were lower than Medicare payments associated with hospice care once the benefit was elected (see Table 3 and Figure 1 below). Specifically, median Medicare spending for a beneficiary with a diagnosis of Alzheimer's disease, non-Alzheimer's dementia, or Parkinson's in the 180 days prior to hospice admission (about 20 percent of patients) was $66.84 per day compared to the RHC rate of $153.45 in FY 2013 during a hospice election (see Table 3 below). Closer to the hospice admission, the median Medicare payments per day increase, as would be expected as the patient approaches the end of life and patient needs intensify. However, 30 days prior to a hospice election, median Medicare spending was $105.24 for patients with Alzheimer's disease, non-Alzheimer's dementia, or Parkinson's. In contrast, the median Medicare payments prior to hospice election for patients with a principal hospice diagnosis of cancer were $143.56 in the 180 days prior to hospice admission and increased to $289.85 in the 30 days prior to hospice admission. The average length of stay for hospice elections where the principal diagnosis was reported as Alzheimer's disease, non-Alzheimer's Dementia, or Parkinson's is greater than patient's with other diagnoses, such as cancer, CVA/stroke, chronic kidney disease, and Chronic Obstructive Pulmonary Disease (COPD). For example, the average lifetime length of stay for an Alzheimer's, non-Alzheimer's Dementia, or Parkinson's patient in FY 2013 was 119 days compared to 47 days for patients with a principal diagnosis of cancer (or in other words, 150 percent longer).

TABLE 3—MEDIAN PRE-HOSPICE DAILY SPENDING ESTIMATES AND INTERQUARTILE RANGE BASED ON 180, 90, AND 30 DAY LOOK-BACK PERIODS PRIOR TO INITIAL HOSPICE ADMISSION WITH ESTIMATES OF AVERAGE LIFETIME LENGTH OF STAY (LOS) BY PRIMARY DIAGNOSIS AT HOSPICE ADMISSION, FY 2013

| | Estimates of daily non-hospice Medicare spending prior to first hospice admission | | | | | | | | | Mean lifetime LOS |
|---|---|---|---|---|---|---|---|---|---|---|
| | 180 day look-back | | | 90 day look-back | | | 30 day look-back | | | |
| | 25th pct. | Median | 75th pct. | 25th pct. | Median | 75th pct. | 25th pct. | Median | 75th pct. | |
| All Diagnoses | $47.04 | $117.73 | $240.73 | $55.75 | $157.89 | $337.97 | $57.66 | $266.84 | $545.44 | 73.8 |
| Alzheimer's, Dementia, and Parkinson's | 23.39 | 66.84 | 162.60 | 23.06 | 82.00 | 220.12 | 21.02 | 105.24 | 368.30 | 119.3 |
| CVA/Stroke | 56.18 | 116.86 | 239.30 | 82.32 | 170.40 | 352.74 | 150.21 | 352.41 | 622.23 | 47.4 |

[5] Subcommittee of Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[6] Mor V. Masterson-Allen S. (1987): *Hospice care systems: Structure, process, costs and outcome.* New York: Springer Publishing Company.

[7] Fogel, Richard. (1983): *Comments on the Legislative Intent of Medicare's Hospice Benefit (GAO/HRD–83–72).*

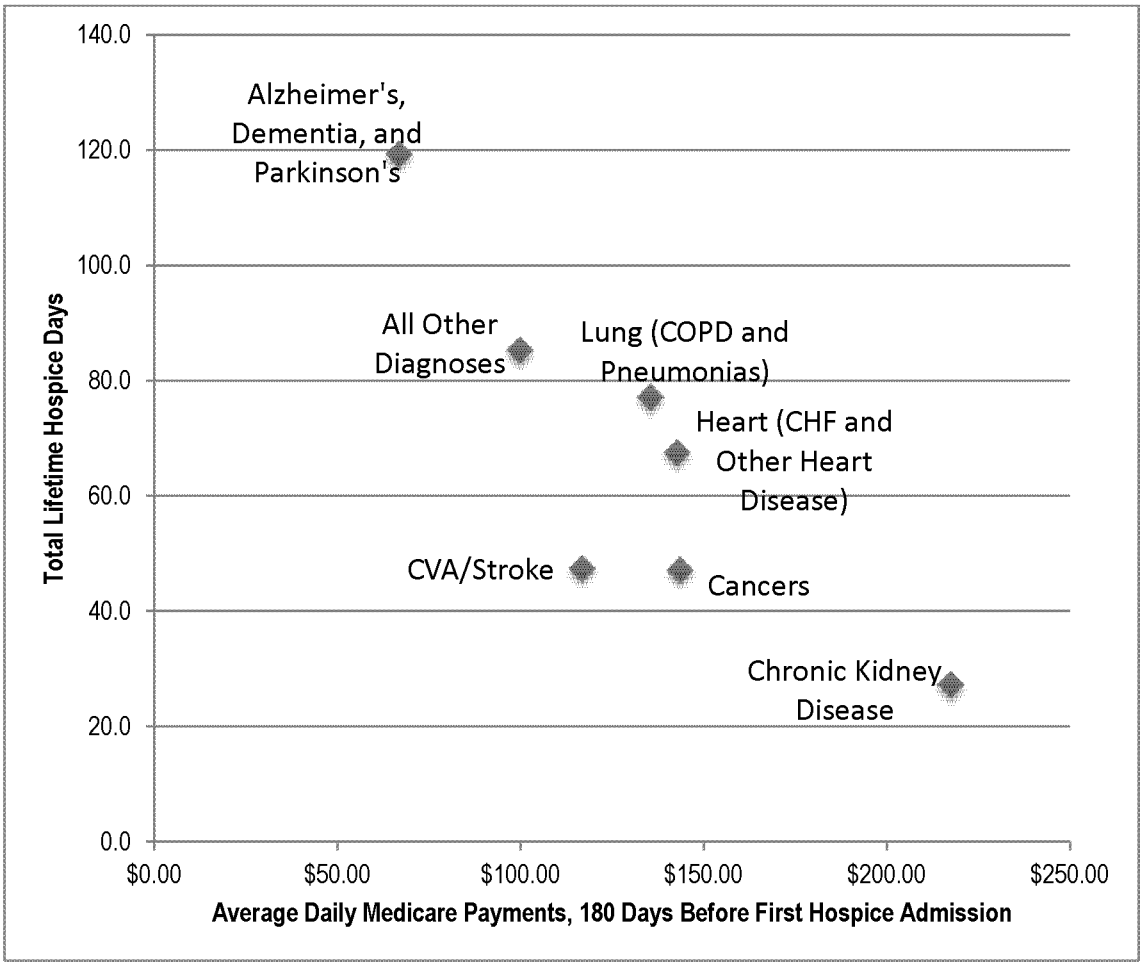
[8] Connor, S. (2007). Development of Hospice and Palliative Care in the Unites States. OMEGA. 56(1), 89–99. doi:102190/OM.5.1.h.

TABLE 3—MEDIAN PRE-HOSPICE DAILY SPENDING ESTIMATES AND INTERQUARTILE RANGE BASED ON 180, 90, AND 30 DAY LOOK-BACK PERIODS PRIOR TO INITIAL HOSPICE ADMISSION WITH ESTIMATES OF AVERAGE LIFETIME LENGTH OF STAY (LOS) BY PRIMARY DIAGNOSIS AT HOSPICE ADMISSION, FY 2013—Continued

| | Estimates of daily non-hospice Medicare spending prior to first hospice admission | | | | | | | | | Mean lifetime LOS |
|---|---|---|---|---|---|---|---|---|---|---|
| | 180 day look-back | | | 90 day look-back | | | 30 day look-back | | | |
| | 25th pct. | Median | 75th pct. | 25th pct. | Median | 75th pct. | 25th pct. | Median | 75th pct. | |
| Cancers | 62.81 | 143.56 | 265.58 | 78.30 | 188.08 | 360.92 | 81.52 | 289.85 | 569.67 | 47.1 |
| Chronic Kidney Disease | 94.78 | 217.46 | 402.10 | 126.41 | 293.18 | 541.41 | 199.01 | 466.25 | 820.78 | 27.3 |
| Heart (CHF and Other Heart Disease) | 61.28 | 135.48 | 255.53 | 80.62 | 186.52 | 364.24 | 101.80 | 325.15 | 588.50 | 77.2 |
| Lung (COPD and Pneumonias) | 65.53 | 142.78 | 272.13 | 90.68 | 201.02 | 401.12 | 126.51 | 367.68 | 685.17 | 67.5 |
| All Other Diagnoses | 36.00 | 99.80 | 222.25 | 39.45 | 132.88 | 316.15 | 38.96 | 213.84 | 504.57 | 85.3 |

Source: All Medicare Parts A, B, and D claims for FY 2013 from the Chronic Conditions Data Warehouse (CCW) retrieved March, 2015.
**Note(s):** Estimates drawn from FY2013 hospice decedents who were first-time hospice admissions, ages 66+ at hospice admission, admitted since 2006, and not enrolled in Medicare Advantage prior to admission. All payments are inflation-adjusted to September 2013 dollars using the Consumer Price Index (Medical Care; All Urban Consumers).

Figure 1: Average Pre-Hospice Daily Spending Estimates based on a180-day Look-Back Period Prior to Initial Hospice Admission with Estimates of Lifetime Length of Stay by Primary Diagnosis at Hospice Admission, FY 2013




In the FY 2014 Hospice Wage Index and Payment Rate Update proposed and final rules (78 FR 27843 and 78 FR 48272), we discussed whether a case-mix system could be created in future refinements to differentiate hospice payments according to patient characteristics. While we do not have the necessary data on the hospice claim form at this time to conduct more thorough research to determine whether a case-mix system is appropriate, analyzing pre-hospice spending was undertaken as an initial step in determining whether patients required different resource needs prior to hospice based on the principal diagnosis reported on the hospice claim. Table 3 and Figure 1 above indicate that hospice patients with the longest length of stay had lower pre-hospice spending relative to hospice patients with shorter lengths of stay. These hospice patients tend to be those with neurological conditions,

including those with Alzheimer's disease, other related dementias and Parkinson's disease. Typically, these conditions are associated with longer disease trajectories, progressive loss of functional and cognitive abilities, and more difficult prognostication. Research has shown that the majority of dementia patients are cared for at home, thereby causing informal costs that put an economic burden on families rather than on healthcare systems.[9] Additionally, research using the National Long-Term Care Survey (NLCS) merged with Medicare claims; researchers found that patients with Alzheimer's disease and related conditions do not have higher Medicare expenditures over the last 5 years of their life than the non-demented elderly.[10] Finally, research conducted by the RAND Corporation and published in the Annals of Internal Medicine in February of 2004 found that ''adjusted mean [Medicare] expenditures were 4.0 percent higher overall among hospice enrollees than among non-enrollees. Adjusted mean [Medicare] expenditures were 1 percent lower for hospice enrollees with cancer than for patients with cancer who did not use hospice. Savings were highest (7 percent to 17 percent) among enrollees with lung cancer and other very aggressive types of cancer diagnosed in the last year of life. [Medicare] Expenditures for hospice enrollees without cancer were 11 percent higher than for non-enrollees, ranging from 20 percent to 44 percent for patients with dementia and 0 percent to 16 percent for those with chronic heart failure or failure of most other organ systems''.[11] While analysis examining pre-hospice spending for hospice patients according to their diagnosis reported on the hospice claim has some limitations, it does show that, depending on the type of research study design selected, different conclusions can be drawn regarding the effect of Alzheimer's disease and dementia on medical care costs.[12]

[9] Schaller, S., Mauskopf, J., Kriza, C., Wahlster, P., Kolominsky-Rabas, P. (2015). The main cost drivers in dementia: a systematic review. International Journal of Geriatric Psychiatry. 15, 111–129. doi: 10.1002/gps.4198.

[10] Ayyagari, P., M. Salm, and F. Sloan. 2008. ''Effects of Diagnosed Dementia on Medicare and Medicaid Program Costs.'' Inquiry 44 (Winter 2007/2008): 481–94. Lamb, V., F. Sloan, and A. Nathan. 2008. ''Dementia and Medicare at Life's End.'' Health Services Research 43 (2): 714–32.

[11] *http://www.rand.org/pubs/external_publications/EP20040207.html.* Accessed on April 23, 2015.

[12] Yang, Z., Zhang, K., Lin, P., Clevenger, C., & Atherly, A. (2012). A Longitudinal Analysis of the Lifetime Cost of Dementia. Health Services Research, 47(4), 1660–1678. doi:10.1111/j.1475–6773.2011.01365.x.

2. Non-Hospice Spending for Hospice Beneficiaries During an Election

When a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the terminal illness and related conditions, except for services provided by the designated hospice and the attending physician as described in section II.D.7. However, Medicare payment is allowed for covered Medicare items or services that are unrelated to the terminal illness and related conditions (that is, the terminal prognosis). When a hospice beneficiary receives items or services unrelated to the terminal illness and related conditions from a non-hospice provider, that provider can bill Medicare for the items or services, but must include on the claim a GW (service not related to the hospice patient's terminal condition) modifier (if billed on a professional claim),[13] or condition code 07 (if billed on an institutional claim).[14] Prescription Drug Events (PDEs) unrelated to the terminal prognosis for which hospice beneficiaries are receiving hospice care are billed to Part D and do not require a modifier or a condition code. We reported initial findings on CY 2012 non-hospice spending during a hospice election in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452). This section updates our analysis of non-hospice spending during a hospice election using FY 2013 data.

For FY 2013, we found that Medicare paid $694.1 million for Part A and Part B items or services while a beneficiary was receiving hospice care. The $694.1 million paid for Part A and Part B items or services was for durable medical equipment (6.4 percent), inpatient care (care in long- term care hospitals, inpatient rehabilitation facilities, acute care hospitals; 28.6 percent), outpatient Part B services (16.6 percent), other Part B services (also known as physician, practitioner and supplier claims, such as labs and diagnostic tests, ambulance transports, and physician office visits; 38.8 percent), skilled nursing facility care (5.3 percent), and home health care (4.3 percent). Part A and Part B non-hospice spending occurred mostly for hospice beneficiaries who were at home (56.0 percent). We also found that on hospice service days in which non-hospice spending occurred, 25.7 percent of hospice beneficiaries were in a nursing facility, 1.9 percent were in an inpatient setting, 15.1 percent were in an assisted living facility, and 1.3 percent were in other settings. Although the average daily rate of expenditures outside the hospice benefit was $7.65, we found geographic differences where beneficiaries receive care. The highest rates per day occurred for hospice beneficiaries residing in West Virginia ($13.74), Delaware ($12.76), Mississippi ($12.31), South Florida ($12.24), and Texas ($12.10)

Table 4 below details the various components of Part D spending for patients receiving hospice care. The portion of the $439.5 million total Part D spending which was paid by Medicare is the sum of the Low Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, or $347.1 million.

TABLE 4—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' FY 2013 DRUGS RECEIVED THROUGH PART D

| Component | FY 2013 expenditures |
|---|---|
| (Patient Pay Amount) | $50,871,517 |
| (Low Income Cost-Sharing Subsidy) | 116,890,745 |
| (Other True Out-of Pocket Amount) | 2,125,071 |
| (Patient Liability Reduction due to Other Payer Amount) | 6,678,561 |
| (Covered Drug Plan Paid Amount) | 230,216,153 |
| (Non-Covered Plan Paid Amount | 28,733,518 |
| (Six Payment Amount Totals) | 435,515,566 |
| (Unknown/ Unreconciled) | 3,945,667 |
| (Gross Total Drug Costs, Reported) | 439,461,233 |

Source: Abt Associates analysis of 100% FY 2013 Medicare Claim Files. For more information on the components above and on Part D data, go to the Research Data Assistance Center's (ResDAC's) Web site at: *http://www.resdac.org/.*

Non-hospice Medicare expenditures occurring during a hospice election in FY 2013 were $694.1 million for Parts A and B spending plus $347.1 million for Part D spending, or approximately $1 billion dollars total. This figure is comparable to the estimated $1 billion MedPAC reported during its December

[13] Medicare Claims Processing Manual, Chapter 11-Processing Hospice Claims, Section 30.4-Claims from Medicare Advantage Organizations, B-Billing of Covered Services. *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c11.pdf.*

[14] Medicare Claims Processing Manual, Chapter 11-Processing Hospice Claims, Section 30.3-Data Required on the Institutional Claim to Medicare Contractors, Conditions Codes. *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c11.pdf.*

2013 public meeting.[15] Associated with this $1 billion in Medicare spending were cost sharing liabilities such as co-payments and deductibles that beneficiaries incurred. Hospice beneficiaries had $132.5 million in cost-sharing for items and services that were billed to Medicare Parts A and B, and $50.9 million in cost-sharing for drugs that were billed to Medicare Part D, while they were in a hospice election. In total, this represents an FY 2013 beneficiary liability of $183.4 million for Parts A, B, and D items or services provided to hospice beneficiaries during a hospice election. Therefore, the total non-hospice costs paid by Medicare or beneficiaries for items or services provided to hospice beneficiaries during a hospice election were over $1.2 billion in FY 2013.

In a recent report, the HHS Office of Inspector General (OIG) identified instances where Medicare may be paying under Part D for drugs that should be provided by the hospice as part of the plan of care.[16] To assist CMS in identifying and evaluating instances where drugs, supplies, durable medical equipment (DME), and Part B services provided to hospice patients appear to be related to the principal diagnosis reported on the hospice claim, but were billed separately to other parts of the Medicare program, Acumen, LLC developed case studies that were reviewed and evaluated by CMS clinical staff.[17] Although hospice beneficiaries are allowed to continue receiving care outside the hospice benefit for conditions that are unrelated to the terminal illness and related conditions (that is, unrelated to the terminal prognosis), § 418.56(c) requires hospices to provide all services necessary for the palliation and management of the terminal illness and related conditions.

[15] MedPAC, ''Assessing payment adequacy and updating payments: hospice services'', December 13 2013. Available at: *http://www.medpac.gov/documents/december-2013-meeting-transcript.pdf.*

[16] *oig.hhs.gov/oas/region6/61000059.pdf* ''Medicare Could Be Paying Twice for Prescriptions For Beneficiaries in Hospice''.

[17] The case studies were developed using CY 2013 claims data for only those beneficiaries with Parts A, B and D coverage throughout their hospice. In identifying services that overlapped with a hospice election, we used two methods. The first method identified a match between the first three diagnosis codes of the hospice claim and the diagnosis codes of the overlapping services in the Part A, Part B, and Part D claim for the same beneficiary. The second method identified a match between the hospice diagnoses and the diagnosis codes of the overlapping services in the Part A, Part B and Part D based on a diagnosis code on the overlapping claim and any diagnosis on the hospice claim mapping to the same Healthcare Cost and Utilization Project (HCUP).

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Across Terminal Conditions

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) products whose use was initiated during a hospice stay are likely related to the terminal prognosis. Table 5 and 6 below summarizes total concurrent billing for DMEPOS products by Berenson-Eggers Types of Service (BETOS) categories and concurrent Durable Medical Equipment (DME) billing by the top 20 principal diagnoses as reported on hospice claims in CY 2013.[18] These diagnoses comprised 2.3 million hospice stays, and accounted for $27.1 million in total concurrent spending for DME products. This amount does not include spending for DME rental products that beneficiaries began using prior to a hospice stay.

TABLE 5—CONCURRENT PAYMENTS FOR ALL DME USE INITIATED DURING A HOSPICE STAY BY BETOS CATEGORY, CY 2013

| DMEPOS BETOS category | Total payment for related DME |
|---|---|
| Hospital Beds | $943,731 |
| Wheelchairs | 2,295,038 |
| Oxygen and Supplies | 2,412,281 |
| Orthotics and Prosthetics | 4,400,353 |
| Medical/Surgical Supplies | 7,467,616 |
| Other DME | 9,585,003 |
| Total | 27,104,022 |

TABLE 6—CONCURRENT PAYMENTS FOR ALL DME USE INITIATED DURING A HOSPICE STAY BY TOP 20 PRINCIPAL DIAGNOSIS REPORTED ON HOSPICE CLAIM, CY 2013

| Principal diagnosis | Total payment for related DME |
|---|---|
| Heart failure | $3,365,348 |
| Malignant neoplasm of trachea, bronchus, and lung | 1,519,514 |
| Other cerebral degenerations | 2,979,399 |
| Other organic psychotic conditions (chronic) | 2,540,146 |
| Chronic airways obstruction, not elsewhere classified | 2,610,628 |
| Senile and presenile organic psychotic conditions | 2,868,760 |
| Other ill-defined and unknown causes of morbidity and mortality | 2,349,855 |
| Ill-defined descriptions and complications of heart disease | 1,584,522 |
| Acute but ill-defined cerebrovascular disease | 1,092,772 |
| Other diseases of lung | 412,501 |
| Chronic renal failure | 415,800 |
| Symptoms concerning nutrition, metabolism, and development | 1,390,685 |
| Malignant neoplasm of pancreas | 297,573 |
| Malignant neoplasm of female breast | 486,019 |
| Malignant neoplasm of colon | 521,690 |
| Parkinson's disease | 955,390 |
| Malignant neoplasm of prostate | 312,754 |
| Late effects of cerebrovascular disease | 559,253 |
| Other forms of chronic ischemic heart disease | 670,947 |
| Malignant neoplasm of liver and intrahepatic bile ducts | 170,470 |

We noted that hospice beneficiaries with hospice claims-reported principal diagnoses of chronic airway obstruction, congestive heart failure, cerebral degeneration and lung cancer were receiving services clinically indicated and recommended for these conditions outside of the hospice benefit, which is in violation of requirements regarding the Medicare hospice benefit. This could be attributed to hospices

[18] DMEPOS HCPCS codes are summarized by Berenson-Eggers Types of Service (BETOS) categories. BETOS categories were developed by the American Medical Association (AMA) and aggregate HCPCS codes into clinically coherent groups.

incorrectly classifying conditions as unrelated and referring patients to non-hospice providers, not communicating and coordinating the care and services needed to manage the needs of the hospice beneficiary, or deliberately, to avoid costs. The case studies below are focused on four of the most commonly reported principal hospice diagnoses on hospice claims (see Table 2 in section II.E) based on evidence based clinical guidelines as described for each principal hospice diagnosis.

Malignant Neoplasm of the Trachea, Bronchus, and Lung

Malignant neoplasm of the trachea, bronchus, and lung (or lung cancer) is defined by ICD–9 diagnosis codes beginning with 162 and describes malignant cancers affecting various part of the pulmonary system. Symptoms for this class of conditions may include chronic and worsening cough, shortness of breath, chest pain, metastatic bone pain, and anorexia and weight loss. Clinical practice guidelines for end-stage cancer recommend treatment and management of refractory symptoms including pain, mucositis, dyspnea, fatigue, depression and anorexia through the use of pharmacological interventions including nonsteroidal anti-inflammatories, corticosteroids, opioids and antidepressants.[19] Additionally, evidence shows that palliative chemotherapy and radiotherapy can provide symptom relief from bone and brain metastasis.[20] Recommended interventions for dyspnea include treatment of the underlying reason such as, thoracentesis for pleural effusion, bronchodilators and systemic corticosteroids for inflammation and secretions, and supportive measures such supplemental oxygen, opioids and anxiolytics to decrease the sensation of breathlessness.[21]

Our assessment of concurrently billed Part D drugs included 89,925 stays for beneficiaries with ICD–9 code 162 listed as a primary diagnosis on the hospice claim. Our assessment of concurrently billed Part B services included 153,199 stays. In CY 2013, concurrent billing for all services related this terminal condition comprised $3.4 million. Table 7 below summarizes concurrent payments for services that were potentially related to this class of conditions. Part D drugs that should have been covered under the hospice benefit for the treatment of this condition accounted for $2.1 million. DME services that were billed during hospice stays related to this condition during the same time cost $640,166. Concurrent services provided in Part B institutional settings accounted for $591,772.

TABLE 7—CONCURRENT PAYMENTS FOR SERVICES PROVIDED TO HOSPICE BENEFICIARIES WITH MALIGNANT NEOPLASM OF THE TRACHEA, BRONCHUS, AND LUNG, CY 2013

| Type of service | Description | Total payment |
|---|---|---|
| Drugs/Part D | Common Palliative Drugs | $851,639 |
| Drugs/Part D | Anti-neoplastics (chemotherapy) | 1,321,507 |
| DME | Oxygen Equipment and Supplies | 454,068 |
| DME | Hospital Beds | 47,781 |
| DME | Wheelchairs | 138,316 |
| Part B Inst. | Diagnostic Imaging | 341,601 |
| Part B Inst. | Radiation | 250,171 |
| Total | | 3,405,083 |

Chronic Airway Obstruction

Chronic airway obstruction is defined by ICD–9 diagnosis codes beginning with 496 and includes chronic lung disease with unspecified cause, and is characterized by inflammation of the lungs and airways. Typical symptoms of these pulmonary diseases include increasing and disabling shortness of breath, labored breathing, increased coughing, increased heart rate, decreased functional reserve, increased infections and unintentional, progressive weight loss. Evidence-based practice supports the benefits of oral opioids, neuromuscular electrical stimulation, chest wall vibration, walking aids, respiratory assist devices and pursed-lip breathing in the management of dyspnea in the individual patient with advanced COPD.[22] Oxygen is recommended for COPD patients with resting hypoxemia for symptomatic benefit.[23] Additionally, clinical practice guidelines recommend inhaled bronchodilators, systemic corticosteroids, and pulmonary physiotherapy for the management of COPD exacerbations.[24] Analysis conducted by Acumen, LLC, shows concurrently billed Part D drugs included 130,283 stays for beneficiaries with ICD–9 code 469 listed as a primary diagnosis on the hospice claim. Additionally, concurrently billed Part B services included 198,098 such stays. Table 8 below summarizes concurrent payments for services that are potentially related to this class of conditions. In CY 2013, concurrent billing for all services related this terminal condition comprised $10.4 million. Part D drugs that should have been covered under the hospice benefit for the treatment of this condition accounted for $8.6 million. DME services that were billed during hospice stays related to this condition during the same time amounted to $1.2 million dollars.[25] Finally, concurrent services provided in Part B institutional settings accounted for $605,110.

[19] Qaseem A, Snow V, Shekelle P, Casey DE, Cross JT, Owens DK, et al. Evidence-Based Interventions to Improve the Palliative Care of Pain, Dyspnea, and Depression at the End of Life: A Clinical Practice Guideline from the American College of Physicians. Ann Intern Med. 2008;148:141–146. doi:10.7326/0003–4819–148–2–200801150–00009

[20] Palliative care in lung cancer*: accp evidence-based clinical practice guidelines (2nd edition) Kvale PA, Selecky PA, Prakash US. Chest. 2007;132(3_suppl):368S–403S.

[21] ibid.

[22] DD Marciniuk, D Goodridge, P Hernandez, et al. (2011). Canadian Thoracic Society COPD Committee Dyspnea Expert Working Group. Managing dyspnea in patients with advanced chronic obstructive pulmonary disease: A Canadian Thoracic Society clinical practice guideline. Canadian Respiratory Journal. 18(2), 1–10.

[23] ibid

[24] National Clinical Guideline Centre for Acute and Chronic Conditions. Chronic obstructive pulmonary disease. Management of chronic obstructive pulmonary disease in adults in primary and secondary care. London (UK): National Institute for Health and Clinical Excellence (NICE); 2010 Jun. 61 p. (Clinical guideline; no. 101). Retrieved from the National Guideline Clearinghouse on February 19, 2015. *http://www.guideline.gov/*

[25] DMEPOS HCPCS codes are summarized by Berenson-Eggers Types of Service (BETOS) categories. BETOS categories were developed by the American Medical Association (AMA) and aggregate HCPCS codes into clinically coherent groups.

TABLE 8—CONCURRENT PAYMENTS FOR SERVICES PROVIDED TO HOSPICE BENEFICIARIES WITH CHRONIC AIRWAY OBSTRUCTION, CY 2013

| Type of service | Description | Total payment |
|---|---|---|
| Drugs/Part D | Common Palliative Drugs [26] | $1,757,326 |
| Drugs/Part D | Antiasthmatics & Bronchodilators | 6,545,089 |
| Drugs/Part D | Corticosteroids | 141,179 |
| Drugs/Part D | Respiratory Agents | 148,793 |
| DME | Oxygen Equipment and Supplies [27] | 525,276 |
| DME | Hospital Beds | 480,854 |
| DME | Wheelchairs | 196,692 |
| Part B Institutional | Diagnostic Imaging | 605,110 |
| Total | | 10,400,319 |

Cerebral Degeneration

Cerebral degeneration is defined by ICD–9 diagnosis codes beginning with 331, and includes conditions such as Alzheimer's disease and Reye's syndrome. These conditions are typically characterized by a progressive loss of cognitive function with symptoms including the loss of memory and changes in language ability, behavior, and personality. Additionally, as these cerebral degenerations progress, other clinical manifestations occur such as dysphagia, motor dysfunction, impaired mobility, increased need for activities of daily living assistance, urinary and fecal incontinence, weight loss and muscle wasting. Individuals with these conditions are also at increased risk for aspiration, falls, pneumonias, decubitus ulcers and urinary tract infections. Clinical practice guidelines for the treatment of cerebral degenerative conditions includes pharmacological interventions including Angiotensin Converting Enzyme inhibitors, memantine or combination therapy depending on severity of disease, as well as antidepressants, antipsychotics, psychostimulants, mood stabilizers, benzodiazepines and neuroleptics, depending on behavioral manifestations. Non-pharmacological interventions recommended include mental, behavioral and cognitive therapy, speech language pathology to address swallowing issues, and other interventions to treat and manage manifestations including pressure ulcers, cachexia and infections.[28]

Our assessment of concurrently billed Part D drugs included 208,346 stays for beneficiaries with ICD–9 code 331 listed as a primary diagnosis on the hospice claim. Our assessment of concurrently billed Part B services included 318,044 stays. In CY 2013, concurrent billing for all services related to this principal diagnosis comprised $11.2 million. Table 9 below summarizes concurrent payments for services that are potentially related to this class of conditions. Part D drugs that should have been covered under the hospice benefit for the treatment of this condition accounted for $10.3 million. Concurrently billed DME products that were related this condition cost Medicare an additional $390,476. Concurrent services provided in Part B institutional settings accounted for $496,790.

TABLE 9—CONCURRENT PAYMENTS FOR SERVICES PROVIDED TO HOSPICE BENEFICIARIES WITH CEREBRAL DEGENERATION, CY 2013

| Type of service | Description | Total payment |
|---|---|---|
| Drugs/Part D | Common Palliative Drugs | $1,184,005 |
| Drugs/Part D | Antipsychotic/Antimanic Agents | 2,336,504 |
| Drugs/Part D | Psychotherapeutic & Neurological Agents | 6,752,270 |
| DME | Hospital Beds | 138,249 |
| DME | Wheelchairs | 252,228 |
| Part B Inst. | Diagnostic Imaging | 496,790 |
| Total | | 11,160,046 |

Congestive Heart Failure

Congestive heart failure (CHF) is defined by ICD–9 diagnosis codes beginning with 428. CHF is characterized by symptoms such as shortness of breath, edema, diminished endurance, angina, productive cough and fatigue. For the management of congestive heart failure, clinical practice guidelines recommend pharmacological interventions including beta blockers, angiotensin converting enzyme inhibitors, angiotensin receptor blockers, diuretics, anti-platelets, anti-coagulants and digoxin, depending on symptomology and response or nonresponse to other treatments.[29] Nonpharmacological interventions recommended include continuous positive airway pressure and

[26] Includes all analgesics, anxiolytics, antiemetics, and laxatives. These four drug types are considered ''nearly always covered under the hospice benefit'' and as such are rarely expected to be billed separately during a hospice stay.

[27] For COPD, we also include respiratory assist devices (RADs) in this category.

[28] Development Group of the Clinical Practice Guideline [trunc]. Clinical practice guideline on the comprehensive care of people with Alzheimer's disease and other dementias. Barcelona (Spain): Agency for Health Quality and Assessment of Catalonia (AQuAS); 2010. 499 p. Retrieved from the National Guideline Clearinghouse on February 19, 2015. *http://www.guideline.gov/*.

[29] Scottish Intercollegiate Guidelines Network (SIGN). Management of chronic heart failure. A national clinical guideline. Edinburgh (Scotland): Scottish Intercollegiate Guidelines Network (SIGN); 2007 Feb. 53 p. (SIGN publication; no. 95).

supplemental oxygen for those with coexisting pulmonary disease.[30]

Our assessment of concurrently billed Part D drugs included 158,220 stays for beneficiaries with ICD–9 code 428 listed as a primary diagnosis on the hospice claim. Our assessment of concurrently billed Part B services included 256,236 stays. In CY 2013, concurrent billing for all services related this terminal condition comprised $5.8 million. Table 10 below summarizes concurrent payments for services that are potentially related to this class of conditions. Part D drugs that should have been covered under the hospice benefit for the treatment of this condition accounted for $3.8 million. DME services that were billed during hospice stays related to this condition during this time cost $843,534. Concurrent services provided in Part B institutional settings accounted for $1.2 million.

TABLE 10—CONCURRENT PAYMENTS FOR SERVICES PROVIDED TO HOSPICE BENEFICIARIES WITH CONGESTIVE HEALTH FAILURE, CY 2013

| Type of service | Description | Total payment |
|---|---|---|
| Drugs/Part D | Common Palliative Drugs | $1,229,748 |
| Drugs/Part D | Diuretics | 334,700 |
| Drugs/Part D | Beta Blockers | 363,480 |
| Drugs/Part D | Anti-hypertensives | 584,799 |
| Drugs/Part D | Anti-anginal Agents | 468,333 |
| Drugs/Part D | Cardiovascular Agents—Misc | 799,605 |
| Drugs/Part D | Vasopressors | 43,496 |
| DME | Oxygen Equipment and Supplies | 471,376 |
| DME | Hospital Beds | 96,219 |
| DME | Wheelchairs | 275,940 |
| Part B Inst. | Diagnostic Imaging | 690,726 |
| Part B Inst. | EKGs | 72,933 |
| Part B Inst. | Cardiac Devices | 242,819 |
| Part B Inst. | Diagnostic Clinical Labs | 79,999 |
| Part B Prof. | Diagnostic Clinical Labs | 64,698 |
| Total | | 5,818,871 |

Our regulations at § 418.56(c) require that hospices provide all services necessary for the palliation and management of the terminal illness and related conditions. We have discussed recommended evidence-based practice clinical guidelines for the hospice claims-reported principal diagnoses mentioned in this section. However, this analysis reveals that these recommended practices are not being covered under the Medicare hospice benefit. We believe the case studies in this section highlight the potential systematic unbundling of the Medicare hospice benefit and may be valuable analysis to inform policy stakeholders.

3. Live Discharge Rates

Currently, federal regulations allow a patient who has elected to receive Medicare hospice services to revoke their hospice election at any time and for any reason. Specifically, the regulations state that if the hospice patient (or his/her representative) revokes the hospice election, Medicare coverage of hospice care for the remainder of that period is forfeited. The patient may, at any time, re-elect to receive hospice coverage for any other hospice election period that he or she is eligible to receive (§ 418.28(c)(3) and § 418.24(e)). During the time period between revocation/discharge and the re-election of the hospice benefit, Medicare coverage would resume for those Medicare benefits previously waived. A revocation can only be made by the beneficiary, in writing, that he or she is revoking the hospice election and the effective date of the revocation. A hospice cannot ''revoke'' a beneficiary's hospice election, nor is it appropriate for hospices to encourage, request or demand that the beneficiary revoke his or her hospice election. Like the hospice election, a hospice revocation is to be an informed choice based on the beneficiary's goals, values and preferences for the services they wish to receive.

Federal regulations only provide limited opportunity for a Medicare hospice provider to discharge a patient from its care. In accordance with § 418.26, discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause. Hospices may not automatically or routinely discharge the patient at its discretion, even if the care may be costly or inconvenient. As we indicated in the FY 2015 Hospice Wage Index and Payment Rate Update proposed and final rules, we understand that the rate of live discharges should not be zero, given the uncertainties of prognostication and the ability of patients and their families to revoke the hospice election at any time. On July 1, 2012, we began collecting discharge information on the claim to capture the reason for all types of discharges which includes, death, revocation, transfer to another hospice, moving out of the hospice's service area, discharge for cause, or due to the patient no longer being considered terminally ill (that is, no longer qualifying for hospice services). Based upon the additional discharge information, Abt Associates, our research contractor performed analysis on FY 2013 claims to identify those beneficiaries who were discharged alive. The details of this analysis will be reported in the 2015 technical report and will be made available on the Hospice Center Web page. In order to better understand the characteristics of hospices with high live discharge rates, we examined the aggregate cap status, skilled visit intensity; average lengths of stay; and non-hospice spending rates per beneficiary.

Between 2000 and 2013, the overall rate of live discharges increased from 13.2 percent in 2000 to 18.3 percent in 2013. Among hospices with 50 or more discharges (discharged alive or deceased), there is significant variation

[30] Lindenfeld J, Albert NM, Boehmer JP, Collins SP, Ezekowitz JA, Givertz MM, Klapholz M, Moser DK, Rogers JG, Starling RC, Stevenson WG, Tang WHW, Teerlink JR, Walsh MN. Executive Summary: HFSA 2010 Comprehensive Heart Failure Practice Guideline. J Card Fail 2010;16:475e539.

in the rate of live discharge between the 10th and 90th percentiles (see Table 11 below). Most notably, hospices at the 95th percentile discharged 50 percent or more of their patients alive.

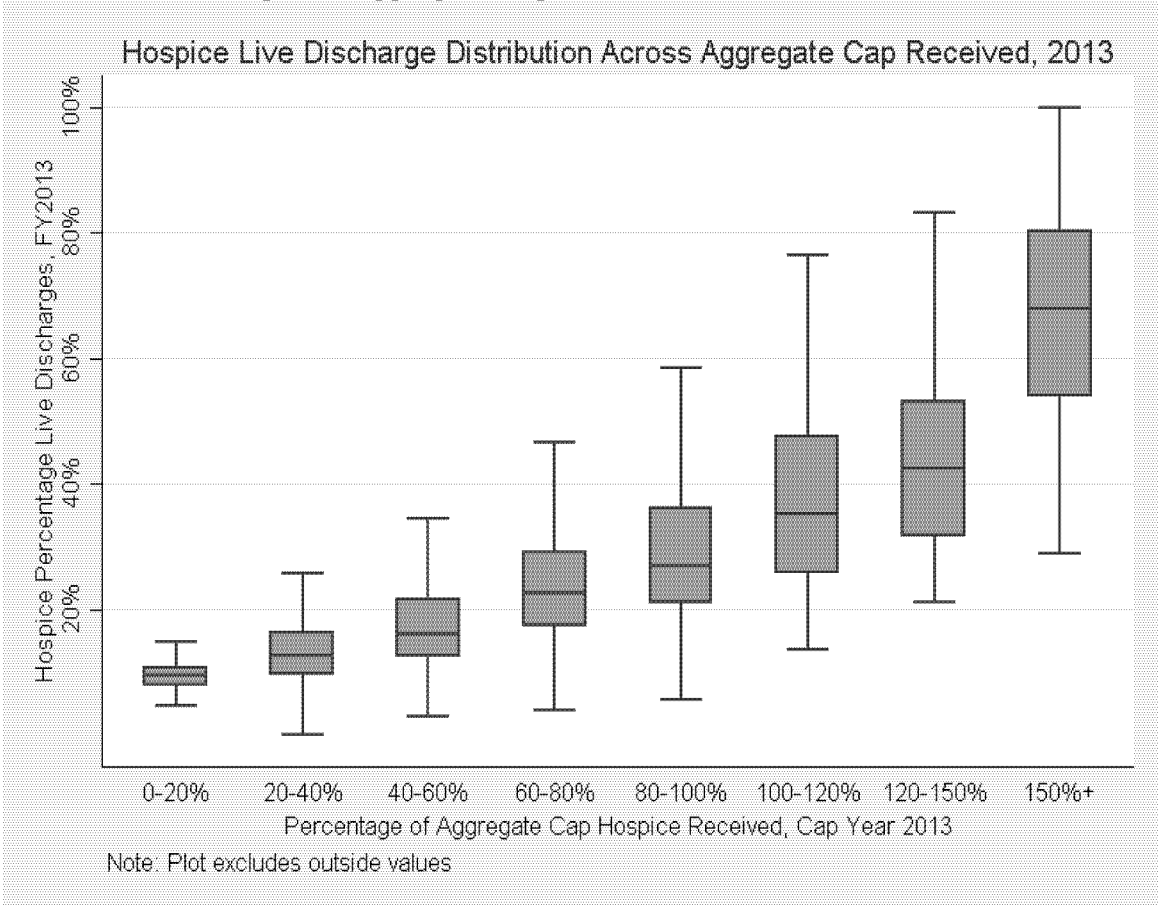
TABLE 11—DISTRIBUTION OF LIVE DISCHARGE RATES IN FY 2013 FOR HOSPICES WITH 50 OR MORE LIVE DISCHARGES

| Statistic | Live discharge rate (%) |
|---|---|
| 5th Percentile | 8.1 |
| 10th Percentile | 9.5 |
| 25th Percentile | 12.9 |
| Median | 18.3 |
| 75th Percentile | 26.6 |
| 90th Percentile | 39.1 |
| 95th Percentile | 50.0 |

**Note:** n=3,096

We analyzed hospices' aggregate cap status to determine whether there is a relationship between live discharge rates and their aggregate cap status. As described in section III.4.C and section III.D, when the Medicare Hospice Benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice can receive in a year. Our FY 2013 analytic file contained 3,061 hospices with aggregate cap information and with more than 50 discharges in FY 2013. We found that 40.3 percent of hospices above the 90th percentile were also above the aggregate cap for the 2013 cap year. Conversely, only 3.8 percent of hospices below the 90th percentile were above the aggregate cap. As illustrated by the box plot below, the vertical axis represents the hospices' live discharge rates in FY 2013 and the horizontal axis represents the total payments hospices received at the end of the cap year of November 2012 through October 2013 relative to the total cap amount. Hospices under 100 percent on the X-axis are below the cap and those 100 percent or higher on the X-axis are above the cap. Our analysis found that hospices with higher live discharge rates are also above the cap. Specifically, the top of the rectangle represents the 75th percentile of live discharge rates, the middle line represents the median for that group, and the bottom of the rectangle is the 25th percentile of live discharge rates among all hospices ending the year within the range of cap percentages of live discharge rates as indicated by the horizontal axis (see Figure 2 below). We found that there appears to be a relationship with hospices with high live discharge rates and those that are above the aggregate cap.

**Figure 2: Distribution of Hospice Live Discharge Rates by Hospice Payment Received Relative to the Hospice's Aggregate Cap Amount, FY 2013**




In FY 2013, we found that hospices with high live discharge rates also, on average, provide fewer visits per week. Those hospices with live discharge rates at or above the 90th percentile provide, on average, 3.97 visits per week. Hospices with live discharge rates below the 90th percentile provide, on average, 4.48 visits per week. We also found in FY 2013 that, when focusing on visits classified as skilled nursing or medical social services, hospices with

live discharge rates at or above the 90th percentile provide, on average, 1.91 visits per week versus hospices with live discharge rates below the 90th percentile that provide, on average, 2.35 visits per week.

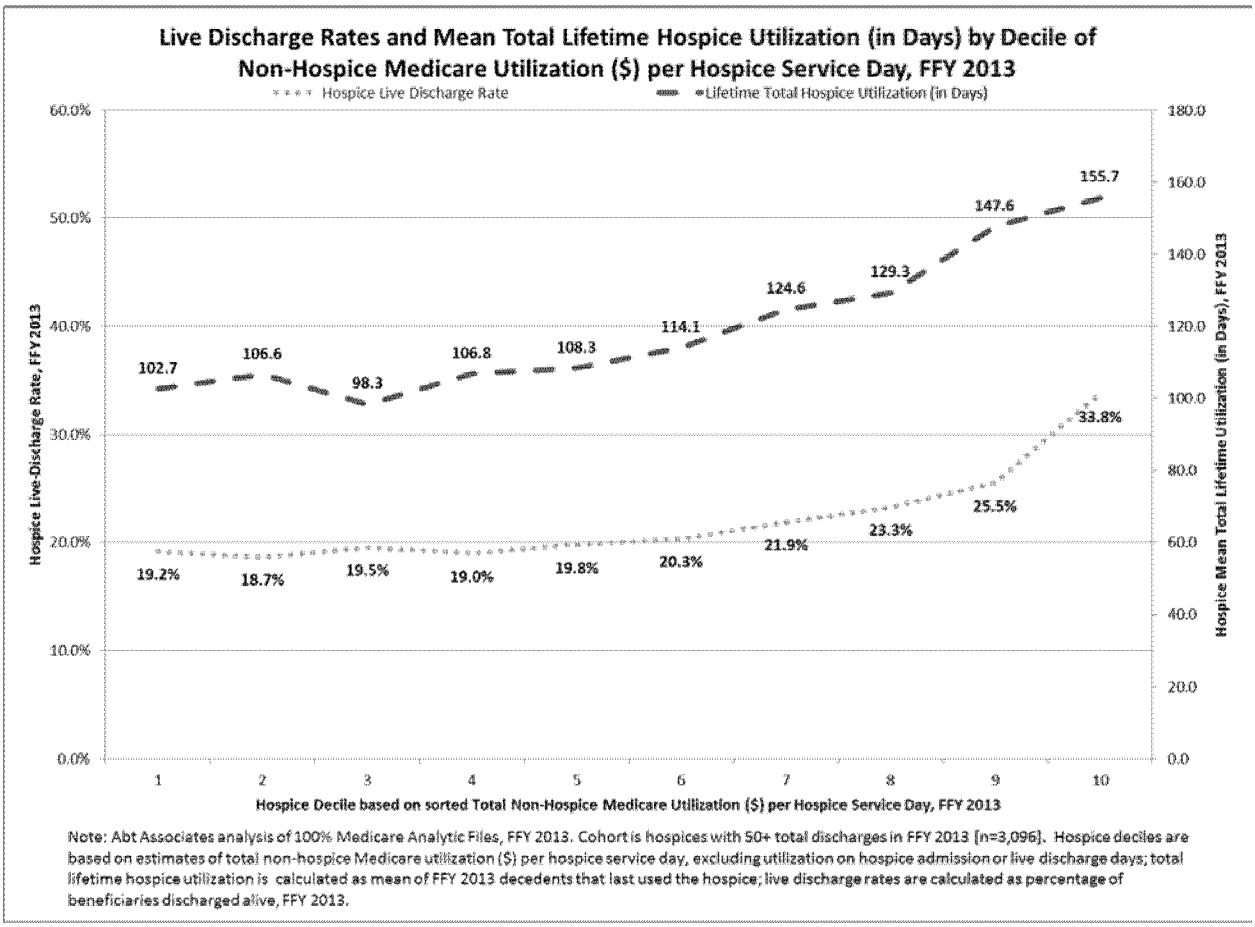
We examined whether there was a relationship between hospices with high live discharge rates, average lengths of stay, and non-hospice spending per beneficiary per day (see Table 12 and Figure 3 below). As described above in section III.A.2, we identified instances, in the aggregate and illustrated by case studies, where Medicare appeared to be paying for services twice because we would expect them to be covered by the hospice base payment rate. Hospices with patients that, on average, accounted for $30 per day in non-hospice spending while in hospice (decile 10 in Table 12 and Figure 3 below) had live discharge rates that were, on average, about 33.8 percent and had an average lifetime length of stay of 156 days. In contrast, hospices with patients that, on average, accounted for $4 per day in non-hospice spending while in a hospice election (decile 1 in Table 12 and Figure 3 below) had live discharge rates that were, on average, about 19.2 percent and an average lifetime length of stay of 103 days. In other words, hospices in the highest decile, according to their level of non-hospice spending for patients in a hospice election, had live discharge rates and average lifetime lengths of stay that averaged 76 percent and 52 percent higher, respectively, than the hospices in lowest decile.

**Table 12: Mean Daily Non-Hospice Medicare Utilization and Sum Total Non-Hospice Utilization by Hospice Provider Decile based on sorted Non-Hospice Medicare Utilization per Hospice Day, FFY 2013**

| Decile | Non-Hospice Medicare ($) per Hospice Service Day | Total Non-Hospice Medicare ($) |
|---|---|---|
| 1 | $4.15 | $24,683,958 |
| 2 | $6.30 | $47,971,918 |
| 3 | $7.86 | $56,871,943 |
| 4 | $9.22 | $69,879,537 |
| 5 | $10.63 | $105,399,628 |
| 6 | $12.13 | $116,697,215 |
| 7 | $13.82 | $154,499,596 |
| 8 | $15.89 | $177,609,853 |
| 9 | $19.43 | $214,073,434 |
| 10 | $29.47 | $256,226,963 |
| **All Hospices** | **$12.89** | **$1,223,914,046** |

Note: Abt Associates analysis of 100% Medicare Analytic Files, FFY 2013. Cohort is hospices with 50+ total discharges in FFY 2013 [n=3,096]. Hospice deciles are based on estimates of total non-hospice Medicare utilization ($) per hospice service day, excluding utilization on hospice admission or live discharge days.

Figure 3: Average Hospice Live Discharge Rates and Lifetime Lengths of Stay by Decile of Non-Hospice Medicare Spending For Patients in Hospice Elections, FY 2013




The analytic findings presented above suggests that some hospices may consider the Medicare Hospice program as a long-term custodial benefit rather than an end of life benefit for beneficiaries with a medical prognosis of 6 months or less if the illness runs its normal course. As previously discussed in reports by MedPAC and the OIG, there is a concern that hospices may be admitting individuals who do not meet hospice eligibility criteria. We continue to communicate and collaborate across CMS to improve monitoring and oversight activities. We expect to analyze the additional claims and cost report data reported by hospices in the future to determine whether additional regulatory proposals to reform and strengthen the Medicare Hospice benefit are warranted.

*B. Proposed Routine Home Care Rates and Service Intensity Add-On Payment*

1. Statutory Authority and Background

Section 3132(a) of the Affordable Care Act amended 1814(i) of the Act by adding paragraph (6)(D), that instructs the Secretary, no earlier than October 1, 2013, to implement revisions to the methodology for determining the payment rates for RHC and other services included in hospice care as the Secretary determines to be appropriate. The revisions may be based on an analysis of new data and information collected and such revisions may include adjustments to per diem payments that reflect changes in resource intensity in providing such care and services during the course of the entire episode of hospice care. In addition, we are required to consult with hospice programs and MedPAC on the revised hospice payment methodology.

This legislation emerged largely in response to MedPAC's March 2009 Report to Congress, which cited rapid growth of for-profit hospices and longer lengths of stay that raised concerns regarding a per diem payment structure that encouraged inappropriate utilization of the benefit.[31] MedPAC stated that a revised payment system would encourage hospice stays consistent with meeting the eligibility requirements of a medical prognosis of 6 months or less if the illness runs its normal course and increase greater provider accountability to monitor patients' conditions. In that same report, MedPAC stated that their goal was to ''strengthen the hospice payment system and not discourage enrollment in hospice, while deterring program abuse.''

As described in section III.A, CMS has transparently conducted payment reform activities and released research findings to the public since 2010. At that time, Abt Associates conducted a literature review and carried out original research to provide background on the current state of the Medicare

[31] Medicare Payment Advisory Commission (MedPAC). ''Reforming Medicare's Hospice Benefit.'' *Report to the Congress: Medicare Payment Policy*. March, 2009. Web. 18 Feb. 2015. *http://medpac.gov/documents/reports/Mar09_Ch06.pdf?sfvrsn=0.*

hospice benefit. The initial contract also included several technical expert panel meetings with national hospice association representatives, academic researchers, and a cross-section of hospice programs that provided valuable insights and feedback on baseline empirical analyses provided by the ASPE. A subsequent award to Abt Associates continues to support the dissemination of research analyses and findings, which are located in the ''Research and Analyses'' section of the Hospice Center Web page (*http://cms.hhs.gov/Center/Provider-Type/Hospice-Center.html*). In addition, research findings and payment reform concepts were set out in a 2013 technical report and a 2014 technical report, as well as in the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234) and in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452). These research findings and concepts provide a basis for an important initial step toward payment reform outlined in section III.B.2 below.

Over the past several years, MedPAC, the Government Accountability Office (GAO), and OIG, have all recommended that CMS collect more comprehensive data to better evaluate trends in utilization of the Medicare hospice benefit. Furthermore, section 3132(a)(1)(C) of the Affordable Care Act specifies that the Secretary may collect additional data and information on cost reports, claims, or other mechanisms as the Secretary determines to be appropriate. We have received many suggestions for ways to improve data collection to support larger payment reform efforts in the future. Based on those suggestions and industry feedback, we began collecting additional information on the hospice claim form as of April 1, 2014.[32] Additionally, revisions to the cost report form for freestanding hospices became effective for cost reporting periods beginning on or after October 1, 2014. The instructions for completing the revised freestanding hospice cost report form are found in the Medicare Provider Reimbursement Manual-Part 2, chapter 43.[33] Once available, we expect the data from hospice claims and cost reports to provide more comprehensive information on the costs associated with the services provided by hospices to Medicare beneficiaries by level of care.

a. U-Shaped Payment Model

For over a decade, MedPAC and other organizations have reported findings that suggest that the hospice benefit's fixed per-diem payment system is inconsistent with the true variance of service costs over the course of an episode. Specifically, MedPAC cited both academic and non-academic studies, as well as its own analyses (as summarized and articulated in MedPAC's 2002,[34] 2004,[35] 2006,[36] 2008,[37] and 2009 [38] Reports to Congress), demonstrating that the intensity of services over the duration of a hospice stay manifests in a 'U-Shaped' pattern (that is, the intensity of services provided is higher both at admission and near death and, conversely, is relatively lower during the middle period of the hospice episode). According to MedPAC's 2008 Report to Congress, after the high costs at admission, the 'turning point' or 'break-even' point of profitability was found to be about 3 weeks (21 days).[39] Beyond 21 days, the magnitude of profitability deficits or 'marginal costs' declined and the lengths of stay became profitable—and more so—with longer stays.[40] Since hospice care is most profitable during the long, low-cost middle portions of an episode, longer episodes would potentially have very profitable, long middle segments. This financial incentive appears to have resulted in hospices enrolling beneficiaries that are not truly eligible for the benefit (that is, do not have a life expectancy of 6 months or less) and ''may lead some patients, families, and providers to implicitly regard hospice as a source of basic health care for failing patients who did not qualify for skilled nursing facility or home health care and did not qualify for Medicaid or otherwise could not afford other sources of long-term custodial care'',[41] rather than the end-of-life care for which the benefit was originally designed.

In its March 2009 report, ''Reforming Medicare's Hospice Benefit,'' MedPAC recommended that the Congress require CMS to implement a payment system that would adjust per-diem hospice rates based on the day's timing within the hospice episode, with the express goal of mitigating the apparent inconsistency between payments and resource utilization (that is, costs) in hospice episodes.[42] Specifically, MedPAC recommended that payments near the beginning and ending of a stay be set at higher levels (weighted upwards) and payments during the middle portion of care be set at lower levels (weighted downwards) to better mirror documented variation in cost over an episode's duration. Two primary weighting schemes were outlined in MedPAC's 2009 Report: A ''larger intensity adjustment'' (essentially a deeper U-shaped payment model, paying twice the base rate in the first 30/last 7 days and just a quarter of the daily rate in days 181+) and a ''smaller intensity adjustment'' (a relatively shallower U-shaped model, paying 1.5 times the base rate in the first 30/last 7 days and 0.375 times the daily rate in days 181+).

In its March 2015 Report to the Congress,[43] MedPAC reiterated its continued concerns regarding the ''mismatch between payments and hospice service intensity'' in the current hospice system and the ongoing need for payment reform. The Commission stated that ''Medicare's hospice payment system is not well aligned with the costs of providing care throughout a hospice episode. As a result, long hospice stays are generally more profitable than short stays.'' The Commission previously ''recommended that the hospice payment system be reformed to better match service intensity throughout a hospice episode of care (higher per diem payments at the beginning of the episode and at the end of the episode near the time of death and lower payments in the middle)''.

Other organizations have also explored the concept of a U-shaped payment model. The ASPE, in conjunction with its contractor, Acumen LLC, analyzed hospice enrollment and utilization data. ASPE's research

[32] CMS Transmittal 2864. ''Additional Data Reporting Requirements for Hospice Claims''. Available at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R2864CP.pdf*.

[33] *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021935.html?DLPage=1&DLSort=0&DLSortDir=ascending*.

[34] *http://www.medpac.gov/documents/contractor-reports/report-to-the-congress-medicare-beneficiaries'-access-to-hospice-(may-2002).pdf*.

[35] *http://www.medpac.gov/documents/reports/June04_ch6.pdf*.

[36] *http://www.medpac.gov/documents/reports/Jun06_Ch03.pdf*.

[37] *http://www.medpac.gov/documents/reports/Jun08_Ch08.pdf*.

[38] *http://www.medpac.gov/documents/reports/Mar09_Ch06.pdf*.

[39] *http://www.medpac.gov/documents/reports/Jun08_Ch08.pdf*.

[40] Cheung, L., K. Fitch, and B. Pyenson. 2001. The costs of hospice care: An actuarial evaluation of the Medicare hospice benefit. Report by Milliman USA for the National Hospice and Palliative Care Organization, August 1. New York: Milliman USA.

[41] *http://www.medpac.gov/documents/reports/Mar09_Ch06.pdf?sfvrsn=0*.

[42] Medicare Payment Advisory Commission (MedPAC). ''Reforming Medicare's Hospice Benefit.'' *Report to the Congress: Medicare Payment Policy*. March, 2009. Web. 18 Feb. 2015. *http://medpac.gov/documents/reports/Mar09_Ch06.pdf?sfvrsn=0*.

[43] *http://medpac.gov/documents/reports/chapter-12-hospice-services-(march-2015-report).pdf?sfvrsn=0*.

demonstrated that the resource use curve becomes more pronounced as episode lengths increase for hospice users, indicating that this effect occurs because resource use declines more substantially for the middle days relative to beginning and ending days in longer episodes of hospice care than it does for shorter episodes. The decline in the center of the 'U' is deeper for those users who receive RHC only during their hospice episode, which is the case for the majority of hospice patients. Recently, CMS's contracting partner, Abt Associates, conducted analysis of FY 2013 hospice claims data, showing that of the approximately 92 million hospice days billed, 97.45 percent are categorized as RHC.

b. Tiered Payment Model

As required under section 3132(a) of the Affordable Care Act, CMS also explored other options for hospice payment reform. Taking into consideration the research and analysis performed by MedPAC, ASPE, and others, our payment reform contractor, Abt Associates, examined hospice utilization data and modeled a hypothetical ''tiered'' payment system similar to MedPAC's U-shaped payment model by paying different per-diem rates for RHC according to the timing of the RHC day in the patient's episode of care. However, because analysis of hospice claims data found that a relatively high percentage of patients were not receiving skilled visits during the last days of life, the ''tiered payment model'' made the increased payments at end of life contingent on whether skilled services were provided. As reported in the FY 2015 Hospice Payment Rate Update final rule, in CY 2012, approximately 14 percent beneficiaries did not receive any skilled visits in the last 2 days of life (79 FR 50461). While this could be explained, in part, by sudden or unexpected death, the high percentage of beneficiaries with no skilled visits in the last 2 days of life causes concern as to whether beneficiaries and their families are not receiving needed hospice care and support at the very end of life. If hospices are actively engaging with the beneficiary and the family throughout the election, we would expect to see skilled visits during those last days of life. Therefore, in the tiered payment model, making the increased payment at the end of life contingent on whether skilled visits occurred in the last 2 days of life was thought of as one way to provide additional incentive for care to be provided when the patient needs it most.

The groupings in the tiered payment model, presented in Table13 below, were developed through Abt Associates' analyses of resource utilization over the hospice episode and clinical input. Using a sample of 100 percent RHC hospice service days from 2011, Abt then developed payment weights for each grouping by calculating its relative resource utilization rate compared to the overall estimate of resource use across all RHC days (see Table 13 below).

TABLE 13—AVERAGE DAILY RESOURCE USE BY PAYMENT GROUPS IN THE TIERED PAYMENT MODEL, CY 2011

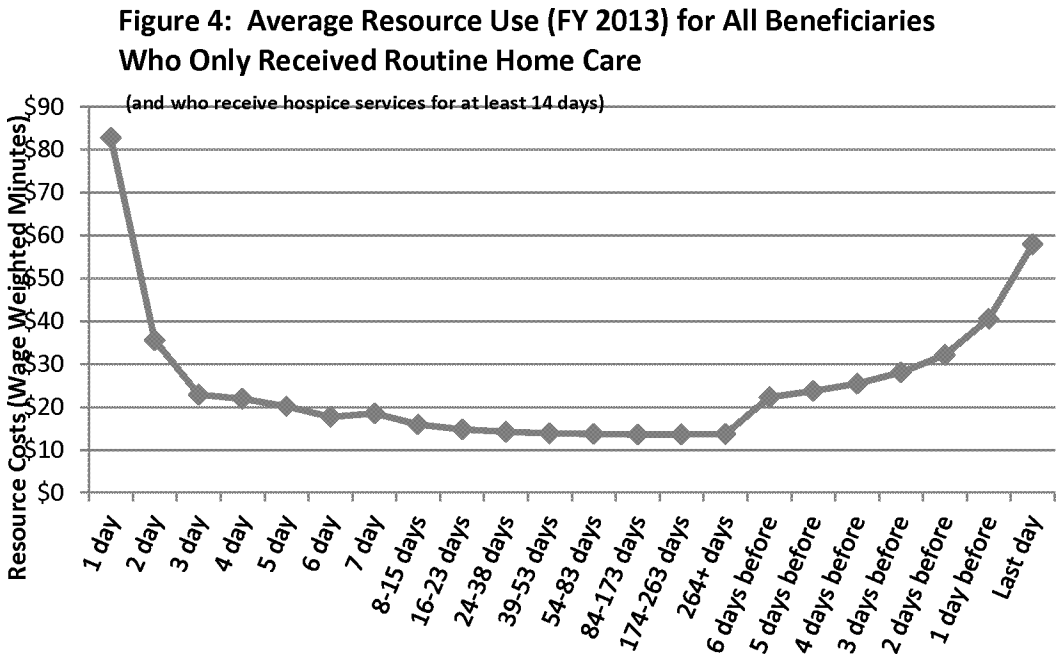
| Group | Days of hospice | Implied weight |
|---|---|---|
| Group 1: RHC Days 1–5 | 2,800,144 | 2.3 |
| Group 2: RHC Days 6–10 | 2,493,004 | 1.11 |
| Group 3: RHC Days 11–30 | 7,767,918 | 0.97 |
| Group 4: RHC Days 31+ | 65,958,740 | 0.86 |
| Group 5: RHC During Last Seven Days, Skilled Visits During Last 2 Days | 2,832,620 | 2.44 |
| Group 6: RHC During Last Seven Days, No Skilled Visits During Last 2 Days | 476,809 | 0.91 |
| Group 7: RHC When Hospice Length of Stay is 5 Days or Less, Patient Discharged as ''Expired''. | 510,787 | 3.64 |
| Total | 82,840,022 | 1.0 |

The payment weighting scheme in this system, derived from observed resource utilization across the entire episode, would produce higher payments during times when service is more intensive (the beginning of a stay or the end of life) and produce lower payments during times when service is less intensive (such as the ''middle period'' of the stay). The tiered payment model was discussed in more detail in the FY2014 Hospice Wage Index final rule (78 FR 48271) and in the Hospice Study Technical Report issued in April of 2013.[44]

c. Visits During the Beginning and End of a Hospice Election

Updated analysis of FY 2013 hospice claims data continues to demonstrate a U-Shaped pattern in of resource use. Increased utilization at both the beginning and end of a stay is demonstrated in Figure 4 below, where FY 2013 resource costs (as captured by wage-weighted minutes) are markedly higher in the first two days of a hospice election and once again in the six days preceding the date of death and on the date of death itself.

[44] *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-Study-Technical-Report.pdf.*




Analysis of skilled nursing and social work visits provided on the first day of a hospice election shows that nearly 89 percent of patients received a visit totaling 15 minutes or more, while 11 percent did not receive a skilled nursing visit or social work visit on the first day of a hospice election (see Table 14 below). The percentage of patients that did not receive a skilled nursing or social work visit on a given day increased to nearly 38 percent on the second day of a hospice election. In accordance with the hospice CoPs at § 418.54(a), hospices are required to have a RN complete an initial assessment of the hospice patient within 48 hours of election; therefore, we would expect to see a nursing visit occurring within the first 2 days of an election in order to be in compliance with the CoPs. We found that, in FY 2013, 96 percent of hospice patients did receive a skilled visit in the first 2 days of a hospice election. The percentage of patients that did not receive a skilled nursing or social work visit on any given day increased to about 65 percent by the sixth day of a hospice election. Overall, on any given day during the first 7 days of a hospice election, nearly 50 percent of the time the patient is not receiving a skilled visit (skilled nursing or social worker visit).

TABLE 14—FREQUENCY AND LENGTH OF SKILLED NURSING AND SOCIAL WORK VISITS (COMBINED) DURING THE FIRST SEVEN DAYS OF A HOSPICE ELECTION, FY 2013

| Visit length | First day (percent) | Second day (percent) | Third day (percent) | Fourth day (percent) | Fifth day (percent) | Sixth day (percent) | Seventh day (percent) | First through seventh day (percent) |
|---|---|---|---|---|---|---|---|---|
| No Visit | 11.0 | 37.7 | 56.0 | 59.1 | 62.0 | 65.6 | 64.2 | 49.3 |
| 15mins to 1 hr | 12.8 | 27.1 | 22.2 | 20.6 | 20.4 | 20.1 | 22.3 | 20.7 |
| 1hr15m to 2 hrs | 32.0 | 21.4 | 14.3 | 13.4 | 12.2 | 10.4 | 10.2 | 16.9 |
| 2hrs15m to 3 hrs | 22.8 | 8.6 | 4.8 | 4.5 | 3.6 | 2.5 | 2.2 | 7.5 |
| 3hrs15m to 3hrs45m | 8.5 | 2.6 | 1.3 | 1.2 | 0.9 | 0.6 | 0.5 | 2.4 |
| 4 or more hrs | 13.0 | 2.6 | 1.3 | 1.2 | 0.9 | 0.7 | 0.6 | 3.2 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

**Source:** FY 2013 hospice claims data from the Standard Analytic Files for CY 2012 (as of June 30, 2013) and CY 2014 (as of December 31, 2013).

As we noted above, we are concerned that many beneficiaries are not receiving skilled visits during the last few days of life. At the end of life, patient needs typically surge and more intensive services are warranted. However, analysis of FY 2013 claims data shows that on any given day during the last 7 days of a hospice election, nearly 50 percent of the time the patient is not receiving a skilled visit (skilled nursing or social worker visit) (see table 15 below). Moreover, on the day of death nearly 30 percent of beneficiaries did not receive a skilled visit (skilled nursing or social work visit).

TABLE 15—FREQUENCY AND LENGTH OF SKILLED NURSING AND SOCIAL WORK VISITS (COMBINED) DURING THE LAST SEVEN DAYS OF A HOSPICE ELECTION, FY 2013

| Visit length (percent) | Day of death (percent) | One day before death (percent) | Two days before death (percent) | Three days before death (percent) | Four days before death (percent) | Five days before death (percent) | Six days before death (percent) | Last seven days combined (percent) |
|---|---|---|---|---|---|---|---|---|
| No Visit | 27.8 | 38.7 | 45.2 | 49.8 | 53.2 | 55.8 | 58.0 | 46.3 |
| 15mins to 1 hr | 23.9 | 27.9 | 26.5 | 25.1 | 24.2 | 23.5 | 22.8 | 24.9 |
| 1hr15m to 2 hrs | 24.2 | 19.3 | 17.4 | 15.9 | 14.5 | 13.6 | 12.7 | 17.1 |
| 2hrs15m to 3 hrs | 12.3 | 7.2 | 5.9 | 5.1 | 4.5 | 4.1 | 3.8 | 6.3 |
| 3hrs15m to 3hrs45m | 4.4 | 2.4 | 1.9 | 1.6 | 1.4 | 1.2 | 1.1 | 2.1 |
| 4 or more hrs | 7.4 | 4.3 | 3.0 | 2.4 | 2.1 | 1.9 | 1.6 | 3.4 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Source: FY 2013 hospice claims data from the Standard Analytic Files for CY 2012 (as of June 30, 2013) and CY 2014 (as of December 31, 2013).

We would expect that skilled visits are provided to the patient and family at end of life as the changing condition of the individual and the imminence of death often warrants frequent changes to care to alleviate and minimize symptoms and to provide support for the family. Although previous public comments stated that patients and families sometimes request no visits at the end of life, and there are rare instances where a patient passes away unexpectedly, we would expect that these instances would be rare and represent a small proportion of the noted days without visits at the end of life. However, the data presented in Table 15 above suggests that it is not rare for patients and families to have not received skilled visits (skilled nursing or social work visits) at the end of life. In the FY 2015 Hospice Wage Index and Payment Rate Update final rule, we noted that nearly 5 percent of hospices did not provide any skilled visits in the last 2 days of life to more than 50 percent of their decedents receiving routine home care on those last 2 days and 34 hospices did not make any skilled visits in the last 2 days of life to any of their decedents who died while receiving routine home care (79 FR 50462).

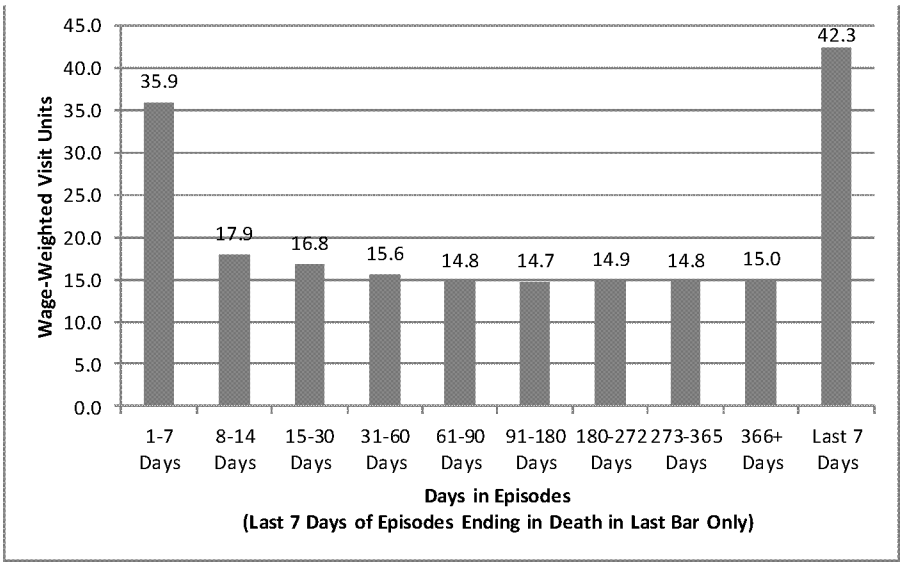
2. Proposed Routine Home Care Rates

RHC is the basic level of care under the Hospice benefit, where a beneficiary receives hospice care, but remains at home. With this level of care, hospice providers are currently reimbursed per day regardless of the volume or intensity of services provided to a beneficiary on any given day. As stated in the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234), ''it is CMS' intent to ensure that reimbursement rates under the Hospice benefit align as closely as possible with the average costs hospices incur when efficiently providing covered services to beneficiaries.'' However, as discussed in section III.B.1 above, there is evidence of a misalignment between the current RHC per diem payment rate and the cost of providing RHC. In order to help ensure that hospices are paid adequately for providing care to patients regardless of their palliative care needs during the stay, while at the same time encouraging hospices to more carefully determine patient eligibility relative to the statutory requirement that the patients' life expectancy be 6 months or less, we are using the authority under section 1814(i)(6)(D) of the Act, as amended by section 3132(a) of the Affordable Care Act to propose a revision to the current RHC per diem payment rate to more accurately align the per diem payments with visit intensity (that is, the cost of providing care for the clinical service (labor) components of the RHC rate). We are proposing, in conjunction with a SIA payment discussed in section III.B.3 below, two different RHC rates that would result in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for days 61 or over of hospice care.

The two proposed rates for RHC are based on an extensive body of research concerning visit intensity during a hospice episode as cited throughout this section. We consider a hospice ''episode'' of care to be a hospice election period or series of election periods. Visit intensity is commonly measured in terms of wage-weighted minutes and reflects variation in the provision of care for the clinical service (labor) components of the RHC rate. The labor components of the RHC rate comprise nearly 70 percent of the RHC rate (78 FR 48272). Therefore, visit intensity is a close proxy for the reasonable cost of providing hospice care absent data on the non-labor components of the RHC rate, such as drugs and DME. As shown in Figures 5 and 6 below, the daily cost of care, as measured wage-weighted minutes, declines quickly for individual patients during their hospice episodes, and for long episode patients, remains low for a significant portion of the episode. Thus, long episode patients are potentially more profitable than shorter episode patients under the current per diem payments system in which the payment rate is the same for the entire episode. At the same time, the percent of beneficiaries that enter hospice less than 7 days prior to death has remained relatively constant (approximately 30 percent) over this time period, meaning the increase in the average episode length can be attributed to an increasing number of long stay patients. We found that the percent of episodes that are more than 6 months in length has nearly doubled from about 7 percent in 1999 to 13 percent in 2013.

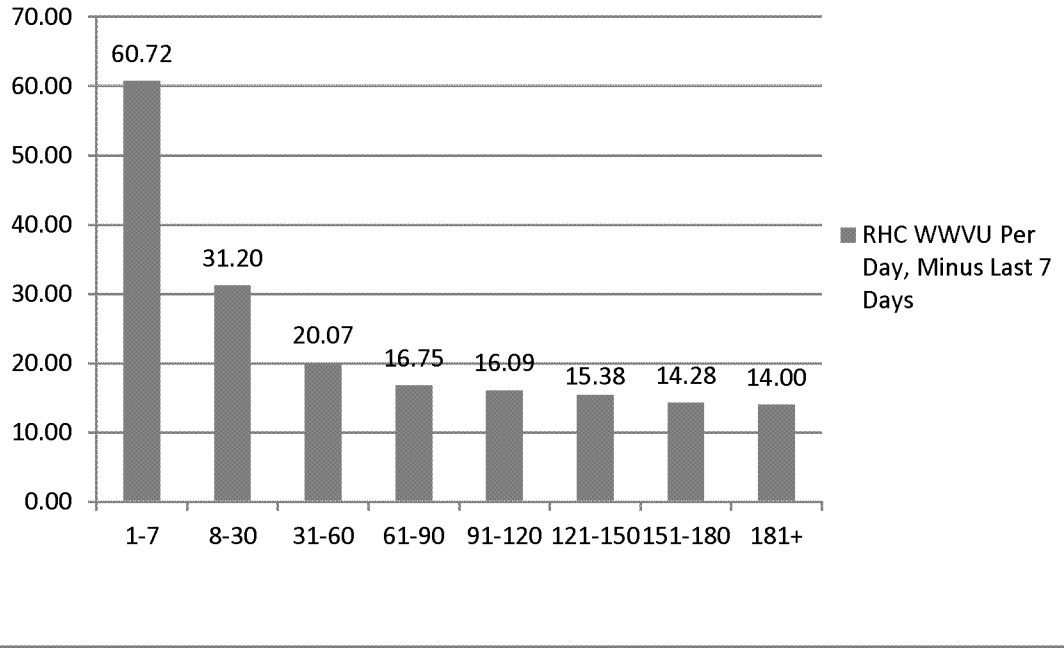
Figure 5 displays the pattern of wage-weighted minutes by time period within beneficiary episodes, but excluding the last 7 days of the episode for decedents. The wage-weighted minutes for the last 7 days are displayed separately by the bar furthest to the right of the Figure 5. The visit intensity curve declines rapidly after 7 days and then at a slower rate until 60 days when the curve becomes flat throughout the remainder of episodes (excluding the last 7 days prior to death). It is for this reason we are proposing to pay the higher rate for the first 60 days and a lower rate thereafter. It is clear from the figure that visit utilization is constant from day 61 on, until the last 7 days for decedents. We believe the most important reason for proposing a different RHC rate for the first 60 days versus days 61 and beyond is that we must account for differences in average visit intensity between episodes that will end within 60 days and those that will go on for longer episodes.

**Figure 5: Wage-Weighted Minutes per RHC Day, CY 2013**




As Figure 6 demonstrates, beneficiaries whose entire episode is between 8 and 60 days do have higher wage-weighted minute usage than those with longer stays. Using 60 days for the high RHC rate as opposed to an earlier time assured that hospices would have sufficient resources for providing high quality care to patients (for example, 1 through 60 days) whose average daily visit intensity is higher than for longer stay patients.

**Figure 6: RHC Wage-Weighted Minutes Per Day, Minus Last 7 Days, All Episodes Ending in CY 2013**




The SIA payments based on actual visits provided would be added to the applicable rate during the last 7 days to reflect the rapid increase in visit intensity during that time period.

Table 16 below describes the average wage-weighted minutes for RHC days in FY 2014, calculated both in specific phases within an episode as well as overall.

TABLE 16—AVERAGE WAGE WEIGHTED MINUTES PER RHC DAY, FY 2014

| Phase of days in episode | Average wage-weighted minutes | RHC Days | Ratio of wage weighted minutes for each row divided by wage weighted minutes for days 1–7 |
|---|---|---|---|
| 1–7 Days | 39.32 | 5,401,497 | 1.0000 |
| 8–14 Days | 20.12 | 4,276,570 | 0.5118 |
| 15–30 Days | 17.96 | 7,693,966 | 0.4567 |
| 31–60 Days | 16.10 | 10,679,971 | 0.4095 |
| 61–90 Days | 15.44 | 8,061,934 | 0.3927 |
| 91–180 Days | 14.93 | 16,156,969 | 0.3797 |
| 181–272 Days | 14.79 | 10,056,928 | 0.3762 |
| 273–365 Days | 14.91 | 6,844,692 | 0.3791 |
| 365 up Days | 15.05 | 15,962,038 | 0.3828 |
| Total RHC Days | 17.21 | 85,134,565 | 0.4377 |

In Table 16, the average wage-weighted minutes per day for days 1 through 7 describe the baseline for the other phases of care, set at a value of one. Given the demands of the initial care in an episode, resource intensity is highest during this first week of an episode, and resource needs decline steadily over the course of an episode. The overall average wage-weighted minutes per day across all RHC days equals $17.21 as described in the last row in table 16 above. We then calculated the average wage-weighted minute costs for the two groups of days (Days 1 through 60 and Days 61+) utilizing FY 2014 RHC days multiplied by the 2013 Bureau of Labor Statistics (BLS) average hourly wage values for the relevant disciplines, as follows: Skilled Nursing: $40.07; Physical Therapy: $55.93; Occupational Therapy: $55.57; Speech Language Pathology: $60.21; Medical Social Services: $38.25; and Aide: $14.28. The average wage-weighted minute cost for days 1 through 60 equals to $21.69 while the average wage weighted minutes for days 61 or more equals $15.01.

To calculate the RHC payment rate for days 1 through 60, we compare the average wage-weighted minutes per day for days 1 through 60 to the overall average wage-weighted minutes per day multiplied by the labor portion of the FY 2015 RHC rate (column 4 in Table 17 below), which equals ($21.69/$17.21)*$109.48 = $137.98. Similarly, the RHC payment rate for days 61+ equals the average wage-weighted minutes per day for days 61+ divided by the overall average wage-weighted minutes per day multiplied by the labor portion of the FY 2015 RHC rate (column 4 in Table 17 below), which equals ($15.01/$17.21)*$109.48 = $95.48.

TABLE 17—FY 2015 RHC RATE REVISED LABOR PORTION CALCULATION

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| | FY 2015 RHC payment rate | RHC Labor-related share | FY 2015 RHC payment rate—labor portion | Average wage weighted minutes for RHC differential rate/ overall RHC average wage weighted minutes | Revised FY 2015 labor portion |
| Days 1–60 | $159.34 | × 0.6871 | $109.48 | × 1.2603 ($21.69/$17.21) | $137.98 |
| Days 61+ | 159.34 | × 0.6871 | 109.48 | × 0.8722 ($15.01/$17.21) | 95.48 |

As discussed in section III.C of this rule, currently, the labor-related share of the hospice payment rate for RHC is 68.71 percent. The non-labor share is equal to 100 percent minus the labor–related share, or 31.29 percent. Given the current base rate for RHC for FY 2015 of $159.34, the labor and non-labor components are as follows: for the labor-share portion, $159.34 multiplied by 68.71 percent equals $109.48; for the non-labor share portion, $159.34 multiplied by 31.29 percent equals $49.86. After determining the labor portion for the RHC rate for the first 60 days and the labor portion for the RHC rate for days 61 and over, we add the non-labor portion ($49.86) to the revised labor portions as described in column 6 in Table 17 above and in column 2 in Table 18 below. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the proposed RHC rates would need to be adjusted by a ratio of the total labor payments for RHC under using the current single rate for RHC to the estimated total labor payments for RHC using the two proposed rates for RHC. This ratio results in a budget neutrality adjustment of 0.9985 as shown in column 3 in Table 18 below. Finally, adding the revised labor portion with budget neutrality to the non-labor portion results in revised FY 2015 RHC payment rates of $187.63 for days 1 through 60 and $145.21 for days 61 and over.

TABLE 18—RHC BUDGET NEUTRALITY ADJUSTMENT FOR RHC RATES

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| | Revised FY 2015 labor portion | Budget neutrality factor [1] | Revised FY 2015 labor portion with budget neutrality | FY 2015 Non-labor portion | FY 2015 Revised RHC payment rates |
| Days 1–60 | $137.98 | × 0.9985 | $137.77 | $49.86 | $187.63 |
| Days 61+ | 95.49 | × 0.9985 | 95.35 | 49.86 | 145.21 |

[1] The budget neutrality adjustment is required due to differences in the average wage index for days 1–60 compared to days 61 and over.

The proposed RHC rates for days 1 through 60 and days 61 and over (column 6 of Table 18 above) would replace the current single RHC per diem payment rate with two new RHC per diem rates for patients who require RHC level of care during a hospice election. In order to mitigate potential high rates of discharge and readmissions, we further propose that the count of days follow the patient. For hospice patients who are discharged and readmitted to hospice within 60 days of that discharge, his or her prior hospice days will continue to follow the patient and count toward his or her patient days for the receiving hospice upon hospice election. The hospice days would continue to follow the patient solely to determine whether the receiving hospice may bill at the 1 through 60 or 61+ RHC rate. The proposed policy does not preclude the receiving hospice (same or different hospice) from billing for a per diem payment for each hospice day. Therefore, we consider an ''episode'' of care to be a hospice election period or series of election periods separated by no more than a 60 day gap. We will monitor this proposal and trends in discharges and revocations for potential future refinements to address perverse incentives. This policy proposal attempts to better align RHC payment rates with resource use and is not intended to place an arbitrary limit on hospice services. We continue to expect hospices to adhere to the long-standing policy to provide ''virtually all'' care during a hospice election as articulated in the 1983 Hospice Care proposed and final rules as well as most recently in FY 2015 Hospice Wage Index and Payment Rate Update final rule. Furthermore, program integrity and oversight efforts including but not limited to, medical review, MAC audits, Zone Program Integrity Contractor actions, Recovery Auditor activities, or suspension of provider billing privileges, are being considered to address fraud and abuse. We are soliciting public comment on all aspects of the proposed RHC payment rates as articulated in this section as well as this policy in conjunction with the proposed SIA payment described in section III.B.3 below.

3. Proposed Service Intensity Add-On (SIA) Payment

Section 1814(i)(1)(A) of the Act states that payment for hospice services must be equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations. In addition, section 1814(i)(6)(D) of the Act, as amended by section 3132(a) of the Affordable Care Act, requires the Secretary to implement revisions to the methodology for determining the payment rates for RHCs and other services included in hospice care under Medicare Part A as the Secretary determines to be appropriate as described in section III.B.1 above. Given that independent analyses demonstrate a U-shaped cost pattern across hospice episodes, CMS believes that implementing revisions to the payment system that align with this concept supports the requirements of reasonable cost in section 1814(i)(A) of the Act. As articulated above, CMS considered implementing a tiered payment model as described in the FY 2014 Hospice Wage Index final rule (78 FR 48271) and in the Hospice Study Technical Report issued in April of 2013,[45] in order to better align payments with observed resource use over the length of a hospice stay. However, operational concerns and programmatic complexity led us to explore the concept of a SAI that could be implemented with minimal systems changes that limit reprocessing of hospice claims due to sequential billing requirements. In addition, while the tiered model represented a move toward better aligning payments with resource use, it only accounted for whether skilled services were provided in the last 2 days of life (Groups 5 and 6 in Table 13 above). Section III.B.1.c, above notes that on any given day during the first 7 days of a hospice election and last 7 days of life, only about 50 percent of the time are visits being made. In our view, increasing payments at the beginning of a hospice election and at the end of life for days where visits are not occurring does not align with the requirements of reasonable cost articulated in statute in section 1814(i)(A) of the Act. Therefore, as one of the first steps in addressing the observed misalignment between resource use and associated Medicare payments and in improving patient care through the promotion of skilled visits at end of life with minimal claims processing systems changes, CMS proposes to implement a SIA payment if the criteria outlined below are met

To qualify for the SIA payment, we propose that the following criteria must be met: (1) The day is billed as a RHC level of care day; (2) the day occurs during the last 7 days of life (and the beneficiary is discharged dead); (3) direct patient care is provided by a RN or a social worker (as defined by § 418.114(c) and § 418.114(b)(3), respectively) that day; and (4) the service is not provided in a skilled nursing facility/nursing facility (SNF/NF). The proposed SIA payment would be equal to the CHC) hourly payment rate (the current FY 2015 CHC rate is $38.75 per hour), multiplied by the amount of direct patient care provided by a RN or social worker for up to 4 hours total, per day, as long as the four criteria listed above are met. The proposed SIA payment would be paid in addition to the current per diem rate for the RHC level of care.

CMS would create two separate G-codes for use when billing skilled nursing visits (revenue center 055x), one for a RN and one for a Licensed Practical Nurse (LPN). During periods of crisis, such as the precipitous decline before death, RNs are more highly trained clinicians with commensurately higher payment rates. Moreover, our rules at § 418.56(a)(1) require the RN member of the hospice interdisciplinary group to be responsible for ensuring that the needs of the patient and family are continually assessed. We would expect that at end of life the needs of the

[45] *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/Hospice-Study-Technical-Report.pdf.*

patient and family would need to be frequently assessed; thus the skills of the interdisciplinary group RN are required. We note that social workers also often play a crucial role in providing support for the patient and family when a patient is at end of life. While the nature of the role of the social worker does facilitate interaction via the telephone, CMS proposes to only pay an SIA for those social work services provided by means of in-person visits. Analysis conducted by Abt Associates on the FY 2013 hospice claims data shows that in the last 7 days of life only approximately 10 percent of beneficiaries received social work visits of any kind. Moreover, we also found that only about 13 percent of social work ''visits'' are provided via telephone; therefore, the proportion of social work calls likely represents a very small fraction of visits overall in the last few days of life. The SIA payment would be in addition to the RHC payment amount and the costs associated with social work phone conversations; visits by LPNs, aides, and therapists; counseling; drugs; medical supplies; DME; and any other item or service usually covered by Medicare would still be covered by the existing RHC payment amount in accordance with section 1861(dd)(1) of the Act.

In 2011, the OIG published a report that focused specifically on Medicare payments to hospices who served a high percentage of nursing facility residents. The OIG found that from 2005 to 2009, the total Medicare spending for hospice care for nursing facility residents increased from $2.55 billion to $4.31 billion, an increase of almost 70 percent (OIG, 2011). When looking at hospices that had more than two-thirds of their beneficiaries in nursing facilities, the OIG found that 72 percent of these facilities were for-profit and received, on average, $3,182 more per beneficiary in Medicare payments than hospices overall. High-percentage hospices were found to serve beneficiaries who spent more days in hospice care, to the magnitude of 3 weeks longer than the average beneficiary. In addition, when looking at distributions in diagnoses, OIG found that high-percentage hospices enrolled beneficiaries who required less skilled care. In response to these findings, OIG recommended that CMS modify the current hospice reimbursement system to reduce the incentive for hospices to seek out beneficiaries in nursing facilities, who often receive longer but less complex and costly care.[46] Per the OIG recommendation, we are proposing to exclude SNF/NF sites of service from eligibility for the SIA payment.

The for-profit provider community has frequently highlighted its concerns regarding the lack of adequate reimbursement for hospice short stays in its public filings with the Securities and Exchange Commission (SEC) as described in MedPAC's 2008 Report to Congress.[47] Specifically, MedPAC cited records from the SEC for publicly traded for-profit hospice chains as evidence of a general acknowledgement of the nonlinear cost function of resource use within hospice episodes. For instance:

- VistaCare: ''Our profitability is largely dependent on our ability to manage costs of providing services and to maintain a patient base with a sufficiently long length of stay to attain profitability,'' and that ''cost pressures resulting from shorter patient lengths of stay . . . could negatively impact our profitability.'' [48]
- Odyssey HealthCare: ''Length of stay impacts our direct hospice care expenses as a percentage of net patient service revenue because, if lengths of stay decline, direct hospice care expenses, which are often highest during the earliest and latter days of care for a patient, are spread against fewer days of care.'' [49]

Short lengths of stay were also cited as a source of financial difficulties for small rural hospices (implying that longer stays were more profitable).[50] In the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule, we stated that ''analysis conducted by Abt Associates found that very short hospice stays have a flatter curve than the U-shaped curve seen for longer stays, and that average hospice costs are much higher. These short stays are less U-shaped because there is not a lower-cost middle period between the time of admission and the time of death.'' The FY 2014 Hospice Wage Index and Payment Rate Update proposed rule went on to note that a ''short stay add-on'' was under consideration as a possible reform option (78 FR 27843). Public comments received in response to the proposed rule were favorable regarding a possible short stay add-on payment. Since the proposed SIA payment would be applicable to any 7-day period of time ending in the patient's death, hospice elections with short lengths of stay would receive an additional payment that would help mitigate the marginally higher costs associated with short lengths of stay, consistent with the 'reasonable cost' structure of the hospice payment system. For FY 2013, 32 percent of hospice stays were 7 days or less with 60 percent of stays lasting 30 days or less. The median length of stay in FY 2013 was 17 days.

Although Figure 4 above demonstrates that there is increased resource use during the first 2 days of an election, we are not proposing an additional SIA payment for the first or second day of a hospice election when the length of stay is beyond 7 days. According to MedPAC, the breakeven point for a hospice election is about three weeks after admission.[51] The proposed SIA payment for the last 7 days of life would provide additional reimbursement to help to mitigate the higher costs for stays lasting 3 weeks or less where spreading out the initial costs in the first 2 days of the election over a smaller number of days is not enough to make the overall stay profitable. Once a hospice stay reaches 3 weeks or more, the initial costs associated with the first 2 days of a hospice election can be spread out over a larger number of days, making the overall stay profitable. A stay of 7 days or less before death would be eligible for SIA payment on all days.

We believe that the proposed SIA payment helps to address MedPAC and industry concerns regarding the visit intensity at end of life and the concerns associated with the profitability of hospice short stays. The proposed RHC rates described in section III.B2 and SIA payment would advance hospice payment reform incrementally, as mandated by the Affordable Care Act while simultaneously maintaining flexibility for future refinements. Since this approach would be implemented within the current constructs of the hospice payment system, no major overhaul of the claims processing system or related claims/cost report forms would be required, minimizing burden for hospices as well as for Medicare. CMS needs to further assess whether the four levels of care and the current payment amounts, as well as the amounts after implementation of the SIA, will align with the actual cost of

[46] *http://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf.*

[47] *http://www.medpac.gov/documents/reports/Jun08_Ch08.pdf.*

[48] Health Care Strategic Management. 2004. Hospice companies benefit from favorable Medicare rates. Health Care Strategic Management 22, no. 1: 13–14.

[49] Odyssey HealthCare, Inc. 2004. Annual report to shareholders, form 10–K. Filed with the Securities and Exchange Commission, Washington, DC, March 11. Dallas, TX: Odyssey HealthCare, Inc.

[50] Virnig, B. A., I. S. Moscovice, S. B. Durham, et al. 2004. Do rural elders have limited access to Medicare hospice services? Journal of the American Geriatrics Society 52, no. 5: 731–735.

[51] *http://www.medpac.gov/documents/reports/Jun08_Ch08.pdf.*

providing hospice services. The hospice cost report was redesigned, effective for cost reporting periods beginning on October 1, 2014, and additional data are now being collected on the hospice claim form, effective April 1, 2014. Once additional data is available, CMS will continue to assess additional refinements that may inform more extensive policy and payment approaches, in accordance with the payment methodology reform required by the Affordable Care Act.

As required by section 1814(i)(6)(D)(ii) of the Act, any changes to the hospice payment system must be made in a budget neutral manner in the first year of implementation. Based on the desire to improve patient care through the promotion of skilled visits at end of life, regardless of the patient's lifetime length of stay, we are proposing to make the SIA payments budget neutral through a reduction to the overall RHC rate. The SIA payment budget neutrality factor (SBNF) used to reduce the overall RHC rate is outlined in section III.C.3 and is reflected in the proposed RHC payment rate tables.

We also propose to continue to make the SIA payments budget neutral through an annual determination of the SBNF, which will then be applied to the RHC payment rate. The SBNF for the SIA payments would be calculated for each FY using the most current and complete fiscal year utilization data available at the time of rulemaking. Finally, we are soliciting public comment on all aspects of the proposed SIA payment as articulated in this section as well as the corresponding proposed changes to the regulations at § 418.302 in section VI. We are also proposing to change the word ''Intermediary'' to ''Medicare Administrative Contractor'' in the regulations text at § 418.302 and proposing technical regulations text changes to § 418.306 as described in section VI. As more data become available, CMS will continue to analyze hospice payments, costs, and utilization and will consider refining the SIA payment criteria if needed.

*C. Proposed FY 2016 Hospice Wage Index and Rate Update*

1. Proposed FY 2016 Hospice Wage Index

a. Background

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by OMB to the Metropolitan Statistical Areas (MSAs) definitions.

We use the previous fiscal year's hospital wage index data to calculate the hospice wage index values. For FY 2016, the hospice wage index will be based on the FY 2015 hospital pre-floor, pre-reclassified wage index. This means that the hospital wage data used for the hospice wage index is not adjusted to take into account any geographic reclassification of hospitals including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving General Inpatient care (GIP) or Inpatient Respite Care (IRC).

In the FY 2006 Hospice Wage Index final rule (70 FR 45130), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. The bulletin is available online at *http://www.whitehouse.gov/omb/bulletins/b03-04.html.* In adopting the CBSA geographic designations for FY 2006, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each geographic area consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index. As discussed in the Hospice Wage Index final rule for FY 2006 (70 FR 45138), since the expiration of this 1-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data, which to base the calculation of the hospice wage index. In the FY 2010 Hospice Wage Index final rule (74 FR 39386), we also adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. In FY 2016, the only CBSA without a hospital from which hospital wage data could be derived is 25980, Hinesville-Fort Stewart, Georgia.

In the FY 2008 Hospice Wage Index final rule (72 FR 50214), we implemented a new methodology to update the hospice wage index for rural areas without a hospital, and thus no hospital wage data. In cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index (or indices) of CBSAs contiguous to a rural area without a hospital from which hospital wage data could be derived does not recognize the unique circumstances of Puerto Rico. In this proposed rule, for FY 2016, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047.

b. Elimination of the Wage Index Budget Neutrality Factor (BNAF)

This proposed rule would update the hospice wage index values for FY 2016 using the FY 2015 pre-floor, pre-reclassified hospital wage index. As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values were then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Pre-floor, pre-reclassified hospital wage index values below 0.8 were adjusted by either: (1) The hospice BNAF; or (2) the hospice floor—a 15 percent increase subject to a maximum wage index value of 0.8; whichever results in the greater value.

The FY 2010 Hospice Wage Index rule finalized a provision to phase-out the BNAF over 7 years, with a 10 percent reduction in the BNAF in FY 2010, and an additional 15 percent reduction in each of the next 6 years, with complete phase out in FY 2016 (74 FR 39384). The 10 percent reduced BNAF for FY

2010 was 0.055598, based on a full BNAF of 0.061775; the additional 15 percent reduced BNAF for FY 2011 (for a cumulative reduction of 25 percent) was 0.045422, based on a full BNAF of 0.060562; the additional 15 percent reduced BNAF for FY 2012 (for a cumulative reduction of 40 percent) was 0.035156, based on a full BNAF of 0.058593; the additional 15 percent reduced BNAF for FY 2013 (for a cumulative reduction of 55 percent) was 0.027197, based on a full BNAF of 0.060438; the additional 15 percent BNAF for FY 2014 (for a cumulative reduction of 70 percent) was 0.018461, based on a full BNAF of 0.061538 and the additional 15 percent reduced BNAF for FY 2015 (for a cumulative reduction of 85 percent) is 0.009313, based on a full BNAF of 0.062804. For FY 2016, the BNAF is reduced by an additional and final 15 percent for a cumulative reduction of 100 percent. Therefore, for FY 2016, the BNAF is completely phased-out and eliminated.

Hospital wage index values which are less than 0.8 are still subject to the hospice floor calculation. The hospice floor equates to a 15 percent increase, subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15 which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8.

c. Proposed Implementation of New Labor Market Delineations

OMB has published subsequent bulletins regarding CBSA changes. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, announcing revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combines Statistical Areas, and guidance on uses of the delineation in these areas. A copy of this bulletin is available online at: *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf*. This bulletin states that it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.'' In the FY 2015 Hospice Wage Index final rule (79 FR 50483), we stated that if CMS incorporates OMB's new area delineations, based on the 2010 Census, in the FY 2015 hospital wage index, those changes would also be reflected in the FY 2016 hospice wage index. In the FY 2015 Inpatient Prospective Payment System (IPPS) final rule (79 FR 49951), we finalized the proposal to use OMB's new area delineations, based on the 2010 Census, in the FY 2015 hospital wage index. In addition, the new area delineations have been incorporated into the FY 2015 SNF PPS (79 FR 45628) and the CY 2015 Home Health (HH) PPS (79 FR 66032) using a 1-year transition with a blended wage index.

While the revisions OMB published on February 28, 2013, are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the February 28, 2013 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the hospice wage index to use the latest OMB delineations available in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. While CMS and other stakeholders have explored potential alternatives to the current CBSA-based labor market system (we refer readers to the CMS Web site at: *www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html*), no consensus has been achieved regarding how best to implement a replacement system. As discussed in the FY 2005 IPPS final rule (69 FR 49027), ''While we recognize that MSAs are not designed specifically to define labor market areas, we believe they do represent a useful proxy for this purpose.'' We further believe that using the most current OMB delineations would increase the integrity of the hospice wage index by creating a more accurate representation of geographic variation in wage levels. We have reviewed our findings and impacts relating to the new OMB delineations, and have concluded that there is no compelling reason to further delay implementation. We are proposing to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01 for the hospice wage index effective beginning in FY 2016.

i. Micropolitan Statistical Areas

As discussed in the FY 2006 Hospice Wage Index proposed rule (70 FR 22397) and final rule (70 FR 45132), CMS considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a CBSA ''associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), CMS determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's Hospice rural wage index (see 70 FR 22397 and 70 FR 45132). Thus, the hospice statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSA areas.

Based upon the 2010 Decennial Census data, a number of urban counties have switched status and have joined or became Micropolitan Areas, and some counties that once were part of a Micropolitan Area, have become urban. Overall, there are fewer Micropolitan Areas (541) under the new OMB delineations based on the 2010 Census than existed under the latest data from the 2000 Census (581). We believe that the best course of action would be to continue the policy established in the FY 2006 Hospice Wage Index final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in FY 2016 and consistent with the treatment of Micropolitan Areas under the IPPS, we are proposing to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each state's rural wage index.

ii. Urban Counties Becoming Rural

If we adopt the new OMB delineations (based upon the 2010 decennial Census data), a total of 37 counties (and county equivalents) that are currently considered urban would be considered rural beginning in FY 2016. Table 19 below lists the 37 counties that would change to rural status if we finalize our proposal to implement the new OMB delineations.

TABLE 19—COUNTIES THAT WOULD CHANGE TO RURAL STATUS

| County | State | CBSA number from FY 2015 hospice wage index | CBSA name |
|---|---|---|---|
| Greene County | IN | 14020 | Bloomington, IN. |
| Anson County | NC | 16740 | Charlotte-Gastonia-Rock Hill, NC-SC. |
| Franklin County | IN | 17140 | Cincinnati-Middletown, OH-KY-IN. |
| Stewart County | TN | 17300 | Clarksville, TN-KY. |
| Howard County | MO | 17860 | Columbia, MO. |
| Delta County | TX | 19124 | Dallas-Fort Worth-Arlington, TX. |
| Pittsylvania County | VA | 19260 | Danville, VA. |
| Danville City | VA | 19260 | Danville, VA. |
| Preble County | OH | 19380 | Dayton, OH. |
| Gibson County | IN | 21780 | Evansville, IN-KY. |
| Webster County | KY | 21780 | Evansville, IN-KY. |
| Franklin County | AR | 22900 | Fort Smith, AR-OK. |
| Ionia County | MI | 24340 | Grand Rapids-Wyoming, MI. |
| Newaygo County | MI | 24340 | Grand Rapids-Wyoming, MI. |
| Greene County | NC | 24780 | Greenville, NC. |
| Stone County | MS | 25060 | Gulfport-Biloxi, MS. |
| Morgan County | WV | 25180 | Hagerstown-Martinsburg, MD-WV. |
| San Jacinto County | TX | 26420 | Houston-Sugar Land-Baytown, TX. |
| Franklin County | KS | 28140 | Kansas City, MO-KS. |
| Tipton County | IN | 29020 | Kokomo, IN. |
| Nelson County | KY | 31140 | Louisville/Jefferson County, KY-IN. |
| Geary County | KS | 31740 | Manhattan, KS. |
| Washington County | OH | 37620 | Parkersburg-Marietta-Vienna, WV-OH. |
| Pleasants County | WV | 37620 | Parkersburg-Marietta-Vienna, WV-OH. |
| George County | MS | 37700 | Pascagoula, MS. |
| Power County | ID | 38540 | Pocatello, ID. |
| Cumberland County | VA | 40060 | Richmond, VA. |
| King and Queen County | VA | 40060 | Richmond, VA. |
| Louisa County | VA | 40060 | Richmond, VA. |
| Washington County | MO | 41180 | St. Louis, MO-IL. |
| Summit County | UT | 41620 | Salt Lake City, UT. |
| Erie County | OH | 41780 | Sandusky, OH. |
| Franklin County | MA | 44140 | Springfield, MA. |
| Ottawa County | OH | 45780 | Toledo, OH. |
| Greene County | AL | 46220 | Tuscaloosa, AL. |
| Calhoun County | TX | 47020 | Victoria, TX. |
| Surry County | VA | 47260 | Virginia Beach-Norfolk-Newport News, VA-NC. |

iii. Rural Counties Becoming Urban

If we finalize our proposal to implement the new OMB delineations (based upon the 2010 decennial Census data), a total of 105 counties (and county equivalents) that are currently designated rural would be considered urban beginning in FY 2016. Table 20 below lists the 105 counties that would change to urban status.

TABLE 20—COUNTIES THAT WOULD CHANGE TO URBAN STATUS

| County | State | CBSA number | CBSA name |
|---|---|---|---|
| Utuado Municipio | PR | 10380 | Aguadilla-Isabela, PR. |
| Linn County | OR | 10540 | Albany, OR. |
| Oldham County | TX | 11100 | Amarillo, TX. |
| Morgan County | GA | 12060 | Atlanta-Sandy Springs-Roswell, GA. |
| Lincoln County | GA | 12260 | Augusta-Richmond County, GA-SC. |
| Newton County | TX | 13140 | Beaumont-Port Arthur, TX. |
| Fayette County | WV | 13220 | Beckley, WV. |
| Raleigh County | WV | 13220 | Beckley, WV. |
| Golden Valley County | MT | 13740 | Billings, MT. |
| Oliver County | ND | 13900 | Bismarck, ND. |
| Sioux County | ND | 13900 | Bismarck, ND. |
| Floyd County | VI | 13980 | Blacksburg-Christiansburg-Radford, VA. |
| De Witt County | IL | 14010 | Bloomington, IL. |
| Columbia County | PA | 14100 | Bloomsburg-Berwick, PA. |
| Montour County | PA | 14100 | Bloomsburg-Berwick, PA. |
| Allen County | KY | 14540 | Bowling Green, KY. |
| Butler County | KY | 14540 | Bowling Green, KY. |
| St. Mary's County | MD | 15680 | California-Lexington Park, MD. |
| Jackson County | IL | 16060 | Carbondale-Marion, IL. |
| Williamson County | IL | 16060 | Carbondale-Marion, IL. |

TABLE 20—COUNTIES THAT WOULD CHANGE TO URBAN STATUS—Continued

| County | State | CBSA number | CBSA name |
|---|---|---|---|
| Franklin County | PA | 16540 | Chambersburg-Waynesboro, PA. |
| Iredell County | NC | 16740 | Charlotte-Concord-Gastonia, NC-SC. |
| Lincoln County | NC | 16740 | Charlotte-Concord-Gastonia, NC-SC. |
| Rowan County | NC | 16740 | Charlotte-Concord-Gastonia, NC-SC. |
| Chester County | SC | 16740 | Charlotte-Concord-Gastonia, NC-SC. |
| Lancaster County | SC | 16740 | Charlotte-Concord-Gastonia, NC-SC. |
| Buckingham County | VA | 16820 | Charlottesville, VA. |
| Union County | IN | 17140 | Cincinnati, OH-KY-IN. |
| Hocking County | OH | 18140 | Columbus, OH. |
| Perry County | OH | 18140 | Columbus, OH. |
| Walton County | FL | 18880 | Crestview-Fort Walton Beach-Destin, FL. |
| Hood County | TX | 23104 | Dallas-Fort Worth-Arlington, TX. |
| Somervell County | TX | 23104 | Dallas-Fort Worth-Arlington, TX. |
| Baldwin County | AL | 19300 | Daphne-Fairhope-Foley, AL. |
| Monroe County | PA | 20700 | East Stroudsburg, PA. |
| Hudspeth County | TX | 21340 | El Paso, TX. |
| Adams County | PA | 23900 | Gettysburg, PA. |
| Hall County | NE | 24260 | Grand Island, NE. |
| Hamilton County | NE | 24260 | Grand Island, NE. |
| Howard County | NE | 24260 | Grand Island, NE. |
| Merrick County | NE | 24260 | Grand Island, NE. |
| Montcalm County | MI | 24340 | Grand Rapids-Wyoming, MI. |
| Josephine County | OR | 24420 | Grants Pass, OR. |
| Tangipahoa Parish | LA | 25220 | Hammond, LA. |
| Beaufort County | SC | 25940 | Hilton Head Island-Bluffton-Beaufort, SC. |
| Jasper County | SC | 25940 | Hilton Head Island-Bluffton-Beaufort, SC. |
| Citrus County | FL | 26140 | Homosassa Springs, FL. |
| Butte County | ID | 26820 | Idaho Falls, ID. |
| Yazoo County | MS | 27140 | Jackson, MS. |
| Crockett County | TN | 27180 | Jackson, TN. |
| Kalawao County | HI | 27980 | Kahului-Wailuku-Lahaina, HI. |
| Maui County | HI | 27980 | Kahului-Wailuku-Lahaina, HI. |
| Campbell County | TN | 28940 | Knoxville, TN. |
| Morgan County | TN | 28940 | Knoxville, TN. |
| Roane County | TN | 28940 | Knoxville, TN. |
| Acadia Parish | LA | 29180 | Lafayette, LA. |
| Iberia Parish | LA | 29180 | Lafayette, LA. |
| Vermilion Parish | LA | 29180 | Lafayette, LA. |
| Cotton County | OK | 30020 | Lawton, OK. |
| Scott County | IN | 31140 | Louisville/Jefferson County, KY-IN. |
| Lynn County | TX | 31180 | Lubbock, TX. |
| Green County | WI | 31540 | Madison, WI. |
| Benton County | MS | 32820 | Memphis, TN-MS-AR. |
| Midland County | MI | 33220 | Midland, MI. |
| Martin County | TX | 33260 | Midland, TX. |
| Le Sueur County | MN | 33460 | Minneapolis-St. Paul-Bloomington, MN-WI. |
| Mille Lacs County | MN | 33460 | Minneapolis-St. Paul-Bloomington, MN-WI. |
| Sibley County | MN | 33460 | Minneapolis-St. Paul-Bloomington, MN-WI. |
| Maury County | TN | 34980 | Nashville-Davidson-Murfreesboro-Franklin, TN. |
| Craven County | NC | 35100 | New Bern, NC. |
| Jones County | NC | 35100 | New Bern, NC. |
| Pamlico County | NC | 35100 | New Bern, NC. |
| St. James Parish | LA | 35380 | New Orleans-Metairie, LA. |
| Box Elder County | UT | 36260 | Ogden-Clearfield, UT. |
| Gulf County | FL | 37460 | Panama City, FL. |
| Custer County | SD | 39660 | Rapid City, SD. |
| Fillmore County | MN | 40340 | Rochester, MN. |
| Yates County | NY | 40380 | Rochester, NY. |
| Sussex County | DE | 41540 | Salisbury, MD-DE. |
| Worcester County | MA | 41540 | Salisbury, MD-DE. |
| Highlands County | FL | 42700 | Sebring, FL. |
| Webster Parish | LA | 43340 | Shreveport-Bossier City, LA. |
| Cochise County | AZ | 43420 | Sierra Vista-Douglas, AZ. |
| Plymouth County | IA | 43580 | Sioux City, IA-NE-SD. |
| Union County | SC | 43900 | Spartanburg, SC. |
| Pend Oreille County | WA | 44060 | Spokane-Spokane Valley, WA. |
| Stevens County | WA | 44060 | Spokane-Spokane Valley, WA. |
| Augusta County | VA | 44420 | Staunton-Waynesboro, VA. |
| Staunton City | VA | 44420 | Staunton-Waynesboro, VA. |
| Waynesboro City | VA | 44420 | Staunton-Waynesboro, VA. |
| Little River County | AR | 45500 | Texarkana, TX-AR. |
| Sumter County | FL | 45540 | The Villages, FL. |

TABLE 20—COUNTIES THAT WOULD CHANGE TO URBAN STATUS—Continued

| County | State | CBSA number | CBSA name |
|---|---|---|---|
| Pickens County | AL | 46220 | Tuscaloosa, AL. |
| Gates County | NC | 47260 | Virginia Beach-Norfolk-Newport News, VA-NC. |
| Falls County | TX | 47380 | Waco, TX. |
| Columbia County | WA | 47460 | Walla Walla, WA. |
| Walla Walla County | WA | 47460 | Walla Walla, WA. |
| Peach County | GA | 47580 | Warner Robins, GA. |
| Pulaski County | GA | 47580 | Warner Robins, GA. |
| Culpeper County | VA | 47894 | Washington-Arlington-Alexandria, DC-VA-MD-WV. |
| Rappahannock County | VA | 47894 | Washington-Arlington-Alexandria, DC-VA-MD-WV. |
| Jefferson County | NY | 48060 | Watertown-Fort Drum, NY. |
| Kingman County | KS | 48620 | Wichita, KS. |
| Davidson County | NC | 49180 | Winston-Salem, NC. |
| Windham County | CT | 49340 | Worcester, MA-CT. |

iv. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the new OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 29140 (Lafayette, IN), would experience both a change to its number and its name, and would become CBSA 29200 (Lafayette-West Lafayette, IN), while all of its three constituent counties would remain the same. We are not discussing these proposed changes in this section because they are inconsequential changes with respect to the hospice wage index. However, in other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In one type of change, an entire CBSA would be subsumed by another CBSA. For example, CBSA 37380 (Palm Coast, FL) currently is a single county (Flagler, FL) CBSA. Flagler County would be a part of CBSA 19660 (Deltona-Daytona Beach-Ormond Beach, FL) under the new OMB delineations. In another type of change, some CBSAs have counties that would split off to become part of or to form entirely new labor market areas. For example, CBSA 37964 (Philadelphia Metropolitan Division of MSA 37980) currently is comprised of 5 Pennsylvania counties (Bucks, Chester, Delaware, Montgomery, and Philadelphia). If we adopt the new OMB delineations, Montgomery, Bucks, and Chester counties would split off and form the new CBSA 33874 (Montgomery County-Bucks County-Chester County, PA Metropolitan Division of MSA 37980), while Delaware and Philadelphia counties would remain in CBSA 37964. Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. For example, Lincoln County and Putnam County, WV would move from CBSA 16620 (Charleston, WV) to CBSA 26580 (Huntington-Ashland, WV KY OH). CBSA 16620 would still exist in the new labor market delineations with fewer constituent counties. Table 21 lists the urban counties that would move from one urban CBSA to another urban CBSA if we adopt the new OMB delineations.

TABLE 21—COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA

| Previous CBSA | New CBSA | County | State |
|---|---|---|---|
| 11300 | 26900 | Madison County | IN. |
| 11340 | 24860 | Anderson County | SC. |
| 14060 | 14010 | McLean County | IL. |
| 37764 | 15764 | Essex County | MA. |
| 16620 | 26580 | Lincoln County | WV. |
| 16620 | 26580 | Putnam County | WV. |
| 16974 | 20994 | DeKalb County | IL. |
| 16974 | 20994 | Kane County | IL. |
| 21940 | 41980 | Ceiba Municipio | PR. |
| 21940 | 41980 | Fajardo Municipio | PR. |
| 21940 | 41980 | Luquillo Municipio | PR. |
| 26100 | 24340 | Ottawa County | MI. |
| 31140 | 21060 | Meade County | KY. |
| 34100 | 28940 | Grainger County | TN. |
| 35644 | 35614 | Bergen County | NJ. |
| 35644 | 35614 | Hudson County | NJ. |
| 20764 | 35614 | Middlesex County | NJ. |
| 20764 | 35614 | Monmouth County | NJ. |
| 20764 | 35614 | Ocean County | NJ. |
| 35644 | 35614 | Passaic County | NJ. |
| 20764 | 35084 | Somerset County | NJ. |
| 35644 | 35614 | Bronx County | NY. |
| 35644 | 35614 | Kings County | NY. |
| 35644 | 35614 | New York County | NY. |
| 35644 | 20524 | Putnam County | NY. |
| 35644 | 35614 | Queens County | NY. |
| 35644 | 35614 | Richmond County | NY. |

TABLE 21—COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA—Continued

| Previous CBSA | New CBSA | County | State |
|---|---|---|---|
| 35644 | 35614 | Rockland County | NY. |
| 35644 | 35614 | Westchester County | NY. |
| 37380 | 19660 | Flagler County | FL. |
| 37700 | 25060 | Jackson County | MS. |
| 37964 | 33874 | Bucks County | PA. |
| 37964 | 33874 | Chester County | PA. |
| 37964 | 33874 | Montgomery County | PA. |
| 39100 | 20524 | Dutchess County | NY. |
| 39100 | 35614 | Orange County | NY. |
| 41884 | 42034 | Marin County | CA. |
| 41980 | 11640 | Arecibo Municipio | PR. |
| 41980 | 11640 | Camuy Municipio | PR. |
| 41980 | 11640 | Hatillo Municipio | PR. |
| 41980 | 11640 | Quebradillas Municipio | PR. |
| 48900 | 34820 | Brunswick County | NC. |
| 49500 | 38660 | Guánica Municipio | PR. |
| 49500 | 38660 | Guayanilla Municipio | PR. |
| 49500 | 38660 | Peñuelas Municipio | PR. |
| 49500 | 38660 | Yauco Municipio | PR. |

v. Transition Period

Overall, we believe that implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Among the 458 total CBSA and statewide rural areas, 20 (4 percent) would have a higher wage index using the newer delineations. However, 34 (7.4 percent) would have a lower wage index using the newer delineations. Therefore, to remain consistent with the manner in which we ultimately adopted the revised OMB delineations for FY 2006 (70 FR 45138), we are proposing to implement a 1-year transition to the new OMB delineations. Specifically, we propose to apply a blended wage index for one year (FY 2016) for all geographic areas that would consist of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index would be calculated equal to 50 percent of the FY 2016 wage index using the old labor market area delineation and 50 percent of the FY 2016 wage index using the new labor market area delineation. This results in an average of the two values. We refer to this blended wage index as the FY 2016 hospice transition wage index.

This proposed 1-year transition policy is also consistent with the transition policies adopted by both the FY 2015 SNF PPS (79 FR 25767) and the CY 2015 HH PPS (79 FR 66032). This transition policy would be for a 1-year period, going into effect on October 1, 2015, and continuing through September 30, 2016. Thus, beginning October 1, 2016, the wage index for all hospice payments would be fully based on the new OMB delineations. We invite comments on our proposed transition methodology.

The proposed wage index applicable to FY 2016 is set forth in Addendum A available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.* Addendum A will not be published in the **Federal Register**. The proposed hospice wage index for FY 2016 would be effective October 1, 2015 through September 30, 2016.

Addendum A provides a crosswalk between the FY 2016 wage index using the current OMB delineations in effect in FY 2015 and the FY 2016 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in FY 2016 if these proposed changes are finalized. Addendum A shows each state and county and its corresponding proposed transition wage index along with the previous CBSA number, the new CBSA number, and the new CBSA name.

Due to the way that the transition wage index is calculated, some CBSAs and statewide rural areas may have more than one transition wage index value associated with that CBSA or rural area. However, each county will have only one transition wage index. For counties located in CBSAs and rural areas that correspond to more than one transition wage index value, the CBSA number will not be able to be used for FY 2016 claims. In these cases, a number other than the CBSA number would be necessary to identify the appropriate wage index value on claims for hospice care provided in FY 2016. These numbers are five digits in length and begin with ''50.'' These codes are shown in the last column of Addendum A in place of the CBSA number where appropriate. For counties located in CBSAs and rural areas that still correspond to only one wage index value, the CBSA number would still be used.

2. Proposed Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment''). A complete description of the MFP projection methodology is available on our Web site at *http://www.cms.gov/*

*Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html.*

In addition to the MFP adjustment, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). The proposed hospice payment update percentage for FY 2016 is based on the estimated inpatient hospital market basket update of 2.7 percent (based on IHS Global Insight, Inc.'s first quarter 2015 forecast with historical data through the fourth quarter of 2014). Due to the requirements at 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the estimated inpatient hospital market basket update for FY 2016 of 2.7 percent must be reduced by a MFP adjustment as mandated by Affordable Care Act (currently estimated to be 0.6 percentage point for FY 2016). The estimated inpatient hospital market basket update for FY 2016 is reduced further by a 0.3 percentage point, as mandated by the Affordable Care Act. In effect, the proposed hospice payment update percentage for FY 2016 is 1.8 percent. We are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the inpatient hospital market basket update and MFP adjustment), we would use such data, if appropriate, to determine the FY 2016 market basket update and the MFP adjustment in the FY 2016 Hospice Rate Update final rule.

Currently, the labor portion of the hospice payment rates is as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates is as follows: For RHC, 31.29 percent; for CHC, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

3. Proposed FY 2016 Hospice Payment Rates

Historically, the hospice rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements; however, beginning in FY 2014 and for subsequent FY, we are using rulemaking as the means to update payment rates. This change was proposed in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule and finalized in the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48270). It is consistent with the rate update process in other Medicare benefits, and provides rate information to hospices as quickly as, or earlier than, when rates are published in an administrative instruction.

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides continuous home care, IRC, or general inpatient care. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest; and GIP is to treat symptoms that cannot be managed in another setting.

As discussed in section III.B.2, of this proposed rule, we are proposing two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 60 and beyond. As discussed in section III.B.3, we are proposing to make a SIA payment, in addition to the daily RHC payment, when direct patient care is provided by a RN or social worker during the last 7 days of the patient's life. The SIA payment would be equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service. The SIA payment would also be adjusted by the appropriate wage index. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, for the proposed SIA payment, the proposed RHC rates would need to be adjusted by a budget neutrality factor. The budget neutrality adjustment that would apply to days 1 through 60 is equal to 1 minus the ratio of SIA payments for days 1 through 60 to the total payments for days 1 through 60 and is calculated to be 0.9853. The budget neutrality adjustment that would apply to days 61 and beyond is equal to 1 minus the ratio of SIA payments for days 61 and beyond to the total payments for days 61 and beyond and is calculated to be 0.9967. Lastly, the RHC rates would be increased by the proposed FY 2016 hospice payment update percentage of 1.8 percent as discussed in section III.C.3. The proposed FY 2016 RHC rates are shown in Table 22. The proposed FY 2016 payment rates for CHC, IRC, and GIP would be the FY 2015 payment rates increased by 1.8 percent. The proposed rates for these three levels of care are shown in Table 23. The proposed FY 2016 rates for hospices that do not submit the required quality data are shown in Tables 24 and 25. The proposed FY 2016 hospice payment rates would be effective for care and services furnished on or after October 1, 2015, through September 30, 2016.

TABLE 22—PROPOSED FY 2016 HOSPICE PAYMENT RATES FOR RHC

| Code | Description | Proposed rates [1] | Proposed SIA budget neutrality factor adjustment (1–0.0081) | Proposed FY 2016 hospice payment update percentage | Proposed FY 2016 payment rates |
|---|---|---|---|---|---|
| 651 | Routine Home Care (days 1–60) | $187.63 | × 0.9853 | × 1.018 | $188.20 |
| 651 | Routine Home Care (days 61+) | 145.21 | 0.9967 | × 1.018 | 147.34 |

[1] See section III.B.2 for the proposed RHC rates for days 1–60, and days 61 and beyond before accounting for the proposed Service Intensity Add-on (SIA) payment budget neutrality factor and the proposed FY 2016 hospice payment update percentage of 1.8 percent as required by section 1814(i)(1)(C) of the Act.

TABLE 23—PROPOSED FY 2016 HOSPICE PAYMENT RATES FOR CHC, IRC, AND GIP

| Code | Description | FY 2015 payment rates | Proposed FY 2016 hospice payment update of 1.8 percent | Proposed FY 2016 payment rate |
|---|---|---|---|---|
| 652 | Continuous Home Care Full Rate = 24 hours of care $=39.44 FY 2016 hourly rate | $929.91 | × 1.018 | $946.65 |
| 655 | Inpatient Respite Care | 164.81 | × 1.018 | 167.78 |
| 656 | General Inpatient Care | 708.77 | × 1.018 | 721.53 |

We reiterate in this proposed rule, that the Congress required in sections 1814(i)(5)(A) through (C) of the Act that hospices begin submitting quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. We remind hospices that this applies to payments in FY 2016 (See Tables 24 and 25 below). For more information on the HQRP requirements please see section III.E. in this proposed rule.

TABLE 24—PROPOSED FY 2016 HOSPICE PAYMENT RATES FOR RHC FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

| Code | Description | Proposed RHC rates [1] | Proposed SIA budget neutrality factor adjustment (1–0.0081) | Proposed FY 2016 hospice payment update of 1.8 percent minus 2 percentage points = −0.2 percent | Proposed FY 2016 payment rates |
|---|---|---|---|---|---|
| 651 | Routine Home Care (days 1–60) | $187.63 | × 0.9853 | × 0.998 | $184.50 |
| 651 | Routine Home Care (days 61+) | 145.21 | 0.9967 | × 0.998 | 144.44 |

[1] See section III.B.2 for the proposed RHC rates for days 1–60, and days 61 and beyond before accounting for the proposed Service Intensity Add-on (SIA) payment budget neutrality factor and the proposed FY 2016 hospice payment update percentage of 1.8 percent as required by section 1814(i)(1)(C) of the Act.

TABLE 25—PROPOSED FY 2016 HOSPICE PAYMENT RATES FOR CHC, IRC, AND GIP FOR HOSPICES THAT *DO NOT* SUBMIT THE REQUIRED QUALITY DATA

| Code | Description | FY 2015 payment rates | Proposed FY 2016 hospice payment update of 1.8 percent minus 2 percentage points = −0.2 percent | Proposed FY 2016 payment rate |
|---|---|---|---|---|
| 652 | Continuous Home Care Full Rate= 24 hours of care $=38.67 hourly rate. | $929.91 | × 0.998 | $928.05 |
| 655 | Inpatient Respite Care | 164.81 | × 0.998 | 164.48 |
| 656 | General Inpatient Care | 708.77 | × 0.998 | 707.35 |

4. Hospice Aggregate Cap and the IMPACT Act of 2014

When the Medicare hospice benefit was implemented, the Congress included 2 limits on payments to hospices: An inpatient cap and an aggregate cap. As set out in sections 1861(dd)(2)(A)(iii) and 1814(i)(2)(A) through (C) of the Act, respectively, the hospice inpatient cap limits the total number of Medicare inpatient days (general inpatient care and respite care) to no more than 20 percent of a hospice's total Medicare hospice days. The intent of the inpatient cap was to ensure that hospice remained a home-based benefit. The hospice aggregate cap limits the total aggregate payment any individual hospice can receive in a year. The intent of the hospice aggregate cap was to protect Medicare from spending more for hospice care than it would for conventional care at the end of life.

The aggregate cap amount was set at $6,500 per beneficiary when first enacted in 1983; this was an amount hospice advocates agreed was well above the average cost of caring for a hospice patient.[52] Since 1983, the

[52] National Hospice and Palliative Care Organization (NHPCO), ''A Short History of the Medicare Hospice Cap on Total Expenditures.'' Web 19 Feb. 2014. *http://www.nhpco.org/sites/default/files/public/regulatory/History_of_Hospice_Cap.pdf.*

$6,500 amount has been adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers (CPI–U) from March 1984 to March of the cap year, as required by section 1814(i)(2)(B) of the Act. The cap amount is multiplied by the number of Medicare beneficiaries who received hospice care from a particular hospice during the year, resulting in its hospice aggregate cap, which is the allowable amount of total Medicare payments that hospice can receive for that cap year. The cap year is currently November 1 to October 31, and was set in place in the December 16, 1983 Hospice final rule (48 FR 56022).

Section 1814(i)(2)(B)(i) and (ii) of the Act, as added by section 3(b) of the IMPACT Act requires, effective for the 2016 cap year (November 1, 2015 through October 31, 2016), that the cap amount for the previous year to be updated by the hospice payment update percentage, rather than the original $6,500 being annually adjusted by the change in the CPI–U for medical care expenditures since 1984. This new provision will sunset for cap years ending after September 30, 2025, at which time the annual update to the cap amount will revert back to the original methodology. This provision is estimated to result in $540 million in savings over 10 years starting in 2017.

As a result, we are proposing to update § 418.309 to reflect the new language added to section 1814(i)(2)(B) of the Act.

In accordance with section 1814(i)(2)(B)(i) of the Act, the hospice aggregate cap amount for the 2015 cap year, starting on November 1, 2014 and ending on October 31, 2015, will be $27,135.96. This amount was calculated by multiplying the original cap amount of $6,500 by the change in the CPI–U medical care expenditure category, from the fifth month of the 1984 accounting year (March 1984) to the fifth month the current accounting year (in this case, March 2015). The CPI–U for medical care expenditures for 1984 to present is available from the Bureau of Labor Statistics (BLS) Web site at: *http://www.bls.gov/cpi/home.htm.*

*Step 1:* From the BLS Web site given above, the March 2015 CPI–U for medical care expenditures is 444.020 and the 1984 CPI–U for medical care expenditures was 105.4.

*Step 2:* Divide the March 2015 CPI–U for medical care expenditures by the 1984 CPI–U for medical care expenditures to compute the change.

440.020/105.4 = 4.174763

*Step 3:* Multiply the original cap base amount ($6,500) by the result from step 2) to get the updated aggregate cap amount for the 2015 cap year.

$6,500 × 4.174763 = $27,135.96

As required by section 1814(i)(2)(B)(ii) of the Act, the hospice aggregate cap amount for the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016, will be the 2015 cap amount updated by the FY 2016 hospice payment update percentage (see section III.C.2 above). As such, the 2016 cap amount will be $27,624.41 ($27,135.96 * 1.018 = $27,624.41). A Change Request with the finalized hospice payment rates, a finalized hospice wage index, the Pricer for FY 2016, and the hospice cap amount for the cap year ending October 31, 2015 will be issued in the summer.

*D. Proposed Alignment of the Inpatient and Aggregate Cap Accounting Year With the Federal Fiscal Year*

As noted in section III.C.4, when the Medicare hospice benefit was implemented, the Congress included 2 limits on payments to hospices: an aggregate cap and an inpatient cap. The intent of the hospice aggregate cap was to protect Medicare from spending more for hospice care than it would for conventional care at the end-of-life. If a hospice's total Medicare payments for the cap year exceed such hospice's aggregate cap amount, then the hospice must repay the excess back to Medicare. The intent of the inpatient cap was to ensure that hospice remained a home-based benefit. If a hospice's inpatient days (GIP and respite) exceed 20 percent of all hospice days then, for inpatient care, the hospice is paid: (1) the sum of the total reimbursement for inpatient care multiplied by the ratio of the maximum number of allowable inpatient days to actual number of all inpatient days; and (2) the sum of the actual number of inpatient days in excess of the limitation by the routine home care rate.

1. Streamlined Method and Patient-by-Patient Proportional Method for Counting Beneficiaries To Determine Each Hospice's Aggregate Cap Amount

The aggregate cap amount for any given hospice is established by multiplying the cap amount by the number of Medicare beneficiaries who received hospice services during the year. Originally, the number of Medicare beneficiaries who received hospice services during the year was determined using a ''streamlined'' methodology whereby each beneficiary is counted as ''1'' in the initial cap year of the hospice election and is not counted in subsequent cap years. Specifically, the hospice includes in its number of Medicare beneficiaries those Medicare beneficiaries who have not previously been included in the calculation of any hospice cap, and who have filed an election to receive hospice care in accordance with § 418.24 during the period beginning on September 28th (34 days before the beginning of the cap year) and ending on September 27th (35 days before the end of the cap year), using the best data available at the time of the calculation. This is applicable for cases in which a beneficiary received care from only one hospice. If a beneficiary received care from more than one hospice, each hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care with that hospice in that cap year, using the best data available at the time of the calculation. Using the streamlined method, a different timeframe from the cap year is used to count the number of Medicare beneficiaries because it allows those beneficiaries who elected hospice near the end of the cap year to be counted in the year when most of the services were provided (48 FR 38158).

During FY 2012 rulemaking, in addition to the streamlined method, CMS added a ''patient-by-patient proportional'' method as a way of calculating the number of Medicare beneficiaries who received hospice services during the year in determining the aggregate cap amount for any given hospice (76 FR 47309). This method specifies that a hospice should include in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation. The total number of Medicare beneficiaries for a given hospice's cap year is determined by summing the whole or fractional share of each Medicare beneficiary that received hospice care during the cap year, from that hospice. Under the patient-by-patient proportional methodology, the timeframe for counting the number of Medicare beneficiaries is the same as the cap accounting year (November 1 through October 31). The aggregate cap amount for each hospice is now calculated using the patient-by-patient proportional method, except for those hospices that had their cap determination calculated under the streamlined method prior to the 2012 cap year, did not appeal the streamlined method used to determine

the number of Medicare beneficiaries used in the aggregate cap calculation, and opted to continue to have their hospice aggregate cap calculated using the streamlined method no later than 60 days after receipt of its 2012 cap determination

2. Proposed Inpatient and Aggregate Cap Accounting Year Timeframe

As stated in section III.C.4, the cap accounting year is currently November 1 to October 31. In the past, CMS has considered changing the cap accounting year to coincide with the hospice rate update year, which is the federal fiscal year (October 1 through September 30). In the FY 2011 Hospice Wage Index notice (75 FR 42951), CMS solicited comments on aligning the cap accounting year for both the inpatient and aggregate hospice cap to coincide with the FY. In the FY 2012 Hospice Wage Index proposed rule, we summarized the comments we received, stating that ''several commenters supported the idea of our aligning the cap year with the federal fiscal year; with some noting that the change would be appropriate for a multi-year apportioning approach (the patient-by-patient proportional method).'' Other commenters stated that we should not change the cap year at this time, and recommended that we wait for this to be accomplished as part of hospice payment reform (76 FR 26812).

In FY 2012, we decided not to finalize changing the cap accounting year to the FY, partly because of a concern that a large portion of providers could still be using the streamlined method. As stated earlier, the streamlined method has a different timeframe for counting the number of beneficiaries than the cap accounting year, allowing those beneficiaries who elected hospice near the end of the cap year to be counted in the year when most of the services were provided. However, for the 2013 cap year, only 486 hospices used the streamlined method to calculate the number of Medicare hospice patients and the remaining providers used the patient-by-patient proportional method. Since the majority of providers now use the patient-by-patient proportional method, we believe there is no longer an advantage to defining the cap accounting year differently from the hospice rate update year and maintaining a cap accounting year (as well as the period for counting beneficiaries under the streamlined method) that is different from the federal fiscal year creates an added layer of complexity that can lead to hospices unintentionally calculating their aggregate cap determinations incorrectly. In addition, shifting the cap accounting year timeframes to coincide with the hospice rate update year (the federal fiscal year) would better align with the intent of the new cap calculation methodology required by the IMPACT Act of 2014, as discussed in section III.C.4. Therefore, we are proposing to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the federal fiscal year for FYs 2017 and later. Under this proposal, in addition to aligning the cap accounting year with the federal fiscal year, we would also align the timeframe for counting the number of beneficiaries with the federal fiscal year. This proposal would eliminate timeframe complexities associating with counting payments and beneficiaries differently from the federal fiscal year and would help hospices avoid mistakes in calculating their aggregate cap determinations.

In shifting the cap accounting year to match the federal fiscal year, we note that new section 1814(i)(2)(B)(ii) of the Act, as added by section 3(b) of the IMPACT Act, requires the cap amount for 2016 to be updated by the hospice payment update percentage in effect ''during the FY beginning on the October 1 preceding the beginning of the accounting year''. In other words, we interpret this to mean that the statute requires the 2016 cap amount to be updated using the most current hospice payment update percentage in effect at the start of that cap year. For the 2016 cap year, the 2015 cap amount would be updated by the FY 2016 hospice payment update percentage outlined in section III.C.2. For the 2017 cap year through the 2025 cap year, we would update the previous year's cap amount by the hospice payment update percentage for that current federal fiscal year. For the 2026 cap year and beyond, changing the cap accounting year to coincide with the federal fiscal year will require us to use the CPI–U for February when updating the cap amount, instead of the current process which uses the March CPI–U to update the cap amount. Section 1814(i)(2)(B) of the Act requires us to update the cap amount by the same percentage as the percentage increase or decrease in the medical care expenditure category of the CPI–U from March 1984 to the ''fifth month of the accounting year '' for all years except those accounting years that end after September 30, 2016 and before October 1, 2025.

In shifting the cap year to match the federal fiscal year, we are proposing to also align the timeframes in which beneficiaries and payments are counted for the purposes of determining each individual hospice's aggregate cap amount (see table 26 below) as well as the timeframes in which days of hospice care are counted for the purposes determining whether a given hospice exceeded the inpatient cap. In the year of transition (2017 cap year), for the inpatient cap, we propose to calculate the percentage of all hospice days of care that were provided as inpatient days (GIP care and respite care) from November 1, 2016 through September 30, 2017 (11 months). For those hospices using the patient-by-patient proportional method for their aggregate cap determinations, for the 2017 cap year, we would count beneficiaries from November 1, 2016 to September 30, 2017. For those hospices using the streamlined method for their aggregate cap determinations, we propose to allow 3 extra days to count beneficiaries in the year of transition. Specifically, for the 2017 cap year (October 1, 2016 to September 30, 2017), we would count beneficiaries from September 28, 2016 to September 30, 2017, which is 12 months plus 3 days, in that cap year's calculation. For hospices using either the streamlined method or the patient-by-patient proportional method, we propose to count 11 months of payments from November 1, 2016 to September 30, 2017 for the 2017 cap year. For the 2018 cap year (October 1, 2017 to September 30, 2018), we would count both beneficiaries and payments for hospices using the streamlined or the patient-by-patient proportional methods from October 1, 2017 to September 30, 2018. Likewise, for the 2018 cap year would calculate the percentage of all hospice days of care that were provided as inpatient days (GIP care or respite care) from October 1, 2017 to September 30, 2018. Because of the non-discretionary language used by Congress in determining the cap for a year, the actual cap amount for the adjustment year would not be prorated for a shorter time frame. We are soliciting public comment on all aspects of the proposed alignment of the cap accounting year with the federal fiscal year, as articulated in this section, as well as the corresponding proposed changes to the regulations at § 418.308(c) in section VI.

TABLE 26—HOSPICE AGGREGATE CAP TIMEFRAMES FOR COUNTING BENEFICIARIES AND PAYMENTS FOR THE PROPOSED ALIGNMENT OF THE CAP ACCOUNTING YEAR WITH THE FEDERAL FISCAL YEAR

| Cap year | Beneficiaries | | Payments | |
|---|---|---|---|---|
| | Streamlined method | Patient-by-patient proportional method | Streamlined method | Patient-by-patient proportional method |
| 2016 | 9/28/15–9/27/16 | 11/1/15–10/31/16 | 11/1/15–10/31/16 | 11/1/15–10/31/16 |
| Proposed 2017 (Transition Year) | 9/28/16–9/30/17 | 11/1/16–9/30/17 | 11/1/16–9/30/17 | 11/1/16–9/30/17 |
| Proposed 2018 | 10/1/17–9/30/18 | 10/1/17–9/30/18 | 10/1/17–9/30/18 | 10/1/17–9/30/18 |

*E. Proposed Updates to the Hospice Quality Reporting Program (HQRP)*

1. Background and Statutory Authority

Section 3004(c) of the Affordable Care Act amended section 1814(i)(5) of the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction would not be cumulative or be taken into account in computing the payment amount for subsequent FYs. Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary.

2. General Considerations Used for Selection of Quality Measures for the HQRP

Any measures selected by the Secretary must be endorsed by the consensus-based entity, which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Our paramount concern is the successful development of a Hospice Quality Reporting Program (HQRP) that promotes the delivery of high quality healthcare services. We seek to adopt measures for the HQRP that promote patient-centered, high quality, and safe care. Our measure selection activities for the HQRP take into consideration input from the Measure Applications Partnership (MAP), convened by the NQF, as part of the established CMS pre-rulemaking process required under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at: *(http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx.* We also take into account national priorities, such as those established by the National Priorities Partnership at (*http://www.qualityforum.org/npp/*), the HHS Strategic Plan *http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare, (*http://www.ahrq.gov/workingforquality/nqs/nqs2013annlrpt.htm*) and the CMS Quality Strategy (*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-AssessmentInstruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html*). To the extent practicable, we have sought to adopt measures endorsed by member organizations of the National Consensus Project recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

3. Proposed Policy for Retention of HQRP Measures Adopted for Previous Payment Determinations

Beginning with the FY 2018 payment determination, for the purpose of streamlining the rulemaking process, we propose that when we adopt measures for the HQRP beginning with a payment determination year, these measures are automatically adopted for all subsequent years' payment determinations, unless we propose to remove, suspend, or replace the measures.

Quality measures may be considered for removal by CMS if:

- Measure performance among hospices is so high and unvarying that meaningful distinctions in improvements in performance can be no longer be made;
- Performance or improvement on a measure does not result in better patient outcomes;
- A measure does not align with current clinical guidelines or practice;
- A more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available;
- A measure that is more proximal in time to desired patient outcomes for the particular topic is available;
- A measure that is more strongly associated with desired patient outcomes for the particular topic is available; or
- Collection or public reporting of a measure leads to negative unintended consequences.

For any such removal, the public will be given an opportunity to comment through the annual rulemaking process. However, if there is reason to believe continued collection of a measure raises potential safety concerns, we will take immediate action to remove the measure from the HQRP and will not wait for the annual rulemaking cycle. The measures will be promptly removed and we will immediately notify hospices and the public of such a decision through the usual HQRP communication channels, including listening sessions, memos, email notification, and Web postings. In such instances, the removal of a

measure will be formally announced in the next annual rulemaking cycle.

CMS is not proposing to remove any measures for the FY 2017 reporting cycle. We invite public comment on our proposal that once a quality measure is adopted, it be retained for use in the subsequent fiscal year payment determinations unless otherwise stated.

4. Previously Adopted Quality Measures for FY 2016 and FY 2017 Payment Determination

As stated in the CY 2013 HH PPS final rule (77 FR 67068, 67133), CMS expanded the set of required measures to include additional measures endorsed by NQF. We also stated that to support the standardized collection and calculation of quality measures by CMS, collection of the needed data elements would require a standardized data collection instrument. In response, CMS developed and tested a hospice patient-level item set, the HIS. Hospices are required to submit an HIS-Admission record and an HIS-Discharge record for each patient admission to hospice on or after July 1, 2014. In developing the standardized HIS, we considered comments offered in response to the CY 2013 HH PPS proposed rule (77 FR 41548, 41573). In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following six NQF endorsed measures and one modified measure for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen,
- NQF #1634 Pain Screening,
- NQF #1637 Pain Assessment,
- NQF #1638 Dyspnea Treatment,
- NQF #1639 Dyspnea Screening,
- NQF #1641 Treatment Preferences,
- NQF #1647 Beliefs/Values Addressed (if desired by the patient) (modified).

To achieve a comprehensive set of hospice quality measures available for widespread use for quality improvement and informed decision making, and to carry out our commitment to develop a quality reporting program for hospices that uses standardized methods to collect data needed to calculate quality measures, we finalized the HIS effective July 1, 2014 (78 FR 48258). To meet the quality reporting requirements for hospices for the FY 2016 payment determination and each subsequent year, we require regular and ongoing electronic submission of the HIS data for each patient admission to hospice on or after July 1, 2014, regardless of payer or patient age (78 FR 48234, 48258). Collecting data on all patients provides CMS with the most robust, accurate reflection of the quality of care delivered to Medicare beneficiaries as compared with non-Medicare patients. Therefore, to measure the quality of care delivered to Medicare beneficiaries in the hospice setting, we collect quality data necessary to calculate the adopted measures on all patients. We finalized in the FY 2014 Hospice Wage Index (78 FR 48258) that hospice providers collect data on all patients in order to ensure that all patients regardless of payer or patient age are receiving the same care and that provider metrics measure performance across the spectrum of patients.

Hospices are required to complete and submit an HIS-Admission and an HIS-Discharge record for each patient admission. Hospices failing to report quality data via the HIS in FY 2015 will have their market basket update reduced by 2 percentage points in FY 2017 beginning in October 1, 2016. In the FY 2015 Hospice Wage Index final rule (79 FR 50485, 50487), we finalized the proposal to codify the HIS submission requirement at § 418.312. The System of Record (SOR) Notice titled ''Hospice Item Set (HIS) System,'' SOR number 09–70–0548, was published in the **Federal Register** on April 8, 2014 (79 FR 19341).

5. HQRP Quality Measures and Concepts Under Consideration for Future Years

We are not currently proposing any new measures for FY 2017. However, we are working with our measure development and maintenance contractor to identify measure concepts for future implementation in the HQRP. In identifying priority areas for future measure enhancement and development, CMS takes into consideration input from numerous stakeholders, including the Measures Application Partnership (MAP), the Medicare Payment Advisory Commission (MedPAC), Technical Expert Panels, and national priorities, such as those established by the National Priorities Partnership, the HHS Strategic Plan, the National Strategy for Quality Improvement in Healthcare, and the CMS Quality Strategy. In addition, CMS takes into consideration vital feedback and input from research published by our payment reform contractor as well as from the Institute of Medicine (IOM) report, titled ''Dying in America,'' released in September 2014.[53] Finally, the current HQRP measure set is also an important consideration for future measure development areas; future measure development areas should complement the current HQRP measure set, which includes HIS measures and CAHPS® Hospice Survey measures. Based on input from stakeholders, CMS has identified several high priority concept areas for future measure development:

- Patient reported pain outcome measure that incorporates patient and/or proxy report regarding pain management;
- Claims-based measures focused on care practice patterns including skilled visits in the last days of life, burdensome transitions of care for patients in and out of the hospice benefit, and rates of live discharges from hospice;
- Responsiveness of hospice to patient and family care needs;
- Hospice team communication and care coordination.

These measure concepts are under development, and details regarding measure definitions, data sources, data collection approaches, and timeline for implementation will be communicated in future rulemaking. CMS invites comments about these four high priority concept areas for future measure development.

6. Form, Manner, and Timing of Quality Data Submission

a. Background

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act requires that beginning with the FY 2014 and for each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY.

b. Proposed Policy for New Facilities To Begin Submitting Quality Data

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50488) we finalized a policy stating that any hospice that receives its CCN notification letter on or after November 1 of the preceding year involved is excluded from any payment penalty for quality reporting purposes for the following FY. For example, if a hospice provider receives their CCN notification letter on November 2, 2015 they would

[53] IOM (Institute of Medicine). 2014. *Dying in America: Improving quality and honoring individual preferences near the end of life.* Washington, DC: The National Academies Press.

not be required to submit quality data for the current reporting period ending December 31, 2015 (which would affect the FY 2017 APU). In this instance, the hospice would begin with the next reporting period beginning January 1, 2016 and all subsequent years. However, if a hospice provider receives their CCN notification letter on October 31, 2015, they would be required to submit quality data for the current reporting period ending December 31, 2015 (which would affect the FY 2017 APU) and all subsequent years. This requirement was codified at § 418.312.

We are proposing to modify our policies for the timing of new providers to begin reporting to CMS. Beginning with the FY 2018 payment determination and for each subsequent payment determination, we propose that a new hospice be responsible for HQRP quality data reporting beginning on the date they receive their Certification Number (CCN) (also known as the Medicare Provider Number) notification letter from CMS. Under this proposal, hospices would be responsible for reporting quality data on patient admissions beginning on the date they receive their CCN notification.

Currently, new hospices may experience a lag between Medicare certification and receipt of their actual CCN Number. Since hospices cannot submit data to the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) system without a valid CCN Number, CMS proposes new hospices begin collecting HIS quality data beginning on the date they receive their CCN notification letter by CMS. We believe this policy will provide sufficient time for new hospices to establish appropriate collection and reporting mechanisms to submit the required quality data to CMS. We invite public comment on this proposal that a new hospice be required to begin reporting quality data under HQRP beginning on the date they receive their CCN notification letter from CMS.

c. Previously Finalized Data Submission Mechanism, Collection Timelines and Submission Deadlines for the FY 2017 Payment Determination

In the FY 15 Hospice Wage Index final rule (79 FR 50486) we finalized our policy requiring that, for the FY 2017 reporting requirements, hospices must complete and submit HIS records for all patient admissions to hospice on or after July 1, 2014. Electronic submission is required for all HIS records. Although electronic submission of HIS records is required, hospices do not need to have an electronic medical record to complete or submit HIS data. In the FY 14 Hospice Wage Index (78 FR 48258) we finalized that, to complete HIS records, providers can use either the Hospice Abstraction Reporting Tool (HART) software, which is free to download and use, or a vendor-designed software. HART provides an alternative option for hospice providers to collect and maintain facility, patient, and HIS Record information for subsequent submission to the QIES ASAP system. Once HIS records are complete, electronic HIS files must be submitted to CMS via the QIES ASAP system. Electronic data submission via the QIES ASAP system is required for all HIS submissions; there are no other data submission methods available. Hospices have 30 days from a patient admission or discharge to submit the appropriate HIS record for that patient through the QIES ASAP system. CMS will continue to make HIS completion and submission software available to hospices at no cost. We provided details on data collection and submission timing at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html*.

The QIES ASAP system provides reports upon successful submission and processing of the HIS records. The final validation report may serve as evidence of submission. This is the same data submission system used by nursing homes, inpatient rehabilitation facilities, home health agencies, and long-term care hospitals for the submission of Minimum Data Set Version 3.0 (MDS 3.0), Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF–PAI), Outcome Assessment Information Set (OASIS), and Long-Term Care Hospital Continuity Assessment Record & Evaluation Data Set (LTCH CARE), respectively. We have provided hospices with information and details about use of the HIS through postings on the HQRP Web page, Open Door Forums, announcements in the CMS MLN Connects Provider e-News (E-News), and provider training.

d. Proposed Data Submission Timelines and Requirements for FY 2018 Payment Determination and Subsequent Years

Hospices are evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their substantive performance level with respect to the required quality measures. In order for CMS to appropriately evaluate the quality reporting data received by hospice providers, it is essential HIS data be received in a timely manner.

The submission date for any given HIS record is defined as the date on which a provider submits the completed record. The submission date is the date on which the completed record is submitted and accepted by the QIES ASAP system. Beginning with the FY 2018 payment determination, we propose that hospices must submit all HIS records within 30 days of the Event Date, which is the patient's admission date for HIS-Admission records or discharge date for HIS-Discharge records.

- For HIS-Admission records, the submission date should be no later than the admission date plus 30 calendar days. The submission date can be equal to the admission date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's admission date.
- For HIS-Discharge records, the submission date should be no later than the discharge date plus 30 calendar days. The submission date can be equal to the discharge date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's discharge date.

The QIES ASAP system validation edits are designed to monitor the timeliness and ensure that providers submitted records conform to the HIS data submission specifications. Providers are notified when timing criteria have not been met by warnings that appear on their Final Validation Reports. A standardized data collection approach that coincides with timely submission of data is essential in order to establish a robust quality reporting program and ensure the scientific reliability of the data received. We invite comments on the proposal that hospices must submit all HIS records within 30 days of the Event Date, which is the patient's admission date for HIS-Admission records or discharge date for HIS-Discharge records.

e. Proposed HQRP Data Submission and Compliance Thresholds for the FY 2018 Payment Determination and Subsequent Years

In order to accurately analyze quality reporting data received by hospice providers, it is imperative we receive ongoing and timely submission of all HIS-Admission and HIS-Discharge records. To date, the timeliness criteria for submission of HIS Admission and HIS-Discharge records has never been proposed and finalized through rulemaking process. We believe this

matter should be addressed by defining a clear standard for timeliness and compliance at this time. In response to input from our stakeholders seeking additional specificity related to HQRP compliance affecting FY payment determinations and, due to the importance of ensuring the integrity of quality data submitted to CMS, we are proposing to set specific HQRP thresholds for timeliness of submission of hospice quality data beginning with data affecting the FY 2018 payment determination and subsequent years.

Beginning with the FY 2018 payment determination and subsequent FY payment determinations, we propose that all HIS records must be submitted within 30 days of the Event Date, which is the patient's admission date or discharge date. To coincide with this requirement, we propose to establish an incremental threshold for compliance with this timeliness requirement; the proposed threshold would be implemented over a 3 year period. To be compliant with timeliness requirements, we propose that hospices would have to submit no less than 70 percent of their total number of HIS-Admission and HIS-Discharge records by no later than 30 days from the Event Date for the FY 2018 APU determination. The timeliness threshold would be set at 80 percent for FY 2019 and at 90 percent for FY 2020 and subsequent years. The threshold corresponds with the overall amount of HIS records received from each provider that fall within the established 30 day submission timeframes. Our ultimate goal is to require all hospices to achieve a timeliness requirement compliance rate of 90 percent or more.

For example, beginning in FY 2018, hospices will have met the timeliness requirement threshold if at the end of the reporting period 70 percent of all their HIS reporting data for the year has been received within the 30 day submission timeframe.

To summarize, we propose to implement the timeliness threshold requirement beginning with all HIS admission and discharge records that occur on or after January 1, 2016, in accordance with the following schedule.

- Beginning on or after January 1, 2016 to December 31, 2016, hospices must submit at least 70 percent for all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2018.
- Beginning on or after January 1, 2017 to December 31, 2017, hospices must score at least 80 percent for all HIS records received within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2019.
- Beginning on or after January 1, 2018 to December 31, 2018, hospices must score at least 90 percent for all HIS records received within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2020.

We invite public comment on our proposal to implement the new data submission and compliance threshold requirement, as described previously, for the HQRP.

7. HQRP Submission Exception and Extension Requirements for the FY 2017 Payment Determination and Subsequent Years

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50488), we finalized our proposal to allow hospices to request and for CMS to grant exemptions/extensions with respect to the reporting of required quality data when there are extraordinary circumstances beyond the control of the provider. When an extension/exception is granted, a hospice will not incur payment reduction penalties for failure to comply with the requirements of the HQRP. For the FY 2016 payment determination and subsequent payment determinations, a hospice may request an extension/exception of the requirement to submit quality data for a specified time period. In the event that a hospice requests an extension/exception for quality reporting purposes, the hospice would submit a written request to CMS. In general, exceptions and extensions will not be granted for hospice vendor issues, fatal error messages preventing record submission, or staff error.

In the event that a hospice seeks to request an exception or extension for quality reporting purposes, the hospice must request an exception or extension within 30 days of the date that the extraordinary circumstances occurred by submitting the request to CMS via email to the HQRP mailbox at *HQRPReconsiderations@cms.hhs.gov*. Exception or extension requests sent to CMS through any other channel would not be considered as a valid request for an exception or extension from the HQRP's reporting requirements for any payment determination. In order to be considered, a request for an exception or extension must contain all of the finalized requirements as outlined on our Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospiceQuality-Reporting/index.html*.

If a provider is granted an exception or extension, timeframes for which an exception or extension is granted will be applied to the new timeliness requirement so providers are not penalized. If a hospice is granted an exception, we will not require that the hospice submit any quality data for a given period of time. If we grant an extension to a hospice, the hospice will still remain responsible for submitting quality data collected during the timeframe in question, although we will specify a revised deadline by which the hospice must submit this quality data.

This process does not preclude us from granting extensions/exceptions to hospices that have not requested them when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We may grant an extension/exception to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exception to hospices in a region or locale, we will communicate this decision through routine communication channels to hospices and vendors, including, but not limited to, Open Door Forums, ENews and notices on *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/*. We propose to codify the HQRP Submission Exception and Extension Requirements at § 418.312.

8. Hospice CAHPS Participation Requirements for the 2018 APU and 2019 APU

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452), we stated that CMS would start national implementation of the CAHPS® Hospice Survey as of January 1, 2015. We started national implementation of this survey as planned. The CAHPS® Hospice Survey is a component of CMS' Hospice Quality Reporting Program that emphasizes the experiences of hospice patients and their primary caregivers listed in the hospice patients' records. Measures from the survey will be submitted to the National Quality Forum (NQF) for endorsement as hospice quality measures. We refer readers to our extensive discussion of the Hospice Experience of Care Survey in the Hospice Wage Index FY 2015 final rule for a description of the measurements involved and their relationship to the statutory requirement for hospice

quality reporting (79 FR 50450 also refer to 78 FR 48261).

a. Background and Description of the Survey

The CAHPS® Hospice Survey is the first national hospice experience of care survey that includes standard survey administration protocols that allow for fair comparisons across hospices.

CMS developed the CAHPS® Hospice Survey with input from many stakeholders, including other government agencies, industry stakeholders, consumer groups and other key individuals and organizations involved in hospice care. The Survey was designed to measure and assess the experiences of patients who died while receiving hospice care as well as the experiences of their informal caregivers. The goals of the survey are to—

- Produce comparable data on patients' and caregivers' perspectives of care that allow objective and meaningful comparisons between hospices on domains that are important to consumers;
- Create incentives for hospices to improve their quality of care through public reporting of survey results; and
- Hold hospice care providers accountable by informing the public about the providers' quality of care.

The development process for the survey began in 2012 and included a public request for information about publicly available measures and important topics to measure (78 FR 5458, January 25, 2013); a review of the existing literature on tools that measure experiences with end-of-life care; exploratory interviews with caregivers of hospice patients; a technical expert panel attended by survey development and hospice care quality experts; cognitive interviews to test draft survey content; incorporation of public responses to **Federal Register** notices (78 FR 48234, August 7, 2013) and a field test conducted by CMS in November and December 2013.

The CAHPS® Hospice Survey treats the dying patient and his or her informal caregivers (family members or friends) as the unit of care. The Survey seeks information from the informal caregivers of patients who died while enrolled in hospices. Survey-eligible patients and caregivers are identified using hospice records. Fielding timelines give the respondent some recovery time (2 to 3 months), while simultaneously not delaying so long that the respondent is likely to forget details of the hospice experience. The survey focuses on topics that are important to hospice users and for which informal caregivers are the best source for gathering this information. Caregivers are presented with a set of standardized questions about their own experiences and the experiences of the patient in hospice care. During national implementation of this survey, hospices are required to conduct the survey to meet the Hospice Quality Reporting requirements, but individual caregivers will respond only if they voluntarily choose to do so. A survey Web site is the primary information resource for hospices and vendors (*www.hospicecahpssurvey.org*). The CAHPS® Hospice Survey is currently available in English, Spanish, Traditional Chinese, and Simplified Chinese. CMS will provide additional translations of the survey over time in response to suggestions for any additional language translations. Requests for additional language translations should be made to the CMS Hospice CAHPS® Project Team at *hospicesurvey@cms.hhs.gov.*

In general, hospice patients and their caregivers are eligible for inclusion in the survey sample with the exception of the following ineligible groups: primary caregivers of patients under the age of 18 at the time of death; primary caregivers of patients who died within 48 hours of admission to hospice care; patients for whom no caregiver is listed or available, or for whom caregiver contact information is not known; patients whose primary caregiver is a legal guardian unlikely to be familiar with care experiences; patients for whom the primary caregiver has a foreign (Non-US or US Territory address) home address; patients or caregivers of patients who request that they not be contacted (those who sign ''no publicity'' requests while under the care of hospice or otherwise directly request not to be contacted). Identification of patients and caregivers for exclusion will be based on hospice administrative data. Additionally, caregivers under 18 are excluded.

Hospices with fewer than 50 survey-eligible decedents/caregivers during the prior calendar year are exempt from the CAHPS® Hospice Survey data collection and reporting requirements for payment determination. Hospices with 50 to 699 survey-eligible decedents/caregivers in the prior year will be required to survey all cases. For hospices with 700 or more survey-eligible decedents/caregivers in the prior year, a sample of 700 will be drawn under an equal-probability design. Survey-eligible decedents/caregivers are defined as that group of decedent and caregiver pairs that meet all the criteria for inclusion in the survey sample.

We moved forward with a model of national survey implementation, which is similar to that of other CMS patient experience of care surveys. Medicare-certified hospices are required to contract with a third-party vendor that is CMS-trained and approved to administer the survey on their behalf. A list of approved vendors can be found at this Web site: *www.hospicecahpssurvey.org.* Hospices are required to contract with independent survey vendors to ensure that the data are unbiased and collected by an organization that is trained to collect this type of data. It is important that survey respondents feel comfortable sharing their experiences with an interviewer not directly involved in providing the care. We have successfully used this mode of data collection in other settings, including for Medicare-certified home health agencies. The goal is to ensure that we have comparable data across all hospices.

Consistent with many other CMS CAHPS® surveys that are publicly reported on CMS Web sites, CMS will publicly report hospice data when at least 12 months of data are available, so that valid comparisons can be made across hospice providers in the United States, to help patients, family and friends choose a hospice program for themselves or their loved ones.

b. Participation Requirements To Meet Quality Reporting Requirements for the FY 2018 APU

In section 3004(c) of the Affordable Care Act, the Secretary is directed to establish quality reporting requirements for Hospice Programs. The CAHPS® Hospice Survey is a component of the CMS Hospice Quality Reporting Requirements for the FY 2018 APU and subsequent years.

The CAHPS® Hospice Survey includes the measures detailed in Table 27. The individual survey questions that comprise each measure are listed under the measure. These measures are in the process of being submitted to the National Quality Forum (NQF).

Table 27—Hospice Experience of Care Survey Quality Measures and Constituent Items

Hospice team communication
- While your family member was in hospice care, how often did the hospice team keep you informed about when they would arrive to care for your family member?
- While your family member was in hospice care, how often did the hospice team explain things in a way that was easy to understand?
- How often did the hospice team listen carefully to you when you talked with them about problems with your family member's hospice care?
- While your family member was in hospice care, how often did the hospice team keep you informed about your family member's condition?
- While your family member was in hospice care, how often did the hospice team listen carefully to you?

Getting timely care
- While your family member was in hospice care, when you or your family member asked for help from the hospice team, how often did you get help as soon as you needed it?
- How often did you get the help you needed from the hospice team during evenings, weekends, or holidays?

Treating family member with respect
- While your family member was in hospice care, how often did the hospice team treat your family member with dignity and respect?
- While your family member was in hospice care, how often did you feel that the hospice team really cared about your family member?

Providing emotional support
- While your family member was in hospice care, how much emotional support did you get from the hospice team?
- In the weeks after your family member died, how much emotional support did you get from the hospice team?

Getting help for symptoms
- Did your family member get as much help with pain as he or she needed?
- How often did your family member get the help he or she needed for trouble breathing?
- How often did your family member get the help he or she needed for trouble with constipation?
- How often did your family member get the help he or she needed from the hospice team for feelings of anxiety or sadness?

Getting hospice care training
- Did the hospice team give you the training you needed about what side effects to watch for from pain medicine?
- Did the hospice team give you the training you needed about if and when to give more pain medicine to your family member?
- Did the hospice team give you the training you needed about how to help your family member if he or she had trouble breathing?
- Did the hospice team give you the training you needed about what to do if your family member became restless or agitated?

Single Item Measures

Providing support for religious and spiritual beliefs
- (Support for religious or spiritual beliefs includes talking, praying, quiet time, or other ways of meeting your religious or spiritual needs.) While your family member was in hospice care, how much support for your religious and spiritual beliefs did you get from the hospice team?

Information continuity
- While your family member was in hospice care, how often did anyone from the hospice team give you confusing or contradictory information about your family member's condition or care?

Understanding the side effects of pain medication
- Side effects of pain medicine include things like sleepiness. Did any member of the hospice team discuss side effects of pain medicine with you or your family member?

Global Measures

Overall rating of hospice
- Using any number from 0 to 10, where 0 is the worst hospice care possible and 10 is the best hospice care possible, what number would you use to rate your family member's hospice care?

Recommend hospice
- Would you recommend this hospice to your friends and family?

To comply with CMS's quality reporting requirements for the FY 2018 APU, hospices will be required to collect data using the CAHPS® Hospice Survey. Hospices would be able to comply by utilizing only CMS-approved third party vendors that are in compliance with the provisions at § 418.312(e). Ongoing monthly participation in the survey is required January 1, 2016 through December 31, 2016 for compliance with the FY 2018 APU.

Approved CAHPS® Hospice Survey vendors will submit data on the hospice's behalf to the CAHPS® Hospice Survey Data Center. The deadlines for data submission occur quarterly and are shown in Table 28 below. Deadlines are the second Wednesday of the submission months, which are August, November, February, and May. Deadlines are final; no late submissions will be accepted. However, in the event of extraordinary circumstances beyond the control of the provider, the provider will be able to request an exemption as previously noted in the Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Year FY 2016 and Beyond section. Hospice providers are responsible for making sure that their vendors are submitting data in a timely manner.

TABLE 28—CAHPS® HOSPICE SURVEY DATA SUBMISSION DATES FY2017 APU, FY2018 APU, AND FY2019 APU

| Sample months (that is, month of death) [1] | Quarterly data submission deadlines [2] |
|---|---|
| **FY2017 APU** | |
| Dry Run January–March 2015 (Q1) | August 12, 2015. |
| April–June 2015 (Q2) | November 11, 2015.[3] |
| July–September 2015 (Q3) | February 10, 2016. |
| October–December 2015 (Q4) | May 11, 2016. |
| **FY2018 APU** | |
| January–March 2016 (Q1) | August 10, 2016. |
| April–June 2016 (Q2) | November 9, 2016. |
| July–September 2016 (Q3) | February 8, 2017. |
| October–December 2016 (Q4) | May 10, 2017. |
| **FY2019 APU** | |
| January–March 2017 (Q1) | August 9, 2017. |
| April–June 2017 (Q2) | November 8, 2017. |
| July–September 2017 (Q3) | February, 14, 2018. |
| October–December 2017 (Q4) | May 9, 2018. |

[1] Data collection for each sample month initiates two months following the month of patient death (for example, in April for deaths occurring in January).
[2] Data submission deadlines are the second Wednesday of the submission month.
[2] Corrected from the Final Rule published August 22, 2014, 79 FR 50493.

In the FY 2014 Hospice Wage Index and Rate Update final rule, we stated that we would exempt very small hospices from CAHPS® Hospice Survey requirements. We propose to continue that exemption: Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2015 through December 31, 2015 are exempt from CAHPS® Hospice Survey data collection and reporting requirements for the 2018 APU. To qualify for the survey exemption for the FY 2018 APU, hospices must submit an exemption request form. This form will be available on the CAHPS® Hospice Survey Web site *http://www.hospicecahpssurvey.org.* Hospices are required to submit to CMS their total unique patient count for the period of January 1, 2015 through December 31, 2015. The due date for submitting the exemption request form for the FY 2018 APU is August 10, 2016.

c. Participation Requirements To Meet Quality Reporting Requirements for the FY 2019 APU

To meet participation requirements for the FY 2019 APU, we proposed that hospices collect data on an ongoing monthly basis from January 2017 through December 2017 (inclusive). Data submission deadlines for the 2019 APU will be announced in future rulemaking.

Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2016 through December 31, 2016 are exempt from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2019 payment determination. To qualify, hospices must submit an exemption request form. This form will be available in first quarter 2017 on the CAHPS® Hospice Survey Web site *http://www.hospicecahpssurvey.org.*

Hospices are required to submit to CMS their total unique patient count for the period of January 1, 2016 through December 31, 2016. The due date for submitting the exemption request form for the FY 2018 APU is August 10, 2016.

d. Annual Payment Update

The Affordable Care Act requires that beginning with FY 2014 and each subsequent fiscal year, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year, unless covered by specific exemptions. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent fiscal years. In the FY 2015 Hospice Wage Index we added the CAHPS® Hospice Survey to the Hospice Quality Reporting Program requirements for the FY 2017 payment determination and determinations for subsequent years.

- To meet the HQRP requirements for the FY 2018 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2016 through December 31, 2016 to qualify for the full APU.
- To meet the HQRP requirements for the FY 2019 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2017 through December 31, 2017 to qualify for the full APU.

e. CAHPS® Hospice Survey Oversight Activities

We propose to continue a requirement that vendors and hospice providers participate in CAHPS® Hospice Survey oversight activities to ensure compliance with Hospice CAHPS® technical specifications and survey requirements. The purpose of the oversight activities is to ensure that hospices and approved survey vendors follow the CAHPS® Hospice Survey technical specifications and thereby ensure the comparability of CAHPS® Hospice Survey data across hospices.

We propose that the reconsiderations and appeals process for hospices failing to meet the Hospice CAHPS® data collection requirements will be part of the Reconsideration and Appeals process already developed for the Hospice Quality Reporting program. We encourage hospices interested in learning more about the CAHPS® Hospice Survey to visit the CAHPS® Hospice Survey Web site: *http://www.hospicecahpssurvey.org.*

9. HQRP Reconsideration and Appeals Procedures for the FY 2016 Payment Determination and Subsequent Years

In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50496), we notified hospice providers on how to seek reconsideration if they received a noncompliance decision for the FY 2016 payment determination and subsequent years. A hospice may request reconsideration of a decision by CMS that the hospice has not met the requirements of the Hospice Quality Reporting Program for a particular period. Reporting compliance is determined by successfully fulfilling both the Hospice CAHPS® Survey requirements and the HIS data submission requirements.

We wish to clarify that any hospice that wishes to submit a reconsideration request must do so by submitting an email to CMS containing all of the requirements listed on the HQRP Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Reconsideration-Requests.html.* Electronic email sent to *HQRPReconsiderations@cms.hhs.gov* is the only form of submission that will be accepted. Any reconsideration requests received through any other channel including U.S. postal service or phone will not be considered as a valid reconsideration request. We codified this process at § 418.312. In addition, we codified at § 418.306 that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY and solicited comments on all of the proposals and the associated regulations text at § 418.312 and in § 418.306 in section VI.

In the past, only hospices found to be non-compliant with the reporting requirements set forth for a given payment determination received a notification of this finding along with instructions for requesting reconsideration in the form of a certified United States Postal Service (USPS) letter. In an effort to communicate as quickly, efficiently, and broadly as possible with hospices regarding annual compliance, we are proposing additions to our communications method regarding annual notification of reporting compliance in the HQRP. In addition to sending a letter via regular USPS mail, beginning with the FY 2017 payment determination and for subsequent fiscal years, we propose to use the Quality Improvement and Evaluation System (QIES) National System for Certification and Survey Provider Enhanced Reports (CASPER) Reporting as an additional mechanism to communicate to hospices regarding their compliance with the reporting requirements for the given reporting cycle. The electronic APU letters would be accessed using the CASPER Reporting Application. Requesting access to the CMS systems is performed in two steps. Details are provided on the QIES Technical Support Office Web site (direct link), *https://www.qtso.com/hospice.html.* Once successfully registered, access the CMS QIES to Success Welcome page *https://web.qiesnet.org/qiestosuccess/index.html* and select the ''CASPER Reporting'' link. Additional information about how to access the letters will be provided prior to the release of the letters.

We propose to disseminate communications regarding the availability of hospice compliance reports in CASPER files through routine channels to hospices and vendors, including, but not limited to issuing memos, emails, Medicare Learning Network (MLN) announcements, and notices on *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Reconsideration-Requests.html.*

We further propose to publish a list of hospices who successfully meet the reporting requirements for the applicable payment determination on the HQRP Web site *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting.html.* We propose updating the list after reconsideration requests are processed on an annual basis.

We invite comment on the proposals to add CASPER Reporting as an additional communication mechanism for the dissemination of compliance notifications and to publish a list of compliant hospices on the HQRP Web site.

10. Public Display of Quality Measures and Other Hospice Data for the HQRP

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. The procedures must ensure that a hospice would have the opportunity to review the data regarding the hospice's respective program before it is made public.

We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data. We also recognize that it is essential that the data made available to the public be meaningful and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. Hospices have been required to use a standardized data collection approach (HIS) since July 1, 2014. Data from July 1, 2014 onward is currently being used to establish the scientific soundness of the quality measures prior to the onset of public reporting of the seven quality measures implemented in the HQRP. We believe it is critical to establish the reliability and validity of the quality measures prior to public reporting in order to demonstrate the ability of the quality measures to distinguish the quality of services provided. To establish reliability and validity of the quality measures, at least four quarters of data will be analyzed. Typically, the first one or two quarters of data reflect the learning curve of the facilities as they adopt standardized data collection procedures; these data often are not used to establish reliability and validity. We began data collection in CY 2014; the data from CY 2014 for Quarter 3 (Q3) will not be used for assessing validity and reliability of the quality measures. We are analyzing data collected by hospices during Quarter 4 (Q4) CY 2014 and Q1–Q3 CY 2015. Decisions about whether to report some or all of the quality measures publicly will be based on the findings of analysis of the CY 2015 data.

In addition, the Affordable Care Act requires that reporting be made public on a CMS Web site and that providers have an opportunity to review their data prior to public reporting. CMS will develop the infrastructure for public reporting, and provide hospices an opportunity to review their quality measure data prior to publicly reporting information about the quality of care provided by ''Medicare-certified'' hospice agencies throughout the nation. CMS also plans to make available provider-level feedback reports in the Certification and Survey Provider Enhances Reports (CASPER) system. These provider-level feedback reports or ''quality reports'' will be separate from public reporting and will be for provider viewing only, for the purposes of internal provider quality improvement. As is common in other quality reporting programs, quality reports would contain feedback on facility-level performance on quality metrics, as well as

benchmarks and thresholds. For the CY 2014 Reporting Cycle, there were no quality reports available in CASPER; however, CMS anticipates that provider-level quality reports will begin to be available sometime in CY 2015. CMS anticipates that providers would use the quality reports as part of their Quality Assessment and Performance Improvement (QAPI) efforts.

As part of our ongoing efforts to make healthcare more transparent, affordable, and accountable, the HQRP is prepared to post hospice data on a public data set, the Medicare Provider Utilization and Payment Data: Physician and Other Supplier Public Use File located at *https://data.cms.hhs.gov.* This site includes information on services and procedures provided to Medicare beneficiaries by physicians and other healthcare professionals and serves as a helpful resource to the healthcare community. A timeline for posting hospice data on a public data set has not been determined by CMS. Should a timeline become available prior to the next annual rulemaking cycle, details would be announced via regular HQRP communication channels, including listening sessions, memos, email notification, and Web postings.

Furthermore, to meet the requirement for making such data public, we will develop a CMS Compare Web site for hospice, which will list hospice providers geographically. Consumers can search for all Medicare approved hospice providers that serve their city or zip code (which would include the quality measures and CAHPS® Hospice Survey results) and then find the agencies offering the types of services they need. Like other CMS Compare Web sites, the Hospice Compare Web site will feature a quality rating system that gives each hospice a rating of between one (1) and five (5) stars. Hospices will have prepublication access to their own agency's quality data, which enables each agency to know how it is performing before public posting of data on the Compare Web site. Decisions regarding how the rating system will determine a providers star rating and methods used for calculations, as well as a proposed timeline for implementation will be announced via regular HQRP communication channels, including listening sessions, memos, email notification, provider association calls, Open Door Forums, and Web postings. We will announce the timeline for public reporting of quality measure data in future rulemaking.

*F. Clarification Regarding Diagnosis Reporting on Hospice Claims*

1. Background

During the grass roots movement of hospice growth in the United States in the 1970s, healthcare providers recognized the need for a care delivery model to address the needs of those individuals who no longer wanted to seek out the curative care for advancing illnesses and injuries. In the early stages of development, hospice leaders worked with key legislative leaders to develop a system to reimburse hospice care in the United States.[54] However, it was evident that before governmental reimbursement could occur, data had to be collected and analyzed to demonstrate what hospices actually provided and what costs were involved in rendering hospice care. The Health Care Financing Administration (HCFA)—now known as the Centers for Medicare & Medicaid Services (CMS)—conducted a demonstration that included 26 hospices located throughout the country to study the effect of Medicare-reimbursed hospice care. The results of this demonstration, as well as those sponsored by the private health insurance sector and private foundations, along with the testimony of multiple hospice industry leaders, legislators, and hospice families, helped to form the structure of the Medicare hospice benefit. Stakeholders agreed that a Medicare hospice benefit needed to be structured to promote cost control and appropriate service provision, while discouraging providers from entering the hospice market with the intent of maximizing reimbursement from Medicare.

Both the Congress and the hospice industry wanted the Medicare hospice benefit to provide a coordinated range of services to ensure that terminally ill individuals would have access to comprehensive care aimed at addressing their physical, emotional, psychosocial and spiritual needs as they approached the end of life. As stated in the 1983 hospice final rule, and reiterated throughout hospice rules since implementation of the benefit, it is our general view that the waiver required by the law is a broad one and that hospices are required to provide virtually all the care that is needed by terminally ill patients (48 FR 56010). Therefore, hospices are to provide pain and symptom management, as an alternative to the curative model of care, focused on the ''total person'' as opposed to individual disease or injury states. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. We continue to support the philosophy of holistic, comprehensive, virtually all-inclusive hospice care and seek to protect beneficiary access and coverage under the Medicare hospice benefit.

2. Current Discussions About Hospice Vulnerabilities

The Institute of Medicine (IOM) recently released the report, *Dying in America: Improving Quality and Honoring Individual Preferences Near the End of Life.* This report discussed vulnerabilities in the current health care system, especially as it relates to those who are approaching the end of life, and stated that one of the largest barriers in providing efficient, quality end-of-life care is the lack of coordination and communication among different components of the health care system.[55] The report states that better coordination of care is essential in improving patient outcomes and that end-of-life care should be individualized based on patient values, goals, needs, and informed preferences with a recognition that individual service needs and intensity will change over time.[56]

Recent news articles on hospice care highlight the same concerns expressed in the IOM report regarding vulnerabilities in the current health care system. While recent news articles agree that hospice care is a valuable and needed service for patients who are near death, the articles identified issues with hospice quality of care, the lack of services provided, conflicts of interest, and the current Medicare payment structure that may incentivize the provision of fewer services.[57] Overall, the IOM report and recent news articles raise concerns regarding fragmented and uncoordinated care for those who are terminally ill.

As mentioned in previous rules, and in section III.A of this proposed rule, there is data suggesting a significant amount of ''unbundling'' is occurring for services that should be included in the hospice bundled payment. As

[54] Connor, S. (2007). *Development of Hospice and Palliative Care in the United States.* OMEGA. 56 (1); 89–99.

[55] Institute of Medicine (IOM), ''Dying in America: Improving Quality and Honoring Individual Preferences Near End-of-Life,'' 2014, p.5–10.

[56] Institute of Medicine (IOM), ''Dying in America: Improving Quality and Honoring Individual Preferences Near End-of-Life,'' 2014, p.5–52.

[57] *http://www.washingtonpost.com/sf/business/collection/business-of-dying/*

discussed previously above, our data analysis shows that $1.3 billion is being paid outside of the Medicare hospice benefit for those under an active hospice election. With such a significant amount of services being provided outside of the Medicare hospice benefit, it raises questions whether hospices are providing full disclosure of the nature of hospice care, which focuses on improving quality of life as one is approaching the end of life while eliminating the need for unnecessary, futile and possibly harmful diagnostics, treatments, and therapies. Additionally, we have received anecdotal reports from non-hospice providers who have rendered care and services to hospice beneficiaries in which the non-hospice provider states that the care given was related to the terminal prognosis of the individual. These reports go on to say that they have contacted hospices to coordinate the care of the hospice beneficiary only to be told by those hospices that they disagreed with the non-hospice providers' clinical judgment that the care was related to the terminal prognosis. We have been told that hospices are refusing to reimburse the non-hospice provider for care related to the terminal prognosis. These non-hospice providers also informed us that the hospices told them to code the claim with a different diagnosis or to code condition code 07 (treatment of Non-terminal Condition for Hospice) or the modifier ''GW'' (service not related to the hospice patient's terminal condition) on their claims to ensure that the non-hospice provider would consequently get paid through Medicare. These non-hospice providers stated that they disagreed with this practice, and considered it fraudulent. As such, they were unable to be reimbursed by the hospice or by Medicare for services provided that they felt were the responsibility of hospice. We have also received anecdotal reports from hospice beneficiaries and their families that they have been told by the hospice to revoke their hospice election to receive high-cost services that should be covered by the hospice, such as palliative chemotherapy and radiation.

Given the legislative history, the statements provided by hospices during the development of the benefit, and anecdotal reports from non-hospice providers and hospice beneficiaries, we are concerned that some hospices are making determinations of hospice coverage based solely on cost and reimbursement as opposed to being based on patient-centered needs, preferences and goals for those approaching the end of life. We believe this to be counter to the holistic, comprehensive, and coordinated hospice care model promoted during the development of the Medicare hospice benefit.[58] It was very clear throughout the development, and years after the implementation, of the Medicare hospice benefit that hospices were expected to make good on their promise to do a better job in the provision and coordination of care than conventional Medicare services for those who were at the end of life.[59] However, if hospices are not making good on that promise, it results in increased burden on hospice beneficiaries and their families—both clinically and financially—and is not in keeping with the intent of the Medicare hospice benefit as originally developed and implemented in 1983.

3. Medicare Hospice Eligibility Requirements

The Medicare hospice regulations at § 418.25(b) state that in reaching a decision to certify that a patient is terminally ill, meaning that the patient has a medical prognosis of a life expectancy of 6 months or less, the certifying physician(s) must consider at least the following information:

- Diagnosis of the terminal condition of the patient.
- Other health conditions, whether related or unrelated to the terminal condition.
- Current clinically relevant information supporting all diagnoses.

Eligibility for the Medicare hospice benefit has always been based on the prognosis of the individual. As we have mentioned in previous rules, prognosis is not necessarily established through just a single diagnosis or even multiple diagnoses; rather, it is based on the totality of the individual and everything that affects their life expectancy. In the FY 2015 Hospice Payment Rate Update final rule (79 FR 50471), we reminded providers that there are multiple public sources available to assist in determining whether a patient meets Medicare hospice prognosis eligibility criteria (that is, industry-specific clinical and functional assessment tools and information on MAC Web sites, including Local Coverage Determinations (LCDs)). We have mentioned that there are prognostication tools available for hospices to assist in thoughtful evaluation of Medicare beneficiaries for determining eligibility for the Medicare hospice benefit. We expect hospice providers to use the full range of tools available, including guidelines, comprehensive assessments, and the complete medical record, as necessary, to make responsible and thoughtful clinical determinations regarding prognosis eligibility.

As mentioned earlier in this section, the hospice industry has come under increased media scrutiny, much of it related to hospices enrolling patients who may not be eligible for the benefit because they are not terminally ill and enrolling patients with certain diagnoses that typically have a longer length of stay, mainly non-cancer diagnoses. In the December 26, 2013 Washington Post article, ''Hospice firms draining billions from Medicare'', the author discusses the incentives for hospices to recruit patients who are not yet terminally ill or not yet ready to elect the hospice benefit. This article also goes on to describe allegations from former hospice employees who say that some hospices knowingly admitted patients who were not declining in health.[60] To address some of these noted hospice vulnerabilities, the recent IMPACT Act legislation, as summarized in Section II.D.8. of this proposed rule, requires increased hospice program oversight through more frequent hospice surveys and medical review efforts. All of these efforts seek to protect the Medicare hospice beneficiaries, as well as, the integrity of the Medicare hospice benefit.

4. Assessment of Conditions and Comorbidities Required by Regulation

We have recognized throughout the federal regulations at part 418 that the total person is to be assessed, including acute and chronic conditions, as well as, controlled and uncontrolled conditions, and comorbidities, in order to determine an individual's terminal prognosis. We have also been clear that the original intent of the Medicare hospice benefit is to provide comprehensive, integrated and holistic care for those who have a terminal prognosis. While hospices are responsible for the palliation and management of the terminal illness and related conditions, in the 1983 hospice proposed rule (48 FR 38147) we stated that upon hospice election, the individual waives payment for certain other benefits except in ''exceptional and unusual circumstances.'' In that

[58] ''Background Materials on Medicare Hospice Benefit Including Description of Proposed Implementing Regulations,'' September 9, 1983. Committee on Finance, United States Senate, S. Prt. 98–88, p. 1.

[59] Hoyer, T. (1998). A History of the Medicare Hospice Benefit. The Hospice Journal, 13(1–2), 61–69.

[60] *http://www.washingtonpost.com/business/economy/medicare-rules-create-a-booming-business-in-hospice-care-for-people-who-arent-dying/2013/12/26/4ff75bbe-68c9-11e3-ae56-22de072140a2_story.html.*

proposed rule, we did not specify these ''exceptional and unusual circumstances'' because we did not yet know what specific types of circumstances would warrant the use of this exception and invited comments on this point. In the 1983 hospice final rule (48 FR 56010 through 56011), we stated that we did not receive any suggestions for identifying exceptional and unusual circumstances that warranted the inclusion of a specific provision in the regulations to accommodate them. We stated this because most of the comments that were made attempted to suggest this exception as a means of routinely providing non-hospice Medicare financing for the expense of costly services needed by hospice patients and we do not view this as an appropriate interpretation of the law (48 FR 56011). We reiterated that we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case by case basis and that it is our general rule that the waiver required by law is a broad one.

Since the implementation of the Medicare hospice benefit, there have been many questions and requests for CMS to provide those ''exceptional and unusual'' circumstances for which a condition would be unrelated to the prognosis of the terminally ill individual. We continue to state that those circumstances would be ''exceptional and unusual'' and that hospices continue to be required to provide virtually all the care that is needed by terminally ill patients. To respond to the many requests for greater clarification, in the Medicare Program; FY 2015 Payment Rate Update proposed rule (79 FR 26554 through 26555), we solicited comments on definitions we provided for ''terminal illness'' and ''related conditions.'' Based on comments received in response to those definitions and from comments received in prior year's proposed rules, it appears that there continues to be widely varying interpretation as to what constitutes ''terminal illness'' and ''related conditions'' and hence the services that should be provided and covered by hospices. Similar to the 1983 hospice final rule, some commenters appear to have a very broad interpretation stating that all conditions are related to the terminal prognosis. Other commenters have a very narrow interpretation as to what illnesses and conditions would be and would not be the responsibility of hospice, and felt that those conditions are limited to a single diagnosis. Additionally, some comments previously received stated that longstanding, preexisting, chronic, stable and controlled conditions and disease states as well as comorbidities, should not be considered related to a patient's terminal illness or related conditions. Some commenters went on to say that not all pain and symptoms are related to a patient's terminal prognosis. Many commenters stated that determining ''related conditions'' was often very difficult, while others reported that it wasn't difficult at all. Many commenters felt that the management and maintenance of comorbidities is not the responsibility of hospice as they felt that these comorbidities are not related to the reason why an individual is terminally ill. These commenters believed that these types of conditions should not be included in the bundle of services covered under the Medicare hospice benefit. As we have previously stated in response to those comments, we believe these conditions are included in the bundle of hospice services as hospices are required to provide reasonable and necessary services for both palliation and management of all conditions that contribute to a terminal prognosis. Conversely, several commenters were in agreement that all medical problems will affect a person's prognosis and will relate, in some way, to the disease that will ultimately end that person's life.

Defined at § 418.3, ''terminally ill'' means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. The original implementing regulations of the Medicare hospice benefit, beginning with the 1983 hospice propose and final rules (48 FR 318146 and 48 FR 56008), articulate a set of requirements that do not delineate between preexisting, chronic, controlled or comorbid conditions. The presence of comorbidities is recognized as an important factor contributing to the overall status of an individual and should be considered when determining terminal prognosis. Mental health comorbidities must also be considered as it is not uncommon for terminally ill individuals to have underlying mental health conditions that could contribute to their prognosis and/or affect the plan of care. Health care researchers agree the importance of comorbidity is clear, due to its high prevalence in older populations and its impact on health and health care.[61] It is also well-documented that comorbidities affect overall general health, treatment choice, prognosis, and is a predictor of poor survival.[62] A study of U.S. hospice patients also showed that hospice patients with higher comorbidity index scores were more likely to—

- Be admitted to the ER and hospital;
- Die in the hospital;
- Be discharged from hospice.[63]

It is not an uncommon clinical practice for some clinicians to stop drugs for comorbid conditions arbitrarily because the person has a progressive life-limiting illness; however, withdrawing long term drugs from comorbidities without considering the natural course of the illness can lead to serious problems, such as rebound hypertension, tachycardia, depression and death.[64] It is imperative for hospice patients with comorbidities to have careful management and for clinicians to consider both the physical and psychological effects of treatment.[65]

The National Hospice and Palliative Care Organization (NHPCO) recognizes the importance of comorbidities. They define ''comorbidity'' as known factors or pathological disease impacting on the primary health problem and generally attributed to contributing to increased risk for poor health status outcomes[66] This aligns with the Medicare hospice benefit requirements in which the physical, psychosocial, emotional and spiritual needs of the individual and his or her family must be assessed to develop the hospice plan of care. The individualized plan of care is developed and refined, as necessary, through the course of an individual's hospice election and is based on the initial and ongoing comprehensive assessments.

[61] Gijsen, R., Hoeymans, N., Schellevis, F., Ruwaard, Satariano, W., van den Bos, G., (2001). Causes and consequences of comorbidity: A review. Journal of Clinical Epidemiology, 54(2001), 661.

[62] Yancik, R., Ganz, P, Varricchio, C., Conley, B. (2001). Perspectives on Comorbidity and Cancer in Older Patients: Approaches to Expand the Knowledge Base. American Society of Clinical Oncology. PAGE #.

Repetto, L., Comandini, D., Mammoliti, S. (2001). Life expectancy, comorbidity and quality of life: The treatment equation in the older cancer patients. Critical Reviews in Oncology/Hematology, 37(2001), 148.

Escarrabill, J., Cataluna, J., Hernandez, C., Servera, E. (2009). Recommendations for End-of-Life Care in Patients with Chronic Obstructive Pulmonary Disease. Archivos de Bronconeumologia, 45(6), 297–303.

[63] Legler et al. (2011). The effect of comorbidity burden on health care utilization for patients with cancer using hospice. Journal of Palliative Care Medicine. 14(6), 751–756.

[64] Stevenson, J., Abernethy, A., Miller, C, Currow, D. (2004). Managing comorbidities in patients at the end of life. British Medical Journal. 324(2004), 909–912.

[65] Stevenson, J., Abernethy, A., Miller, C, Currow, D. (2004). Managing comorbidities in patients at the end of life. British Medical Journal. 324(2004), 909–912.

[66] National Hospice and Palliative Care Organization. (2010). Standards of Practice for Hospice Programs.

Our regulations at § 418.54(c) require that the comprehensive assessment must take into consideration the following factors:

- The nature and condition causing admission (including the presence or lack of objective data and subjective complaints).
- Complications and risk factors that affect care planning.
- Functional status, including the patient's ability to understand and participate in his or her own care.
- Imminence of death.
- Severity of symptoms.
- Drug profile. A review of all of the patient's prescription and over-the-counter drugs, herbal remedies and other alternative treatments that could affect drug therapy.
- Bereavement. An initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment must be incorporated into the plan of care and considered in the bereavement plan of care.
- The need for referrals and further evaluation by appropriate health professionals.

The hospice CoPs at § 418.56(c) require that the hospice plan of care reflect patient and family goals and have measurable outcomes. Furthermore, the plan of care is a dynamic and fluid document that will change as the individual's condition changes throughout the course of a hospice election. A comprehensive, holistic, integrated and coordinated approach to service delivery is the hallmark of hospice care and a valued service for Medicare beneficiaries and families as the individual approaches the end-of-life. We believe that many hospices practice this comprehensive approach as they recognize that it is the hospices' responsibility to provide all medical, emotional, psychosocial and spiritual services for all component conditions of the terminal prognosis along the continuum of care.

5. Clarification Regarding Diagnosis Reporting on Hospice Claims

International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM) Coding Guidelines state the following regarding the selection of the principal diagnosis: The principal diagnosis is defined in the Uniform Hospital Discharge Data Set (UHDDS) as that condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care. In the case of selection of a principal diagnosis for hospice care, this would mean the diagnosis most contributory to the terminal prognosis of the individual. In the instance where two or more diagnoses equally meet the criteria for principal diagnosis, ICD–10–CM coding guidelines do not provide sequencing direction, and thus, any one of the diagnoses may be sequenced first, meaning to report all of those diagnoses meeting the criteria as a principal diagnosis. Per ICD–10–CM Coding Guidelines, for diagnosis reporting purposes, the definition for ''other diagnoses'' is interpreted as additional conditions that affect patient care in terms of requiring:

- Clinical evaluation; or
- therapeutic treatment; or
- diagnostic procedures; or
- extended length of hospital stay; or
- increased nursing care and/or monitoring.

The UHDDS item #11–b defines Other Diagnoses as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received and/or the length of stay. ICD–10–CM coding guidelines are clear that all diagnoses affecting the management and treatment of the individual within the healthcare setting are requirement to be reported. This has been longstanding existing policy. Adherence to coding guidelines when assigning ICD–9–CM and ICD–10–CM diagnosis and procedure codes is required under the Health Insurance Portability and Accountability Act (HIPAA) as well as our regulations at 45 CFR 162.1002.

However, though established coding guidelines are required, it does not appear that all hospices are coding on hospice claims per these guidelines. In 2010, over 77 percent of hospice claims reported only one diagnosis. Previous rules have discussed requirements for hospice diagnosis reporting on claims and the importance of complete and accurate coding. Preliminary analysis of FY 2014 claims data demonstrates that hospice diagnosis coding is improving; however, challenges remain. Analysis of FY 2014 claims data indicates that 49 percent of hospice claims listed only one diagnosis.[67] We conducted additional analysis on instances where only one diagnosis was reported on the FY 2014 hospice claim and found that 50 percent of these beneficiaries had, on average, eight or more chronic conditions and 75 percent had, on average, five or more chronic conditions.[68] These chronic, comorbid conditions include: Hypertension, anemia, congestive heart failure, chronic obstructive pulmonary disease, ischemic heart disease, depression, diabetes and atrial fibrillation, to name a few.

In the Medicare Program; Hospice Wage Index for Fiscal Year 2013 Notice (77 FR 44248) we stated that hospices should report on hospice claims all coexisting or additional diagnoses that are related to the terminal illness; they should not report coexisting or additional diagnoses that are unrelated to the terminal illness, even though coding guidelines required the reporting of all diagnoses that affect patient assessment and planning. However, as discussed earlier in this section, there is widely varying interpretation as to what factors influence the terminal prognosis of the individual (that is, what conditions render the individual terminally ill and which conditions are related). Furthermore, based on the numerous comments received in previous rulemaking, and anecdotal reports from hospices, hospice beneficiaries, and non-hospice providers discussed above, we are concerned that hospices may not be conducting a comprehensive assessment nor updating the plan of care as articulated by the CoPs to recognize the conditions that affect an individual's terminal prognosis.

Therefore, we are clarifying that hospices will report all diagnoses identified in the initial and comprehensive assessments on hospice claims, whether related or unrelated to the terminal prognosis of the individual. This is in keeping with the requirements of determining whether an individual is terminally ill. This would also include the reporting of any mental health disorders and conditions that would affect the plan of care as hospices are to assess and provide care for identified psychosocial and emotional needs, as well as, for the physical and spiritual needs. Our regulations at § 418.25(b) state, ''in reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

- Diagnosis of the terminal condition of the patient.
- Other health conditions, whether related or unrelated to the terminal condition.
- Current clinically relevant information supporting all diagnoses.

[67] Preliminary FY 2014 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on January 13, 2015.

[68] Preliminary FY 2014 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on January 21, 2015.

ICD–10–CM Coding Guidelines state that diagnoses should be reported that develop subsequently, coexist or affect the treatment of the individual. Furthermore, having these diagnoses reported on claims falls under the authority of the Affordable Care Act for the collection of data to inform hospice payment reform. Section 3132 a(1)(C) of the Affordable Care Act states that the Secretary may collect the additional data and information on cost reports, claims, or other mechanisms as the Secretary determines to be appropriate. Having adequate data on hospice patient characteristics will help to inform thoughtful, appropriate, and clinically relevant policy for future rulemaking. We will monitor compliance with required coding practices and collaborate with all relevant CMS components to determine whether further policy changes are needed or if additional program integrity oversight actions need to be implemented.

## IV. Collection of Information Requirements

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

## V. Regulatory Impact Analysis

### *A. Statement of Need*

This proposed rule meets the requirements of our regulations at § 418.306(c), which requires annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of Core-Based Statistical Areas (CBSAs), or previously used Metropolitan Statistical Areas (MSAs). This proposed rule would also update payment rates for each of the categories of hospice care described in § 418.302(b) for FY 2016 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, the payment rate updates may be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The data collected may be used to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013. In accordance with section 1814(i)(6)(D) of the Act, this proposed rule would provide an update on hospice payment reform research and analyses and proposes a SIA payment in accordance with the requirement to revise the methodology for determining hospice payments in a budget-neutral manner. Finally, section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices and this rule discusses changes in the requirements for the hospice quality reporting program in accordance with section 1814(i)(5) of the Act.

### *B. Introduction*

We have examined the impacts of this proposed 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 (UMRA, 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 proposed rule has been designated as economically significant under section 3(f)(1) of Executive Order 12866 and thus a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking. This proposed rule was also reviewed by OMB.

### *C. Overall Impact*

The overall impact of this proposed rule is an estimated net increase in Federal Medicare payments to hospices of $200 million, or 1.3 percent, for FY 2016. The $200 million increase in estimated payments for FY 2016 reflects the distributional effects of the 1.8 percent proposed FY 2016 hospice payment update percentage ($290 million increase), the use of updated wage index data and the phase-out of the wage index budget neutrality adjustment factor (-0.7 percent/$120 million decrease) and the proposed implementation of the new OMB CBSA delineations for the FY 2016 hospice wage index with a one-year transition (0.2 percent/$30 million increase). The elimination of the wage index budget neutrality adjustment factor (BNAF) was part of a 7-year phase-out that was finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39384), and is not a policy change. The proposed RHC rates and the proposed SIA payment, outlined in section III.B, would be implemented in a budget neutral manner in the first year of implementation, as required per section 1814(i)(6)(D)(ii) of the Act. In section III.B., we also proposed continuing to make the SIA payments budget neutral annually. The RHC rate budget neutrality factors and the SBNF used to reduce the overall RHC rate are outlined in section III.C.3. Therefore, the proposed RHC rates and the proposed SIA payment would not result in an overall payment impact for the Medicare program or hospices.

#### 1. Detailed Economic Analysis

Table 29, Column 3 shows the combined effects of the use of updated wage data (the FY 2015 pre-floor, pre-reclassified hospital wage index) and the phase-out of the BNAF (for a total BNAF reduction of 100 percent), resulting in an estimated decrease in FY 2016 payments of 0.7 percent ($ − 120 million). Column 4 of Table 29, shows the effects of the proposed 50/50 blend of the FY 2016 hospice wage index values (based on the use of FY 2015 pre-floor, pre-reclassified hospital wage index data) under the old and the new CBSA delineations, resulting in an estimated increase in FY 2016 payments of 0.2 percent ($30 million). Column 5 displays the estimated effects of the proposed RHC rates, resulting in no overall change in FY 2016 payments for hospices as this proposal would be implemented in a budget neutral manner. Column 6 shows the estimated effects of the proposed SIA payment, resulting in no change in FY 2016

payments for hospices as this proposal would be implemented in a budget neutral manner through a reduction to the overall RHC rate for FY 2016. Column 7 shows the effects of the proposed FY 2016 hospice payment update percentage. The proposed 1.8 percent hospice payment update percentage is based on a 2.7 percent inpatient hospital market basket update for FY 2016 reduced by a 0.6 percentage point productivity adjustment and by 0.3 percentage point as mandated by the Affordable Care Act. The estimated effects of the 1.8 percent proposed hospice payment update percentage would result in an increase in payments to hospices of approximately $290 million. Taking into account the 1.8 percent proposed hospice payment update percentage ($290 million increase), the use of updated wage data and the phase-out of the BNAF (−$120 million), and the proposed adoption of the new OMB CBSA delineations with a one-year transition for the FY 2016 hospice wage index ($30 million), Column 8 shows that hospice payments are estimated to increase by $200 million ($290 million − $120 million + $30 million = $200 million), or 1.3 percent, in FY 2016.

a. Effects on Hospices

This section discusses our analysis of the estimated impacts on FY 2016 payments to hospices due to: (1) The use of updated wage index data for the proposed FY 2016 hospice wage index (using FY 2015 hospital pre-floor, pre-reclassified hospital wage data) and the phase-out of the BNAF, (2) the proposed FY 2016 hospice wage index that adopts the new OMB CBSA delineations with a one-year transition, (3) the proposed RHC rates, (4) the proposed SIA payment, and (5) the proposed 1.8 percent hospice payment update percentage. Table 29 below shows the results of our analysis. For the purposes of our impact analysis, we use the utilization observed in the most complete hospice claims data available at the time of rulemaking (FY 2014 hospice claims submitted as of December 31, 2014). Presenting these data gives the hospice industry a more complete picture of the effects on their total revenue based on the use of updated hospital wage index data and the BNAF phase-out, the proposed adoption of the new OMB CBSA delineations with a one-year transition, the proposed SIA payment, and the proposed FY 2016 hospice payment update percentage as discussed in this proposed rule. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. 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 hospices.

TABLE 29—ESTIMATED HOSPICE IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY, FY 2016

| (1) | Providers (2) | Updated FY 2016 wage index data and phase-out of BNAF (% change) (3) | Proposed 50/50 blend of FY 2016 wage index values under old and new CBSA delineations (% change) (4) | Proposed routine home care rates (days 1 thru 60 and days 61+) (%) (5) | Proposed FY 2016 SIA payment (% change) (6) | Proposed FY 2016 hospice payment update percentage (% change) (7) | Total FY 2016 proposed policies (% change) (8) |
|---|---|---|---|---|---|---|---|
| All Hospices | 4,010 | −0.7 | 0.2 | 0.0 | 0.0 | 1.8 | 1.3 |
| Urban Hospices | 3,015 | −0.7 | 0.3 | 0.0 | 0.0 | 1.8 | 1.4 |
| Rural Hospices | 995 | −0.3 | −0.2 | 0.4 | 0.0 | 1.8 | 1.7 |
| Urban Hospices—New England | 140 | 0.0 | 0.1 | 1.3 | −0.1 | 1.8 | 3.1 |
| Urban Hospices—Middle Atlantic | 251 | −0.7 | −0.2 | 0.8 | 0.0 | 1.8 | 1.7 |
| Urban Hospices—South Atlantic | 410 | −1.1 | 0.3 | −0.7 | −0.1 | 1.8 | 0.2 |
| Urban Hospices—East North Central | 388 | −0.8 | 0.7 | −0.2 | 0.0 | 1.8 | 1.5 |
| Urban Hospices—East South Central | 165 | −0.7 | 0.5 | −0.3 | 0.0 | 1.8 | 1.3 |
| Urban Hospices—West North Central | 221 | −0.7 | 0.6 | 0.7 | 0.0 | 1.8 | 2.4 |
| Urban Hospices—West South Central | 593 | −1.1 | 0.6 | −1.2 | −0.2 | 1.8 | −0.1 |
| Urban Hospices—Mountain | 299 | −0.6 | 0.2 | −0.4 | 0.0 | 1.8 | 1.0 |
| Urban Hospices—Pacific | 511 | −0.1 | 0.0 | 1.0 | 0.2 | 1.8 | 2.9 |
| Urban Hospices—Outlying | 37 | 0.0 | 0.3 | −1.1 | −0.2 | 1.7 | 0.7 |
| Rural Hospices—New England | 24 | −0.3 | 0.0 | 3.3 | 0.3 | 1.8 | 5.1 |
| Rural Hospices—Middle Atlantic | 42 | 0.3 | −0.1 | 1.8 | 0.5 | 1.8 | 4.3 |
| Rural Hospices—South Atlantic | 141 | −0.6 | 0.1 | −0.2 | 0.0 | 1.8 | 1.1 |
| Rural Hospices—East North Central | 135 | −0.7 | −0.4 | 0.8 | 0.2 | 1.8 | 1.7 |
| Rural Hospices—East South Central | 133 | −0.1 | −0.1 | −0.9 | −0.2 | 1.8 | 0.5 |
| Rural Hospices—West North Central | 184 | −0.3 | −0.1 | 2.2 | −0.1 | 1.8 | 3.5 |
| Rural Hospices—West South Central | 184 | −0.1 | −0.1 | −1.0 | −0.2 | 1.8 | 0.4 |
| Rural Hospices—Mountain | 102 | −1.4 | −0.7 | 0.3 | 0.1 | 1.8 | 0.1 |
| Rural Hospices—Pacific | 47 | 2.1 | 0.1 | 3.3 | 0.3 | 1.8 | 7.6 |
| Rural Hospices—Outlying | 3 | −0.8 | −0.2 | 1.9 | 0.2 | 1.8 | 2.9 |
| 0–3,499 RHC Days (Small) | 840 | −0.5 | 0.1 | 3.0 | 0.1 | 1.8 | 4.5 |
| 3,500–19,999 RHC Days (Medium) | 1,924 | −0.6 | 0.2 | 0.6 | 0.0 | 1.8 | 2.0 |
| 20,000+ RHC Days (Large) | 1,246 | −0.7 | 0.3 | −0.2 | 0.0 | 1.8 | 1.2 |
| Non-Profit Ownership | 1,070 | −0.6 | 0.2 | 1.2 | 0.1 | 1.8 | 2.7 |
| For Profit Ownership | 2,398 | −0.7 | 0.3 | −1.0 | −0.1 | 1.8 | 0.3 |
| Govt/Other Ownership | 542 | −0.6 | 0.3 | 0.6 | 0.1 | 1.8 | 2.2 |
| Freestanding Facility Type | 3,016 | −0.7 | 0.3 | −0.4 | 0.0 | 1.8 | 1.0 |
| HHA/Facility-Based Facility Type | 994 | −0.4 | 0.2 | 1.8 | 0.2 | 1.8 | 3.6 |
| Rate of RHC NF/SNF Days is in Lowest Quartile (Less than or equal to 3.1%) | 1,002 | −0.5 | 0.1 | 0.7 | 0.0 | 1.8 | 2.1 |
| Rate of RHC NF/SNF Days is in 2nd Quartile (Greater than 3.1 and Less than or equal to 16.7%) | 1,003 | −0.6 | 0.1 | 0.4 | 0.2 | 1.8 | 1.9 |
| Rate of RHC NF/SNF Days is in 3rd Quartile (Greater than 16.7 and less than or equal to 35.5%) | 1,003 | −0.7 | 0.3 | −0.1 | 0.0 | 1.8 | 1.3 |

TABLE 29—ESTIMATED HOSPICE IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY, FY 2016—Continued

| (1) | Providers (2) | Updated FY 2016 wage index data and phase-out of BNAF (% change) (3) | Proposed 50/50 blend of FY 2016 wage index values under old and new CBSA delineations (% change) (4) | Proposed routine home care rates (days 1 thru 60 and days 61+) (%) (5) | Proposed FY 2016 SIA payment (% change) (6) | Proposed FY 2016 hospice payment update percentage (% change) (7) | Total FY 2016 proposed policies (% change) (8) |
|---|---|---|---|---|---|---|---|
| Rate of RHC NF/SNF Days is in Highest Quartile (Greater than 35.5%) | 1,002 | −0.7 | 0.4 | −0.6 | −0.2 | 1.8 | 0.7 |

Source: FY 2014 hospice claims data from the Standard Analytic Files for CY 2013 (as of June 30, 2014) and CY 2014 (as of December 31, 2014).

**Note:** The proposed 1.8 percent hospice payment update percentage for FY 2016 is based on an estimated 2.7 percent inpatient hospital market basket update, reduced by a 0.6 percentage point productivity adjustment and by 0.3 percentage point. Starting with FY 2013 (and in subsequent fiscal years), the market basket percentage update under the hospice payment system as described in section 1814(i)(1)(C)(ii)(VII) or section 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity as set out at section 1886(b)(3)(B)(xi)(II) of the Act. In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions set out under section 1814(i)(1)(C)(v) of the Act).

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.

Table 29 above also presents the impact of the changes in this proposed rule according to the type of hospice, geographic location, type of ownership, hospice base, size, and percentage of RHC days in a SNF/NF. The majority of hospice payments are made at the routine home care rate; therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2014. As indicated in column 2 of Table 29, there are 4,010 hospices included in the regulatory impact analysis. Approximately 40 percent of Medicare-certified hospices are identified as voluntary (non-profit) or government agencies (1,612 hospices) and 60 percent are proprietary (for-profit) (2,398 hospices). In addition, our analysis shows that most hospices are in urban areas, are medium-sized, and are freestanding.

b. Hospice Size

The use of updated wage data combined with the BNAF phase-out is anticipated to decrease FY 2016 payments to large hospices by 0.7 percent and to decrease payments to small and medium hospices by 0.5 percent and 0.6 percent respectively (column 3). The proposed 50/50 Blend for FY 2016 wage index values under the old and the new CBSA delineations is anticipated to result in an increase in payments to small hospices of 0.1 percent, an increase in payments to medium hospices of 0.2 percent, and an increase to large hospices of 0.3 percent (column 4). The proposed RHC rates are projected to increase payments by 3.0 percent for small hospices and 0.6 percent for medium hospices. The proposed RHC rates are anticipated to decrease payments by 0.2 percent for large hospices. The proposed FY 2016 SIA payment is projected to result in an increase in FY 2016 payments of 0.1 percent for small hospices and no change in payments for medium and large hospices (column 6).

c. Geographic Location

Column 3 of Table 29 shows the combined estimated effects of using updated wage data and the BNAF phase-out and results in a decrease in FY 2016 payments of 0.7 percent for urban hospices and 0.3 percent for rural hospices. Urban hospices can anticipate a decrease in payments ranging from 1.1 percent in the South Atlantic and West South Central regions to 0.1 percent for hospices in the Pacific. No change in payments is expected for urban hospices in the New England and outlying areas. Rural hospices are estimated to see a decrease in payments in eight regions, ranging from 1.4 percent in the Mountain region to 0.1 percent in the East South Central and West South Central regions. Rural hospices can anticipate an increase in payments in the Middle Atlantic region of 0.3 percent and an increase of 2.1 percent in the Pacific region.

Column 4 shows the effect of the proposed 50/50 Blend of the FY2016 wage index values under the old and the new CBSA delineations. Overall, hospices are anticipated to experience a 0.2 percent increase in payments, with urban hospices experiencing an estimated increase of 0.3 percent and rural hospices experiencing an estimated decrease of 0.2 percent. All urban areas other than Middle Atlantic and Pacific are estimated to see increases in payments, ranging from 0.7 percent in the East North Central region to 0.1 percent in the New England region. No change in FY 2016 payments for hospices in urban areas in the Pacific region is expected. In contrast, rural hospices are estimated to experience a small decrease in payments in seven regions, ranging from 0.1 percent in the East South Central, Middle Atlantic, and West North Central regions to 0.7 percent in the Mountain region. Payments in the New England region are anticipated to remain unchanged and payments in the South Atlantic and Pacific regions are estimated to increase slightly by 0.1 percent.

Column 5 shows the anticipated effects of the proposed RHC rates, that is, paying separate rates for days 1 through 60 and days beyond 60. Overall, hospices would experience no change in overall payments for FY 2016 due to the proposed RHC rates. FY 2016 payments are estimated to range from an increase of 3.3 percent for rural hospices in New England and Pacific regions to a decrease of 1.2 percent for urban hospices in the West South Central region.

Column 6 shows the effects of proposed FY 2016 SIA Payment. Overall, hospices are anticipated to experience no change in overall payments for FY 2016. However, FY 2016 payments are estimated to range from an increase of 0.5 percent for rural hospices in the Middle Atlantic region to a decrease of 0.2 percent for urban hospices in the West South Central region and the Outlying region.

Column 8 shows the total anticipated impact of the FY 2016 proposed policy

changes. Overall, all hospices are anticipated to receive a 1.3 percent increase in payment. Rural hospices in the Pacific Region show the largest anticipated payment increase of 7.6 percent. Rural hospices in New England are anticipated to receive an increase of 5.1 percent, Middle Atlantic hospices are anticipated to receive an increase of 4.3 percent and rural hospices in the outlying regions are estimated to receive an increase of 2.9 percent in payments.

d. Type of Ownership

Column 3 demonstrates the effect of the use of updated wage data and BNAF phase-out on estimated FY 2016 payments. We estimate that using the updated wage data and BNAF phase-out would decrease estimated payments to voluntary (non-profit) and government hospices by 0.6 percent. Proprietary (for-profit) hospices are expected to have a decrease in payments of 0.7 percent. Column 4 demonstrates the effects of the proposed 50/50 Blend of FY 2016 wage index values under the old and the new CBSA delineations. Estimated FY 2016 payments to voluntary (non-profit), proprietary (for-profit) and government hospices are anticipated to increase by 0.2 percent, 0.3 percent and 0.3 percent, respectively. Column 5 shows the anticipated impacts for the two proposed RHC rates. Estimated FY 2016 payments are anticipated to increase for voluntary (non-profit) and government hospices by 1.2 percent and 0.6 percent respectively and to decrease for proprietary (for-profit) hospices by 1.0 percent. Column 6 shows the estimated effects of the proposed SIA payment. Estimated FY 2016 payments are anticipated to increase for voluntary (non-profit) and government hospices by 0.1 percent and decrease for proprietary (for-profit) hospices by 0.1 percent.

e. Hospice Base and Percentage of RHC Days in a SNF/NF

Column 3 demonstrates the combined effects of using the updated wage data and the BNAF phase-out on estimated payments for FY 2016. Estimated payments are anticipated to decrease for freestanding hospices by 0.7 percent and decrease for HHA/facility-based hospices by 0.4 percent. Column 4 shows the effects of the proposed 50/50 Blend of FY 2016 wage index values under the old and new CBSA delineations. Payments are estimated to increase by 0.3 percent for freestanding hospices and by 0.2 percent for HHA/facility-based hospices. Column 5 shows the effects of the proposed RHC rates. Payments to freestanding hospices are expected to decrease by 0.4 percent while payments to HHA/facility-based hospices are expected to increase by 1.8 percent. Column 6 shows the effects of the proposed SIA payment. Payments to freestanding hospices are expected to neither increase nor decrease due to the SIA proposal, while payments for HHA/facility-based hospices are expected to increase by 0.2 percent.

Table 29 also shows the effects of the proposed changes in this rule by the rate of RHC NF/SNF days in quartiles. Column 3 shows that all four quartiles (lowest quartile being less than or equal to 3.1 percent of RHC days in a SNF/NF to the highest quartile being greater than 35.5 percent of RHC days in a SNF/NF) are anticipated to experience a decrease in payments ranging from 0.5 percent for the first quartile to 0.7 percent for the third and fourth quartiles. Column 4 shows the effect of the proposed 50/50 Blend of FY 2016 wage index values under the old and the new CBSA delineations. All four quartiles are anticipated to experience an increase in payments under this proposal with the first and second quartiles anticipated to experience increases of 0.1percent, the third quartile anticipated to experience an increase of 0.3 percent, and the highest quartile to experience an increase in payments of 0.4 percent. Column 5 shows the anticipated impact of the proposed RHC rates on hospices by their rates of RHC days in a SNF/NF. The first and second quartiles are anticipated to see an increase in payments of 0.7 percent and 0.4 percent respectively. The third and fourth quartiles are anticipated to see decreases of 0.1 percent and 0.6 percent respectively due to the proposed RHC rates. Column 6 shows the anticipated effect of the proposed FY 2016 SIA payment on hospices by their rates of RHC days in a SNF/NF. The second quartile is anticipated to see an increase in payments of 0.2 percent. The first and third quartile is expected to experience no change in payments under the FY 2016 SIA payment proposal and the highest quartile is anticipated to experience a decrease in FY 2016 payments of 0.2 percent under this proposal.

f. Effects on Other Providers

This proposed rule would only affect Medicare hospices, and therefore has no effect on other provider types.

g. Effects on the Medicare and Medicaid Programs

This proposed rule only affects Medicare hospices, and therefore has no effect on Medicaid programs. As described previously, estimated Medicare payments to hospices in FY 2016 are anticipated to increase by 1.3 percent, or $200 million.

h. Alternatives Considered

For the FY 2016 proposed rule, we considered several alternatives to the proposals articulated in section III.B. As described in Table 13 in section III.B.1 of this preamble, previous work on a tiered payment model indicates that a different RHC payment could begin at day 31. Therefore, we considered proposing that the higher rate of the RHC payment to be the first 30 days of hospice care given the results above and given that MedPAC identified in their 2008 Report to Congress that the 'break-even' point of profitability was found to be about three weeks. However, because our analysis found that 'marginal costs' continued to decline slightly between days 15–30 and days 31–60 (see figure 5 in section III.B.2 of this preamble), we proposed to begin the lower RHC payment rate on day 61. In addition, we proposed to have the ''count of days'' follow the patient (that is, count the days relative to the patient's lifetime length of stay) to mitigate potential high rates of live discharge and readmission due to the proposed RHC payment rates based on the days of care. For hospice patients who are discharged and readmitted to hospice within 60 days of that discharge, his/her prior hospice days will continue to follow the patient and count toward his/her patient days for the receiving hospice upon hospice election. We also considered a longer (that is, 90 days) window of time between a discharge and a subsequent hospice election as a basis of determining which RHC payment rate would be applied based on the days following the beneficiary. However, we proposed the 60 day time period. We also considered not applying the higher initial RHC rate (1 through 60 days) to beneficiaries in nursing homes.

For the SIA payment, we considered allowing the first two days of a new hospice election with a unique hospice provider to also be eligible for the SIA payment. The reason for not proposing to allow the SIA payment to apply to the first two days of a new hospice election with a unique hospice was outlined in section III.B. In addition, because the SIA payment is required to be implemented in a budget neutral manner in the first year of implementation, per section 1814(i)(6)(D)(ii), allowing the first two days of the hospice election with a unique hospice provider to be eligible for the SIA payment would result in a larger decrease to the RHC rate for all hospice providers. We estimate that the

RHC would need to be reduced by 1.26 percent (rather than the proposed 0.81 percent).

i. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 30 below, we have prepared an accounting statement showing the classification of the expenditures associated with this proposed rule. Table 30 provides our best estimate of the increase in Medicare payments under the hospice benefit as a result of the changes presented in this proposed rule for 3,879 hospices in our impact analysis file constructed using FY 2014 claims as of December 31, 2014.

TABLE 30—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS, FROM FY 2015 TO FY 2016

[In $millions]

| Category | Transfers |
|---|---|
| **FY 2015 Hospice Wage Index and Payment Rate Update** | |
| Annualized Monetized Transfers. | $200. |
| From Whom to Whom? | Federal Government to Hospices. |

j. Conclusion

In conclusion, the overall effect of this proposed rule is an estimated $200 million increase in Medicare payments to hospices. The $200 million increase in estimated payments for FY 2016 reflects the distributional effects of the 1.8 percent proposed FY 2016 hospice payment update percentage ($290 million increase), the use of updated wage index data and the phase-out of the wage index budget neutrality adjustment factor (−0.7 percent/$120 million decrease) and the proposed implementation of the new OMB CBSA delineations for FY 2016 hospice wage index with a one-year transition (0.2 percent/$30 million increase). The proposed SIA payment does not result in aggregate changes to estimate hospice payments for FY 2016 as this proposal would be implemented in a budget neutral manner through an overall reduction to the RHC payment rate for all hospices.

2. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.5 million to $38.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of the updated wage data and the BNAF phase-out (−0.7 percent decrease or −$120 million) the proposed implementation of the new OMB CBSA delineations for FY 2016 hospice wage index with a one-year transition (0.2 percent increase or $30 million), the proposed SIA payment (no estimated aggregate impact on payments), and the proposed FY 2016 hospice payment update percentage (1.8 percent increase or $290 million) results in an overall increase in estimated hospice payments of 1.3 percent, or $200 million, for FY 2016. Therefore, the Secretary has determined that this proposed rule will not create a significant economic impact on a substantial number of small entities.

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 the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule only affects hospices. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

3. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This proposed rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $144 million or more.

## VI. Federalism Analysis and Regulations Text

Executive Order 13132, Federalism (August 4, 1999) requires an agency to provide federalism summary impact statement when it promulgates a proposed rule (and subsequent final rule) that has federalism implications and which imposes substantial direct requirement costs on State and local governments which are not required by statute. We have reviewed this proposed rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on State or local governments.

**List of Subjects in 42 CFR Part 418**

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services propose to amend 42 CFR chapter IV as set forth below:

## PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

### Subpart G—Payment for Hospice Care

■ 2. Section 418.302 is amended by—
■ a. Adding paragraphs (b)(1)(i) and (ii).
■ b. Amending paragraphs (d)(1), (d)(2), (e) introductory text, (f)(2) and (f)(5)(ii) by removing the word ''intermediary'' and adding in its place the words ''Medicare Administrative Contractor''.
■ c. Revising paragraph (e)(1).

The revisions and additions read as follows:

**§ 418.302 Payment procedures for hospice care.**

* * * * *

(b) * * *

(1) * * *

(i) *Service intensity add-on.* Except as provided in paragraph (b)(1)(ii) of this section, routine home care days that occur during the last 7 days of a hospice election ending with a patient discharged as ''expired'' are eligible for a service intensity add-on payment. Such payment must be equal to the continuous home care hourly payment rate, as described in paragraph (e)(4) of this section, multiplied by the amount of direct patient care provided by a RN and/or social worker, up to 4 hours total per day.

(ii) Routine home care days provided to patients residing in a skilled nursing facility (SNF) or a long-term care

nursing facility (NF) are not eligible for the service intensity add-on payment.

* * * * *

(e) * * *

(1) Payment is made to the hospice for each day during which the beneficiary is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day (except as set out in paragraph (b)(1)(i) of this section).

* * * * *

■ 3. Section 418.306 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

**§ 418.306 Annual update of the payment rates and adjustment for area wage differences.**

(a) *Applicability.* CMS establishes payment rates for each of the categories of hospice care described in § 418.302(b). The rates are established using the methodology described in section 1814(i)(1)(C) of the Act and in accordance with section 1814(i)(6)(D) of the Act.

(b) *Annual update of the payment rates.* The payment rates for routine home care and other services included in hospice care are the payment rates in effect under this paragraph during the previous fiscal year increased by the hospice payment update percentage increase (as defined in sections1814(i)(1)(C) of the Act), applicable to discharges occurring in the fiscal year.

(1) For fiscal year 2014 and subsequent fiscal years, per section 1814(i)(5)(A)(i) of the Act, in the case of a Medicare-certified hospice that submits hospice quality data, as specified by the Secretary, the payment rates are equal to the rates for the previous fiscal year increased by the applicable hospice payment update percentage increase.

(2) For fiscal year 2014 and subsequent fiscal years, per section 1814(i)(5)(A)(i) of the Act, in the case of a Medicare-certified hospice that does not submit hospice quality data, as specified by the Secretary, the payment rates are equal to the rates for the previous fiscal year increased by the applicable hospice payment update percentage increase, minus 2 percentage points. Any reduction of the percentage change will apply only to the fiscal year involved and will not be taken into account in computing the payment amounts for a subsequent fiscal year.

(c) *Adjustment for wage differences.* Each hospice's labor market is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by OMB. CMS will issue annually, in the **Federal Register**, a hospice wage index based on the most current available CMS hospital wage data, including changes to the definition of MSAs. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C) of this chapter. The payment rates established by CMS are adjusted by the Medicare contractor to reflect local differences in wages according to the revised wage data.

* * * * *

**§ 418.308 [Amended]**

■ 4. Section 418.308(c) is amended by removing the phrase ''(that is, by March 31st)''.

■ 5. Section 418.309 is amended by revising the introductory text and paragraph (a) to read as follows:

**§ 418.309 Hospice aggregate cap.**

A hospice's aggregate cap is calculated by multiplying the adjusted cap amount (determined in paragraph (a) of this section) by the number of Medicare beneficiaries, as determined by one of two methodologies for determining the number of Medicare beneficiaries for a given cap year described in paragraphs (b) and (c) of this section.

(a) *Cap amount.* The cap amount was set at $6,500 in 1983 and is updated using one of two methodologies described in paragraphs (a)(1) and (2) of this section.

(1) For accounting years that end on or before September 30, 2016 and end on or after October 1, 2025, the cap amount is adjusted for inflation by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers that is published by the Bureau of Labor Statistics. This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year.

(2) For accounting years that end after September 30, 2016, and before October 1, 2025, the cap amount is the cap amount for the preceding accounting year updated by the percentage update to payment rates for hospice care for services furnished during the fiscal year beginning on the October 1 preceding the beginning of the accounting year as determined pursuant to section 1814(i)(1)(C) of the Act (including the application of any productivity or other adjustments to the hospice percentage update).

* * * * *

Dated: April 23, 2015.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 27, 2015.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2015–10422 Filed 4–30–15; 4:15 pm]

**BILLING CODE 4120–01–P**

# FEDERAL REGISTER

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Part IV

## The President

Proclamation 9266—Asian American and Pacific Islander Heritage Month, 2015
Proclamation 9267—National Mental Health Awareness Month, 2015
Proclamation 9268—Older Americans Month, 2015
Proclamation 9269—Loyalty Day, 2015

Federal Register
Vol. 80, No. 86
Tuesday, May 5, 2015

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9266 of April 30, 2015**

## Asian American and Pacific Islander Heritage Month, 2015

**By the President of the United States of America**

**A Proclamation**

The rich heritage of Asian Americans, Native Hawaiians, and Pacific Islanders spans the world and the depths of America's history. Generation after generation, Asian Americans and Pacific Islanders have forged a proud legacy that reflects the spirit of our Nation—a country that values the contributions of everyone who calls America home. During Asian American and Pacific Islander (AAPI) Heritage Month, we honor the perseverance of those who courageously reached for their hopes and dreams in a new land, and we celebrate the important impact the AAPI community has made on our Nation's progress.

From the more than one million immigrants who journeyed across the Pacific and arrived on Angel Island to the Chinese-American laborers who risked their lives to link our coasts by rail, the determination of this vibrant community represents the best of our national character. In each chapter of our country's story—in places like Selma and the grape fields of Delano, during the moments where our Nation's destiny has been decided—AAPIs of all backgrounds have set inspiring examples as leaders and trailblazers, united by a common hope for civil rights, equal treatment, and a better tomorrow for all Americans.

Through times of hardship and in the face of enduring prejudice, these women and men have persisted and forged ahead to help strengthen our Union. Native Hawaiians have fought to protect their treasured traditions, language, and lands. And AAPI patriots have defended the beliefs for which we stand. Seventy years ago, the United States and our allies secured a lasting peace throughout the Asia Pacific region and much of the world—a victory achieved in part by thousands of Filipino Americans who fought valiantly but were denied compensation, and also by Japanese Americans who served this country even as the freedom of their loved ones was denied.

Fifty years ago, the United States opened new doors of opportunity to more Asian and Pacific Islander immigrants through the Immigration and Nationality Act of 1965, ending the arbitrary and outdated policies that unfairly limited the potential of entire regions. This year also marks the 40th anniversary of the end of the Vietnam War, which brought new Vietnamese, Cambodian, Hmong, and Laotian communities to this country. But as we recognize the enormous progress America has made, we must also acknowledge the many struggles AAPIs continue to experience in the face of persistent inequality and bigotry, including barriers to equal access to education, employment, and health care. South Asian Americans—especially those who are Muslim, Hindu, or Sikh—too often face senseless violence and harassment due only to the color of their skin or the tenets of their faith. And to this day, many AAPIs continue to live in the shadows and are separated from their families due to our broken immigration system.

My Administration is committed to addressing these unmet needs and the ugly discrimination that still exists. I was proud to re-establish the White House Initiative on AAPIs soon after I took office, to foster opportunities for increased access to and involvement in Federal programs. As part of

that effort, my Administration is expanding its regional network of Federal leaders and hosting community meetings across the country to better understand the needs of the diverse AAPI community. Last year, I announced my intent to take actions that would allow more high-skilled immigrants, graduates, and entrepreneurs to stay and contribute to our economy, and I continue to call on the Congress to pass comprehensive immigration reform. To highlight the tremendous growth of the AAPI community and my Administration's commitment to increasing opportunity for AAPIs everywhere, this month we will host the White House Summit on AAPIs—an unprecedented and historic all-day convening of senior Federal officials and community leaders from across the country.

As we commemorate Asian American and Pacific Islander Heritage Month, we pay tribute to all those in the AAPI community who have striven for a brighter future for the next generation. Together, let us recommit to embracing the diversity that enriches our Nation and to ensuring all our people have an equal chance to succeed in the country we love.

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 May 2015 as Asian American and Pacific Islander Heritage Month. I call upon all Americans to visit *www.WhiteHouse.gov/AAPI* to learn more about our efforts on behalf of Asian Americans and Pacific Islanders, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10895
Filed 5–4–15; 11:15 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9267 of April 30, 2015**

## National Mental Health Awareness Month, 2015

**By the President of the United States of America**

**A Proclamation**

This year, approximately one in five American adults—our friends, colleagues, and loved ones—will experience a diagnosable mental health condition like depression, anxiety, bipolar disorder, schizophrenia, or post-traumatic stress, and many others will be troubled by significant emotional and psychological distress, especially in times of difficulty. For most of these people, treatment can be effective and recovery is possible. Yet today, millions of Americans still do not receive the care they need. This month, we stand with those who live with mental illness, and we recommit to ensuring all Americans have access to quality, affordable care.

In the past decade, our Nation has made extraordinary progress in recognizing severe psychological distress and diagnosing and treating mental illness, and my Administration is committed to building on that success. The Affordable Care Act extends mental health and substance use disorder benefits and parity protections to over 60 million Americans. Protections under the law also prohibit insurers from denying coverage because of pre-existing conditions like a diagnosis of mental illness and require most insurance plans to cover recommended preventive services without copays, including behavioral assessments for children and depression screenings. As part of the BRAIN Initiative, we are funding innovative research that aims to revolutionize our understanding of conditions that affect the brain, such as mental health disorders, and to improve the lives of all who live with them. And we continue to invest in community health centers, enabling them to expand access to mental health services where they are needed most.

As Americans, we have a sacred obligation to provide those who suffer from the invisible wounds of war with the support they have earned. Earlier this year, I was proud to sign the Clay Hunt SAV Act, which authorized additional steps to address mental health and prevent suicide among veterans. This law will build on my Administration's ongoing work to bolster mental health services for service members, veterans, and their families. We recently established a new policy that will ensure the continuity of mental health medications during service members' transitions to care at the Department of Veterans Affairs (VA), and we took action to make certain those receiving mental health care are connected to mental health professionals as they transition to the VA or a community provider. My Administration has also worked to increase the number of counselors available to our veterans and to expand the capacity of the Veterans Crisis Line.

Despite how common it is to experience severe psychological distress, substance use problems, and mental illness, there is still considerable stigma associated with mental health treatment. This month, we must bring mental illness out of the shadows and encourage treatment for those who might benefit; it is our shared responsibility to recognize the signs of psychological and emotional distress and to support those in need. We must strive to remove the stigma around mental illness and its treatment, overcome fear and misunderstanding, and make sure all those dealing with a mental health issue know they are not alone. Asking for help is not a sign of weakness—taking action to help yourself is a sign of strength. If you or someone

you know is in need of immediate assistance, call 1–800–662–HELP. The National Suicide Prevention Lifeline also offers immediate assistance for all Americans, including service members and veterans, at 1–800–273–TALK.

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 May 2015 as National Mental Health Awareness Month. I call upon citizens, government agencies, organizations, health care providers, and research institutions to raise mental health awareness and continue helping Americans live longer, healthier lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10896
Filed 5–4–15; 11:15 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9268 of April 30, 2015**

## Older Americans Month, 2015

**By the President of the United States of America**

**A Proclamation**

In America, every person who is willing to work hard and play by the rules should be able to build a life of opportunity and prosperity. We learned this simple truth from our oldest generation—the women and men who relentlessly pursued progress throughout the 20th century. Drivers of enormous change, they have enriched our Nation and bravely defended the values we cherish; they have broken down barriers and blazed pathways for all who followed; and they have raised us all and endowed us with a freer, fairer, more equal world.

After a lifetime of contributions, they have earned our care and respect, and they deserve to live out their years with dignity and independence. Our Nation is strongest when older Americans live comfortably in their golden years and have the opportunity to continue to contribute to the fabric of the country and society they helped to shape. This month, we celebrate the accomplishments and sacrifices of our elders, and we reaffirm our belief that the promise of our Nation extends to Americans of all ages.

The United States is entering a new era, and the face of our Nation is growing older and more diverse. For the next 15 years, thousands of Americans will reach retirement age every day, and by 2030, there will be more than twice as many older Americans as there were at the beginning of this century. This growing population is a tremendous national asset. By changing the way we think and talk about aging—by focusing on the opportunities of aging rather than the limitations—we can work to maximize the potential of this generation and ensure they continue to thrive as they age.

To address the changing landscape of aging and advance policies that help older Americans pursue their fullest measure of happiness, this summer my Administration will host the 2015 White House Conference on Aging. By connecting older Americans, their families, caregivers, advocates, community leaders, and experts, the Conference is an important chance to continue our efforts to safeguard retirement security, promote healthy aging, provide long-term services and support, and protect older Americans from abuse, neglect, and financial exploitation.

This year also marks the 50th anniversary of Medicare, Medicaid, and the Older Americans Act, as well as the 80th anniversary of Social Security. For decades, these landmark achievements have stood as pillars of economic opportunity for millions of Americans and reflected the promise we make to our seniors. As President, I have worked tirelessly to strengthen these programs. Throughout the last half-century, the Older Americans Act has empowered older Americans by upholding their rights and supporting social and nutrition services, as well as a nationwide network of employment, training, and research programs. These vital services help millions of seniors across our Nation. I am also proud of the progress we have made during my Administration to improve Medicare, which provides essential health care and security for older Americans. And I am committed to further strengthening Medicare by bolstering access to care for beneficiaries, encouraging better outcomes, and improving long-term sustainability.

Social Security is one of the most important and successful programs ever established in the United States, and we must make certain it is solvent and viable for the American people, now and in the future. I am fighting to ensure any reforms will protect retirement security for the most vulnerable, including low-income seniors, and maintain the robust disability and survivors' benefits that help families after they have paid into the system. To build on this legacy, I started the *my*RA program, a new type of savings account that provides additional pathways for Americans to build their nest egg, and I have called for new rules to require financial advisors to put their clients' interests before their own—ensuring all who responsibly prepare for retirement receive the best advice possible.

Our elders forged a bright future for all our Nation's children, and they deserve the best America has to offer. As heirs to their proud legacy, we must reach for the world they have made possible. During Older Americans Month, we lift up all those whose life's work has made ours a little easier, and we recommit to showing them the fullest care, support, and respect of a grateful Nation.

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 May 2015 as Older Americans Month. I call upon all Americans of all ages to acknowledge the contributions of older Americans during this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10897
Filed 5–4–15; 11:15 am]
Billing code 3295–F5

# Presidential Documents

**Proclamation 9269 of April 30, 2015**

## Loyalty Day, 2015

**By the President of the United States of America**

**A Proclamation**

As Americans, we are united not by the circumstances of our birth or our station in life, but by our fidelity to a set of shared ideals and unalienable rights. The principles of freedom, justice, and equality for all are at the very core of who we are as a Nation. We believe firmly in the power of democracy and opportunity—but we know that these blessings are only what we make of them, and that our experiment in self-government gives work and purpose to each new generation. Today, we recommit to the profoundly patriotic work of doing all we can to better the country we love.

Throughout the course of our history, our values have sustained us through periods of tremendous struggle and times of great prosperity. They found expression in the courage of patriots who loved this country so much that they were willing to risk everything to realize its promise. It was an enormous faith in what our country could be that led hopeful women and men to march on Washington, waving the American Flag—even as they were denied their fundamental rights. And it was the understanding that our Union is a constant work in progress that guided our forebears through places like Seneca Falls, Selma, and Stonewall.

As a Nation, we know the journey to perfect our Union is unending, and we are strong enough to be self-critical. We can look upon our imperfections and decide that it is within our power to remake our country to more closely align with our highest ideals. On Loyalty Day, we reaffirm the belief that loving this great Nation requires more than singing its praises or avoiding uncomfortable truths. It requires the willingness to speak out for what is right and to recognize that change depends on our actions, our attitudes, and the values we teach our children. Let us never forget America is exceptional because we each have the capacity to shape our own destiny and change the course of our Union's history.

In order to recognize the American spirit of loyalty and the sacrifices that so many have made for our Nation, the Congress, by Public Law 85–529 as amended, has designated May 1 of each year as ''Loyalty Day.'' On this day, let us reaffirm our allegiance to the United States of America and pay tribute to the heritage of American freedom.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 1, 2015, as Loyalty Day. This Loyalty Day, I call upon all the people of the United States to join in support of this national observance, whether by displaying the Flag of the United States or pledging allegiance to the Republic for which it stands.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–10913
Filed 5–4–15; 11:15 am]
Billing code 3295–F5

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